Real Threat or Unavoidable Risk

Transnational Crime and the Consequences for the Legitimacy of States

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Abstract

Attention for transnational organized crime has been rising in the past decade. The overall goal of this thesis is to analyse to what extent transnational organized crime influences the legitimacy of nation states. Furthermore specific attention is paid to the advent of the international drug regime, and the current policies. The theoretical framework is based on securitization theory and the ideas of Beck on risk society and reflexive modernity. Both theories have specific attention for risks and threats. The analysis shows that primarily strong states are able to address transnational organized crime. Policies and institutions are set up to tackle the problem. By trying to manage transnational organized crime, states present themselves as important actors, which legitimize their existence. Weaker states, where institutions are not (yet) functioning properly, have more difficulties. In those situations legitimacy is negatively influenced by the presence of organized crime, because it undermines the rule of law and causes corruption. Another point raised in the analysis, is that markets for illegal goods play an important role. The existence of market dimensions might be more important than the criminal groups that are active on the market. This points to the fact that the structure of organized crime groups has become less hierarchical, and resembles more a network structure. Reflexive modernity emphasizes the fact that one cannot tackle a problem that is inherently connected with one’s own society. This might be the case for transnational crime and drug specifically. Markets provide an essential incentive for organized crime groups and the problems connected with organized crime might be even more difficult to tackle, because market forces have become part of present society.

Key words: transnational crime, security, securitization, risk society, state-hood, globalisation.
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Chapter 1 Introduction

1.1 States, International Settings and Crime

In the current era of globalisation many scholars have questioned the ability of states to adapt to changes in global patterns of politics.¹ Most scholars agree that states and governing practices are changing, but there is an ongoing debate about how they are changing and what the implications of those changes will be.

There are scholars who argue that in an era of transnational growth the state is in decline, and that it cannot be considered a single governing body. This view stresses the inability of states to adapt and maintain their dominant grip on power.² In face of new security issues, new actors and challenges rise on the one hand, but on the other traditional actors and response approaches still dominate.³ This implies that a gap must appear between the practices and capacities of the non-state entities creating transnational challenges and threats and the capacities of the state-based response. A failure of states, to adapt might lead to the fact that state-based responses are not able tackle these changes. This would create room for security threats to evolve. Transnational non-state actors will take the opportunities in the current globalized world, such as global ideational, material, technological or scientific developments.⁴ This allows them to flourish, while state-based actors are not taking full advantage of these possibilities. This does not mean that the state no longer has any significance in countering security threats. Rather the idea that state-based actors can no longer catch up with present developments would be emphasized.

Other scholars argue that the state is declining due to forces of globalization, and that the new era of governance can be more accurately described as a network.⁵ This metaphor captures the idea that power and authority are shifting away from monolithic states towards an increasing body of non-state and hybrid bodies.⁶ Society is no longer controlled by a unitary actor, the state, but rather a dispersed mechanism of information, resources and a multiplicity of actors. There is no central steering mechanism, but the coordination among different actors emerges through intentional interactions. The emergence of policy networks and networks as new modes of governance are a result of this change.⁷ The transformation of formal tightly coupled organizations and hierarchies towards loosely coupled networks is the consequence. The rise in international organizations (IOs) to deal with

¹ Aydinli and Yön, 2011, p. 57.
² Ibid.
³ Ibid.
⁴ Ibid.
⁵ Castells, 2000, p. 695.
⁶ Ibid.
⁷ Keck and Sikkink, 1999, p. 89.
transnational challenges is another aspect which shows changes in state behaviour. For example, Castells argues that governance relies on the articulation among different levels of institutional decision making linked by information networks. Networks are an old form of social organization, and not a new phenomenon.\textsuperscript{8} Networks are dynamic, self-evolving structures, which can grow and cooperate. They are powered by information technology and communicate in the same digital language. This self-generating process can be compared with molecular biology, whereby cells evolve and develop through their interaction in a network of networks, within the body and with their environment.\textsuperscript{9}

Although there is no consensus amongst scholars in which direction state behaviour is changing, there is general agreement that it is changing.

The above shows that state behaviour is changing. The legitimacy of states might be influenced as well by these changes. One phenomenon operating within all these changes is transnational crime, which might influence states, their legitimacy and their actions. Therefore, this thesis will focus on transnational organized crime and how this influences the legitimacy of states. This will be researched with securitization theory. A wide range of subjects can be securitized and transnational crime might be one of them.

The argument in this thesis may very well generalize to all kinds of transnational criminal activities, but the focus here is on illicit drugs. The illegal drug trade has had attention for a long time, and despite a wide scope of efforts no solution seems to be effective. Besides, the choice for illegal drugs reflects a pragmatic way to limit the inquiry while concentrating on a lucrative transnational criminal activity.\textsuperscript{10} Large profits are being made in the illegal drug business, and although it is difficult to give hard data of the illegal drug market, since many interrelated crimes are not detected, reported or prosecuted, the UNODC estimates the global market value of opium and heroin trade at $68 billion.\textsuperscript{11} Thereby it is one of the most profitable illegal business, some estimates are up to 5\% of the world international trade.\textsuperscript{12}

The Copenhagen school and the theory of risk society and reflexive modernity will form the basis of the theoretical framework used in this thesis. The Copenhagen school argues against the fact that the core of Security Studies is war and force. According to them other issues play an equally important role and the security agenda is open to diverse types of threats. The Copenhagen school moves from an objectivist analysis of threat assessment to multiple and complex ways in which security threats are internally generated and constructed. They explore threats to referent objects, and

\textsuperscript{8} Castells, 2000, p. 695.
\textsuperscript{9} Ibid., p. 697.
\textsuperscript{10} Thoumi, 2005, p. 187.
\textsuperscript{11} UNODC, World Drug Report 2011, executive summary, p. 15-16,
\textsuperscript{12} UNDCP in, Thoumi, 2005, p. 190.
the securitization of these threats, that can be military as well as non-military.\textsuperscript{13} Waever adapted the concept of ‘speech act’, used by Austin and Searle in linguistic philosophy, and applied it to the discourse of security. Something is identified as a security issue when this constitutes a particular speech act involving the process of securitization. An issue is presented as posing an existential threat to a designated referent object.\textsuperscript{14} Buzan has refined the definition and added the fact that something requires exceptional measures and emergency action to deal with. A subject is then moved from the realm of politics to the realm of security, and as a result securitized.\textsuperscript{15}

The theory of risk society focuses on the continued modernization, whereby technological and scientific progress has made the world more vulnerable to unknown risks. These unknown risks are an inherent part of the reflexive modernity, where society begins to confront itself, rather than external others. Risk society can be applied to security studies. This is done through the concept ‘reflexive security’, as developed by Rasmussen.\textsuperscript{16} This will be elaborated in the second chapter. The concept reflexive security offers a way to analyse how states react to transnational organized crime because it embraces the idea of reflexive modernity and the inevitability of risks.

1.2 Goal of this Thesis

Attention for transnational organized crime has been rising over the past decade. The fact that the Copenhagen school is open to diverse types of threats creates the possibility to research to what extent transnational organized crime is securitized. The main purpose of the thesis is to explore the transborder activities that are conducted by different actors in the area of crime, and to research to what extent they are securitized, what the consequences are for the legitimacy of states, and how they are responding to transnational organized crime. This will improve of our understanding of how transnational organized crime operates and what the consequences are for nation states.

The leading research question is: to what extent does the securitization of transnational organized crime influence the legitimacy of states? Sub-questions, addressed in the subsequent chapters are: In what way can securitization theory and the theory on reflexive security help to analyse transnational organized crime?; How did transnational organized crime develop?; To what extent is transnational organized crime securitized and what are the consequences for the legitimacy of nation states?

\textsuperscript{13} Buzan, 1997, p. 13.
\textsuperscript{14} Dannreuther, 2007, p. 42.
\textsuperscript{16} Rasmussen, 2001.
1.3 Methodology

The research method used in this thesis is a critical analysis of selected literature. I used several books, like ‘Security, A New Framework for Analysis’ by Buzan, Waever and de Wilde and ‘Risk Society’ from Beck.

The website of the UNODC was very useful for reports and assessments on drugs and crime, completed by the UN. The websites of NATO and the EU provided examples and illustrations of theoretical statements.


1.4 Overview of Thesis

The second chapter will elaborate securitization theory and the theory of risk society. Here the theories and concepts, like securitization theory, legitimacy, risk and reflexive modernity will be explained. These will be used in the analysis. The methodology of this thesis will be addressed as well. The third chapter will describe transnational organized crime. First the concept of transnational crime will be discussed, and a definition will be given. Then changes in the international field and the consequences for transnational organized crime will be explained. The chapter ends with arguments of various scholars on whether transnational crime can be seen as a security issue. The fourth chapter will analyse to what extent transnational organized crime has been securitized and what the consequences are for the legitimacy of states. Hereby the theoretical framework, as elaborated in the second chapter, will be utilised. Developments on the international level concerning transnational crime and legitimacy are discussed first. Secondly transnational crime, states and the influence on state legitimacy are examined. Thirdly, this chapter will look at transnational crime through reflexive modernity glasses and discuss the consequences of such an approach. Throughout the thesis drugs and anti-drug policies will get attention, in order to provide practical examples. The thesis will end with a conclusion, where the main research question will be answered, as posed above, here in the introduction.
Chapter 2 Securitization Theory and the Risk Society

This chapter contains the theoretical background of this thesis and will focus on the following sub question: *in what way can securitization theory and theory on reflexive security help to analyse transnational organized crime?* The first part of this chapter this chapter describes the methodology of this thesis, then securitization theory and the Copenhagen school will be discussed. Specific attention will be paid to the political sector of the Copenhagen school, and the concept ‘legitimacy’ will be explained. The second part will elaborate on risk society and reflexive security. The third part will discuss the differences between threats and risks. A conclusion forms the final part of this chapter and will answer the first sub question as stated above.

2.1 Securitization Theory

The methodology of this thesis will be constructivist epistemology and constructivist ontology. Constructivist epistemology will be utilised because it holds that there is no objective knowledge, but knowledge constructed depending on convention, perception and social experience. This seems to be the case in reference to transnational organized crime. Criminal activities often played a supporting role in many traditional security problems, such as terrorist networks, rebel movements and illicit arms trafficking. Nowadays these and other problems, such as money laundering and drug trafficking, reflect the growing importance of non-state actors within security studies, and international relations more in general. The problems and the rise of non-state actors might indicate that the problems are becoming more widespread and that they might pose a threat to international security. Although some security specialists might argue that crime is less important than for example weapons proliferation or international terrorism, most would probably agree that certain types of criminal activities pose a threat to international security. But there is no obvious answer, and one must be very clear in terms of analysing why certain crimes or criminals are tagged with the status of ‘international security threat’. This indicates that what for some is seen as a threat towards international security, is not the case for others. In other words, constructivist ontology will be utilised because how threats are perceived by states and other actors and how states and other actors understand them is based on the meaning attributed to them.

Constructivist ontology is also relevant because the Copenhagen school will be utilised, which argues that securitisation is an intersubjective process based on meanings. Constructivist epistemology and ontology can be useful to understanding the meaning attributed to a material items. Constructivism can be linked to the double context of what Beck calls ‘reflexive modernity’. Hereby
Beck refers to the increasing awareness of the inherent limits and ambiguities of technical and social progress.\textsuperscript{17} Reflexive modernity is called ‘reflexive’ because it is an era when society begins to confront primarily itself rather than external others. This confrontation is a result of the ‘victory’ over the first, simple, linear, industrial modernization based on the national state.\textsuperscript{18} At the present time unforeseen consequences can no longer be controlled by further functional differentiation. More generally, during the 1980s Western philosophy and social sciences has engaged in discussions and redefinitions of its own and hence others identity. The importance of identity and its analysis became central issues for the empirical analysis of the social construction of others, in other words constructivism.\textsuperscript{19} The main research question of this thesis is: \textit{to what extent does the securitization of transnational organized crime influence the legitimacy of states?}; this includes examining the development of transnational organized crime, and how this is portrayed/constructed in amongst others, the media, and by national and international actors.

