

## ORGANIZED CRIME AS A COLLECTIVE SECURITY PROBLEM: PROSPECTS AND CHALLENGES IN U.N. ENFORCEMENT

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*The prevailing view of the U.N. system's approach to organized crime holds that progress in integrating counter-crime initiatives into peace operations established by the U.N. Security Council has been limited, and the U.N. system has taken a cautious approach against organized crime. A more thorough examination of the Security Council's complex actions regarding organized crime challenges this assessment. By analyzing Security Council resolutions between 2000 and 2021, this article finds that out of 1333 resolutions passed, 538 (40.4%) addressed or discussed organized crime in relation to a situational crisis or generalized threat. In a significant number of cases, measures were taken under Chapter VII of the U.N. Charter. This article argues that the Security Council has been highly creative in addressing the growing convergence of criminal activity, illicit markets, and modern conflicts. By critically analyzing the resolutions adopted under Articles 41 and 42 of the U.N. Charter, the Council has encouraged new approaches to the changing face of modern conflicts and drawn sustained attention to the need to integrate crime-prevention and control initiatives into peace processes and U.N. operations. This article presents the main findings of the empirical work, highlighting the different ways in which the Security Council has responded to organized crime. Against this backdrop, it also critically analyzes the Council's use of peace-keeping and peace-enforcing measures to deal with organized criminal activities, and discusses the evolution of sanctions and the integration of responsive and hybrid regulation into contemporary sanctions regimes.<sup>1</sup>*

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1. The present article was conceived and co-authored for occasion of the *NYU JILP Symposium: The State of International Criminal Law*, NYU School of Law, 29 October 2021. Sections 1, 2 and 4 were written by Leonardo Borlini, and sections 3 and 5 by Stefano Silingardi. Sections 2 and 4 elaborate on, and update, some of the findings of Leonardo Borlini, *The UN Security Council Faces Organized Crime: Fact-finding, Regulation, and Enforcement Strategies*, 20 J. INT'L CRIM. JUST. 2022 (Dec. 2021).

This article elaborates on two datasets including, respectively, the resolutions adopted under Chapter VII of the U.N. Charter from 1990 to 2019 that deal with non-state domestic actors, and all resolutions adopted from 2000 to 2020 referring to different forms of organized crime. The latter dataset, introduced by a methodological note and completed with the

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## I. INTRODUCTION

International law enforcement has witnessed a major evolution over the last century:<sup>2</sup> the gradual move from a method of *horizontal enforcement* (through self-help and, most importantly, countermeasures)<sup>3</sup> to a *centralized enforcement*

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2. See Vera Gowlland-Debbas, *Security Council Enforcement Action and Issues of State Responsibility*, 43 INT'L & COMP. L.Q., 60 (1994). See also Jean D'Aspremont, *The Collective Security System and the Enforcement of International Law*, in THE OXFORD HANDBOOK OF THE USE OF FORCE IN INTERNATIONAL LAW, 129 (Marc Weller ed., 2013) (arguing that not only has international law existed in its modern form for almost 400 years without domestic-type enforcement institution, but, more generally, "it lacks a general mechanism to ensure that any behaviour unwanted by its primary rules is systematically and automatically sanctioned"); Robert Kolb, *Le droit international comme corps de "Droit Privé" et de "Droit Public" [International Law as a system of "private law" and "public law"]*, 419 Recueil des Cours, 621 (2021) (arguing that for the most part, international law remains a compliance-based, not an enforcement-based, system).

3. See Federica Paddeu, *Countermeasures*, in MAX PLANCK ENCYCLOPAEDIA OF PUBLIC INTERNATIONAL LAW, 1 (2015) (defining countermeasures as "unilateral measures adopted by a State (the 'injured State'), in response to the breach of its rights by the wrongful act of another State (the 'wrongdoing' or 'target' State) that affect the rights of the target State and are aimed at inducing it to provide cessation or reparations to the injured State"). See also, Georges Abi-Saab, *The Concept of Sanction in International Law*, in UNITED NA-

*mechanism* based on U.N. Security Council action under Chapter VII of the U.N. Charter.<sup>4</sup> Although scholars debate whether Chapter VII can itself be considered a centralized enforcement mechanism of international law,<sup>5</sup> it remains clear that: a) the Security Council *has the authority to enforce the law* through forcible and non-forcible measures; and b) such an authority can only be exercised against those states or non-state actors who *threaten international peace and security*.<sup>6</sup>

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TIONS SANCTIONS AND INTERNATIONAL LAW, 38 (Vera Gowlland-Debbas ed., 2001) (arguing that countermeasures, like acts of retorsion/reprisal, are “manifestations of ‘self-help’ or ‘private justice’, and their legality is confined to the very narrow limits within which ‘remnants’ of ‘self-help’ are still admitted in contemporary international law”); Nigel D. White, *Autonomous and Collective Sanctions in the International Legal Order*, 27 ITALIAN Y.B. OF INT’L L. 1, 3–27 (2018) (arguing that countermeasures operate as a bilateral, horizontal means of law enforcement in a decentralized system); JAMES CRAWFORD, THE INTERNATIONAL LAW COMMISSION’S ARTICLES ON STATE RESPONSIBILITY 281 (2002) (analyzing the regulation of countermeasures in contemporary international law and according to the International Law Commission’s Draft Articles on Responsibility of States for Internationally Wrongful Acts, U.N. COMM’N OF INT’L L., YEARBOOK OF THE INTERNATIONAL LAW COMMISSION 2001, U.N. Doc. A/CN.4/SER.A/2001/Add.1 (Part 2), U.N. Sales No. E.04.V.17 (Part 2), which regulates countermeasures in article 49).

4. U.N. Charter, Chapter VII (detailing that, if the Security Council determines the existence of a threat to the peace, breach of the peace, or act of aggression (art. 39), it can make recommendations, order provisional measures (art. 40), or take non-military (art. 41), or military enforcement measures (art. 42) according to the exigencies of the particular situation. These measures are binding on member States if the SC so decides. Under that perspective, these measures constitute an enforcement action which is generally conceived of (even through the use of armed force) as directed against a State and as designed to overcome the opposing will of the latter). On the characterization of U.N.S.C. action under Chapter VII as centralized, see Gowlland-Debbas, *supra* note 2, at 60. See generally, Nico Krisch, *Introduction to Chapter VII: The General Framework*, in 2 THE CHARTER OF THE UNITED NATIONS: A COMMENTARY 1237, 1239–71 (B. Simma, et al. eds., 3d ed. 2012) (providing a general overview on the historical origin of Chapter VII, the evolution of State practice, and the character, powers, and limits of enforcement action under Chapter VII).

5. D’Aspremont, *supra* note 2, at 140 (observing that “much debate still persists among scholars as to whether Chapter VII creates an enforcement mechanism *stricto sensu* and whether the prohibition to use force by the UN Charter still left some room for decentralized enforcement performed through forcible self-help”).

6. Nico Krisch, *supra* note 4, at 1241.

These assumptions are critical when considering the evolution of the Council's approach to organized crime. For one thing, organized crime lacks a precise definition and refers to various criminal activities or threats with both domestic and transnational dimensions. Therefore, organized crime can only be elevated to the attention of the U.N. system when the Security Council identifies it as a threat to international peace and security according to Article 39 of the U.N. Charter or as a factor contributing to the existence and gravity of such a threat.<sup>7</sup> For another, the Council's engagement in the fight against non-state criminal activities is part of a move towards much deeper involvement in the internal governance of states, also in areas traditionally considered to be outside the scope of its action (e.g. law-making, domestic justice, and good governance).<sup>8</sup> As a result, the Council has been relying on its powers under Chapter VII of the U.N. Charter to confront non-state criminal activity in ways extending far beyond the original intent of the Charter's drafters.<sup>9</sup> As observed by James Cockayne, with its increased focus on organized criminal activity, the Security Council resolutions suggest an approach to law enforcement that draws "increasingly on domestic criminal justice dis-

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7. *See, e.g.*, Henri Decour, *CONFRONTING THE SHADOW STATE: AN INTERNATIONAL LAW PERSPECTIVE ON STATE ORGANIZED CRIME* 201 n.23 (2018) (citing Security Council resolutions: 1209 (1998), illicit arms flows to and in Africa; 1817 (2008), drug manufacturing and trafficking in Afghanistan; 2066 (2012), drug and arms trafficking in Liberia; 2100 (2013), criminal networks and transnational organized crime in the Sahel region; 2103 (2013), drug trafficking in Guinea-Bissau; 2117 (2013), illicit transfer of small arms and light weapons; 2196 (2015), illicit trade, exploitation and smuggling of natural resources in the Central African Republic (CAR); 2227 (2015), transnational organized crime in the Sahel region; 2262 (2016), illicit trafficking, trade, exploitation and smuggling of natural resources in the CAR; 2267 (2016), drug trafficking and related transnational organized crime in Guinea-Bissau; 2339 (2017), illicit trafficking, trade, exploitation and smuggling of natural resources and illicit transfer of small arms and light weapons in the CAR). *See also* similar resolutions passed since the publication of Decour's book: S.C. Res. 2402 (Feb. 26, 2018), (illicit transfer, destabilizing accumulation and misuse of weapons in Yemen); S.C. Res. 2462 (June 13, 2019), (terrorist financing); S.C. Res. 2610 (Dec. 17, 2021), (terrorist financing).

8. *See, e.g.*, S.C. Res. 1933, ¶¶ 13, 16 (June 30, 2010); S.C. Res. 2162, ¶¶ 9, 11 (June 25, 2014); S.C. Res. 2396 ¶¶ 12–13, 15 (Dec. 21, 2017), S.C. Res. 2617, 7 (Dec. 30, 2021).

9. Borlini, *supra* note 1, at 37.

course and techniques – including investigations on crimes, trials and sanctions.”<sup>10</sup>

Elaborating on the empirical analysis of all Security Council resolutions adopted since 2000, this article expands on the existing literature regarding the Council’s enforcement powers from three distinct perspectives. Part II offers a detailed illustration of the Council’s engagement with organized crime and elucidates, also in quantitative terms, the different strategies that enabled the U.N. executive body to address the issue. Part III analyses the Council’s experimentation with direct enforcement against organized crime through executive policing and military action by U.N. field operations. Specifically, it discusses not only whether peacekeeping is the right instrument to deal with organized crime at the operational level, but also the legal limitations and operational challenges that specific mandates in U.N. practice reveal. Part IV then investigates the Security Council’s practice of dealing with organized crime through the use of sanctions as regulation.<sup>11</sup> It shows that not only does the Council now target the criminal financing of armed groups, but it also sanctions individuals explicitly because of their alleged involvement in specific criminal activities and/or their dealings with criminal networks. Furthermore, the Council uses sanctions as a preventive control mechanism, *i.e.*, as a regulatory tool to prospectively manage risks to peace and security triggered, in particular, by non-state actors.<sup>12</sup> Part V concludes.

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10. James Cockayne, *Confronting Organized Crime and Piracy*, in *THE U.N. SECURITY COUNCIL IN THE 21ST CENTURY*, 299, 299–300 (Sebastian von Einsiedel et al. eds., 2016).

11. Much of this section is based on the work of Kristen Boon, as set forth in, *U.N. Sanctions as Regulation*, 15 *CHINESE J. OF INT’L L.* 543. Just as Boon—along with her co-authors Gregory Fox and Isaac Jenkins—expounded upon this theoretical foundation through the use of a coded dataset of Security Council Resolutions in *The Contributions of United Nations Security Council Resolutions to the Law of Non-International Armed Conflict: New Evidence of Customary International Law*, 67 *AM. U. L. REV.* 649 (2018), this article makes use of a broader dataset to fit Boon’s theoretical lens to organized crime.

12. See Leonardo Borlini, *IL CONSIGLIO DI SICUREZZA E GLI INDIVIDUI [THE SECURITY COUNCIL AND INDIVIDUALS]* 308–315 (2018) (analyzing the different ways in which the Security Council deals with non-state actors).

## II. ORGANIZED CRIME AND COLLECTIVE SECURITY: EMPIRICAL FINDINGS

“Organized crime is a fuzzy and contested umbrella concept that raises frequent disputes in security and criminal sciences.”<sup>13</sup> Because different municipal legal systems provide different definitions, it is often difficult to determine the meaning of the phrase without reference to local contexts.<sup>14</sup> Even so, the legal definitions adopted in most jurisdictions are so broad that they can be applied to a wide range of criminal phenomena and suspects, thus reflecting to the reality that there is no agreed international legal definition of organized crime.<sup>15</sup> Criminologists tend to agree that certain core elements are consistently present in organized crime, including: crime perpetuated through a common enterprise or infrastructure; rational criminal operation; an ultimate eye towards profit.<sup>16</sup> Reflecting these core tenets, “the introduction for the *Oxford Handbook of Organized Crime* starts with the proposition that ‘there are two main notions and types of organized crime: (a) a set of stable organizations illegal *per se* or whose members systematically engage in crime and (b) a set of serious criminal activities, and particularly the provision of illegal goods and services, mostly carried out for monetary gain.’”<sup>17</sup>

The latter notion is reflected in resolutions adopted by the Security Council, while instances of the former are occasionally found directly in the Council’s practice. In recent years, the Council has addressed criminal activities such as trafficking in drugs, arms, human beings, and wildlife, as well as money laundering and the pillaging of natural resources in a

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13. Borlini, *supra* note 1, at 5.