\subsection*{2.1.1 The Copenhagen School}

This thesis will operationalize the Copenhagen school as its theoretical background. Buzan, Waever, and de Wilde explain that any ‘public issue’ can range from non-politicised, towards politicised, and finally securitised.\textsuperscript{20} Non-politicised means that the state does not address the problem and the problem is not part of a debate or public discussion.\textsuperscript{21} Politicised means that a problem is a part of a public policy, and requires a state government to allocate resources in order to address it.\textsuperscript{22} Securitised means that the problem is considered as an existential threat by the audience, and requires emergency measures and justifying actions outside the normal bounds of political procedure.\textsuperscript{23} A problem becomes a security problem when a state representative or securitising agent presents it as impacting the referent object in a manner that existentially threatens the existence of the referent object.\textsuperscript{24} Security threats endanger the survival of collective units in their essential character.\textsuperscript{25} Because of the unique nature of security threats, they justify the utilisation of extraordinary measures to resolve them, and therefore can legitimise the utilisation of force.\textsuperscript{26} Based on the above, security becomes a speech act whereby the state representative declares a state of emergency by calling a problem a security threat.

\begin{footnotesize}
\footnotesuperscript{17} Beck, 1999, p. 2.
\footnotesuperscript{18} \textit{Ibid.}, p. 4.
\footnotesuperscript{19} Guzinni, 2000, p. 154.
\footnotesuperscript{21} \textit{Ibid.}, p. 23.
\footnotesuperscript{22} \textit{Ibid.}
\footnotesuperscript{23} \textit{Ibid.}, p. 23-24.
\footnotesuperscript{24} \textit{Ibid.}, p.21.
\footnotesuperscript{25} \textit{Ibid.}, p.27.
\footnotesuperscript{26} Waever, 1995, in Lipschutz (ed.), p.65.
\end{footnotesize}
Securitisation is an inter-subjective process that depends not only on the representative of the state to declare a security threat, but also on the audience to accept and internalise the speech act, that something actually is a security threat. In this way, security threats are socially constructed. Security threats may not necessarily be real or objective threats, but only need to be perceived as such by those making the speech act and those accepting it. Security is therefore a self-referential process, thus not necessarily because a real existential threat exists, but because the issue is perceived as such type of threat, it is through the process that the issue becomes a security issue. What is more, just because a securitising move is made, does not mean that securitisation has taken place; the audience must accept the securitising move. The audience is to tolerate of the violation of the normal political rules of the game, because if we do not tackle this problem we will not be here, or we will not be able to tackle with it our way. The extraordinary measures are needed to prevent an even worse situation. But securitization is not fulfilled by breaking rules, or by existential threats, it is the existential threat that legitimates the breaking of the rules, this is accepted by the greater audience.

What is still unclear is the how to sort out important cases from the less important ones. The measure used by the Copenhagen school is the scale of chain reactions on other securitizations, how big is the impact of the securitizing move on the wider pattern of relations. A securitizing move is negotiated between securitizing actor and audience, so within the unit. The violation of regular rules is needed because the threat requires it; it cannot be dealt with in the normal way. In a securitized situation the unit does not rely on inter-subjective knowledge and social resources among the units, but instead relies on its own resources. The securitized situation demands the right to govern its actions by its own priorities, but in order to succeed it should persuade the audience through a speech act. In sum, a securitisation process that is successful will include three necessary elements: existential threats, emergency action, and effects on inter-unit relations by breaking free of rules.

Buzan, Waever, and de Wilde explain that what an existential threat threatens will depend on its relationship to the specific referent object, depending on the sector. Security means survival in the face of existential threats, but what constitutes an existential threat may differ across various sectors, such as the military, the environmental or the economic sector. Securitization can either be ad hoc or institutionalized. If a threat is persistent or recurrent, the response and sense of urgency become institutionalized. Securitization on the international level, such as transnational organized crime which will be researched in this thesis, means to present an issue as urgent, important and existential that it

27 Buzan et al., 1998, p.25.
30 Ibid.
31 Ibid, p. 25.
33 Ibid.
34 Ibid.
35 Ibid, p. 27.
should not be exposed to the normal negotiation of politics. Instead it should be dealt with decisively by top leaders, prior to other issues.\textsuperscript{36}

Facilitating internal and external conditions are important; they influence the outcome of the speech act. The internal condition consists of the grammar of security and should create a plot that leaves no other possible way out. The external conditions consist of two parts; one is the social capital of the securitizing actor, who must be one of authority, the other has to do with the threat. It is easier to raise a security threat when certain objects can be referred to that are generally held to be threatening, such as weapons or criminal networks.\textsuperscript{37} Thus successful securitization will depend on the positions held by the securitizing actor. Some actors are placed in positions of power, because they are accepted as voices of security, this implies that they have the power to define security. However no one is guaranteed to make others accept the claim for extraordinary measures.\textsuperscript{38}

Concluding, the speech act approach requires three types of units involved in security analysis. Firstly referent objects, which are seen as existentially threatened, and that have a legitimate claim to survival.\textsuperscript{39} Secondly, securitizing actors, who securitize actors by declaring something, the referent object, existentially threatened.\textsuperscript{40} Thirdly, functional actors, they affect the dynamics of a sector. The functional actor influences decisions in the field of security, without being the referent object.\textsuperscript{41} The functional actors depend on the different sectors, such as the military, the economic or the political sector.

The political sector will be discussed in this thesis, with reference to a specific referent object, which will be the legitimacy and sovereignty of the state. Political security is about organizational stability of social orders, therefore next to states also international organizations, mainly the UN, will be discussed. This will be elaborated in the following subsector.

The political sector is chosen because this sector primarily focuses on non-military threats. The legitimacy of the state is central, because states are (still) the most common form of political organization. States provide the rule of law and institutions that generate legal norms and enforce them through the monopoly of force that characterizes the state.

To what extent transnational organized crime forms a threat toward the legitimacy of states, is precisely what will analysed in the third chapter. Legitimacy is one of the basic elements of the structure and operation of states. The theoretical framework will facilitate an analysis of the extent to which transnational organized crime is framed as an existential threat to the nation state.

\textsuperscript{36} Ibid, p. 29.
\textsuperscript{37} Ibid, p. 33.
\textsuperscript{38} Ibid, p. 31.
\textsuperscript{39} Ibid, p. 36.
\textsuperscript{40} Ibid.
\textsuperscript{41} Ibid.
2.1.2 The Political Sector and Legitimacy

According to Buzan, Waever, and de Wilde, securitisation must explain which actor securitises, which threats or issues are securitised, what the referent objects are, why, with what results, and under which circumstances or what can explain when securitisation is successful.\textsuperscript{42} The Copenhagen school can be utilised to analyse whether political actors were able to carry out the criteria of securitisation and were capable to mobilise the public into supporting and adopting the position.\textsuperscript{43}

Within this thesis the main focus will be on the political sector, which will be used to analyse transnational organized crime. Buzan’s definition of politics will be used and reads as follows: ‘the shaping of human behaviour for the purpose of governing large groups of people.’\textsuperscript{44} This definition represents a middle ground between more extreme ideas of what politics is. Like politics the political sector can be difficult to define. In a matter of speaking, all security can be framed as political, but when all security is political, none is. The term becomes an empty phrase. Threats and defences are constituted politically, and the first step, politicization is political by definition.\textsuperscript{45} To securitize is also a political act. Political security is about the organizational stability of social order, and centres around threats to state sovereignty. These threats can have a military character, but the political sector will primarily focus on non-military threats to legitimacy and sovereignty of the state.\textsuperscript{46} Transnational organized crime might be framed as such a threat. Political threats to the organizational stability of a state are framed as political when no massive military, economic or environmental means are involved. The main feature of this category is that threats themselves are mainly political in form. Political threats can be beyond political units, such as the state, and include politics and can also be focused on political structures, processes and institutions, the so-called system level referent objects. Therefore ‘political security is about threats to the legitimacy or recognition either of political units or of the essential patterns (structures, processes or institutions) among them.’\textsuperscript{47} This can be derived from the fact that political security is about order and the processes that support such a condition. Transnational organized crime might undermine essential patterns, such as structures, processes or institutions among the political units. Political threats can be made to the internal legitimacy of the political unit, and the external recognition of the state.\textsuperscript{48} In the modern state system, threats will be made either to the external side, recognition, or the internal side, legitimacy. The internal side can house factors relating to the role of the state as socioeconomic provider, then legitimacy is tied to economic and social success.

The term legitimacy has been used in various ways, but here the term will refer to the justification of authority. Then legitimate authority means justified authority and theories of

\textsuperscript{42} Ibid, p.32.
\textsuperscript{43} Ibid, p.34.
\textsuperscript{44} Ibid, p. 142.
\textsuperscript{45} Ibid, p. 141.
\textsuperscript{46} Ibid, p. 141.
\textsuperscript{47} Ibid, p. 144.
\textsuperscript{48} Ibid.
legitimacy attempt to specify what parts, for example tradition, legality or democracy, serve as justifications.\textsuperscript{49} Legitimacy is based upon two pillars, a sociological and a normative pillar. On the one hand, it refers to popular attitudes about authority. Authority has popular legitimacy if the subjects to whom it is addressed accept it as justified. Then legitimacy is treated as a belief in the rightness of a given social order. On the other, legitimacy can also have a normative meaning, which refers to whether a claim of authority is well founded. Then legitimacy is treated as the acceptance of the authority of certain sources, for example rational or traditional, of binding commands.\textsuperscript{50} The two aspects of legitimacy are closely related. A regime is called legitimate in order to persuade people or states to accept it, and called illegitimate when one tries to undermine its authority. However, the two aspects of legitimacy are different. There is a significant difference in something that ‘is legitimate’ and something that is ‘accepted as legitimate’\textsuperscript{51} The first description is evaluative; the second description is empirical, about popular attitudes.

Legitimacy shifts between belief systems and more specifiable authorities operating within those belief systems; ‘legitimacy does not depend on whether a rule or a decision is substantively correct, rather it reflects more general support for a regime, which makes subjects willing to substitute the regime’s decisions for their own evaluation of a situation.’\textsuperscript{52} A more operationalized conception of legitimacy is offered by Beetman, who states that power is legitimate to the extent that: ‘it conforms to established rules, the rules can be justified by reference to beliefs shared by both dominant and subordinate, and there is evidence of consent by the subordinate to the particular power relation.’\textsuperscript{53} This provides a more precise set of criteria for how legitimacy is achieved and provides a directory to where one might look to assess state legitimacy. Namely the presence or absence of rule following, of shared beliefs, and of acts of consent.

Gilley defines legitimacy of a state as follows: ‘a state is more legitimate the more it is treated by its citizens as rightfully holding and exercising political power.’\textsuperscript{54} Rightful can be explained in three different ways. Firstly, rightful as views of legality, which refers to the idea that the state has acquired and exercises political power in a way that is in agreement with citizen views on laws, rules and customs.\textsuperscript{55} Rules create predictability in social life, and contribute to a common political culture and identity. Secondly, rightful as views of justification, which refers to reasons given by the state for the way it holds and exercises its power.\textsuperscript{56} The shared beliefs between states and citizens construct a shared morality that exists as a kind of everyday discourse of citizens. Thirdly, rightful as acts of consent, which refers to positive actions that express citizens’ recognition of the state’s right to

\textsuperscript{49} Bodansky, 1999, p. 601.
\textsuperscript{50} Hearn, 2011, p. 200.
\textsuperscript{51} Bodansky, 1999, p. 602.
\textsuperscript{52} Ibid, p. 602.
\textsuperscript{53} Beetham, 1991, p. 15-16.
\textsuperscript{54} Gilley, 2006, p. 500.
\textsuperscript{55} Ibid, p. 502.
\textsuperscript{56} Ibid, p. 503.
exercise political authority and an acceptance of citizens, to be bound to obey the decisions that result, at least in general.\(^{57}\) In other words acceptance of the political authority of the state and the coercion it implies.