14. *Id.*

15. See Cecily Rose, *The Creation of a Review Mechanism for the UN Convention Against Transnational Organized Crime and Its Protocols*, 114 AM. J. INT’L L. 53 (2020). See Convention against Transnational Organized Crime, art. 2, Nov. 15, 2000, 2225 U.N.T.S. 209 (2(a) defining “organized criminal groups” to 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”; and, 2(b) defining a “serious crime” as a “conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty”).

16. Borlini, *supra* note 1.

17. *Id.*

significant number of resolutions, identifying them as factors fueling and aggravating contemporary conflicts and international crises.<sup>18</sup> Criminal markets can “intensify levels of violence and provide significant sources of funding for both state and non-state armed actors in conflicts,” creating criminal war economies and entrenching criminal interests so deeply into the local social fabric that they undermine efforts to negotiate and sustain a peace process.<sup>19</sup> As it has been correctly observed, “[i]n such contexts, the aims of combatants may shift towards more economic, organized criminal activities, or criminal groups may attain power and legitimacy in the absence of effective state institutions”.<sup>20</sup> Reports from the United Nations Organization Stabilization Mission in the Democratic Republic of Congo (MONUSCO), for example, show that virtually all the armed groups involved in that conflict have, at some stage, engaged in illegal exploitation of the vast natural resources in the region.<sup>21</sup> Reports from Central African Republic (C.A.R.), Côte d’Ivoire, Liberia, Sierra Leone, and other countries tell a similar story.<sup>22</sup>

Organized crime has therefore “emerged as a major factor in many contemporary and protracted crises, often exacer-

18. Decour, *supra* note 7.

19. Alexandre Bish, *From resolutions to responses: Organized crime and the UN Security Council, Global Initiative against Transnational Crime*, GLOBAL INITIATIVE (June 18, 2019), <https://globalinitiative.net/analysis/toc-unscc/> [https://perma.cc/V6KP-MEVG].

20. The Global Initiative Against Transnational Organized Crime, *Organized crime and its role in contemporary conflict. An analysis of UN Security Council Resolutions*, 2 (Sept. 2018), <https://globalinitiative.net/wp-content/uploads/2018/09/TGIATOC-UNSC-Policy-Note-1962-web.pdf> [https://perma.cc/Y87P-L2DH].

21. UNEP-MONUSCO-OSESG, ‘Experts’ Background Report on Illegal Exploitation and Trade in Natural Resources Benefitting Organized Criminal Groups and Recommendations on MONUSCO’s Role in Fostering Stability and Peace in Eastern DR Congo 26–30 (Apr. 2015), [https://wedocs.unep.org/bitstream/handle/20.500.11822/22074/UNEP\\_DRCongo\\_MONUSCO\\_OSESG\\_final\\_report.pdf?sequence=1&isAllowed=Y](https://wedocs.unep.org/bitstream/handle/20.500.11822/22074/UNEP_DRCongo_MONUSCO_OSESG_final_report.pdf?sequence=1&isAllowed=Y) [https://perma.cc/6D5Q-7QY4].

22. For the C.A.R., see Final Rep. of the Panel of Experts on the Central African Republic. Extended Pursuant to Security Council Resolution 2536 (2020), U.N. Doc. S/2021/569 (June 25, 2021). For the other countries, see DANIELLA DAM-DE JONG, INTERNATIONAL LAW AND GOVERNANCE OF NATURAL RESOURCES IN CONFLICT AND POST-CONFLICT SITUATIONS 331–43 (2015) (discussing the Security Council’s use of sanctions in order to put an end to resource driven conflicts and the role of peacekeeping operations in giving effect to the SC decisions).

bating violence, insurgencies, and state fragility.”<sup>23</sup> Accordingly, Security Council resolutions concentrate more on the *what* rather than the *who* of organized crime and address a diverse array of activities. An illustrative example is Resolution 2117 (2013), where the Council emphasized:

the illicit transfer, destabilizing accumulation and misuse of small arms and light weapons in many regions of the world continue to pose threats to international peace and security, cause significant loss of life, contribute to instability and insecurity and continue to undermine the effectiveness of the Security Council in discharging its primary responsibility for the maintenance of international peace and security.<sup>24</sup>

This study’s analysis of Security Council resolutions since 2000 shows that the array of criminal phenomena in the Council’s practice includes: drug trafficking; piracy; human trafficking; financial crime including terrorist financing, money laundering and proliferation of weapons financing; human smuggling; pillage and trafficking of natural resources; goods trafficking; theft and armed robbery; kidnapping and abductions; and wildlife trafficking.<sup>25</sup> Hence, the definition of “organized crime” applies to these actions for the purposes of the present study. Out of 1,333 Council resolutions passed in the twenty-two years from 2000 to 2021,<sup>26</sup> 538 (40.4%) addressed or discussed organized crime in relation to a situational crisis or a generalized threat.<sup>27</sup>

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23. Global Initiative, *Organized crime and its role in contemporary conflict*, supra note 20, at 1.

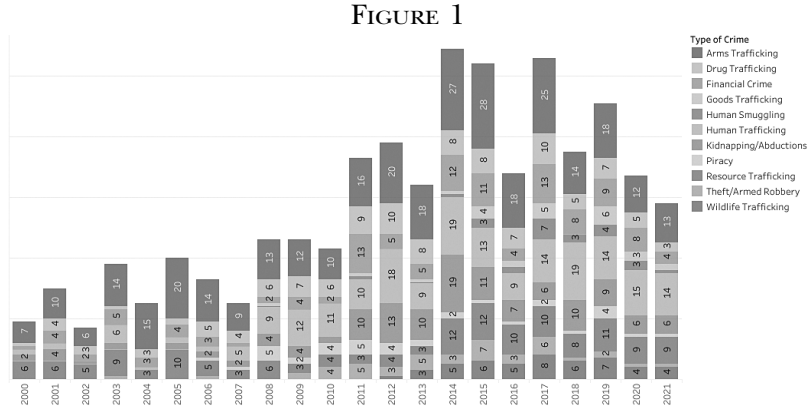
24. S.C. Res. 2117, pmb. § 4 (Sept. 26, 2013).

25. The following five figures are derived from authors’ datasets. See supra, note 1.

26. See *Global Initiative Against Transnational Organized Crime, Organized Crime and Illicit Flows at the Security Council (2018)*, www.globalinitiative.net/SCResolutions [https://perma.cc/MJ44-UJRH] [hereinafter *Global Initiative Database*] (producing an interactive dataset similar to that analyzed here).

27. See *infra* Figure 1. The other 77 resolutions addressed forms of organized crime with reference to a generalized threat (e.g. terrorism, proliferation of nuclear weapons) or in the context of thematic deliberations by the Council (e.g. proliferation of small and light weapons, children in armed conflict, and violations of international humanitarian law).



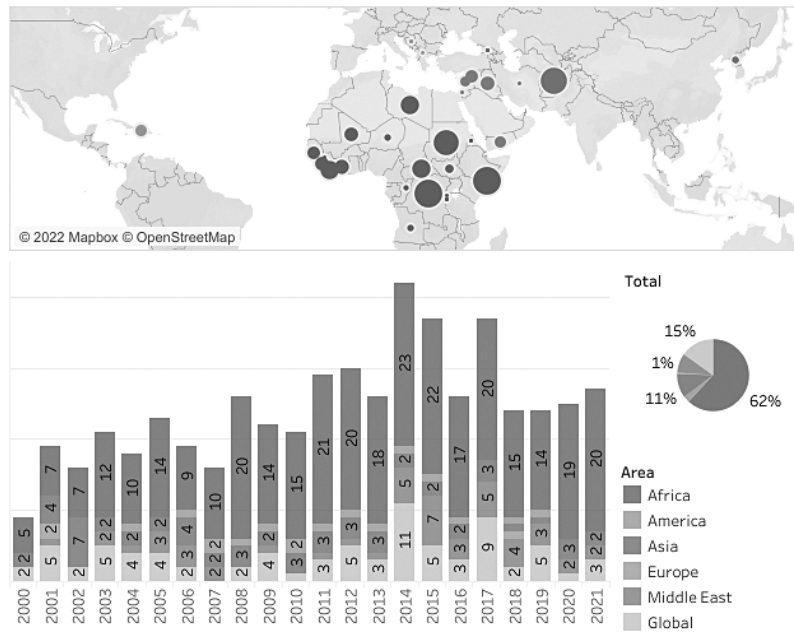


Of those resolutions addressing organized crime, 61% (338) concerned a country or region in Africa.<sup>28</sup> They addressed conflicts in Africa, the Middle East, and the Americas, and reflected the dominance of the crime-terror nexus on the Council’s agenda.<sup>29</sup>

28. See *infra* Figure 2 and Global Initiative Database, *supra* note 26 (both showing that references to organized crime peaked in 2014 and 2017, when, respectively, more than 67% (42) and 61% (38) of the resolutions referred to organized crime).

29. See, e.g., S.C. Res. 2482 (July 19, 2019) (addressing the relationship between organized crime and counter-terrorism).

FIGURE 2



Evidently, the Council has engaged frequently and substantially with organized crime. The percentage of resolutions addressing organized crime relative to the annual resolutions adopted in all but four years since 2000 has remained well above 30%. Moreover, since 2008, the percentage has consistently stayed above 40%, except for in 2010 (36%) and 2016 (34%). This trend continued through 2021, when 27 of the 57 Security Council's resolutions (47%) referred to some form of organized crime, further confirming its significant role. Again, African countries were the center of attention in more than two-thirds (74%) of resolutions referencing a form of organized crime in 2021.<sup>30</sup>

Reference to organized crime in a resolution is, of course, no proxy for the scale of the related conduct, and these resolutions do not necessarily mirror the real-world nature of conflicts on the ground. However, the Council's sustained recognition of the role of organized crime and illicit markets should not come as a surprise. Illicit networks have been shown to

30. See *infra* Figure 3.

play a role in all stages of conflicts: from the motivations behind their onset to the entrenched dynamics of violence, like the financing of armed groups, and complications in achieving sustainable solutions.<sup>31</sup> Criminal interests have been extensively identified as a major hurdle for peace processes;<sup>32</sup> and this growing convergence has been recognized by the Security Council's resolutions by encouraging new approaches to the changing face of modern conflicts and repeatedly drawing attention "to the need to integrate crime-prevention initiatives into the mandates of UN peacekeeping operations, mission assessment" and sanction regimes.<sup>33</sup>

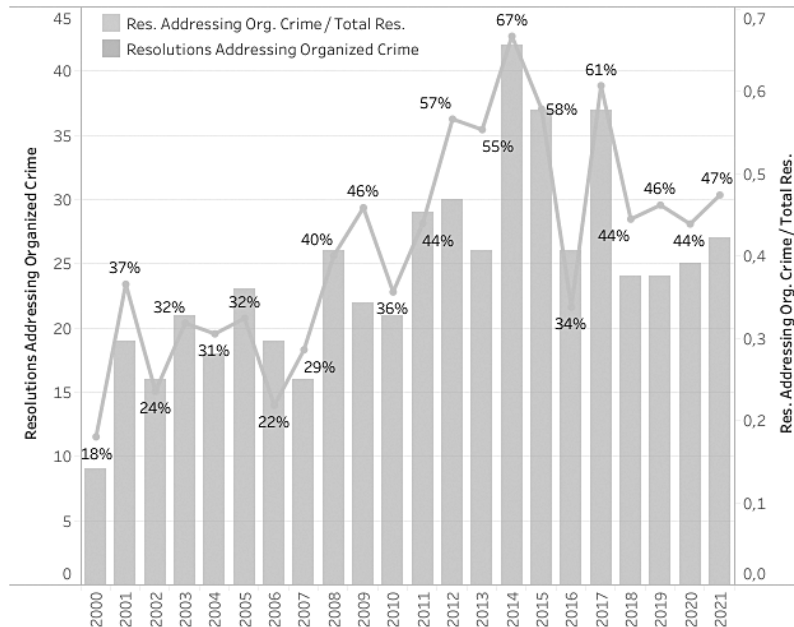
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31. See, e.g., UNEP-MONUSCO-OSESG, *supra* note 21 (detailing how in Central and West Africa's wars, for instance, exacerbation and protraction of conflicts have been some of the consequences of attempts to protect access to many natural resources, such as minerals, oil and wildlife); see also Midterm Rep. of the Panel of Experts on Mali, U.N. Doc. S/2020/158 (2020) (hereinafter 'Security Council Midterm Report on Mali') (applying similar analysis regarding recent conflicts in the Sahel to illicit trafficking in drugs, the smuggling of migrants and other criminal transit flows as serving as a means of resourcing insurgencies).

32. Borlini, *supra* note 12, at 118–121, 206–207.

33. Global Initiative, *Organized crime and its role in contemporary conflict*, *supra* note 20, at 1.

FIGURE 3



In a considerable number of resolutions, measures were taken under Chapter VII of the U.N. Charter.<sup>34</sup> Within this group, the Council has only occasionally authorized the use of forcible measures by U.N. member states—e.g., against piracy and armed robbery in Somalian territorial waters<sup>35</sup> and to tackle the trafficking of migrants in the Mediterranean Sea<sup>36</sup> Instead, most of its Chapter VII resolutions have been about the imposition or modification of sanctions and U.N. peace operations.<sup>37</sup> In many recent and ongoing conflicts in which forms of organized crime have emerged, targeted sanctions were often complemented by embargos on specific commodities like e.g., arms, gold, metals, stones, minerals, wildlife and other natural resources.<sup>38</sup> This was done to apply pressure to conflict groups by cutting off their sources of financing and

34. *See infra* Figure 4.

35. S.C. Res. 1816 (June 2, 2008); S.C. Res. 1851 (Dec. 16, 2008).

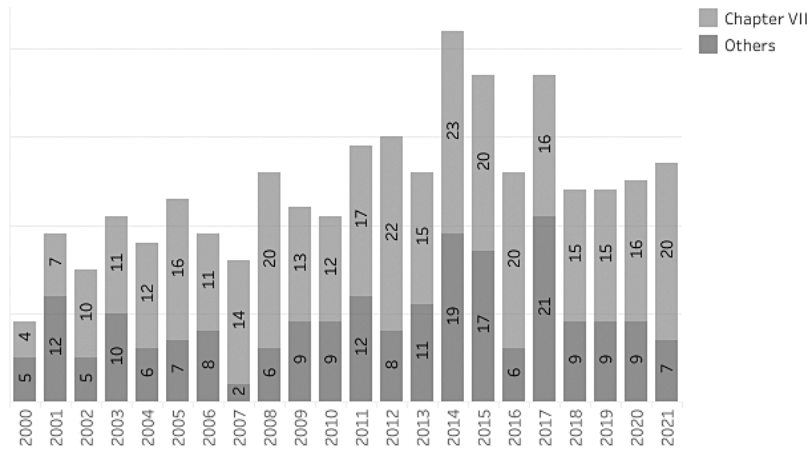
36. S.C. Res. 2240 (Oct. 9, 2015); S.C. Res. 2312 (Oct. 6, 2016); S.C. Res. 2380 (Oct. 5, 2017).

37. *See infra* Figure 5.

38. *Global Initiative Database*, *supra* note 26.

weapons. Sanctions are also used as a proactive and preventive policy tool.<sup>39</sup> The evolution of contemporary peacekeeping shows that policing has played an important role in U.N. peace operations dealing with organized crime.<sup>40</sup> But policing functions within such peacekeeping operations are focused more on investigations and the provision of public order than they are on military operations against organized crime groups.<sup>41</sup>

FIGURE 4

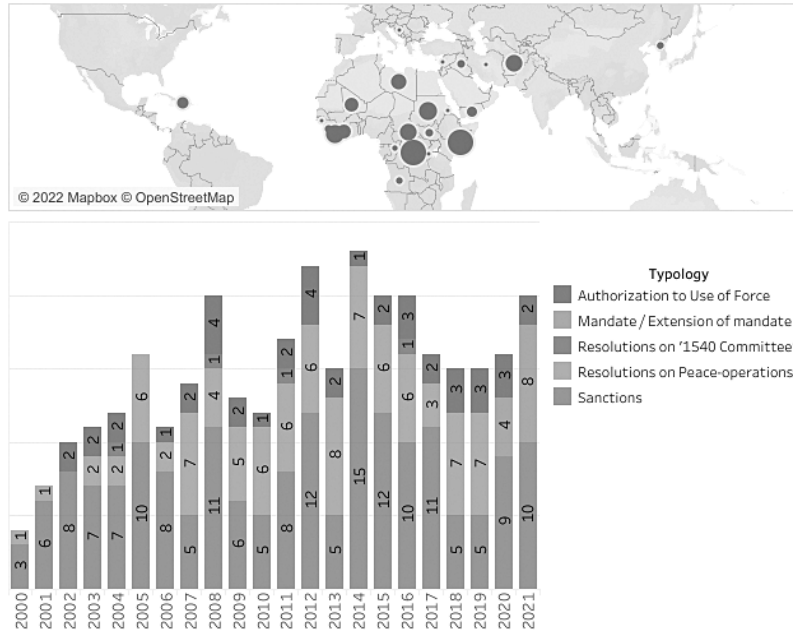


39. See *infra* Part IV.

40. See *infra* Part III.

41. See David M. Malone, *An Evolving UN Security Council*, in COOPERATING FOR PEACE AND SECURITY 75 (Bruce D. Jones et al. eds., 2010) (detailing that the few exceptions have included: the Special Trafficking Operations Program (STOP) established by the U.N. International Police Task Force in 2001 within United Nations Mission in Bosnia-Herzegovina (UNMIBH) dealing with human trafficking; a revised mandate for the U.N. Stabilization Mission in Haiti (MINUSTAH) which aimed to upgrade its crime prevention capacities, particularly its ability to deal with gangs, drugs, and arms trafficking; and, the operations by the Force Intervention Brigade charged by the SC with neutralizing M23, an armed group in the eastern DRC that was involved in illicit resource trafficking).

FIGURE 5



Non-Chapter VII resolutions have played a less meaningful role in dealing with organized crime. They take three main forms. First are so-called “thematic resolutions.”<sup>42</sup> These resolutions are typically of “general scope, primarily concerned with the protection of civilians in armed conflicts, particularly vulnerable persons such as women and children.”<sup>43</sup> Other resolutions of this type deal with certain generalized threats, such as the illicit transfer of weapons, and are mainly concerned with “standard setting” within the context of the promotion of existing international legal norms (the protection of cultural heritage, for example).<sup>44</sup> Interestingly, there are also recent tendencies towards the adoption of “guidelines,” for example on non-payment of ransoms to terrorist groups,<sup>45</sup> or on the

42. See Borlini, *supra* note 12, 176–205 (describing thematic resolutions).

43. Robert Kolb, Book Review, 61 *GER. Y.B. INT’L L.* 585 (2019) (reviewing LEONARDO BORLINI, *THE SECURITY COUNCIL AND INDIVIDUALS* (2018)).

44. See S.C. Res. 2347 (Mar. 24, 2017) (condemning the unlawful destruction of cultural heritage).

45. S.C. Res. 2133 (Jan. 27, 2014).

cooperation between the state and the private sector on weapons.<sup>46</sup>

Second are resolutions containing recommendations on the fight against crime and terrorism.<sup>47</sup> Salient features in this context include the growing call for cooperation within the private sector, like the Kimberley Process Certification Scheme (“Kimberley Process”) on diamonds.<sup>48</sup> Tools like these interact with the sanctions imposed under Article 41 of the U.N. Charter.<sup>49</sup>

Third are organizational or operational resolutions,<sup>50</sup> which are either limited to temporal extensions of existing sanction regimes and peace operations, or regard political missions. They are established under Chapter VI of the U.N. Charter and tasked with observing and verifying peace processes and post-conflict transitions, as well as providing programs of technical assistance.<sup>51</sup>

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46. S.C. Res. 2370 (Aug. 2, 2017).

47. *E.g.*, S.C. Res. 2133 (Jan. 27, 2014), S.C. Res. 2370 (Aug. 2, 2017), and S.C. Res. 2396 (Dec. 21, 2017).

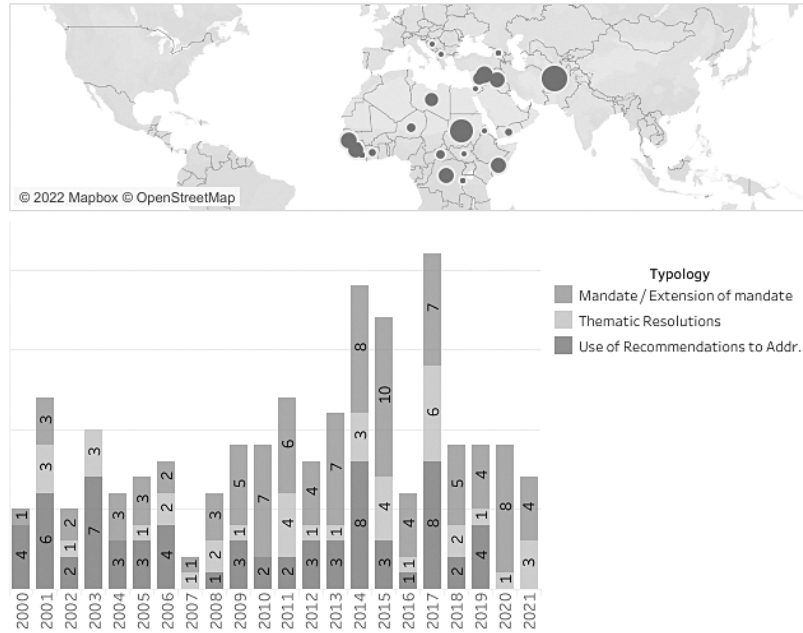
48. S.C. Res. 1459 (Jan. 28, 2003).

49. U.N. Charter art. 41 (setting forth the legal basis for all non-military enforcement measures, thereby empowering the Security Council to “decide what measures not involving the use of armed force are to be employed to give effect to its decisions”; these measures may include “complete or partial interruption of economic relations and of rail, sea, air, postal and telegraphic, radio and other means of communication, and the severance of diplomatic relations”). *See also* Nico Krisch, *Article 41*, in 2 THE CHARTER OF THE UNITED NATIONS: A COMMENTARY 1316 (B. Simma et al. eds, 3d ed. 2012) (describing the Article 41 scheme in greater detail); *see also infra* note 135.

50. *See* Benedetto Conforti & Carlo Focarelli, *THE LAW AND PRACTICE OF THE UNITED NATIONS* 452–53 (2016) (providing a definition of organizational and operational resolutions).

51. *See* Borlini, *supra* note 1, at 11.

FIGURE 6



To conclude, the practice of the Security Council, in dealing with different forms of organized crime over the last twenty years, shows a significant number of resolutions adopted under Chapter VII of the UN Charter. As discussed in the remaining part of this work, these resolutions show two main changes to that practice: i) the involvement of different Security Council subsidiary bodies (peace-operations, sanctions committees and panels of experts) in direct fact-finding about criminal networks and activities fueling contemporary conflicts and international crises; and ii) the integration of responsive hybrid forms of regulation into modern sanctions regimes (such that the use of sanctions is a form of regulation to address organized crime).<sup>52</sup>

52. Borlini, *supra* note 1.



### III. ENFORCEMENT ACTION AGAINST ORGANIZED CRIME THROUGH U.N. PEACE OPERATIONS MANDATES

Of the few studies that have explored how the Security Council deals with the increasing threats organized crime poses to international peace and security, most begin with a common assumption that organized crime is present in almost three quarters of the countries where the Council has authorized the deployment of U.N. peace operations, particularly in the West Africa and Sahel contexts.<sup>53</sup> As for the economic impact of total transnational organized crime, official data from the U.N. Office on Drugs and Crime (UNODC) from 2009 provide a conservative estimate of \$870 billion per year, representing more than 3% of global GDP.<sup>54</sup> Thirteen years later, with cyber-criminal activities rising significantly, it is highly likely that this percentage has increased.<sup>55</sup>

Organized crime also has a disproportionate impact on countries experiencing conflict and fragility. For instance, according to the most recent data from the Global Organized Crime Index 2021, the Democratic Republic of the Congo (D.R.C.) was identified as the country most affected by organized crime, followed by Colombia, Myanmar, Mexico, Nigeria,

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53. WALTER KEMP, MARK SHAW & ARTHUR BOUTELLIS, *THE ELEPHANT IN THE ROOM: HOW CAN PEACE OPERATIONS DEAL WITH ORGANIZED CRIME?* (International Peace Institute ed., 2013). See also Cockayne, *supra* note 10, at 302 (beginning with such an assumption); Arthur Boutellis & Stephanie Tiélès, *Peace Operations and Organised Crime: Still Foggy?*, in UNITED NATIONS PEACE OPERATIONS IN A CHANGING GLOBAL ORDER 173 (Cedric de Coning & Mateja Peter eds., 2019); Arthur Boutellis & Kari M. Osland, *Preventing Organized Crime. The Need for a Context Sensitive, UN System-Wide Approach*, NORWEGIAN INST. INT'L AFFS. 7 (July 2020), [https://www.academia.edu/43393705/The\\_Need\\_for\\_a\\_Context\\_Sensitive\\_UN\\_System\\_Wide\\_Approach\\_Preventing\\_Organized\\_Crime](https://www.academia.edu/43393705/The_Need_for_a_Context_Sensitive_UN_System_Wide_Approach_Preventing_Organized_Crime) [<https://perma.cc/979P-855G>].

54. United Nations Office on Drugs and Crime (UNODC), *Research Rep. Estimating Illicit Financial Flows Resulting from Drug Trafficking and Other Transnational Organized Crimes*, at 42 (Oct. 2011).