A problem is the ‘invisibility’ of well-functioning legitimacy. When things appear to run well, the idea of legitimacy is not visible. Legitimacy becomes more visible when something is not working, when states are too weak to regulate societal conflict. When a state suffers from problems the legitimacy of the state becomes debatable, whereas without any problems the need for a state becomes obscure. A state needs problems to justify its existence, but these problems should not escalate, then their authority becomes undermined. In other words states need to validate their authority, in order to preserve the power to make (binding) decisions.

When reading about legitimacy (of a state) it is important to note the following. Legitimation is a \textit{process}, a matter of more or less and not of all or nothing.\(^{58}\) Legitimacy of a state is connected with the acceptance of power. What people find legitimate is also what they find normal, what they are used to and see as natural. It is possible to rationally decide what is legitimate and what not, but it can be hard to judge about worlds we are not familiar with. A way to create a basis for legitimation is recognition, because recognition goes over into acceptation. When there is acceptation it can be interpreted as natural because nobody questions it the way it is. The state can be seen as an example, its existence is not questioned as such and it creates a basis for stability.

The legitimacy of the government of a state points to an important difference between strong and weak states. Internal threats are typical of weak states, where the authority of the government is much more contested. In a stronger state the basic framework is generally accepted and has thus more basic legitimacy. Especially in a strong liberal-democratic state there is a much stronger assumption that the government acts as the only legitimate agent of the nation-state. Moreover in a strong state it is generally assumed that national security can be viewed primarily from protecting the state for outside threat and interference.\(^{59}\)

Other parts of legitimacy are connected to the economic position of a state and the ability to maintain conditions where capital accumulation is possible.\(^{60}\) Transnational organized crime might undermine the (economic) position of a state, and thereby threaten the political security. As discussed by many different political thinkers, ‘politics is a continuous struggle to establish the quasi-permanence of an ordered public realm in a sea of change.’\(^{61}\) The legitimacy and the recognition of the state are important markers, for they provide the conditions, such as stability, needed for political activity. Transnational organized crime might have a negative influence on the legitimation of a state, thereby weakening its position. The identity of a state is not something it has for itself; it is more a

\(^{57}\) Gilley, 2006, p. 503.
\(^{58}\) Bodansky, 1999, p. 623.
\(^{60}\) Newell and Paterson, 1998, p. 691.
question of commonly established categories of international subjectivity rather than objective facts.\textsuperscript{62} And so according to the Copenhagen school there is good reason to focus specifically on external legitimacy, the recognition of the state as a state.

All in all, legitimacy of a state rests on cultural norms, values and identity, economic opportunities, the presence or absence of rule following or coercion, and of acts of consent. These elements will be used to analyse how transnational organized crime influences the legitimacy of states. These elements apply to international organizations as well, and will be used to analyze the legitimacy of international organizations.

The role of the media should not be underestimated (the so called ‘CNN effect’).\textsuperscript{63} In the case of a state, the government will usually be the securitizing actor, especially when the threats actually concern the government itself.\textsuperscript{64} Although there is an important difference between strong and weak states, weak states are more vulnerable to political threats. Demands can also be made in relation to institutions, structures or processes in the international system, systemic referent objects. Currently the main candidates are institutions and organizations of international governance. These are generally considered as a precondition for continued political stability, primarily by states and multinationals. Hereby stability refers to either the participating units or the relations among those units. Institutions can stabilize units individually, or contribute to the stability of something larger, such as patterns among or across them.\textsuperscript{65}

The specific securitization actors investigated in this thesis are the governments of states, and international organizations. Although the main focus will be on governments of states and international organizations,

The referent objects they are attempting to present as threatened are the legitimacy and sovereignty of the states. Although states will probably not speak explicitly about their legitimacy, they will address this more indirectly. Legitimacy is defined in various aspects, which indirectly influence legitimacy. Legitimacy and especially sovereignty are pillars under the current international order. An issue has to be framed as a threat, threatening the breakdown of these pillars, or causing irreplaceable effects, and then one can legitimize extreme steps.

The next part of this chapter is about the emergent literature on risk theory and reflexive security within Security studies. Risk society theory was originally developed by Beck, and is currently more and more applied on security studies. This theory will be elaborated in the next sub section.

\textsuperscript{63} Ibid, p. 149.
\textsuperscript{64} Ibid, p. 146.
\textsuperscript{65} Ibid, p. 147.
2.2 Risk Society

Within the study of international security the sociological concept ‘risk society’ is increasingly applied to understand new discourses and practices of security. This section will outline the rise of the concept ‘risk society’ and the consequences for thinking about and the framing of international security. This theory will be applied in the third chapter, along with the theory of the Copenhagen school.

The end of the Cold War marked a new era for Security Studies. Rather than the deterrence from a monolithic threat from another state, the management of global security risks has gained attention. The language of risk first appeared, implicit and explicitly, in Western policy documents in 1991. From then onwards attention moved to the combination of risks and security. For example, NATO began to focus on the management of ‘security challenges and risks’ as a key organizational task. In 1999 the revised strategic concept of NATO included the new mandate of ‘crisis management’ that would stop uncertainties and risks from developing into acute crisis and manage those that could not be prevented. The 2003 EU Security Strategy states that ‘large scale aggression against any member state is now improbable, and that instead Europe faces now threats which are more diverse, less visible and less predictable.’ Mentioned, amongst others, is the internal threat of organized crime, where Europe is seen as a prime target. As stated in the report, this internal security threat has an important external dimension, such as cross-border trafficking of drugs, illegal migrants and weapons, which accounts for a large part of the activities of criminal gangs. The threats described create a sequence of insecurities and risks. The main security challenges are described as risks, these challenges are multidirectional and often difficult to predict. Within academic writing the change in Western security has been noticed, although Williams states that the majority of strategic studies has failed to address this conceptual shift.

Rasmussen introduced the concept of reflexive security in the article, ‘Reflexive Security: NATO and International Risk Society’. He seeks to understand the security policy of the West after the end of the Cold War. Thereby he utilizes the theory of Beck on risk society and reflexive modernity. In his article he explains the transition of NATO in a post-Cold War era, whereby the Western society changes from a means-end Weberian rationality to late modern reflexive rationality. Beck’s notion of reflexivity is relevant to the discussion of what signifies security. In modernity that signifier was the distribution of wealth, or in other words the distribution of resources in society. In

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66 Williams, 2008, p. 57.
67 NATO, 1991, Strategic concept.
68 Ibid.
70 Ibid.
71 Williams, 2008, p. 58.
72 Ibid.
late modernity, Beck finds the signifier of politics to be risk.\(^74\) Rasmussen addresses three essential features to identify reflexive security: ‘management’, the ‘presence of the future’ and the ‘boomerang effect’, these will be explained below.\(^75\) The basis for the majority of work on the idea of risk is developed by the German sociologist Beck. Therefore firstly the theory of Beck will be elaborated.

### 2.2.1 Reflexive Modernity and Risk Society

The basis for the work of Beck is that: ‘all around the world, contemporary society is undergoing radical change that poses a challenge to Enlightenment based modernity and opens a field where people choose new and unexpected forms of the social and political.’\(^76\) The core of the argument lies in decision, risk is about choice; choice in the present based on a future scenario. The risk society represents the ‘darker side’ of the modernity, the continued modernization with technological, scientific and industrial developments have made the world more vulnerable to unknown risks. Scientific progress has had positive as well as negative effects on civilization. One of the developments is to discover more information about ‘bad things’, but all this information does not make us feel more secure. On the contrary, the opposite occurs and one begins to feel more unsure and uncertain, wondering if the effects of the late modernity can ever be fully grasped. Giddens states: ‘The risk society is a society where we increasingly live on a high technological frontier, which absolutely no one completely understands, and which generates a diversity of possible futures.’\(^77\) The diversity of possible futures leads to the inevitable confrontation of risks; these are a side-effect of one’s own modernity and scientific success. This is called reflexive modernity, it is an era when society begins to confront primarily itself rather than external others. In this sense society becomes reflexive and this lead to the association of late modernity as reflexive modernity.

The confrontation of society with itself ‘… is a result of the victory of the first, simple, linear, industrial modernization based on the national state.’\(^78\) According to Beck, the unforeseen consequences, created by technological progress, can no longer be controlled by further functional differentiation. The concepts of controllability, certainty and security which are fundamental to the first modernity, are about to collapse.\(^79\) These developments are reflected in the following citation of the work of Beck: ‘As the bipolar world fades away, we are moving from a world of enemies to one of dangers and risks. But what does ‘risk’ mean? Risk is the modern approach to foreseeing and controlling the future consequences of human action, the various unintended consequences of radicalized modernization. Every society has, of course, experienced dangers, but the risk regime is a function of a new order: it is not national, but global. It is rather intimately connected with the

\(^{78}\) Beck, 1999, p. 4.
\(^{79}\) Williams, 2008, p. 60.
administrative and technical decision-making process. Risks presuppose decisions. Decisions were previously taken with fixed norms of calculability, connecting means and ends or causes and effects. These norms are precisely what ‘world risk society’ has rendered invalid.\textsuperscript{80} The result of the transition from first to late modernity is that new ways of organizing society begin to emerge.

The risk society is a conception of Western society, where some elements of society are heading, whilst others might have already arrived.\textsuperscript{81} The risk society theory describes this transformation process, and at the same time the probable result of this transformation. The risk society theory shows the creation of a new social rationality, which is closely related to the end of the Weberian interpretation of social action, namely the end of means-end rationality.\textsuperscript{82}

Weber argues that humans determine action, and this is based on expectations of the behaviour of the other in their surroundings.\textsuperscript{83} The presupposed rationality is related to expectations about the behaviour of other human beings or objects. These expectations served as a means for a particular actor to attain ends, and these prospective ends were rationally pursued and calculated. Individual actions were guided by rationality, but the reasons for acting were not an individual matter. The reasons for action were universal and calculable, hereby subjects are able to know the world independently on them and this creates the possibility to develop nearly perfect knowledge on how to act. All subjects were basically alike, and their actions differed because they might use contrasting means, but they envisioned the same ends.\textsuperscript{84} Modernity is closely connected with the continuous ‘rationalization’ of society, whereby an increasing number of social actions is based on calculation. Examples of this rationalization are the state bureaucracy or technological developments, instead of motivations based on morality, tradition or emotion. This displacement of other modes of ‘rationality’ destined modernity to become more and more modern. Beck argues that modernity has become so moderns that it has ceased to be modern, hereby modernity is viewed as a process of becoming.

As modernity struggled to overcome the opportunities and dangers it encountered, the means-end rationality is no longer the only mode of being that individual social agents can imagine. The identity of subjects is no longer determined by the means-end rationality, rationality is a case of becoming and this implies that social subjects are reflecting on which rationality to adopt. This highlights one of the defining characteristics of the transition from modernity to reflexive modernity, the end of the means-end rationality as the only mode of operation.\textsuperscript{85} As Beck states, we are ‘living in an age of constructivism’.\textsuperscript{86}

\textsuperscript{80} Beck, 1999, p. 4.  
\textsuperscript{81} Rasmussen, 2001, p. 289.  
\textsuperscript{82} Ibid.  
\textsuperscript{83} Williams, 2008, p. 61.  
\textsuperscript{84} Rasmussen, 2001, p. 289.  
\textsuperscript{85} Williams, 2008, p. 61.  
\textsuperscript{86} Beck, 1999, p. 133.
Risks are the modern approach to foresee and control future consequences of human action, the various unintended consequences of radicalized modernization. Risks are closely connected with administrative and technical decision-making processes and presume decisions. These decisions were previously taken with fixed calculable norms, the Weberian rationality. They were connected with means and end, or cause and effect. These fixed norms are precisely what risk society has rendered invalid; risks are intrinsically induced and introduced by modernity itself. The rationality of risk is reflexive, because the problems it concerns are products of the society that has to deal with them.\(^\text{87}\)

Pollution is a clear example. Pollution is a product of modernization, without pollution there would be no industry and thus no modernity. So in this manner when facing the problem of pollution, society is facing itself.