55. See Zhanna Malekos Smith & Eugenia Lostri, *The Hidden Costs of Cybercrime*, MCAFEE (Dec. 2020), <https://www.mcafee.com/enterprise/en-us/assets/reports/rp-hidden-costs-of-cybercrime.pdf> [<https://perma.cc/M7HU-3A4D>] (calculating that growing cybercrime incidents did cost the world economy, at the end of 2020, over \$1 trillion, or just more than 1% of global GDP, which is up 50% from a 2018 report that put global losses at \$600 billion).

Iran, Afghanistan, Syria, and Iraq.<sup>56</sup> This data reveals a global, deeply rooted, and gravely impactful phenomenon, particularly in countries of the Global South. And while the primary goal of organized crime groups may only be to pursue their illicit economic activities, their actions can also serve the interests of non-state armed groups that require significant capital to arm and support their members.<sup>57</sup> and further criminalize politics and [contribute to state fragility].<sup>58</sup>

In contexts where the state is unable to effectively control specific regions, such as C.A.R., Cote d'Ivoire, D.R.C., Liberia, and Sierra Leone, criminal organizations may fill that void with their own armed groups, funded in part by the exploitation of natural resources.<sup>59</sup> In at least some of those cases that reality presents one of the most significant crisis factors perpetuating conflict.<sup>60</sup> For instance, the program of the U.N. Stabilization Mission in Haiti (MINUSTAH) for disarmament, demobilization, and reintegration (DDR) has been heavily criticized for not having promptly taken into account that local criminal gangs were the main cause of instability in Haiti.<sup>61</sup>

Yet, it was only in 2010 that the Security Council invited the Secretary-General to consider threats posed by organized crime in mission planning and reporting, noting that “serious

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56. Global Initiative Against Transnational Organized Crime, *Global Organized Crime Index 2021* 18 (Sept. 28, 2021), <https://globalinitiative.net/wp-content/uploads/2021/09/GITOC-Global-Organized-Crime-Index-2021.pdf> [<https://perma.cc/G5BZ-GZ4X>].

57. Non-state armed groups tend to rely on a variety of funding sources, including typical organized criminal activities like armed robberies, kidnapping for ransom, and revenues from trafficking in natural resources. See Kemp, Shaw, & Boutellis, *supra* note 53, at 4–17 (regarding the crises in Kosovo, Guinea-Bissau and Haiti). See also S.C. Res. 2360, pmbly ¶ 20 (June 21, 2017) (noting armed groups' use of resource trafficking); Ray Murphy, *U.N. Peacekeeping in the Democratic Republic of Congo and the Protection of Civilians*, 21 J. CONFLICT & SEC. 209, 224–230 (on the crisis in Congo).

58. Jair Van der Lijn, *Multilateral Peace Operations and the Challenges of Organized crime*, SIPRI 8 (Feb. 2018).

59. *Id.* at 2.

60. See Chester A. Crocker, Fen Osler Hampson & Pamela Aall, *Conflict Management: A New Formula for Global Peace and Security Cooperation*, 87 INT'L AFFS. 39, 43 (focusing on organized criminal networks).

61. James Cockayne, *Winning Haiti's protection competition: organized crime and peace operations, past, present and future*, in PEACE OPERATIONS AND ORGANIZED CRIME. ENEMIES OR ALLIES? 115 (James Cockayne & Adam Lupel eds., 2011).

threats” posed by drug trafficking, transnational organized crime, and terrorism financing to international security “may threaten the security of countries on its agenda.”<sup>62</sup> But despite that declaration, the Council has so far been hesitant to give clear and specific mandates to its peace operations to deal with organized crime.<sup>63</sup>

A. *A brief glance at U.N. peace operations’ mandates against organized crime*

There are currently twelve peacekeeping operations led by the U.N. Department of Peace Operations (DPO).<sup>64</sup> Organized crime, crime prevention, and cooperation in criminal justice are mentioned in the mandates of six operations: the U.N. Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA); the U.N. Multidimensional Integrated Stabilization Mission in Mali (MINUSMA); MONUSCO (D.R.C.); the Interim Security Force for Abyei (UNISFA); U.N. Interim Administration Mission in Kosovo (UNMIK); and the U.N. Mission in South Sudan (UNMISS).<sup>65</sup> To a lesser extent, past peace operations were also tasked with addressing these topics.<sup>66</sup>

Among the few past operations explicitly tasked with addressing organized crime is the mandate of the U.N. Integrated Peacebuilding Office in Guinea-Bissau (UNIOGBIS). Its core responsibilities included supporting the local government in combatting drug trafficking and transnational organized crime.<sup>67</sup> U.N. Resolution 2512 (February 28, 2020), the

62. Statement by the President of the Security Council, U.N. Doc S/PRST/2010/4 (Feb. 24, 2010).

63. Boutellis & Tiélès, *supra* note 53, at 173.

64. *Where we Operate*, UNITED NATIONS PEACEKEEPING, <https://peacekeeping.un.org/en/where-we-operate> [<https://perma.cc/X3P7-PS5U>] (last visited Aug. 4, 2022).

65. Though it does not explicitly address the issue of organized crime, the mandate of the U.N. Police (UNPOL) component of the U.N. Peacekeeping Force in Cyprus (UNFICYP) has included, *inter alia*, the mandate to investigate and report illegal dumping of waste, as well as to prevent and report illegal hunting and bird trapping in the buffer zone.

66. Mariana Caparini, *UN Police and the Challenges of Organized Crime*, SIPRI 12 (2019) (“In 2013, organized crime was found to have been mentioned in the mandates of only 10 of the then 28 peace operations (peacekeeping, special political and peacebuilding missions).”).

67. S.C. Res. 1876, ¶ 3(f) (June 26, 2009).

last extending the UNIOGBIS mandate before the mission officially completed its task on December 31, 2020, reads as follows, with ample room for enforcement actions against organized crime:

[the Security Council] *Reiterates* its call on the Bissau-Guinean authorities to implement and review national legislations and mechanisms to combat transnational organized crime, including drug trafficking, trafficking in persons and money-laundering, which threaten security and stability in Guinea-Bissau and in the sub-region; and *encourages* international partners to support the relevant national institutions in this regard. . . *further encourages* the international community's cooperation with Guinea-Bissau on air traffic control, surveillance, and maritime security, within its jurisdiction, in particular to fight drug trafficking, illegal fishing, and illegal exploitation of natural resources; and *calls* on the Bissau-Guinean authorities to demonstrate commitment to combating drug trafficking through provision of adequate resources and political support to its counternarcotic units, as well as through investigations into and pursuit of accountability for the perpetrators.<sup>68</sup>

However, as one specific study has shown, a strong and specific mandate on organized crime does not guarantee that a mission will succeed. UNIOGBIS, for instance, had little success in implementing its mandate, "in part due to the lack of political will from the successive host governments and the limited leverage and capacities of the small U.N. political mission."<sup>69</sup>

Another significant reference to organized crime, albeit much more limited in scope and ambition, can be found in the mandate of the U.N. peace operation in Mali (MINUSMA). In that case, the Council had already foreseen in 2013 the "serious threats posed by transnational organized crime in the Sahel region, and its increasing links, in some cases, with terrorism," and underscored "the urgent need to address these issue,"<sup>70</sup> but had waited until 2018 to direct

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68. S.C. Res. 2512, ¶ 20 (Feb. 28, 2020).

69. Boutellis & Tiélès, *supra* note 53, at 174.

70. S.C. Res. 2100 (Apr. 25, 2013).

MINUSMA, in an operative paragraph of resolution 2423, “to enhance its awareness of the financial sources of conflicts in Mali, including trafficking in persons, arms, drugs and natural resources, and the smuggling of migrants, and of its implication on the regional security environment, in order to contribute to the definition of integrated and effective strategies in support of long-term peace and stability in Mali and the region.”<sup>71</sup>

The Mali example is, according to some authors, “[t]he best illustration of such disconnect between the diagnosis and the prescription.”<sup>72</sup> On one hand, it illustrates how criminal networks can destabilize an entire region, both because illegal trafficking helped to finance armed groups and because the increasing profits from drug trafficking and kidnapping-for-ransom activities led to the corrosion of state institutions, eventually causing the collapse of the Malian State.<sup>73</sup> On the other, it shows with extreme clarity, how important is to analyze the issue at an early stage in order not to be forced to address it when it has infiltrated the very government and state institutions that the U.N. seeks to strengthen.<sup>74</sup> Further, it shows the extent to which a lack of well-defined mandates and adequate plans to deal with organized crime can dramatically challenge the involvement of peace operations in these contexts.<sup>75</sup>

Currently, explicit references to organized crime can be found in the mandates of MONUSCO (D.R.C.) and MINUSCA (Mali), as described below. However, the organized crime references in MONUSCO are fairly limited. According to resolution 2277 (2016), MONUSCO—the largest U.N. peacekeeping mission with 20,000 uniformed personnel—is

71. S.C. Res. 2423, ¶ 31 (June 28, 2018). *See also* S.C. Res. 2531, ¶¶ 6, 28 (June 29, 2020) (developing this section of the mandate into a multiparagraph section); S.C. Res. 2584, ¶¶ 7, 30 (June 29, 2021). *See also* Blana Montejo & Bojan Stefanovic, *The Implementation of the Action for Peacekeeping in Context*, 24 J. INT’L PEACEKEEPING 223, 245–250 (2021) (focusing on the progressive evolution of MINUSMA’s mandate).

72. Boutellis & Tiélès, *supra* note 53, at 176.

73. Wolfram Lacher, *Organized Crime and the Conflict in the Sahel-Sahara Region*, CARNEGIE ENDOWMENT FOR INT’L PEACE 19 (Sept. 2012), [https://carnegieendowment.org/files/sahel\\_sahara.pdf](https://carnegieendowment.org/files/sahel_sahara.pdf) [<https://perma.cc/7B5B-A5CG>].

74. Boutellis & Tiélès, *supra* note 53, at 174.

75. *See* Borlini, *supra* note 1, at 17.

mandated to address the threat posed by armed groups only through enhanced collection and analysis of information on the transnational criminal networks that support the armed groups, in order to ensure an integrated and tailored response to those groups.<sup>76</sup> While MINUSCA is arguably one of the most extensive U.N. missions addressing organized crime, its mandate is restricted to the illicit exploitation and trafficking of natural resources. According to resolution 2387 (2017), the mission is only explicitly mandated “to continue to support the C.A.R. authorities to develop and finalize a nationally owned strategy to tackle the illicit exploitation and trafficking networks of natural resources which continue to fund and supply armed groups in the C.A.R. taking into account, where appropriate, the reports of the Panel of Experts.”<sup>77</sup>

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76. S.C. Res. 2277, ¶ 31 (Mar. 30, 2016); S.C. Res. 2409, ¶ 33 (Mar. 27, 2018). *See also*, Global Initiative, *Organized crime and its role in contemporary conflict*, *supra* note 20 (“MONUSCO . . . created a dedicated Criminal Networks Task Force in December 2016, to better understand the long-term impact of [transnational] criminal networks on insecurity in eastern DRC, [and to develop and implement integrated strategies to tackle the illegal exploitation or smuggling of gold and charcoal in the DRC]”.); UNEP-MONUSCO-OSESG, *supra* note 21 (warning that transnational organized criminal networks—to which, experts estimate, goes 10–30 percent of the illegal trade (around U.S.\$ 72–426 million per year) in gold, minerals, timber, charcoal and wildlife products such as ivory, exploited and smuggled illegally out of the conflict zone and surrounding areas in eastern DRC—“divide and rule” armed groups in eastern DRC to prevent any single armed group from achieving a dominant role and potentially interfering with illegal exploitation run by transnational criminal networks).

77. Caparini, *supra* note 66, at 15 (discussing S.C. Res. 2387 (2017), ¶ 43(f), which, according to Caparini, “further sets out the mission’s assistance and cooperation with the UN Panel of Experts in monitoring compliance with the arms embargo and restrictions on armed groups exploiting natural resources [and] MINUSCA is also mandated to adopt ‘urgent temporary measures’ where national security forces are not present or operational, and pay particular attention ‘to those engaging in or providing support for acts that undermine the peace, stability or security of the CAR, including acts that threaten or impede the political process, or the stabilization and reconciliation process, or that fuel violence’”). *See also* S.C. Res. 2605, ¶ 6 (Nov. 12, 2021) (calling on the CAR authorities and the authorities of neighboring countries “to cooperate at the regional level to investigate and combat transnational criminal networks and armed groups involved in arms trafficking and in the illegal exploitation of natural resources,” as well as “for the reactivation and regular follow-up of bilateral joint commissions between the CAR and neighbouring countries to address cross-border issues, including issues

References to organized crime are even more scarce in the mandates of U.N. operations addressing crime-fueled extreme violence or armed conflicts.<sup>78</sup> This is the case for the U.N.-African Union Mission in Darfur (UNAMID), which was terminated on December 31, 2020;<sup>79</sup> and the U.N. Mission for Justice Support in Haiti (MINUJUSTH), closed on October 15, 2019.<sup>80</sup> A significant case is the ongoing African Union Mission in Somalia (AMISOM).<sup>81</sup> Despite the acknowledged role of criminal organized groups in supplying al-Shabab through illicit trafficking in arms and other criminal activities, there is, indeed, no directive in the mission mandate to counter them.<sup>82</sup> However, organized crime was mentioned in resolution 2568 (March 12, 2021), where the Council, after recognizing “that the situation in Somalia has evolved since it first authorized AMISOM 14 years ago,”<sup>83</sup> reiterates the need “to pursue an approach that addresses stabilization and governance challenges, including addressing gaps related to public administration, rule of law, combating organized crime, justice and law enforcement.”<sup>84</sup> Then, in operative paragraph 3, the Security Council:

urges the FGS and FMS with the support of the African Union, the United Nations and international partners to work closer together to increase the delivery of non-military activities to address Al-Shabaab’s

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related to arms trafficking, and take agreed next steps to secure common borders.”).