2.2.2 Reflexive Security

In order to understand the security issues of today it is important to take into account the technological changes and the rise of non-state actors, like transnational organized crime. Unlike specific dangers, which can be countered with specific means, risks are elusive and can only be managed. They can be seen as unknown unknowns. There are things we know that we know, there are things we know we don’t know. And there are unknown unknowns, things we don’t know we don’t know. When a situation is described, it consists of things we know and thing we know we don’t know. But each time we encounter an unknown unknown, old certainties have been replaced by reflection on a wide range of risks.\(^\text{89}\) The idea of risk and risk society can be applied within the area of Security studies. In order to do this three essential elements from the work of Beck on politics are selected. These are: ‘management’, ‘presence of the future’ and the ‘boomerang effect’, and mark the reflexive era.

The first element, idea of ‘management’ meant that with the appropriate means, one can realise his ends, and by achieving the desired goal the problem was solved. Nowadays politics is about managing the process, with risks is that there is no end to the problem. With every attempt to remove a risk, a new risk will pop up.\(^\text{90}\) This entails that the direction by which politics guided has changed from ‘rule-directed’ politics to ‘rule altering’ politics. Their ‘laws of politics’ are not yet given, but are the product of their maker’s reflection on where these times of change will take them. Politics becomes a matter of managing change with an eye on the future.\(^\text{91}\) Management refers to governance in a context of risk proliferation, risks cannot be eliminated. Transnational organized crime might be one of those threats whereby new sides will keep popping up, and policymakers are managing rather than solving the problem.

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\(^{87}\) Ibid., p. 4.
\(^{88}\) Rasmussen, 2001, p. 290.
\(^{89}\) Rasmussen, 2004, p. 382.
\(^{90}\) Rasmussen, 2001, p. 291-292.
\(^{91}\) Rasmussen, 2004, p. 394.
The second element ‘presence of the future’ embodies the fact that risks transcend temporal reality. The management of risks is about managing possible events in the future. These possible events in the future, which have yet to occur, become the motivation for action of today. In other words it refers to a concept which defines current problems by their perceived future consequences. A famous example of acting on possible future events was the explanation of the Bush administration to justify the military invasion of Iraq to the American people. But there might be examples within the area of transnational organized crime as well. To prevent possible destruction, society must act in the face of its lack of security, an action that ultimately results in the third element, the ‘boomerang effect’.

The third element ‘boomerang effect’ is composed of two aspects, namely ‘the end of the other’ and ‘the loss of control’. Previously one acted against an ‘other’, or other subjects made decisions against which the subject acted. Nowadays with a decision to act on risks, risks become risky. An attempt to maintain in control by managing risks, inevitably leads to a loss of control. In managing a future risk, new risks proliferate. Thereby risk management becomes a never ending process, and living with insecurity. In other words the distinction between ‘self’ and ‘other’ breaks down, as reflexivity makes the ‘self’ the object of its own actions. Since our actions can become a threat to our own security, threats are no longer defined simply in terms of an ‘other’. The decision to act on a future risk represents a risk in and of itself. The intention of a certain outcome associated with the end goal is no longer secure. The ultimate case of the ‘boomerang effect’ is Mutual Assured Destruction (MAD), in the worst case also the aggressor would be destroyed.

These three elements of politics in risk society create a guideline into the possibility to apply the notion of risk to the field of security studies. Using these elements Beck’s theory of reflexive modernity and risk society offers another way to investigate security policies. They will be used in the third chapter to analyze the consequences of transnational organized crime on the legitimacy of states.

2.3 Threats and Risks

This part will elaborate on the differences between threats and risks. The implications of using risk will also be discussed and the first sub question; in what way can securitization theory and theory on reflexive security help to analyse transnational organized crime?; will be answered.

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92 Williams, 2008, p. 62.
94 Williams, 2008, p. 63.
During the Cold War the West was obsessed by the threat that it believed the Soviet Union posed towards them. This threat was quite solid, monodirectional and the West developed a way to deter the threat. In an age of risk, security challenges have become multidirectional and multifaceted. The West finds itself in a different position than 20 years ago, and the situation has become more complex. Can we still speak of threats or is all we do risk management?

Threats are finite, because they emanate from a specific actor, with a limited amount of resources to support capabilities. Risks are infinite, since they are only possible scenarios, and can exist to a greater extent than threats. Unlike threats, which primarily occupy the here and now, risks transcend space and time. And besides that, by managing a future risk new risks proliferate, as the boomerang effect shows. Risk management is a never ending process and unlike in a threat based system, where obvious capabilities and intent make it clearer for policy-makers to determine where threats lie. A risk-based mindset is far more unclear, there is far less information to rely on (and more unknown unknowns). Society might no longer be focused on perfect security, but managing risk and insecurity is rather the task at hand.

It is very difficult to provide a definition of risk. One can define the nature of risk, but not what a risk is. The indeterminate nature of risk means that perception of risk will be contested. The word risk is being discussed, it is something with a subjective meaning, but there is no objective definition. The perception of risk will be contested between different groups. Thus, the nature of risks can be defined, but the risks per se can not. So although it is impossible to define what a risk is, the subjective and socially constructed nature of risk has been established.

Another point is that risk is not a new concept. Throughout history risk used to be calculable and quantifiable. In modernity there was a separation between risk and uncertainty, but in late modernity this separation as ceased to exist. Risk and uncertainty have become partners in crime, so to speak. Or stated differently ‘... uncertainty is the primary threat.’ Uncertainty has become an intrinsic part of risks, risks are future possible situations.

Risks are socially constructed realities; the discursive construction of risk and the materiality of threats are both present. Threats are also socially constructed realities, which comprise of a material and an ideational factor. The way threats are perceived underlies the way risks are perceived. Threats and risks both have an underlying materiality and a discursive construction or speech act. To identify risks is like the securitization process, both are centred around speech acts and their external, societal facilitating conditions. Therefore, and as stated in the methodology part, constructivist

97 Williams, 2008, p. 66.
98 Ibid., p. 66.
99 Ibid., p. 67.
100 Williams, 2008, p. 65.
101 Ibid., p. 65.
102 Ibid., p. 4.
ontology will be utilised. This relates to the question of epistemology, or how can it be explained. During the ‘first’ modernity collective patterns of social lifer are primarily based on nation-state societies. And social and political relations are understood in a territorial sense.\textsuperscript{103} With the advent of late or reflexive modernity the foundations of action have undergone a radical change. Global threats can turn territorial control and security ineffective. The study of risk offers a new frame of reference that is not territorially fixed and is therefore interesting to utilise when researching transnational organized crime, which isn’t territorially fixed either.

Another aspect is the fact that experts cannot present perfect knowledge on the consequences of modernity any more, such as the implications of certain technological developments; there are too many unknown unknowns.\textsuperscript{104} When there is no one to give authoritative answers, then society begins to work in new ways. It ceases to be modern and becomes reflexive about its own modernity. In the risk society experts no longer have the privileged position of being the only ones who know how the system works. Their monopoly on knowledge can be contested by other groups; this is clearly visible in the debate about climate change.

In this thesis the theoretical part consists of threat versus risk, using the theory of securitization and the theory of risk and reflexive security. The approaches differ in the way they address security problems. Securitization occurs in response to an issue in the present, and risk identification is based on a future scenario. Another aspect is the discussion of the changing rationality of late modernity, on which reflexive security is based. The Copenhagen relies on the rationality of modernity. Next to that Aradau et al. points out that ‘according to the Copenhagen School of security studies, it is imperative to distinguish security in international relations from the more mundane concept of risk, because questions of the latter are not imbued with the same sense of danger, urgency and survival.’\textsuperscript{105} A threat based perspective emphasizes agency and intent between conflicting parties and relies on intelligence in an attempt to eliminate danger. A risk based perspective inclines to emphasize systematic characteristics and relies more on modelling and speculations that do not simply call for the elimination of risk, but try to develop strategies to embrace it.\textsuperscript{106} An example might be found in the report of the global commission on drug policy of June 2011. It states that the war on drugs has failed and calls for a shift from ‘zero tolerance’ towards experiments with models of legal regulation of drugs to undermine the power of organized crime.\textsuperscript{107}

The two theories lined out above will be used to analyse to what extent transnational organized crime is securitized and what the consequences for the legitimacy of nation states are. Thereby legitimacy is

\textsuperscript{104} Rasmussen, 2004, p. 386.
\textsuperscript{105} Aradau et al., 2008, p. 149.
\textsuperscript{106} Ibid., 148.
seen as the presence or absence of rule following, of shared beliefs, and of acts of consent. States need to validate their authority in order to preserve the power to make (binding) decisions. In order to validate their authority they need ‘troubles’. By proving to their citizens that they, and no one else, can solve these ‘troubles’ they can justify their continuation. These ‘troubles’ should not run out of hand, than their legitimacy will be questioned as well. In this thesis transnational organized crime will be the ‘trouble’.

Securitization theory and risk theory help to research how transnational organized crime is being addressed, who addresses it and in what way. Securitization theory focuses on who has the loudest say, with a sense of urgency and survival. Then transnational organized crime is framed in modernity, the here and now. Whereas risk society and reflexive security emphasizes the future aspect and the attempt to develop new solutions to manage contingency. Because legitimacy of a state is a central element in this thesis, it will be shortly recapped how legitimacy of states is specified. Legitimacy of a state rests of cultural norms, values and identity, economic opportunities, the presence or absence of rule following or coercion, and of acts of consent. If one of these aspects is influenced by transnational organized crime, this will influence the legitimacy of states. How transnational organized crime influences the legitimacy of states will be analysed in the fourth chapter.

The next chapter will elaborate on how transnational crime is being discussed in academic literature.
Chapter 3 Transnational Organized Crime

This chapter will focus on the question: How did transnational organized crime develop and how can it be seen as an issue of international security? Firstly transnational organized crime will be elaborated. Attention will be given to the definition of transnational organized crime, and the factors that influenced the rise of transnational crime. Then international efforts to combat illegal drugs will be elaborated. The last section of this chapter discusses arguments of various scholars on whether transnational crime can be seen as a threat to international security. Scholarly articles from, amongst others, Shelley and Dupont will be used to elaborate on how transnational organized crime is being portrayed in academic literature. Reports from the UN and EU will be used as well.

3.1 Defining Transnational Organized Crime

The end of the Cold War marked a new era for the military-political security agenda. The threat of nuclear war diminished and the deterrence of a monolithic threat from another state disappeared of the agenda. Other non-state threats, such as transnational organized crime, terrorism, breakdowns or natural disasters took its place. One of the newly detected threats is transnational organized crime, which will be the central topic of this thesis.

Before the focus will shift to drugs specifically, attention will be given to the definition of transnational crime and a general look on the development of transnational organized crime.

Transnational crime and international crime seem synonymous and may demonstrate no divergence. But there is a significant distinction, which is based on the subject of the criminal activity. International crimes are as the crimes committed by states against international peace and against humanity. Zabyelina states that international crime is similar to, but a more extensive concept of state organized crime and that it includes ‘crimes against international law, crimes against humanity, crimes against the peace and war crimes’. Transnational crimes are crimes less threatening for international peace. Nevertheless they endanger international cooperation, international economic and socio-cultural development and the wellbeing of individuals. International crime might be associated with state-organized crime and, up to a certain level, sponsored by a state; transnational crime may be entirely conducted by private organizations unrelated to any state.