78. *See* Caparini, *supra* note 66, at 13 (arguing that, despite the acknowledged role of organized crime in sustaining violence and armed conflict, many peacekeeping mission mandates are silent on organized crime or set out a very limited role for the mission on the issue).

79. *Id.* (“The Security Council expressed ‘serious concern’ at the involvement of Darfur armed movements in ‘migrant smuggling, criminal activity banditry and mercenary activities’ and encouraged regional states to cooperate on cross-border issues such as weapons smuggling—but only directed UNAMID to continue to support the work of the Panel of Experts in this regard.”).

80. *Id.*

81. *See Id.* (“AMISOM, deployed since 2007, is authorized to conduct offensive operations against al-Shabab, but there is no directive within the mandate to counter the organized criminal groups that supply al-Shabab, the Islamic State.”).

82. *Id.*

83. S.C. Res. 2568, pmb1. (Mar. 12, 2021).

84. *Id.*

organised crime, illicit finance, access to and trafficking in small arms and light weapons, procurement, justice and propaganda activities.<sup>85</sup>

And further, in operative paragraph 33, the Council “[c]alls upon the Somali authorities, in coordination with AMISOM, international partners, and relevant United Nations entities, including UNODC, to combat illicit financial flows and address Al Shabaab’s ability to generate revenue through organised crime operations.”<sup>86</sup> Thus, although still a relatively narrow reference to organized crime, resolution 2568 (2021) does bring the issue to the light.

An additional, rarer option for the Security Council is to authorize military action by peacekeeping forces against organized crime groups, as described below. By far, among the most significant U.N. actions of that kind were: a) the anti-gang operations led by MINUSTAH in 2006–2007, with the Haitian national police’s teams in the front line when carrying out arrests of gang leaders, and MINUSTAH troops in support to cordon off the area;<sup>87</sup> and b) the operations by the MONUSCO Intervention Brigade, charged by the Council with offensive combat functions in eastern D.R.C. against the M-23 rebel group. In resolution 2098, the Security Council developed the Intervention Brigade’s mandate of “neutralizing armed groups and . . . contributing to reducing the threat posed by armed groups to state authority and civilian security in eastern DRC and to make space for stabilization activities” (par. 9), as well as “[i]n support of the authorities of the DRC . . . [to] carry out targeted offensive operations. . . either unilaterally or jointly with [the DRC army], in a robust, highly mobile and versatile manner” (par. 12).<sup>88</sup> The resolution further extended the mandate of the Intervention Brigade from 2014 to 2021.<sup>89</sup>

More recently, the Council authorized MINUSCA, “in support of the CAR authorities, to take active steps to anti-

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85. *Id.* ¶ 3.

86. *Id.* ¶ 33.

87. See GUY HAMMOND, SAVING PORT-AU-PRINCE: UNITED NATIONS EFFORTS TO PROTECT CIVILIANS IN HAITI IN 2006–2007 (Stimson Ctr., 2012) (focusing on a detailed accounts of MINUSTAH’s anti-gang operations).

88. See S.C. Res. 2098, ¶¶ 9, 12 (Mar. 28, 2013).

89. *Id.* at n.81. See also S.C. Res. 2556, ¶ 22 (Dec. 18, 2020); S.C. Res. 2612 ¶ 18 (Dec. 20, 2021).



pate, deter and effectively respond to serious and credible threats to the civilian population. . .”<sup>90</sup> In particular, since April 2018, when the security situation in the C.A.R. (particularly in the Bangui region) was marked by renewed violence driven by the activities of criminal gangs (specifically, extortion rackets and illegal taxation), MINUSCA assisted the C.A.R. government in seizing weapons, ammunition and narcotics, and arresting people involved in organized crime in the framework of an operation that resulted in the exchange of live fire, which killed at least 30 and injured 190 others, including a dozen peacekeepers.<sup>91</sup>

Finally, UNMISS (South Sudan) and MINUSMA (Mali), warrant mentioning. In 2016, the Security Council created a specific unit within UNMISS, the Regional Protection Force (RPF), whose mandate clearly resembles the Intervention Brigade in its use of military force with a pro-active mandate.<sup>92</sup> According to its mandate, the RPF must “use all necessary means, including undertaking robust action,” to achieve “safe and free movement,” and to engage “*any actor* that is credibly found to be preparing attacks, or engages in attacks,” (emphasis added) against civilians and U.N. personnel.<sup>93</sup>

The case of MINUSMA is unique, as that operation has been tasked with a very robust mandate that includes the open use of armed force as an instrument to conduct militarily anti-terrorism operations.<sup>94</sup> Although that decision has been heavily criticized for deviating from traditional principles of peacekeeping,<sup>95</sup> to the extent that terrorist groups can be qualified as criminal organizations, this is a significant prece-

90. See S.C. Res. 2552, ¶ 31(a)(ii) (Nov. 12, 2020).

91. U.N. Secretary General, *Situation in the Central African Republic*, ¶¶ 16–17, U.N. Doc. S/2018/611 (June 18, 2018). See also U.N. Secretary General, *Central African Republic*, ¶ 77, U.N. Doc. S/2019/498 (June 17, 2019).

92. S.C. Res. 2304 (Aug. 12, 2016). The mandate of the RPF was renewed for four subsequent years, and not renewed in S.C. Res. 2567 (Mar. 12, 2021).

93. S.C. Res. 2327, ¶ 9 (Dec. 16, 2016).

94. See S.C. Res. 2480 (Jun. 28, 2019).

95. John Karlsrud, *The U.N. at War: Examining the Consequences of Peace-Enforcement Mandates for the U.N. Peacekeeping Operations in the CAR, the DRC and Mali*, 36 *THIRD WORLD Q.* (2015) 40, 45–47 (criticizing the robust mandate attributed to MINUSMA, as it would largely deviate from the principles of peacekeeping).

dent in the Security Council's actions against organized criminal groups.<sup>96</sup>

B. *U.N. peace operations as law enforcement against organized crime*

Writing in 2016, Cockayne observed that the Security Council's experimentation with direct enforcement against organized crime through executive policing and military action by peacekeeping force "has happened more by accident than design."<sup>97</sup> Over five years later, with an impressive number of Council resolutions passed in the meantime to address the issue of organized crime as a threat to international peace and security and its relationship with, above all, terrorist groups, the situation has not changed. The lack of clear mandates and adequate plans to address organized crime is consistently highlighted by studies exploring this area of practice.<sup>98</sup> To date, the Council's experiments with direct U.N. involvement in enforcement against organized crime have focused primarily on fact-finding, meaning "the verification of facts relating to situations and conduct that trigger or contribute to cause or per-

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96. Judith Vorrath, *Organized Crime on the UN Security Council Agenda*, SWP [GERMAN INST. INT'L AND SEC. AFFS.] (Oct. 2018), <https://www.swp-berlin.org/en/publication/organized-crime-on-the-un-security-council-agenda> [https://perma.cc/QF9P-348K] ("The connection between the two phenomena is the subject of UN Security Council Resolution 2195 from 2014."). *See also*, S.C. Res. 2482, ¶ 20 (July 19, 2019) ("[e]ncourag[ing] Member States . . . to impede cooperation and transfer of skills and knowledge between terrorists and other criminals").

97. Cockayne, *supra* note 10, at 307 (arguing that commentators can speak of "direct enforcement" because U.N. peace operations are subsidiary organs of the United Nations within the meaning of Article 29 of the U.N. Charter. Also determining that: "[t]he Security Council may establish such subsidiary organs as it deems necessary for the performance of its functions"). *See also* U.N. General Assembly, Model Status-of-Force Agreement for Peace-keeping Operations, U.N. Doc. A/45/594 (Oct. 9, 1990) (providing that "[t]he United Nations peacekeeping operations, as subsidiary organ of the United Nations, enjoys the status, privileges and immunities of the United nations").

98. *See, e.g.*, Cockayne, *supra* note 10, at 301 (exploring the lack of clear mandates or plans); Caparini, *supra* note 66, at 12; Boutellis & Tiélès, *supra* note 53, at 179–182.

petuate a threat to peace, or are otherwise important for advancing the UN mandate to preserve peace and security”.<sup>99</sup>

A number of factors contribute to the Security Council’s ongoing structural inability to effectively tackle the issue of organized crime through peace operations. From an international law perspective, the so-called “sovereignty obstacle” is among the most relevant.<sup>100</sup> The sovereignty obstacle refers to the fear, already expressed by many states in official forums and formal declarations, that by internationalizing the issue of organized crime, sovereignty may be compromised.<sup>101</sup> Many countries therefore prefer to engage with organized crime at a national level, in part because investigative and prosecutorial powers are traditionally perceived as part of the very essence of sovereignty and the state monopoly on the use of force.<sup>102</sup> But this approach may have adverse consequences for the successful deployment of peace operations, which operate on the basis of the host government’s consent.<sup>103</sup> Therefore, according,

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99. Borlini, *supra* note 12, at 14–26 (addressing the issue of the Council’s experimentation with UN direct involvement in fact-finding in relation to organized crime).

100. Cockayne, *supra* note 10, at 304.

101. *See e.g.*, U.N. SCOR, 65th Sess., 6277th mtg. at 10, U.N. Doc. S/PV.6277 (Feb. 24, 2010) (the Chinese formal declaration that “The primary responsibility in the fight against drug trafficking and related transnational crime lies with national Governments. International cooperation in that field must adhere to the principles of respect for sovereignty”). *See also* U.N. SCOR, 67th Sess., 6760th mtg. at 8, U.N. Doc. S/PV.6760 (Apr. 25 2012) (a formal declaration by India, according to which, even if undoubtedly “there are situations where international peace and security is exacerbated by illicit cross-border trafficking in arms and drug trafficking,” the conviction was expressed that “[t]he first fundamental principle in that regard is respect for the sovereignty and territorial integrity of the State seeking assistance.”)

102. *See* Van der Lijn, *supra* note 58, at 9 (arguing that organized criminal groups with government connections have used sovereignty to shield off external intervention, while they have also used international interventions to deal with competitors). *See also* S.C. Res. 2063, pmb. ¶ 5 (July 31, 2012) (lamenting the inaction of the Special Prosecutor nominated by the Sudanese government to indict persons suspected of abuses in Darfur); S.C. Res. 1590, pmb. ¶ 20 (Mar. 24, 2005); S.C. Res. 1721, ¶ 30 (Nov. 1, 2006) (both criticizing, in a report to the Security Council, an officer appointed to investigate a massacre for failing even to visit the scene of the crime).

103. U.N. Secretary-General, *An Agenda For Peace: Preventive Diplomacy, Peacemaking and Peace-Keeping*, U.N. Doc. A/47/277-S/24111 (June 17, 1992). *See also* CHRISTIAN HENDERSON, *THE USE OF FORCE AND INTERNATIONAL LAW* 173 (2018); YORAM DINSTEIN, *WAR, AGGRESSION AND SELF- DEFENCE* 356 (6th

for instance, to the Capstone doctrine—the principles and guidelines for U.N. peacekeeping operations, as set out in *United Nations Peacekeeping Operations Principles and Guidelines* of 18 January 2008—“[u]niversality of consent becomes even less probable in volatile settings, characterized by the presence of armed groups not under the control of any of the parties, or by the presence of *other spoilers*” (emphasis added).<sup>104</sup>

Though these actors, which can include criminal organized groups themselves, may not consent to measures adopted by the Security Council, whenever it finds the existence of threat to the peace, a breach of the peace, or an act of aggression under Article 39 of the U.N. Charter, and not exclusively a breach of that article or a violation of international law,<sup>105</sup> the Council can adopt enforcement action through, for instance, peacekeeping missions.<sup>106</sup> In other words, the resolutions adopted under Chapter VII of the U.N. Charter addressing organized crime suggest that the notion of a “threat to peace” in Article 39 of the Charter is the main legal vehicle for the extension of the Council’s actions to organized crime.<sup>107</sup> The Security Council’s interpretation of this central concept should be understood as part of wider norms and ideas that shape how U.N. organs exercise their authority in a constantly changing international setting. By re-interpreting “threat to

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ed., 2017); CHRISTINE GRAY, *INTERNATIONAL LAW AND THE USE OF FORCE* 331 (4th ed., 2018) (all detailing those adverse consequences).

104. U.N. Department of Peacekeeping Operations, *United Nations Peacekeeping Operations Principles and Guidelines* (2008), [https://peacekeeping.un.org/sites/default/files/capstone\\_eng\\_0.pdf](https://peacekeeping.un.org/sites/default/files/capstone_eng_0.pdf) [https://perma.cc/75MG-4WY8].

105. Nico Krisch, *Article 39*, in 2 *THE CHARTER OF THE UNITED NATIONS: A COMMENTARY*, 1272 (B. Simma et al. eds., 3rd ed. 2012) (noting that “Art. 39 opens the way for the use of the most powerful instrument of the UN, the adoption of enforcement measures in cases of threats to the peace, breaches of the peace or acts of aggression”); JAMES CRAWFORD, *BROWNIE’S PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 733 (9th ed. 2019) (noting that “Article 39 functions as the gateway to Chapter VII”).

106. See HANS KELSEN, *THE LAW OF THE UNITED NATIONS: A CRITICAL ANALYSIS OF ITS FUNDAMENTAL PROBLEMS* 706 (1950) (arguing that a key feature of the coercive act is that it is taken against the will of the subject to whom it was applied); Van der Lijn, *supra* note 58, at 9 (noting that especially in situations where representatives of host governments or their armed forces have been implicated in organized crime, “[o]rganized criminal groups . . . have used sovereignty to shield off external intervention”).

107. See Borlini, *supra* note 1, at 14.

peace,” the Council is redefining its authority regarding the permissible scope of its current and future work, continually updating its operational code.<sup>108</sup> While impending interstate conflicts have traditionally represented the fundamental feature of threats to peace, internal situations and post-conflict situations have, over time, also given rise to a Security Council action under Chapter VII, with concepts, such as “arms control measures,” “internal situations,” and “humanitarian considerations,” having undergone considerable changes over time.<sup>109</sup> “Threat to peace” is indeed a malleable (or “mercurial”)<sup>110</sup> concept, which, unlike “aggression” and “breach to the peace,”<sup>111</sup> is not necessarily characterized by the use of force, nor by an international unlawful act. The Council’s discretion about what constitutes a “threat to peace” appears almost unlimited, and Article 39 does not set any explicit limit.<sup>112</sup>

108. See WILLIAM MICHAEL REISMAN, *FOLDED LIES: BRIBERY, CRUSADES AND REFORMS 16* (1979) (addressing the issue of the exact content and scope of the term ‘operational code’).

109. Krisch, *supra* note 105, at 1279; Daniel W. Abott, *The United Nations and Intrastate Conflict: A Legislative History of Article 39 of the United Nations Charter*, 8 U.C. DAVIS J. INT’L L. & POL’Y 275, 275.

110. See Crawford, *supra* note 105, at 734 (referring, under that perspective, to the position of the International Criminal Tribunal for the Former Yugoslavia (ICTY) in the Tadic case, where the Court noted that declaration of threat entails a factual and political judgement, not a legal one).

111. See Gray, *supra* note 103, 262–265 (noting that, acting under Art. 39 U.N. Charter, the Council has rarely determined the existence of a ‘breach of the peace’ or ‘act of aggression’, normally considering it sufficient to determine a ‘threat to the peace’).

112. See Kolb, *supra* note 2, at 339 (arguing that a ‘threat to peace’ exists whenever an act should be qualified in this way in the eyes of the Security Council). See also HANS Kelsen, *THE LAW OF THE UNITED NATIONS: A CRITICAL ANALYSIS OF ITS FUNDAMENTAL FUNCTIONS* 727 (1964) (“[i]t is completely within the discretion of the Security Council to decide what constitutes a ‘threat to peace’”); Rosalyn Higgins, *International Law, Rhodesia and the U.N.*, 23 *WORLD TODAY* 94, 94 (arguing that the power to determine a threat to peace belongs to the Security Council and the Security Council alone); JEAN COMBACAU, *LE POUVOIR DE SANCTION DE L’ONU: ETUDE THÉORIQUE DE LA COERCITION NON MILITAIRE [THE U.N. SANCTIONS’ POWER: A THEORETICAL STUDY ON NON-MILITARY COERCION]* 100 (1974) (arguing that a threat to peace within the meaning of art. 39 is a situation that the Security Council declares to be a real threat to the peace); William Michael Reisman, *The Constitutional Crisis in the United Nations*, 87 *AM. J. INT’L L.* 83, 93 (noting that “Chapter VII is, to use Professor Hart’s nice expression, ‘open-textured’ [such that] a ‘threat to peace’ is, and was obviously designed to be, subjectively determined”); Krisch, *supra* note 105, at 1278 (noting that “[t]hreat to the peace’

In resolutions that it has adopted in the last decade on security, public governance, and crime, the Security Council has, for instance, elevated specific traditionally domestic crimes and activities to the level of threats to peace.<sup>113</sup> An illuminating case is Resolution 2347 (2017), where the Council declared that, especially in the event of armed conflicts, both the unlawful destruction of cultural heritage and the looting and smuggling of cultural property can exacerbate conflict and hamper post-conflict national reconciliation, helping to undermine the security, stability, governance, social, economic and cultural development of affected States.<sup>114</sup> Hence it is evident that in such cases that the activities of organized criminal groups (such as terrorist groups), tend now to be viewed as nearer to the core of the notion of threat to peace.

But the license given to the Security Council under Chapter VII as to the subject of a particular measure links the U.N. enforcement to another perspective on the “sovereignty obstacle.” The “sovereignty obstacle” shows that the members of the Council often make decisions based on their own sovereign interests.<sup>115</sup> As one author observed, in its approach to organized crime, “[t]he Council has moved furthest, fastest, where the criminal activity in question threatened P-5 interests, the country was already on the Council’s agenda, and no state with influence in the Council had a particular reason to limit such experimentation.”<sup>116</sup> Among the instances where the Council has consequently faced less resistance to tackling criminal ac-

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is the broadest, most indistinct, but also the most important concept in Art. 39 [and that in] practice, it is almost the only one used by the SC”). *See generally*, ANNE-LAURENCE GRAF-BRUGÈRE, LA “MENACE CONTRE LA PAIX” DANS LA PRATIQUE DU CONSEIL DE SÉCURITÉ DES NATIONS UNIES [THREATS TO PEACE IN THE U.N. SECURITY COUNCIL’S PRACTICE] (2019) (providing an overall reconstruction of the more recent practice related to the concept of “threat to peace”).

113. Leonardo Borlini, *The Security Council and Non-State Domestic Actors: Changes in Non-Forcible Measures between International Lawmaking and Peacebuilding*, 61 VA J. INT’L L. 489, 504 (2019).

114. *See* S.C. Res. 2347, prml. (Mar. 24, 2017). The Resolution goes on to express its strong concern “about the links between the activities of terrorists and organized criminal groups that, in some cases, facilitate criminal activities, including trafficking in cultural property, illegal revenues and financial flows as well as money-laundering, bribery and corruption.”

115. Cockayne, *supra* note 10, at 304.

116. *Id.* at 310.

tivity are piracy, long recognized as criminal under international law, off the coast of Somalia (a failed-State);<sup>117</sup> actions in small countries of limited strategic interest to the great powers (such as Guinea-Bissau);<sup>118</sup> and actions in countries where the government has lost effective control over parts of its territory (most notably Afghanistan, C.A.R., D.R.C., Haiti, Somalia, and, most recently, Mali).<sup>119</sup> In the latter group, illegal exploitation and trafficking in mineral and wildlife resources have been the most relevant criminal activities addressed.<sup>120</sup>

Further, in its most recent actions the Security Council has also tackled the issue of organized crime by increasingly adopting what might be described a *juridical process*, which focuses more on problems of justice rather than order.<sup>121</sup> This is the *quasi-juridical* (or *regulatory*) approach of the Council that has, as Martti Koskenniemi put it, turned the “Police” into the “Temple.”<sup>122</sup> This issue reemerges in the context of enforcement actions through sanctions, in Part IV.

One of the few concrete developments in Security Council practice came in 2015, with the establishment of the five-member Serious and Organized Crime (SOC) Team within

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117. See Rep. of the Monitoring Group on Somalia. Established Pursuant to Security Council Resolution 1724 (2006), ¶ 90 U.N. Doc. S/2007/436 (July 18, 2007) (“It can be confirmed that piracy off Somalia . . . is caused by a lack of lawful administration of the mainland, which allows the “pirate command centres” to operate without hindrance at many coastal landing points”). See also S.C. Res 1816, prml. (June 2, 2008) (“Determining that the incidents of piracy and armed robbery against vessels in the territorial waters of Somalia and the high seas off the coast of Somalia exacerbate the situation in Somalia which continues to constitute a threat to international peace and security in the region”); U.N. Secretary-General, *Report of the Secretary-General on the Situation with Respect to Piracy and Armed Robbery at Sea Off the Coast of Somalia*, ¶ 60, U.N. Doc. S/2013/623 (Oct. 21, 2013) (“[S]omalia-based piracy is a criminal activity that has transnational aspects and that is driven by the quest for illicit profit”).

118. Cockayne, *supra* note 10, at 30.

119. *Id.*

120. Caparini, *supra* note 66, at 6.

121. D’Aspremont, *supra* note 2, at 142.

122. *Id.* at 142–43 (citing Martti Koskenniemi, *The Police in the Temple: Order, Justice and the U.N.: A Dialectical View*, 6 EUROPEAN J. INT’L L. 325, 328–9, 344 (noting that “[t]here is a crucial difference between policies intended to safeguard ‘security’ and policies intended to bring about the good life - a difference encapsulated in the distinction between the police and the Temple.”)).

the Police Division of the Department of Peacekeeping Operations.<sup>123</sup> The aim of the SOC is not to conduct investigations or any operational role, but to “provide technical expertise and assistance to national police and law enforcement institutions. . . to prevent, disrupt, and dismantle organized criminal activities, including, for instance, drug trafficking, human trafficking, firearms trafficking and exploitation of natural resources.”<sup>124</sup> Within the SOC, a Transnational Threats (TNT) Project has been established to enable U.N. field missions “to better address transnational threats, including serious and organized crime, corruption and violent extremism.”<sup>125</sup> To date, TNT has focused mainly on developing policy and guidance on such activities as information collection, threat analysis, planning and training dealing with transnational organized crime at all mission levels, including through the use of new technologies and specialists involved in peacekeeping operations to contribute establishing the capacity of host States to prevent and counter transnational threats.<sup>126</sup> Though all peace operations are theoretically integrated through “a network of SOC Focal Points in missions, with monthly video teleconferences and information sharing,” only some peace operations have established their own dedicated SOC units, including those in the C.A.R., the D.R.C., and Mali.<sup>127</sup>

Several additional factors contribute to the Security Council’s structural inability to effectively tackle organized crime through peace operations. These are more “strategic/operative” issues than purely juridical ones.<sup>128</sup> Multilateral peace operations may not be the most suitable tool to deal with the organized crime due to their “already overly ambitious man-

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123. Boutellis & Osland, *supra* note 53, at 13.

124. *Serious and Organized Crime*, UNPOL, <https://police.un.org/en/serious-and-organized-crime> [<https://perma.cc/Z7T2-DNVU>] (last visited Aug. 4, 2022).

125. *Id.*

126. *Id.*

127. Boutellis & Osland, *supra* note 53, at 13.

128. Van der Lijn, *supra* note 58, at 10 (observing that combating organized crime requires police forces and capabilities which most peace operation missions do not have at their disposal, and further that the involvement of the military peace operations fighting crime can blur the division of labour between the military and the police); Cockayne, *supra* note 10, at 305; Kemp, Shaw & Boutellis, *supra* note 53, at 8; Carparini, *supra* note 66, at 12.



dates and limited resources.”<sup>129</sup> Specifically, they lack not only sufficient police forces and capabilities, but also financial and technical resources;<sup>130</sup> not to mention that organized crime is usually a transnational phenomenon, whilst U.N. peace operations are traditionally limited to one country only.<sup>131</sup> The arrival of a U.N. peace operation in a country also marks the influx of substantial capital entering the local economy, introducing new opportunities for organized crime groups and the illicit economy, particularly in human trafficking for prostitution.<sup>132</sup>

As some authors have observed, these factors partially explain why the Security Council generally prefers to mandate independent Panels/Groups of Experts monitoring sanctions regimes to look into specific criminal activities, such as illegal arms and minerals trafficking.<sup>133</sup>

#### IV. THE USE OF SANCTIONS AGAINST ORGANIZED CRIME: BETWEEN INTERNATIONAL ENFORCEMENT AND PROSPECTIVE REGULATION

The Security Council also performs verification procedures on organized crime in the context of non-forcible Article 41 measures.<sup>134</sup> These measures, which afford the Council substantial leeway in determining if, when, and how to take action to restore peace and security, have been the object of substantial debate in the legal literature.<sup>135</sup>

129. Caparini, *supra* note 66, at 9.

130. Carparini, *supra* note 66, at 10.

131. Boutellis & Tiélès, *supra* note 53, at 178.

132. Sam R. Bell, Michael E. Flynn & Carla Martinez Machain, *UN peacekeeping forces and the demand for sex trafficking*, 62 INT'L STUDIES Q. 643, 643 (2018).