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110 Ibid., p. 132.
111 Ibid., p. 133.
In the 1990s a more serious focus on transnational organized crime as a phenomena itself came into existence, whereas earlier literature had a stronger focus on domestic organized crime.\textsuperscript{112} One of the issues addressed was the definition of transnational organized crime. There is no agreement on the actual meaning of the term. As Dupont states ‘there is no consensus about the precise meaning of the term ‘transnational crime’, nor is there agreement on the organizational and social dynamics that drive criminal groups and govern their activities’.\textsuperscript{113} Shelley et al. state that the term ‘transnational crime’ was established by the UN about 25 years ago, but it was an all-embracing term which included 18 categories of activity such as terrorism, hijacking and organized crime activities.\textsuperscript{114}

During the last decades the definition of organized crime has evolved, reflecting the increasing complexity and international nature of the phenomenon. The definition moved from international to transnational, thus demonstrating how these criminal organizations seek to operate outside of the state system. Put differently criminal organizations are ‘transcending the sovereignty that organizes the modern state system and leveraging it for its own gain’.\textsuperscript{115} The UN Convention on Transnational Crime sought to provide a definition that is to serve as a benchmark for identifying transnational criminal organizations. Article 2 states: ‘“Organized criminal” group shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit; “Serious crime” shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty; “Structured group” shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure’.\textsuperscript{116} According to article 3 an offence is transnational in nature if: ‘It is committed in more than one State; It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State; It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or It is committed in one State but has substantial effects in another State’.\textsuperscript{117} An organization will be a transnational criminal organization when three or more individuals are structured according to certain principles. These principles facilitate and maintain the coordination of criminal actors in time, space as well as activities and goals. They aim at committing one or more crimes in order to obtain material and/or financial benefits. The transnational aspect means that a

\textsuperscript{113} Dupont, 1999, 435.
\textsuperscript{115} \textit{Ibid.}, 2010, p. 144.
crime is committed in more than one state or involves a criminal organization that is active in various
countries or the preparation and planning of a crime is being conducted from more than one state. The
crime might be committed in one state, but has a significant effect in another state.

The next section elaborates on changes in international settings and how transnational crime is
influenced by or uses these changes.

3.2 Changing International Settings

This section will elaborate on two subjects. Firstly changing international settings and secondly
conditions, which are identified by several scholars, concerning the presence of transnational crime.

Organised crime has a long history and has traditionally been seen as a domestic law-and-order
problem.118 This long history is reflected in the fact that some scholars have attempted to trace it back
to the times of African slave trade.119 However, in this thesis the focus will be on the last decades,
when crime has taken on new international dimensions and criminal organizations have developed in a
similar way as transnational corporations.120 The move towards globalization of economic and
political liberalization took off in the 1970s and has been helpful to the development of all
transnational organizations. This created opportunities for the transnationalization of crime as well.

Important factors in the growth and increasingly international character of organized crime are
technological developments and economic growth of the post World War II era, as well as the current
geopolitical situation.121 The scale of the activities largely reflects the opportunities resulting from
changes in relations between states. But also the changes within states have impacted the activities.
The second half of the 20th century not only experienced a large increase in transactions across
national boundaries that are neither initiated nor controlled by states, but has also seen a decline in
state control over its territory. These transactions can be those of multinational corporations, but also
those attributed to criminal networks. Besides money and goods also people increasingly cross
national boundaries. The mobility of people results in an increase in the number of visitors, but more
importantly, a steady stream of migration from one place to another.122 Transnational criminal
organizations are both contributors to, and beneficiaries of these changes.

The growth in transnational illegal activities is largely due to the increasingly international
scope of legitimate business and the ease with which this is conducted. The growth of international
trade has been eased by the free trade system, and facilitated the vast global increase in the import and

118 Rodriguez, 2011, p. 60.
120 Williams, 1994, p. 96.
122 Williams, 1994, p. 98.
export of goods and services. Examples of technological progress affecting the growth of transnational organized crime are: rise of commercial airline travel, telecommunications and the use of computers in business.\textsuperscript{123} The increased interdependence between states, the ease of international travel and communications, the permeability of national boundaries, and the globalization of international financial markets have facilitated the emergence of what is a single market for licit and illicit goods.\textsuperscript{124} The growth of the market for legal goods and services has made it easier to hide illicit transactions, products and movements. Law enforcement agencies are only able to inspect a small portion of the products and peoples entering their territories. Consequently, the borders have become more porous.\textsuperscript{125}

The growth of international business and financial markets triggers the increase in international crime. The expansion of global financial markets facilitates the illicit market as it facilitates the legal market. Transnational criminal organizations are able to transfer and launder money with speed and relative ease.\textsuperscript{126} That way, organized crime groups follow the trends of international business. The increasing economic interdependence of the world requires both licit and illicit business to think internationally. Global markets have developed in both legitimate and illegitimate goods, with international drugs trade as one of the most notable ones.\textsuperscript{127}

There is one crucial difference between legal transnational organizations and criminal transnational organizations. Most transnational organizations seek access to markets and territory through negotiation, whereas criminal transnational organizations obtain access through circumvention. They operate outside the existing structures of authority and power in world politics. Criminal organizations have developed ways to evade government controls and strategies to avoid law enforcement of states and international organizations.\textsuperscript{128}

The presence of transnational organized crime is due to certain conditions, which are identified by several authors and will be elaborated below.\textsuperscript{129} State failure and economic conditions play an important role, as does the market, which causes demand for a product and has been elaborated in the previous section.

Economic conditions play an important role in the development and existence of transnational organized crime. Sung argues that an underground economy will emerge from economic failure. This economy can be informal as well as criminal.\textsuperscript{130} During periods of economic hardship caused for example by unemployment or high inflation, there is a tendency to turn to illegal means to secure the means to obtain basic needs. Unemployment and scarcity of basic goods and services are signs of

\textsuperscript{123} Shelley, 1995, p. 465.
\textsuperscript{124} Williams, 1994, p. 97.
\textsuperscript{125} Ibid., p. 98.
\textsuperscript{126} Ibid., p. 98.
\textsuperscript{127} Shelley, 1995, p. 466.
\textsuperscript{128} Williams, 1994, p. 101.
\textsuperscript{130} Sung, 2004, p. 114.
breakdown of the economic system. These problems reduce peoples material comfort and steal their sense of dignity, the illicit economy offers means that are not available in the legal economy. Economic failure exists in every society in varying degrees. Even in states with stable governments and developed economies, such as the United Kingdom, high unemployment and an illicit drug economy are not uncommon in impoverished inner cities. But transnational organized crime thrives especially in places were institutions are already weak, and were there might be little other opportunity for local people. The extreme value of some illicit goods compared to that of local economies contains power of attraction and this poses a danger. For example, it allows drug traffickers to infiltrate to high levels within the military and government within a country. Local communities might develop loyalty for organized criminal groups, when the state in not able to provide basic services and guarantee a safe and secure environment. The alienation of a local community from state authorities leads to a loss of state legitimacy, because a state falls short in creating economic opportunities and providing basic services.

State failure is another indication for the presence of organized crime. States fail when one or more of the following conditions occur: the central government ceases to provide political freedoms, civil rights, criminal and civil justice, personal safety, and collective security in an efficient and just manner. The transparent and effective delivery of these political goods legitimizes the political system, and characterizes stable states. Note that no state has ever achieved complete control of its jurisdiction; crime and the abuse of state authority exist in every society to varying degrees. Indicators of failed states are, amongst others, high levels of crime and violence, widespread corruption and the inability of rulers to exercise sovereignty without brutal force. The situation where justification of authority is already difficult is typical for weak states. Internal threats are a sign that the authority of a government, and thereby the legitimacy, is contested.

Economic opportunities and state failure play an important role when researching the presence of transnational organized crime. These conditions come back in the analysis, and will be discussed more extensively. The following section will elaborate on the anti drug efforts in the international arena.

3.3 Drugs

As stated in the introduction, within the area of transnational crime the focus of this thesis will be on drugs. In order to get a better insight in anti drug policies, the history of anti drug measures to will be explained. This section gives background information on the anti drug policies, which will be analyzed
with the theoretical framework in the fourth chapter. This section starts with a few notes on the development of international drugs control in general, then a more specific look will be given to the anti drug efforts of the UN, and the EU.

In 1909 the international community met for the first time to discuss the Chinese opium epidemic. Prior to the 1909 Shanghai Opium Commission, national governments played an active role in retailing opium across borders and large profits were made. The declaration of the Shanghai Commission was a non-binding document, negotiated by delegates lacking power to commit in behalf of their states. It would almost take 100 years to create international law and instruments presently available to deal with the global drug problem. 135

The founding Covenant of the League of Nations explicitly mentioned the control of ‘dangerous drugs’ as one of the organizations concerns. During the 1930s, with assistance from the US Federal Bureau of Narcotics, two international anti-drug conventions aimed at supressing narcotics and dangerous drugs were written and accepted. In 1948 the new UN made drug prohibition one of its priorities. 136 In 1961 the UN Single Convention was created, and forms together with two other international conventions the foundation of the current global drug control regime. The UN Single Convention is so called because it largely replaced previous international agreements that had been developed since the early years of the twentieth century. 137

The two other international conventions on worldwide drug control are the 1971 Convention on Psychotropic Substances and the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. 138 The UN Single Convention was amended in 1972. An important purpose of the 1961 and 1971 Conventions was to codify internationally appropriate control measures to ensure the availability of narcotic drugs and psychotropic’s for medical and scientific purposes. At the same time the focus was on the prevention of leakage into illicit channels. The 1988 Convention was designed to deal with the growth of international trafficking in illegal substances in the 1970s and 1980s. Earlier international instruments dealt with this issue in a limited way. 139 It provides measures against drug trafficking, such as provisions on money laundering, asset seizure and agreements on mutual legal assistance. Another new element is the attention paid to drug demand and the Convention tightened the control regime significantly by including this as well. The previous Conventions were primarily addressing the supply side of the drug problem. Under the 1988 Convention each party is required to make the possession of drugs for personal consumption a criminal offence under their domestic law. 140

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135 UN, 100 years of drug control, 2009, p. 9.
138 Ibid.
139 Ibid.
140 Ibid., p. 173.
None of the above mentioned Conventions are self-executing. While they impose obligations on states to apply international law, such law is not directly or immediately enforceable. The International Narcotics Control Board (INCB), the independent and quasi-judicial monitoring body for the implementation of UN international drug conventions, has no formal power to enforce the implementation of the Convention provisions and punish parties for non-compliance. But then again, states are required to remain true to UN Conventions in line with the Vienna Convention on the Law of Treaties established in 1969. This situation leaves some room for interpretation at the national level, and explains the variation of domestic policies between signatory states.

The United Nation Office on Drugs and Crime (UNODC) is a special office of the UN, specialized in information on drug control and crime prevention. The UN, other than the government of the US, has done more to defend and extend drug prohibition than any other organization in the world. The UN identifies the goal of its anti-drug efforts as ‘a drug free world’. The UNODC exists since 1997, when the United Nations Drug Control Programme and the Centre for International Crime Prevention merged into one body, the UNODC. The UNODC is active in all regions of the world through an extensive network of field offices.

The UN represents the international level in this thesis, and as stated in the first chapter the UN has a central role as founder and main source of the basic principles of international society international law. In the fourth chapter of this thesis an analysis will be given, the focus will be on how the UN perceives transnational crime, and how this influences the legitimacy of the UN. In order to provide such an analysis, documents of the UN and scholarly articles about the perspective of the UN will be used.

Within the EU each member state has developed its own national policy, which can differ significantly. But recently, harmonization of drug-control policies has become increasingly important. The emphasis is on international cooperation in the fight against drugs and particularly in an effort to restrain large scale drug trafficking crime organizations. The first working group which was set up to facilitate cooperation between the member states of the European Community (EC) was the European Committee to Combat Drugs (CELAD) in 1989. It brought together national coordinators in this field from different member states. CELAD made the first European Plan to Combat Drugs, and this was adopted by the Council of Ministers of the EC in Rome, 1990. The document was a first attempt to act coherently against drugs at the national and Community level. It made recommendations to reduce the demand for drugs, combat illicit trafficking and increase coordination at member state level. When the Maastricht Treaty on European Union entered into force in 1993 the Plan gained

143 UN, 1998.
145 Chatwin, 2004, p 441.
146 Ibid., p. 445.
institutional power. It was the first time that drugs were included in an EU treaty. In 1995 the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) was established. Their main objective is to collect and analyse information relating to drugs. The priorities of the EMCDDA are the reduction of the demand for drugs, international cooperation, and the control of trade. Another instrument in the fight against drugs was the establishment of the European Police Office (EUROPOL), they assists member states in their fight against international crime, amongst others drug trafficking.

Anti drug efforts have been on the international agenda for over 100 years. These efforts have resulted in various institutions and international cooperation. The efforts will be discussed with the theoretical framework in the fourth chapter. Transnational crime, as such, appeared on the security agenda quite recently. How scholars view transnational crime will be elaborated below.

3.4 Transnational Crime as a Security Issue

This section discusses different standpoints of various scholars concerning the threat transnational crime might pose. The fact that transnational crime is viewed, by several scholars, as a threat to international security is discussed as well.

There is a debate whether transnational crime constitutes a security threat. Unlike for example terrorist groups, transnational organized crime has predominantly economic objectives. Like legal enterprises, illicit enterprises add to national wealth, create jobs and provide a safety net against recession. The profits of criminal activities are vast, and at least some of these profits are brought back into the national economy, which will have certain multiplier effects. With these effects in mind, one might draw the conclusion that transnational crime does not pose a threat to national and international security. The above stated conclusion is based on a mainly military conception of security.

Other scholars point to the linkages between transnational organized crime and terrorism, extremism, and the threat it poses to national security. Swanstrom points out that it is necessary to include new challenges to security, even though they do not follow the old concepts of borders and states, but are transnational, non-state and may have a non-military character. In this case security is defined not as just external military threats but in a broader sense, thereby including the effective functioning of society; transnational organized crime is seen as security issue because it can have

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severe consequences on societies and states. Four arguments are presented by different scholars. The first argument signals that transnational crime poses a threat to the political sovereignty of the state; transnational crime undermines and subverts the authority and legitimacy of governments. Organized crime implicitly and explicitly challenges the monopoly of the state over taxation and violence. Williams states that the willingness of transnational criminal organizations to use force against a state and its law enforcement agencies can be more destabilizing than activities of revolutionary or terrorist groups. The second argument points to the relation between organized crime and economic security, especially in developing and or weaker states. Transnational criminal organizations can use internal weakness of many countries to corrupt government officials and others which are important for their business. State capacity will be under even more pressure when individuals become familiar to working outside the regulatory setting and the rule of law. This will erode the political sovereignty of these states, and government institutions may become so corrupt that they no longer have either the incentive or the capacity to reassert control. The third argument concerns the growth of coercive power of large criminal organizations; this can have serious implications on the norms and institutions that support global order. The dominance of governments is increasingly challenged by the emergence of powerful non-state actors, operating either regionally or globally. These sovereign free actors have the autonomy to engage in activities that are difficult for states to regulate. Transnational criminal organizations may threaten the legitimacy of government structures. The fourth argument points to the fact that revolutionary political movements and insurgent groups can turn to crime to finance their operations. Research on the emerging crime-terrorism nexus is an example. The authors admit that the impact of transnational organized crime varies in different regions and states. The economic impact is greatest in small and weak economies, for example. However, according to them, it would be a mistake to overlook the above mentioned consequences of transnational organized crime. Criminal activities, particularly those conducted on a large scale and involving significant international collaboration, may pose a serious threat to the security of states.

The four consequences mentioned above have different implications for societal, national and international security. When an issue is seen as a threat to security, this does not automatically imply that it is a threat to international security. Whereas national security concerns mainly one’s own safety, international security has a more distinctive meaning, which is rooted in the traditions of power politics. Within the traditional understanding of security, the military-political angel dominates,
international security is about survival. Within the wider conception of security, as is the Copenhagen school, security means survival in the face of existential threats, but what constitutes these existential threats differs across the various sectors. In the political sector, which has the main focus in this thesis, existential threats are traditionally defined in terms of the constituting principle of the state, sovereignty and sometimes also ideology. The sovereignty of a state can be existentially threatened by anything that questions the recognition, legitimacy or governing authority. Supranational regimes, such as the EU, and international regimes can be existentially threatened by situations that undermine the rules, norms and institutions that constitute those regimes. When an issue is seen as a threat to international security, in concerns mutual survival and safety of states and institutions.

When viewing transnational crime and drugs trade as an issue of international security, scholars focus on the interconnectedness of security aspects. Wang states that ‘multinational systemic crime is often operated by complex international criminal systems, which makes it dramatically for one single country to prevent and control.’ Scholars view transnational crime as a systemic issue; it may threaten the integrity of financial and commercial institutions on a national and international level. The argument is that the various elements of criminal drug networks, the production, distribution and consumption elements of drugs are spread internationally. The communication networks, monetary transaction and transportation systems appear to be sophisticated and efficient. Criminal networks show a high degree of flexibility, such as in their choice of transit routes, and they rely on the lack of political cohesion and state incapability. When transit routes for illegal drugs trafficking change, they happen at a relative quick pace, to which national governments have problems adapting. And while measures are invoked against drug trafficking, these are usually on a national level. Swanstrom points out that the narcotics trade has increased the level of corruption and threatens the internal cohesion of many states, primarily weaker ones though, as it dominates both trade and politics. The link between drug trafficking and arms traffickers or terrorist organizations is also made.

When viewed as such, the above mentioned arguments indicate that the impact of transnational organized crime and drug trade is transnational in character. The impact as well as the security consequences are not viewed as a national security problem, but internationally and are addressed as such.

In the following, fourth, chapter it will be analysed whether transnational organized crime, and specifically drugs, is securitized and how this influences the legitimacy of nation states.

162 Ibid., p. 22.
164 Wang and Wang, 2009, p. 27.
165 Ibid., 2009, p. 27.
166 Swanstrom, 2007, p. 22.
167 Ibid., p. 4.
Chapter 4 Transnational Organized Crime and Legitimacy

This chapter discusses to what extent transnational organized crime is securitized and what the consequences are for the legitimacy of nation states. Firstly this chapter starts with how transnational crime is being addressed on the international level. Secondly a closer look will be taken in order to see in what way transnational crime has effects on states and how this influences their legitimacy. Thirdly, transnational crime and the concepts securitization and reflexive modernity will be discussed. Finally, this chapter ends with a conclusion.

4.1 Developments on the International Level

This section elaborates how transnational crime is addressed on the international level. Attention for transnational organized crime by the UN, and other organisations has been rising over the past decade. Contrary to transnational crime as a main subject, specifically drugs and drug trafficking has had attention on the international level for almost over a century. This and emerging trends within transnational crime, will be discussed as well.

During a speech delivered at the UN General Assembly, former US President Clinton discussed the threat posed by transnational criminal groups. He declared that: ‘these forces jeopardize the global trend toward peace and freedom, undermine fragile democracies, sap the strength from developing countries, threaten our efforts to build a safer, more prosperous world.’ In 2000, the General Assembly adopted the UN Convention against Transnational Organized Crime. The Convention is supplemented by three Protocols, which target specific areas and manifestations of organized crime. These are focused on the combat against trafficking in persons, migrant smuggling and illicit trafficking in firearms.

The United Nations Convention against Transnational Organized Crime entered into force in 2003. The Convention represents a step forward in the struggle against transnational organized crime. States who ratify the Convention commit themselves to taking measures against transnational organized crime, such as the creation of criminal domestic offences, mutual legal assistance and law enforcement cooperation. Article 1 states that ‘the purpose of the Convention is to promote cooperation to prevent and combat transnational organized crime more effectively.’ Hereby the

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171 UNODC, 2000, p. 5.
Convention shows that states are willing to enhance international cooperation in order to tackle the problem.\footnote{172} When crime crosses borders, purely national means are not enough and a more global response is required. The Convention can be seen as a sign of political will and, so far, forms the main international instrument to combat transnational organized crime. The focus of the Convention is on international cooperation, which is in the interest of the UN as well, and as will be shown below.

Transnational organized crime has remained an item on the international agenda. In February 2010, the UN Security Council noted: ‘with concern the serious threat posed in some cases by drug trafficking and transnational organized crime to international security in different regions of the world.’\footnote{173} Also in 2010 the UNODC has produced the first Transnational Organized Crime Threat Assessment ever. The report focuses on trafficking flows, connects the dots between different regions and gives a global overview of illicit markets, examples are human trafficking, drug trafficking and firearms trafficking. In this report, but in other documents, such as the Conventions, as well the UN frames transnational organized crime as a threat and an international problem, and according to them international cooperation is needed to address this problem in a proper way. By emphasizing the international aspect, the UN justifies, in a way, their own authority and thereby their legitimacy. As explained in the theoretical part, legitimacy is partly related with reasons given by a governing body for the way it holds and exercises power. By framing transnational crime as an international problem, the UN legitimizes their own authority as an international rulemaking body.

When discussing anti-drug policies international cooperation has been present much longer, than with organized crime in general. Prior to the 20th century drug problems were regarded as a matter for particular states. The first sign of the internationalization of the drug problem was the Shanghai Opium Commission in 1909, which was followed by the 1912 Hague Convention on Opium. Both were summoned at the instigation of the US.\footnote{174} Ever since, the US has long played a dominant role within the international drug control system; ‘more is invested in the system by way of effort, people, and... money by the United States than by any other nation in the world community.’\footnote{175} Since the 1930s the US has been a driving force to make drug offences international crimes. After WWII they emerged as the political, economic and military dominant power and were able to shape a new control regime and had the power to impose it on other nations. The following quote illustrates this development: ‘…prohibition based drug control grew to international proportions at the insistence of the United States.’\footnote{176} The influence of the US on the international drug control regime has grown stronger from the 1970s onwards. As Stares states: ‘largely at the urging of the United States, the global prohibition regime was subsequently

\footnotesize{\textsuperscript{172} UNODC, \url{http://www.unodc.org/unodc/en/treaties/CTOC/index.html}, (accessed August 2011).}
\footnotesize{\textsuperscript{173} UNODC, 2010.}
\footnotesize{\textsuperscript{174} Pryce, 2006, p. 604.}
\footnotesize{\textsuperscript{175} Room and Paglia, 1999, p. 309.}
\footnotesize{\textsuperscript{176} Jelsma, 2010, p. 3.}
strengthened and broadened. The US efforts internationally reflect to a considerable extent domestic politics. President Nixon was the first to use the term ‘war on drugs’ in 1971, whereby he identified drug abuse as ‘public enemy No. 1.’ President Reagan continued and issued a National Security Decision Directive (NSDD-221) in April 1986, declaring drug trafficking a ‘lethal’ threat to the US. According to Room and Paglia the 1971 Convention, the 1972 Protocol amending the 1961 Convention and the 1988 Convention may all be seen as outgrowths of the ‘American wars’. It was the cultural, economic and ideological hegemony of the US that made it possible to successfully internationalise the new emphasis on supply-side policies, mainly through the UN. These policies led to crop eradication, alternative development and aid linked to drug control policies to recipient countries. The more rigorously pursued policy of interdiction has become the order of the day. US anti-drug policies influenced UN approaches towards anti-drug policies, and thereby provided another rationale for the existence of the UN, and a broadening of their field of activity.

The production, trafficking and consumption at that time were limited to marginal groups, which consisted of people that were ‘unusual or different’. Thoumi claims that the Single Convention in 1961 was not a response to a substantial rise in drug consumption, but that it was the culmination of the internationalization of the drug problem process which started in 1909. Besides, a curious thing is that the Convention did not require the Parties to apply penal law to achieve the goals agreed upon in the text. It was during the 1960s, after the Single Convention of 1961, that drug use increased. The 1960s brought liberation from many taboos, the use of drugs being one of them. It was during the 1960s and 1970s that the use of drugs became a part of a new lifestyle that challenged traditional norms. So even when consumption was not yet ‘very’ high, policies to restrict drug use were pursued, mainly at the initiation of the US. The US was able to do so, because they were a dominant power, and therefore had the power to coerce others to follow their trail.