133. See Boutellis & Tiélès, *supra* note 53, at 178 (arguing that, “[i]n many cases, the host government may not consent to the U.N. mission investigating criminal networks, because the U.N. mission would lead to uncovering links—support, penetration, or co-optation—to both armed groups and the government itself, which would naturally strain relations with the host State”).

134. Borlini, *supra* note 12, at 21.

135. See VERA GOWLLAND-DEBBAS, UNITED NATIONS SANCTIONS AND INTERNATIONAL LAW (2001); Mohamed Bennouna, *Les sanctions économiques des Nations Unies [U.N. economic sanctions]*, RECUEIL DES COURS 300 (2002); Laura Picchio Forlati, *The Legal Core of International Sanctions*, in ECONOMIC SANCTIONS IN INTERNATIONAL LAW, 99 (Laura Picchio Forlati & Linos-Alexandre

With regard to Security Council sanctions practices, so far, the only listing of individuals explicitly because of alleged implication in criminal activities have been: a) in December 2018, on the basis of the Mali sanctions regime established pursuant to resolution 2374 (2017) for implications in drug, oil, and human trafficking; and b) in June 2018, under the Libya sanctions regime for human trafficking.<sup>136</sup>

Beyond these specific listings, by 2012 the Council was no longer just sanctioning the financing of armed groups, but also targeting certain businesses that dealt with criminal networks.<sup>137</sup> Sanctions committees have regularly helped the Council to adjust U.N. sanctions regimes to criminal trafficking and other forms of organized crime through their monitoring and reporting activities.<sup>138</sup> The appointment of expert

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Sicilianos eds., 2004); JEREMY MATAM FARRALL, UNITED NATIONS SANCTIONS AND THE RULE OF LAW (2007); FRANCESCO SALERNO (ED.), SANZIONI "INDIVIDUALI" DEL CONSIGLIO DI SICUREZZA E GARANZIE PROCESSUALI FONDAMENTALI [THE UN SECURITY COUNCIL'S INDIVIDUAL SANCTIONS AND FUNDAMENTAL PROCEDURAL GUARANTEES] (2010); Vera Gowlland-Debbas, *The Security Council and Issues of Responsibility under International Law*, 353 RECUEIL DES COURS 225 (2019); Alain Pellet & Alina Miron, *Sanctions*, in MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW (2012); LARISSA VAN DEN HERIK (ED.), U.N. SANCTIONS AND INTERNATIONAL LAW (2017); White, *supra* note 3, 3–27; Kolb, *supra* note 2, at 335; Masahiko Asada, *United Nations and sanctions*, in ECONOMIC SANCTIONS IN INTERNATIONAL LAW AND PRACTICE 3, 3–23 (2002).

136. Boutellis & Osland, *supra* note 53, at 11. See also *Mohamed Ben Ahmed Mahri*, UNITED NATIONS SECURITY COUNCIL, <https://www.un.org/securitycouncil/content/mohamed-ben-ahmed-mahri> (July 10, 2019) (detailing one of the most significant designations: that of Mohamed Ben Ahmed Mahri, who was listed on December 2018, pursuant to paragraph 8 (c) of resolution 2374 (2017) for supporting or financing individuals and entities identified in paragraphs 8 (a) and (b) of the same resolution, including through the proceeds from organized crime, such as the following: the production and trafficking of narcotic drugs, the trafficking in persons and the smuggling of migrants, the smuggling and trafficking of arms as well as the trafficking in cultural property).

137. See, e.g., S.C. Res. 2036, ¶¶ 22–23 (Feb. 22, 2012) (authorizing a sanctions committee to impose targeted sanctions against individuals and entities engaged in commerce in charcoal through Al-Shabaab-controlled areas of Somalia); S.C. Res. 2134, ¶ 37(d) (Jan. 28, 2014) (“providing support for armed groups or criminal networks through the illicit exploitation of natural resources, including diamonds and wildlife and wildlife products, in the CAR”); S.C. Res. 2136, ¶ 4(g) (Jan. 30, 2014) (targeting “[i]ndividuals or entities supporting armed groups in the DRC through illicit trade of natural resources, including gold or wildlife as well as wildlife products”).

138. Borlini, *supra* note 12, 28–33.

panels and monitoring groups supporting the work of sanctions committees has become a regular feature of U.N. sanctions monitoring in tackling arms trafficking, the illegal trade in natural resources, and other smuggling activities.<sup>139</sup> Among others, the activities of such groups and panels have included monitoring trafficking in diamonds and other natural resources in the C.A.R.; piracy in Somalia; kidnapping and hostage-taking by terrorist groups; and trafficking in arms and cultural property in Mali.<sup>140</sup> In addition, the Council has encouraged an active role in investigating sanctions violations not only for sanctions committees but also for monitoring teams and expert groups, which have been tasked with investigating specific illegal activities and identifying individuals and companies implicated in organized crime.<sup>141</sup>

The Security Council has also started to confront non-state actors—and in particular, organized criminal groups—through regulation and law enforcement.<sup>142</sup> The use of sanctions as a regulatory instrument is perhaps the most notable feature of the Council’s action against organized crime.<sup>143</sup> In particular, analysis of sanctions practice in conflicts fueled by organized crime “identifies a shift in emphasis from *ex-post* to *ex-ante* measures,” i.e., “as tools that the Council is using to pro-

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139. See U.N. Security Council, *Subsidiary Organs of the United Nations Security Council, Fact Sheets 2022* (Jan. 21, 2022) (noting that, as of December 31 2021, there are fourteen active sanctions regimes, “[e]ach regime is administered by a sanctions committee chaired by a non-permanent member of the Security Council[, t]here are ten monitoring groups, teams and panels that support the work of 11 of the 14 sanctions committees,” and that in general, these bodies try to understand problems of sanctions regimes, as well as to (sometimes) identify non-compliant subjects).

140. See, e.g., S.C. Res. 2134, ¶ 41 (Jan. 28, 2014) (deciding that the mandate of the Expert Group is the to assist the Sanctions Committee by providing information regarding designated individuals and entities, and individuals and entities that may meet the designation criteria, including by reporting such information to the Committee, as it becomes available, and to include in its formal written reports, the names of potential designees). See also S.C. Res. 2368 (July 20, 2017); S.C. Res. 2374 (Sept. 5, 2017).

141. Alex Vines & Tom Cargill, *The Impact of U.N. Sanctions and their Panels of Experts: Sierra Leone and Liberia*, 65 CANADA’S J. GLOBAL POL’Y ANALYSIS 45, 45.

142. Leonardo Borlini, *The North Korean Gauntlet, International Law and the New Sanctions Imposed by the Security Council*, XXVI ITALIAN Y.B. INT’L L. 319 (2016).

143. Boon, *supra* note 11, at 548.

spectively manage risks to peace and security.”<sup>144</sup> Further, by integrating its regulatory powers with non-UN informal law-making and enforcement initiatives,<sup>145</sup> the Security Council has increasingly promoted non-binding norms that “not only address the immediate goal of conflict management, but also engage in mapping out future [regulation] and good governance.”<sup>146</sup> These two elements are typically merged into a single sanctions regime.<sup>147</sup>

First, take into account the experience of Security Council’s resolutions aiming at regulating future conduct.<sup>148</sup> Certainly, many sanctions imposed under Article 41 of the U.N. Charter continue to be *ex-post* measures applied in response to specific conduct considered to be a threat to peace and security. They include restrictions or prohibitions on access to funding, weapons, travel, and other assets.<sup>149</sup> U.N. sanctions have thus been employed to stigmatize and constrain criminal actors in their ability to conduct proscribed activities in Angola, the C.A.R., Cote d’Ivoire, the D.R.C., Guinea Bissau, Liberia, Libya, Mali, Sierra Leone, South Sudan and Somalia.<sup>150</sup> But the Council is also increasingly applying sanctions in a forward-looking manner, making positive behavioral demands on state and non-state actors to support democratic processes, the

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144. *Id.* at 547 (noting that, notwithstanding the above considerations, the heart of many sanctions regimes still continues to be *ex post* measures applied as a result of particular conduct considered to be a threat to peace and security).

145. See CHARLES B. ROGERS, *THE ORIGIN OF INFORMALITY. WHY THE LEGAL FOUNDATIONS OF GLOBAL GOVERNANCE ARE SHIFTING AND WHY IT MATTERS* (2020) (explaining why policy-makers are turning increasingly to informal agreements and organizations).

146. Boon, *supra* note 11, at 548.

147. Borlini, *supra* note 1, at 33.

148. See generally Louis Kaplow, *Rules versus Standards: An Economic Analysis*, 42 DUKE L. J. 557 (discussing the relationship between rules applied *ex ante* and standards applied *ex post*; according to the analysis of the author, first a standard might be a precedent for future enforcement actions, and the situation thereafter will thus be as though a rule rather than a standard prevails. Second, it may not be a precedent, in which event the standard prevails indefinitely).

149. Gray, *supra* note 103, at 274–80.

150. Borlini, *supra* note 12, 316–333.

management of common resources, and good governance.<sup>151</sup> Further, “the Council and related bodies sequence the application of sanctions to increase responsiveness, such that the imposition of negative *ex-post* measures are combined with the incentive of their lifting in order to achieve secondary regulatory goals.”<sup>152</sup>

Analysis of resolutions reveals that the Council has imposed sanctions in a forward-looking manner in at least nine out of fourteen of the sanction regimes currently in place.<sup>153</sup> This shifts the emphasis from *ex-post* measures to those that regulate the future conduct of actors involved in organized crime. Instances of regulatory sanctions vary, from signaling the Security Council’s support for particular courses of action, including comprehensive domestic reforms, to sequencing and linking the lifting of sanctions to reforms aimed at tackling organized crime, and reducing the impact of illicit trafficking on intrastate conflicts.<sup>154</sup> Finally, sustained attention to informal norms related to organized criminal conduct should also be considered, as along with attention to non-state actors and hybrid public/private regulatory strategies aimed at both industry and governmental actors.<sup>155</sup>

One example of the first strategy is the “positive” signaling of better management of natural resources and animal products related to the prohibition of poaching and trade in wild-life products, justified by its link to organized crime in the C.A.R.<sup>156</sup> The second approach is apparent in Liberia, where

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151. See *High Level Review of United Nations Sanctions (Compendium)* (Based on U.N. Doc. A/69/941-S/2015/432) 84 (Nov. 2015) (addressing U.N. sanctions regarding natural resources).

152. Boon, *supra* note 11, at 550–51.

153. Borlini, *supra* note 12, at 31.

154. See, e.g., S.C. Res. 2127, ¶ 56 (Dec. 5, 2013) (where the Council declares its intention to “swiftly consider imposing targeted measures, including travel bans and asset freezes, against individuals who act to undermine the peace, stability and security, including by engaging in . . . the recruitment and use of children in armed conflict in violation of applicable international law, sexual violence, or supporting the illegal armed groups or criminal networks through their illicit exploitation of natural resources, including diamonds, in the CAR, or by violating the arms embargo”).

155. Boon, *supra* note 11, at 554–64.

156. S.C. Res. 2127 (Dec. 5, 2013).

lifting sanctions is linked to the implementation of domestic reforms endorsed by Council resolutions.<sup>157</sup> These include:

the creation of an arms stockpile marking and identification system, a weapons storage system, and the control of arms and ammunition, [as well as reform of the] government's administrative infrastructure to ensure that the revenues from the timber industry are used for legitimate purposes. . . and the establishment of a certificate-of-origin scheme for rough diamonds. Sequencing has [also] been sharp. . . in the C.A.R. and D.R.C. sanctions regimes, where the Security Council authorized additional measures [in January 2014 and June 2016, respectively,] by expanding the basis for targeting individuals to include providing support for armed groups or criminal networks through the illicit exploitation of natural resources including diamonds, gold and wildlife, as well as wildlife products in or from [those states]. Also, the basis for targeting individuals was expanded in July 2018 to include [participation in] activities that destabilize South Sudan through the illicit exploitation or trade of natural resources. [Another] important example of sequencing is the adjustment of the Libya sanctions regime in August 2014 and the further elaboration of the designation criteria in March 2015 and June 2017, [leading] to the travel bans and asset freezes imposed in June 2018 on six major perpetrators of illegal activities relating to human trafficking and the smuggling of migrants."<sup>158</sup>

The emphasis on a more "regulatory" mode of enforcing international law was manifest in November 2010, when the Council had "one of its own creations generate guidance for private businesses and adopted 'Due Diligence Guidelines' prepared at its request by a group of experts monitoring implementation of sanctions on the D.R.C."<sup>159</sup> The scope of these guidelines was to reduce the risk of conflicts arising in eastern D.R.C. because of the provision of direct and indirect

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157. Boon, *supra* note 11, at 569–574.