It can be argued that transnational crime and drugs specifically, plays an important role in US foreign policies. In the last years of the Cold War, drugs came to the top of the international agenda, because it offered a terrain where tensions between the US and the Soviet Union were less strained. With the collapse of the Soviet Union, the ideological opponent and thereby the main ideological organizing principle of US foreign policy disappeared. The UNDCP notes in a report that the attention for anti-drug policies: ‘seemed almost to take the place’ of the Cold War in the early 1990s. In order to persuade other states to follow their behaviour, the US used anti-drug policies to legitimize their behaviour, instead of anti-communist policies. Besides, for US foreign policy the war on drugs could

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177 Stares, 1996, p. 16.
179 Ibid., p. 5.
182 Thoumi, 2010, 78.
provide a rationale for activist and interventionist policies in Latin America that were previously justified by anticommunism.\textsuperscript{185} Anti-drug policies were used to cover other interests that were at stake. Thus, the anti-drug policies offered a way to justify the behaviour of the US towards Latin American countries. Here the coercion aspect, the creation of rules, laws and customs, of legitimacy comes forward. The US used their power to press other states to follow their lead in anti-drug policies.

New trends in transnational organized crime are emerging. Several authorities, such as the European Commission, a United Nations High-level Panel and the United States Department of Justice’s Strategy to Combat International Organized Crime, state that both highly structured and loosely structured organizations are involved in transnational organized crime. These authorities claim that the former are losing against the latter. Hierarchical structure refers to the kind of groups that emerge in areas where legislation is either absent or not enforced. These groups have an institutional capacity of their own and engage in a wide range of criminal activities in the territories they control. The loose networks refer to the mutual commercial ties between buyers and sellers of smuggled goods in illicit markets around the world.\textsuperscript{186} Some of the hierarchical structured groups, of which some have been involved in transnational trafficking for years, were not able to adapt to the opportunities and challenges that have occurred. The notion goes that the smaller, more flexible groups, or networks, are an adaptive response to law enforcement pressure on the more visible traditional hierarchies. Zabyelina describes these changes in an article, and depicts organized crime as groups that ‘tend to possess a networking organizational principle build on a limited number of individuals forming a relatively tight and structured core group surrounded by a loose network of associates.’\textsuperscript{187} The changes in structures of criminal organizations are like their legal counterparts. Relationships are organized according to certain principles, such as time and space. Actors and their actions are not viewed as autonomous units, but rather as interdependent, acting in a social network whereby relationships are defined by linkages among units.\textsuperscript{188} These networks are never static. Changes in time and space, as well as activities and priorities, demonstrate how changes in the international setting influence organized crime.

This is in line with the argument of Castells, mentioned in the introduction of this thesis. Castells argues that due to the forces of globalization society is no longer controlled by a unitary actor, but rather a dispersed mechanism whereby interaction among different actors emerges through intentional interactions.\textsuperscript{189} McIlwain speaks of social systems of organized crime as well, whereby social networks bind different actors.\textsuperscript{190} Drug trafficking is the result of entrepreneurs who are

\textsuperscript{185} Room and Paglia, 1999, p. 311
\textsuperscript{186} UNODC, 2010, p. 27.
\textsuperscript{187} Zabyelina, 2010, p. 128.
\textsuperscript{188} Levitsky, 2003, p. 233.
\textsuperscript{189} Castells, 2000, p. 695.
\textsuperscript{190} McIlwain, 1999, p. 306.
constructing and reconstructing networks of like-minded individuals, thereby matching desire with illegal products and related services. According to McIlwain ethnic and kinship ties are taken advantage of, but individuals are never restricted by these factors.\textsuperscript{191} Transnational criminal networks are a result of individuals who are engaged in social networking with the purpose of organizing crime, thereby transcending culture. These networks are constantly changing, evolving and adapting, due to internal and external forces, such as the market. The breakdown of hierarchical structures into loosely organized structures or networks is a consequence. The network structure allows to transcend time and space, which permits criminals to engage in activities on a global scale.

Edwards and Gill share this point of view, and describe that the concept of ‘market’ is the most suitable way of summarizing the current context for much crime.\textsuperscript{192} The UN states that the criminal networks are hardly groups at all, with no independent institutional identity, but more commercial connections of varying durability between individuals, who respond to the common interest of making money.\textsuperscript{193} The legal prohibition of the production and distribution of certain goods and services causes a vacuum. As is the case with drugs, from the primary producer till consumer, one cannot write and enforce contracts through formal channels, and thus an effective power vacuum is created around the production, distribution and financing of the prohibited commodity and its inputs. When the production and sale of a good or service is prohibited and there is reasonable demand at high prices, some of this demand is bound to be filled at high prices. Drugs are the prime example, but gambling, alcohol and prostitution are important areas where criminals are active. Next to prohibition, exclusive government monopolies in the case of for example alcohol, or tobacco in the past, have invited smuggling and protection by organized groups.\textsuperscript{194} Markets can thrive because there is a power vacuum and a shortage or absence or ultimate enforcement. Networks of market driven individuals might have existed in transnational trafficking for a long time, but were less visible to law enforcement authorities than traditional groups. The authorities used to focus on local crime problems.\textsuperscript{195}

The above shows that the illegal markets have become more important than the groups that are involved in criminal activities. Most scholars point to the importance of the state’s role in shaping the behaviour of an illicit economy and vice versa. Calvani, et al. point out that drug production is relocated and distribution is rerouted in response to drug control efforts by state institutions.\textsuperscript{196} Friman and Andreas argue: ‘how organized and sophisticated the trafficking groups are often depends on…

\begin{itemize}
\item[\textsuperscript{191}] McIlwain, 1999, p. 317.
\item[\textsuperscript{192}] Edwards and Gill, 2002, p. 260.
\item[\textsuperscript{193}] UNODC, 2010, p. 28.
\item[\textsuperscript{194}] Skaperdas, 2001, p. 181.
\item[\textsuperscript{195}] UNODC, 2010, p. 28.
\item[\textsuperscript{196}] Calvani, et al., 1997, p. 661.
\end{itemize}
the intensity and form of state controls. If drug control succeeds in one region of a state, illicit drug traders will move to a less well-regulated area. If a state is able to control drug trafficking relatively well within its borders, then the core of the drug business will move to an neighbouring country. The strength of the illegal markets also points to the limits the state. Legal business can ignore borders, and move beyond the reach of regulations of a state. Criminal organizations can move beyond the law enforcement reach of the state, though one should keep in mind that it is the state that defines what market activities are illegal in the first place, and these vary over time. There are scholars who argue that illicit drug economies can become state substitutes. According to Fuentes and Kelly, criminal groups can create a state within a state. These are clear situations where the legitimacy, in this case rule following behaviour, of a state in undermined. This indicates that institutions matter, and the strength or weakness of a state is an important factor when looking at an illegal economy. The strength or weakness of states and organized crime will be elaborated in part 4.2.

Organized crime seems to be less a matter of a group of individuals who are involved in a range of illicit activities. It has become a matter of a collection of illicit activities in which some individuals and groups are now involved. If individuals active in illicit activities are being arrested, the activities continue, because the illicit market and the incentives it generates remain. The network structure allows adapting to external forces, such as the market or law enforcement strategies. Strategies aimed at groups will not stop the illicit activities, when the dynamics of the market remain unaddressed. The combating against organized crime has been seen as almost exclusively a matter of law enforcement, and although the problem is international, the tools are largely national. Penal law is a matter of national legislation and the criminal justice system is an important mechanism for internal stability. The focus is on legal measures whereby crime is seen in terms of quantitative increases, and perceived as a threat to state security. Thus law enforcement is presented in order to solve the problem.

In describing the problem of transnational organized crime and illegal drugs, the UN has the opportunity to problematize it in such a way as to establish or reconfirm their existence and their own crucial role in the search for a solution. In their reports and Conventions, but also the language that is being used in speeches, as elaborated on the previous pages, the threat transnational crime forms and the international aspect is being emphasized. The common strand in all policy activity, such as the UN Convention against Transnational Organized Crime, is a reassertion of the power, efficacy and importance of law enforcement as the appropriate means of intervening against organized crime. In

197 Friman and Andreas, 1999, p. 7.
198 Andreas, 2004, p. 647.
200 UN, 2010, p. 29.
201 Ibid.
order to address the illicit market forces the state is being reasserted, with ‘…more intensive, expansive, and technologically innovative international policing and surveillance efforts.’\textsuperscript{203} Even when it is known that tighter enforcement increases cost of an illegal good. Due to a higher risk of capture and smaller quantities available, prices increase. This might attract new suppliers because potential earnings are higher.\textsuperscript{204} At the international level, transnational organized crime is used as a motivation for the development of transnational law enforcement, as stated in the aforementioned UN Convention. Examples which are given in Edwards and Gill are: ‘in Europe transnational organized crime has introduced urgency into the operationalization of the Schengen Agreement and Europol which provide information and intelligence sharing arrangements or member states.’\textsuperscript{205} Another example is the Organization of American States, which has established the Inter-American Drug abuse Commission to produce a programme of action on the production and use of illicit substances.\textsuperscript{206} In other words, the UN frames transnational organized crime in such a way that it legitimizes their role. The UN emphasizes the need for law enforcement operations and international cooperation. Hereby they assert their authority as an international actor and justify their existence. States who comply with the proposed measures of the UN show rule following behaviour and thereby contribute to the rightfulness of these measures. The increased acceptance of measures, like international cooperation, contributes to an enhanced legitimacy of the UN.

The following section will elaborate on transnational crime and the effects it has on states.

4.2 Transnational Organized Crime and States

In this section transnational organized crime and the effects it has on nation states will be argued. The focus will be on the effect that transnational crime has on the legitimacy of states, as discussed in the theoretical framework. As with international institutions, legitimacy of a state can increase or decrease as a result of transnational organized crime. States can problematize transnational crime in such a way as to prove their own crucial role in fighting it, and as a valid reason to persuade certain policies. Drug related problems will be discussed as well, in order to give practical examples. This section addresses the influence of transnational crimes and the economic condition of states. After that, the influence of transnational crime and the capacity of states will be addressed.

The presence of transnational organized crime is due to certain conditions, as elaborated in the previous chapter. Another condition is the market, which causes demand for a product. This has been

\begin{flushleft}
\textsuperscript{203} Ibid.
\textsuperscript{204} Thornton, 2003, p. 437.
\textsuperscript{205} Edwards and Gill 2002, p. 257.
\textsuperscript{206} Ibid.
\end{flushleft}
elaborated in the previous section. This section discusses the link between organized crime and the rule of law and other forms of state failure.

The transparent and effective delivery of personal safety and collective security, civil justice and civil justice legitimizes a political system. Organized crime is more dominant in countries where the rule of law is less well assured. This can be seen in figure 1, where the rule of law index from the World Bank is linked with the UNODC organized crime index. States that are placed in the upper left quarter are experiencing high levels of organized crime and the rule of law is not well assured. Those in the bottom right corner show low scores on the UNODC organized crime index and rank high the rule of law index of the World Bank.

![Figure 1 Link Rule of Law and Organized Crime](image)

According to van Dijk, the critical factor determining the extent of organized crime in a state is the quality of the institutions responsible for the rule of law, such as police services and independent courts. Where police forces operate relatively professional, levels of organized crime tend to remain fairly low. The rule of law is clear sign of the legitimacy of a state; it represents the rule following part. Figure 1 shows that when the obedience towards the rule of law is low, organized crime tends to

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208 Van Dijk, 2007, p. 46.
be present. A state is not able to keep organized crime out and organized crime might even further weaken the authority of a government through for example corruption.

Williams states that criminal organizations tend to develop and prosper in conditions that often accompany transitions to democracy and the free market.\textsuperscript{209} Skaperdas elaborates on a power vacuum and the shortage or absence of ultimate enforcement that can be created by major political changes.\textsuperscript{210} These type of situations are characterized by one or more of the following appearances: the collapse and re-establishment of state structures, changes in the principles underlying economic management and a re-orientation of the relations with the outside world, which usually involves an opening of the economy and society. Sometimes transition is primarily economic, other times it is primarily political.\textsuperscript{211} For example, the political transition in South Africa has been accompanied by an upsurge of indigenous criminal organizations, as well as an increase in problems of drug abuse, drug trafficking and associated violence. Transitional states lack the capacity to impose the same degree of order on the population as that achieved the old regime. In other words, the legitimacy of a government is questioned, the rule following capacity a state can impose on the population is weakened. During periods of disorder normal constraints on the behaviour of citizens disappears or is seriously weakened. Although foreign trade and investment are often regarded as essential for economic growth and development and thereby strengthen legitimacy, the difficulty is that when borders open, controlling who and what enters and leaves the country becomes much harder. As shown in the theoretical part, the economic position of a state is important as well for the acceptance of authority. But especially when institutions to check and control flows of goods are not fully developed, controlling trade flows becomes difficult. In the case of South Africa, ‘the region’s extensive air, sea and land infrastructure make it a prime conduit for moving illegal cargoes... Long porous border and weak border controls, including undermanned ports and numerous secondary airports, give drug traffickers and other smugglers nearly unlimited access to transport their goods.’\textsuperscript{212} Another example is the growth of the Sicilian mafia during the years immediately following the unification of Italy.\textsuperscript{213} These are situations were the legitimacy of a state is seriously challenged, since it takes time for new governance structures to develop and a state might remain weak functions might be taken over by organized crime groups.