158. Borlini, *supra* note 113, at 540.

159. *Id.* at 541.

support by illegal armed groups.<sup>160</sup> The same may actually happen with regard to those people, even within the national armed forces, who may perpetrate serious violations of international humanitarian law and human rights provisions.<sup>161</sup> A year later, the Council adopted a similar due diligence approach “to remove Eritrean extractive enterprises from global supply chains and extended the regime to the provisions of financial services, including insurance and reinsurance, that would facilitate investment in the Eritrean extractive sector.”<sup>162</sup>

#### V. CONCLUSION: PROSPECTS AND CHALLENGES IN U.N. ENFORCEMENT ACTIONS AGAINST ORGANIZED CRIME

Peacekeeping missions and sanctions are the two typical mechanisms through which the Security Council has addressed organized crime as a threat to international peace and security. Neither of the two, however, has been entirely successful. Peace missions lack well-defined mandates and adequate plans to deal with organized crime. They also lack the human, financial, and technical resources needed to comprehensively address the issue, in part because of organized crime’s transnational character, which would require operations well beyond the territory of the host nation. Overall, as illustrated in Part III of this article, progress on integrating counter-crime initiatives into peace operations has been limited. Arguably, the U.N. system has taken a cautious approach in dealing with organized crime through peace operations.<sup>163</sup>

Beyond peace operations, sanctions alone cannot represent the primary instrument for tackling organized crime. They come with substantial side effects and are not structurally intended to address the entire chain of illicit activities and transactions. Among the most significant weaknesses in the Security Council’s sanctions practice are the risks, well-known to international lawyers, that sanctions lead to serious human rights failures and the concern that they are inconsistent with the minimal due process guarantees found in international

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160. *Id.*

161. *Id.*

162. *Id.* at 540–41.

163. Global Initiative, *supra* note 20, at 4.

law.<sup>164</sup> Further, those who are subject to restrictive measures as a consequence of the Council's sanctions also face substantial public stigma.<sup>165</sup> In cases of organized crime, these problems are complicated by the fact that most of the bodies within the Security Council's ambit, including expert panels, have had to develop their work and methodological tools on an *ad hoc* basis, which has resulted in a body of highly inconsistent practices and procedures.<sup>166</sup>

Despite all the legal limitations and operational challenges that both peace operations' mandates and sanctions in the U.N. practice reveal, important factors must be considered before concluding that the Security Council's engagement in the fight against organized crime has so far led only to inconclusive results. Of the 1,333 Security Council resolutions passed between 2000 and 2021, 538 (40.4%) addressed or discussed organized crime in relation to a situational crisis or a generalized threat.<sup>167</sup> A considerable number of these resolutions were taken under Chapter VII of the U.N. Charter, which imposes legally binding measures on member States.<sup>168</sup> This was made possible by the Security Council's efforts to re-interpret the concept of a "threat to peace," as embodied in Article

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164. Bardo Fassbender, *Targeted Sanctions Imposed by the UN Security Council and Due Process Rights – A Study Commissioned by the UN Office of Legal Affairs and Follow-Up Actions by the United Nations*, 3 INT'L ORG.'S L. REV. 437 (focusing on the lack of legal procedures available to individuals and "entities" targeted with sanctions under Chapter VII of the UN Charter through which they could challenge the measures taken against them); Devika Hovell, *Due Process in the United Nations*, 110 AM. J. INT'L L. 9 (for a comprehensive overview of due process in Security Council sanctions decision making); Thomas Biersteker, Larissa van den Herik & Rebecca Brubaker, *Enhancing Due Process in UN Security Council Targeted Sanctions Regimes*, GENEVA GLOB. GOVERNANCE CTR., GRADUATE INST. OF INT'L AND DEV. STUD. (Mar. 2021), [https://www.graduateinstitute.ch/sites/internet/files/2021-09/report\\_enhancing\\_due\\_process\\_March2021\\_FINAL%20%281%29.pdf](https://www.graduateinstitute.ch/sites/internet/files/2021-09/report_enhancing_due_process_March2021_FINAL%20%281%29.pdf) [<https://perma.cc/DN2U-5AD7>] (recommending the D.R.C. sanctions regime as the most suitable regime to develop a context-sensitive armed conflict review mechanism and providing a draft annex with commentary for the proposed mechanism for a future UN Security Council Resolution).

165. On the human rights problems of the Security Council's sanctions practice *see, e.g.*, Therese O'Donnel, *Naming and Shaming: The Sorry Tale of Security Council Resolution 1530 (2004)*, 17 EUROPEAN J. OF INT'L L. 945.

166. Borlini, *supra* note 12, at 28.

167. *See Global Initiative Database, supra* note 26.

168. *Id.*



39 of the U.N. Charter.<sup>169</sup> And not only has the Council has widened the scope of application of that concept well beyond the classical security threats, but it also has decided to take enforcement actions against non-State entities, thus departing from the general approach of the Charter, which relies primarily on member State action to implement collective decisions. If it is true that, as already observed by some commentators, “Arts 39 and 41 are flexible enough to accommodate non-governmental targets,”<sup>170</sup> it is not so obvious that organized criminal groups fit in that category as well. For economic or military measures to be taken in order to induce such entities to change their behavior, the Council has elevated a traditionally domestic crime and activity to the level of threats to peace, or of a factor contributing to such threats. The result is that the activities of organized criminal groups, previously seen as only loosely connected to the notion of “threat to peace,” now tend to be viewed nearer to its core.

The sustained attention to organized crime as a “threat to peace” also led the Council to encourage new approaches to tackle that issue. In an increasing number of resolutions, the Council has integrated crime-prevention and control initiatives into a variety of (public and private) law enforcement techniques in the context and mandates of peace processes and UN operations. It has also created specific mandated taskforces within UN peace operations – like the SOC Team within the Police Division of the Department of Peacekeeping Operations – to provide technical expertise and assistance to national police and law enforcement institutions to prevent, disrupt, and dismantle organized criminal activities. Although it is difficult at this early stage and in the absence of significant publicly available information to fully evaluate the impact of these taskforces, they nonetheless provide an example “of the value of direction from the Security Council in elevating counter-crime initiatives to higher up on the peacekeeping agenda and addressing the (increasingly recognized) intersections between organized crime and conflict”.<sup>171</sup>

169. See Krish, *supra*, note 105.

170. Krish, *supra* note 4, at 1270–71.

171. Summer Walker & Tuesday Reitano, *Fragmented but Far-Reaching: The UN System’s Mandate and Response to Organized Crime*, GLOB. INITIATIVE AGAINST TRANSNAT’L ORGANIZED CRIME 12 (June 2019), <https://globalinitia->

Equally important to the Security Council's approach to organized crime is the integration of prospective and responsive forms of regulation into contemporary sanctions practice.<sup>172</sup> The regulatory shift in the Security Council's sanctions practice suggests that it has resorted to sanctions regimes to alter the behavior of a multiplicity of public and private actors, with the intention of controlling organized networks and illicit markets and creating the positive conditions for preventing new crises. Of course, this does not erase the practical, organizational, and legal problems that the Security Council has experienced in its practice, nor the absence of a broad, clear, and comprehensive strategic framework to fight organized crime. But it certainly shows a significant trend in the Council toward more creatively addressing the growing convergence of criminal activity, illicit markets, and modern conflicts.

One may also consider the Council's complex practices in addressing organized crime from a different perspective. A significant trend in international enforcement is the ever more frequent recourse to unilateral (or "autonomous") sanctions.<sup>173</sup> These are measures imposed by single states or international or regional organizations, without prior authorization by the Security Council, or measures that extend beyond what the Council enacts.<sup>174</sup> The phenomenon is central to current debates in international law literature. These can include autonomous sanctions that can theoretically achieve outcomes the Council cannot, due to internal political and bureaucratic tensions.<sup>175</sup> It is therefore worth noting that states may opt for unilateral actions to fight transnational criminal organiza-

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tive.net/wp-content/uploads/2019/06/gitoc\_un\_june\_19.pdf [https://perma.cc/52K6-5HGS].

172. Boon, *supra* note 11, at 553.

173. See, e.g., STEFANO SILINGARDI, LE SANZIONI UNILATERALI E LE SANZIONI CON APPLICAZIONE EXTRATERRITORIALE NEL DIRITTO INTERNAZIONALE [UNILATERAL SANCTIONS AND SANCTIONS WITH EXTRATERRITORIAL APPLICATION IN INTERNATIONAL LAW] (2020).

174. See Charlotte Beaucillon, *An introduction to unilateral and extraterritorial sanctions: definitions, state of practice and contemporary challenges*, in RESEARCH HANDBOOK ON UNILATERAL AND EXTRATERRITORIAL SANCTIONS, 1, 2–4 (2021).

175. See Jean-Marc Thouvenin, *Articulating U.N. sanctions with unilateral restrictive measures*, in RESEARCH HANDBOOK ON UNILATERAL AND EXTRATERRITORIAL SANCTIONS 149, 162 (Charlotte Beaucillon ed., 2021)

tions.<sup>176</sup> For example, the United States introduced a “Transnational Criminal Organizations sanctions program” in 2011, when President Obama issued Executive Order 13581, declaring a national emergency to deal with the threat to U.S. national security, foreign policy, economic interests posed by transnational criminal organizations<sup>177</sup> On December 15, 2021, President Biden significantly reinforced this sanctions regime, with two new Executive Orders, *Establishing the U.S. Council on Transnational Organized Crime* (USCTOC)<sup>178</sup> and *Imposing Sanctions on Foreign Persons Involved in the Global Illicit Drug Trade*.<sup>179</sup> The second Executive Order “enhances the De-

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176. See Yvon Dandurand & Jessica Jahn, *The future of international cooperation against transnational organized crime. The undoing of Untoc?*, GLOB. INITIATIVE AGAINST TRANSNAT'L ORGANIZED CRIME 12 (Oct. 2021).

177. Office of Foreign Assets Control (OFAC), *Transnational Criminal Organizations Sanctions Program* (Apr. 14, 2015). The sanctions regime has been further developed through Exec. Order No. 13,863, 84 Fed. Reg. 10,255 (Mar. 15, 2019), which defines, in its Section 1 (modifying Section 3, subsection (e) of Exec. Order No. 13,581), the term “significant transnational criminal organization” as “a group of persons that includes one or more foreign persons; that engages in or facilitates an on-going pattern of serious criminal activity involving the jurisdictions of at least two foreign states, or one foreign state and the United States; and that threatens the national security, foreign policy, or economy of the United States.”). For more on the U.S. creation of sanctions, see R. GORDON, M. SMITH & T. CORNELL, SANCTIONS LAW 108–23 (2019).

178. *The Biden Administration Launches New Efforts to Counter Transnational Criminal Organizations and Illicit Drugs*, THE WHITE HOUSE (Dec. 15, 2020), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/12/15/executive-order-on-establishing-the-united-states-council-on-transnational-organized-crime/> [https://perma.cc/9H78-R6ZA] (explaining that the departments and agencies involved in counter-transnational organized crime efforts are: the Department of Justice, the Department of Homeland Security, the Department of the Treasury, the Department of State, the Department of Defense, and the Office of the Director of National Intelligence. The USCTOC will have an operational arm, the strategic Division, is charged with “developing whole-of-government plans to address the top transnational organized crime threats” and “will draw on law enforcement and Intelligence Community information to develop comprehensive strategic plans to drive operations, initiatives, and actions across the government.”).

179. *Executive Order on Imposing Sanctions on Foreign Persons Involved in Global Illicit Drug Trade*, THE WHITE HOUSE (Dec. 15, 2020), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/12/15/executive-order-on-imposing-sanctions-on-foreign-persons-involved-in-the-global-illicit-drug-trade/> [https://perma.cc/LWE5-29FJ].

partment of Treasury's [authority] to target any foreign person engaged in drug trafficking activities, regardless of whether they are linked to a specific kingpin or cartel," and further "enables Treasury to sanction foreign persons who knowingly receive property that constitutes, or is derived from, proceeds of illicit drug trafficking activities."<sup>180</sup>

Unilateral measures of this sort may facilitate significant progress in combating transnational organized crime, and, to some extent, may constitute tools to remedy the inability of international law to enforce its legal obligations. But these results may be achieved at the expense of international coordination and the overall coherence of international law. Thus, the Security Council's role is only an element of—though arguably a central one—a larger, more complex, and admittedly quite fragmented set of actions against organized crime. Regardless, the ways in which the collective security system has been reinterpreted by the Council to address organized crime demonstrates that it has evolved far beyond the functions it was originally intended to exercise.<sup>181</sup>

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180. See Press Release, U.S. Department of Treasury, Treasury Uses New Sanctions Authority to Combat Global Illicit Drug Trade (Dec. 15, 2021). Under this new authority, on December 15, 2021, OFAC designated 25 actors (10 individuals and 15 entities) in four countries for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production. See also *U.S. Department of Treasury Targets Narcotics Traffickers and Their Supporters Using Enhanced Counter-Narcotics Authorities*, U.S. EMBASSY AND CONSULATES IN BRAZIL (Dec. 15, 2021), <https://br.usembassy.gov/u-s-department-of-treasury-targets-narcotics-traffickers-and-their-supporters-using-enhanced-counter%E2%80%AFnarcotics-authorities/> [https://perma.cc/92WS-CUA5].

181. See James Crawford, *Chance, Order, Change: The Course of International Law*, 365 RECUEIL DES COURSES 313 (2013) (discussing the original defect of the SC in that specific area); Kolb, *supra* note 2, at 461 (observing the extraordinary reach of these measures).