There is a close connection between state failure, organized crime and corruption. Corruption erodes the integrity of those holding public office, including those responsible for upholding the rule of law. In some cases corruption is detected at the highest levels of government and law enforcement can become paralysed by mistrust. For example, in Guatemala in August 2009, President Colom fired the director general of the national police and other high-ranking officials after a large amount of

\textsuperscript{209} Williams, 1997, p. 21.
\textsuperscript{210} Skaperdas, 2001, p. 182.
\textsuperscript{211} Williams, 1997, p. 21.
\textsuperscript{212} Ibid., p. 23.
\textsuperscript{213} Skaperdas, 2001, p. 182.
cocaine and cash went missing. Another example, in El Salvador, in August 2008, the chief of police resigned when two top assistants were accused of drug links. But corruption can extend outside the police and can involve justice officials, legislators and members of state and local government as well. Investigators, prosecutors and judges who pursue organized criminals are threatened and killed, journalists and activists can also be targeted and freedom of press is undermined. Currently, Mexico is one of the most dangerous places in the world for journalists. Although major news will be front page news, many incidents are unreported. Journalists employed in the most violent states of Mexico, such as Tamaulipas, work under the observant eye of the drug cartels. Over the last ten years, 64 journalists have been killed or disappeared. In 2010, six editorial rooms have been under attack and in some cases the buildings were shelled. Editorial rooms and radio stations receive bomb warnings and it is impossible for reporters to get a life insurance in the federal state Chihuahau. Ciudad Juarez, which is situated in the north of Chihuahau, is a site were drugs murders are a daily occurrence. Thereby organized crime has a negative influence on society in general, and lessens the rule of law.

High levels of corruption add to the costs of doing business in a country. In 2005, the World Bank describes in the World Development Report the consequences of corruption and crime: ‘crime .... increases the cost of business, whether through direct loss of goods or the costs of taking precautions such as hiring security guards, building fences, or installing burglar alarm systems. In the extreme, foreign firms decline to invest, and domestic ones will flee the country for a more peaceful locale.’ Crime has a negative influence on investments, but the overall impact of criminal activities on the economy may not always be just negative. Van Dijk states that money generated with drugs trade in Latin America in the 1990s has given a significant boost to national economies in Latin America. Although drugs may generate substantial amounts of money, its prominence deters investment and harms the capacity of a government to promote sustainable economic growth. Thus in the end organized crime has a negative influence on the economy.

Organized crime negatively influences the rule of law and increases corruption, which both undermine the legitimacy of a state. When organized crime groups are powerful, legislation, policy making and legal rulings no longer serve the whole population, but are directed towards the interest of the few. Through the prejudice of legislation, policy decisions and jurisprudence, market efficiencies are undermined and both local and foreign investors lose confidence in the legal and regulatory functions of the state. This undermines economic growth and development and has negative

214 UNODC, 2000, p. 23.
219 Van Dijk, 2007, p. 50.
consequences for the legitimacy of a state. The economic base of a country is undermined, as is the rule of law and jurisdiction; all three are associated with the legitimacy of a state.

There are a number of places where criminals have become so powerful that, rather than seeking to evade the government, they begin to directly confront it. Especially in Central America the wealth associated with drug trafficking has created large and powerful organized crime groups. These groups have manpower and weaponry that is sufficient to challenge the state when threatened, and have access to military arms and explosives. 220 In general organized criminals do not seek to topple the state, they need some stability and infrastructure in order to be able to conduct their activities. There is little evidence to indicate they have any kind of political agenda, aside from avoiding police interference with their affairs. Activities that a state fails to regulate tend to fall under the control of local actors. Organized crime grows in geographic areas and communities that the state has neglected. Socially excluded communities respond upon the lack of opportunity by creating their own sources of credit, jobs and security. Without the formal government, local actors are forced to settle disputes themselves, which is often done with violence or the credible threat of violence. Organized criminal groups have strong incentives to secure loyalty of the local population. They may offer a range of community services in order to provide support for people not sufficiently served by the state. The violence and corruption have an eroding effect on law enforcement integrity.

In order to overcome the problem of transnational crime, several scholars point out that states tend to focus on law enforcement. 221 In the UK, the goals of policy on transnational organized crime are described as ‘the arrest and prosecution of those identified as ‘Core Criminals’, the disruption of their criminal activities, the seizure of their criminal assets and the dismantling of their criminal organizations.’ 222 The focus on law enforcement creates a justification for investment in law enforcement goals. Governmental concerns over the threat of transnational organized crime have been recognized in recent legislation and the establishment of national law enforcement agencies dedicated to its control. In the UK the National Crime Squad was established, in order to target ‘drugs traffickers and other serious professional criminals who threaten the integrity of our financial system by fraud and money laundering.’ 223 Another aspect is the expanding regulation to intercept new information technologies and give legal protection to secret surveillance activities. 224 Hereby the power of a government is extended under the cover of anti organized crime measures.

This shows that transnational organized crime can influence the legitimacy of states in a positive and a negative way. Transnational organized crime ‘gives’ states something in order to (re)claim their power. But at the same time it undermines the state, through corruption and violence. It is mainly in weaker states that legitimacy is undermined, as elaborated in the examples. In states

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where the rule of law and institutions are functioning, transnational organized crime is used to regain their powers increase their legitimacy in an age of globalization, where states are loosing grip on markets, and their existence is being questioned. This trend has been elaborated in the introduction of the thesis.

It is difficult to distinguish if a state is weak because there is organized crime, or is organized crime situating itself in a weak state. Currently states with government institutions that are poorly performing are linked to all different types of problems, such as regional instability, humanitarian disasters, terrorism and organized crime.\textsuperscript{225} The focus on weak states represents a shift in thinking about threat perceptions. Before 9-11 weak states were of little strategic importance for policymakers. It is difficult to distinguish how crime and state weakness are related. Both were probably already present, though currently crime and state weakness are receiving more attention. Although criminal networks are drawn to places were the rule is imperfectly applied and regulatory systems are weak, and might even further reduce a weak states capacity, it has to be said that state weakness alone is not sufficient for criminal activities to develop. Criminals seek profits, and might accept the higher risks of operating in states with stronger capacities in return for greater rewards.\textsuperscript{226} Getting high returns depends on the worldwide market to sell illicit goods, and launder the proceeds. This depends on access to financial services, modern telecommunications and transportation infrastructure. Also the link between state weakness and organized crime varies by sector. Some activities, such as illegal drug trafficking are more related to state failure. Other criminal sectors as money laundering, cyber crime or financial fraud are less obvious related with state weakness.

The following section will elaborate on transnational organized crime, and thereby use securitization theory and the ideas of Beck on reflexive modernity.

4.3 Transnational Organized Crime, Securitization and the Reflexive Era

The first part of this subchapter addresses the securitization of transnational crime and drugs on the international level, as represented by the UN. First of all transnational crime will be addressed, and then the focus will be on drugs. The second part of this section elaborates transnational organized crime and the reflexive era.

In particular, it needs to be examined whether the securitizing actor has labelled transnational crime as an existential threat to security. The referent object in this case is legitimacy of the state, which is defined as ‘the presence or absence of rule following, of shared beliefs, and of acts of consent’ and can

\textsuperscript{225} Patrick, 2006, p. 27.
\textsuperscript{226} Ibid., 37.
be read in the theoretical part. A political concern becomes a security matter through a process of securitization. A securitizing actor defines an issue as an existential threat and asserts that it needs to be removed from the normal process of politics due to its declared urgency. The ‘speech act’ is the key to securitization. The concern must be represented as an existential threat, and then security is linked to survival. Securitization only succeeds when a relevant audience (public opinion, politicians, and military officers) is convinced of the existential nature of the threat. Once securitized, extraordinary measures can be imposed that go beyond standard political procedures. Keep in mind that an act of securitization does not depend on the use of exceptional means; it merely provides securitizing actors with the right to adopt such actions.

The rising attention for transnational organized crime means that the problem is part of a public policy, and it is being addressed by an international organization. The Convention states that countries should address transnational organized crime. It forms a signal that there is growing international awareness of the size of transnational organized crime. The fact that it is being addressed in the UN Security Council indicates that there is attention for this problem on an international level and that it is being addressed. The Convention can be seen as a new tool to combat transnational organized crime and it enhances international cooperation. It does provide space to address transnational organized crime, but it does not provide enough space to adopt extraordinary measures. There does not seem to be evidence that the Convention provides space to securitize transnational organized crime in general. The Convention points out that each state party shall adopt legislative and other measures as may be necessary to establish criminal offences but there seems to be no evidence that the issue is framed as an existential threat and that it needs to be removed from the normal process of politics due to its declared urgency. It appears not (yet) to be high enough on the international agenda.

In the case of drugs specifically the picture is quite different. The Single Convention on Narcotic Drugs of 1961 consolidated international drug norms and sets the guidelines for the current drug control policies and limits the use of opiates, marihuana and cocaine to this in medicine and scientific research. The Convention banns all religious, recreational, social or experimental use of these drugs, but it leaves out alcohol and nicotine, drugs that are domesticated in Western Culture and other parts of the world. The system exercises control over more than 116 narcotic drugs, in the 1961 Convention 105 psychotropic substances under the 1971 Convention and 22 chemical substances under the 1988 Convention. Interestingly, from the perspective of harm to public health, what is omitted from all the international Conventions namely nicotine/tobacco and alcohol each account for

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227 UNODC, 2000, p. 5.
228 Thoumi, 2010, p. 77.
229 Room and Paglia, 2010, p. 308.
more of the global burden of disease and disability than all of the controlled drugs together. The World Health Organization (WHO) estimates that within the contributions of different risk factors to the global burden of disease, 3.5% of the lost disability-adjusted life –years are attributed to alcohol, 2.6% to tobacco and 0.6% to all drugs under international control.

Until the early 1970s, the international control system was concerned primarily with three agricultural products and their derivatives: opium poppies, coca leaves and cannabis. Industrial societies with substantial pharmaceutical drugs had successfully resisted attempts to extend the international control system beyond the scope of opium, coca and cannabis derivatives. This changed due to the growth of recreational and other nonmedical use of pharmaceutical drugs in industrial countries. In particular the US became a proponent of a new treaty as part of the official US reaction to the use of drugs by the 1960s counterculture.

The 1971 Convention was formulated in a response to the increase in experimental and recreational drug use of synthetic drugs during the 1960s. It establishes norms that governments should follow to issue production licenses and to regulate medical prescriptions and international drug trade. It also establishes guidelines for international cooperation against illicit trade.

The Convention of 1988 was a response to the growth in international drug trafficking and the growing strength of trafficking organizations and a reaction to the ‘normalisation’ of drug use in the 1980s. The Convention focuses on controlling international drug trafficking and promotes international cooperation among the signatories. For the first time money and asset laundering appear as something to be fought. It is also the first time that the signing parties commit themselves to penalize all aspects related to the illicit drug traffic, such as illicit plantings, manufacturing, distribution, sales, money laundering, etc., as to ‘ensure that such illicit activities were dealt with as serious offences by each State’s judiciary and prosecutorial authorities.’

Taking a closer look at the Conventions, which create the foundation of the international drug control system, the preamble of the Single Convention of 1961 shows that the international drug control system is positioned on the threat posed by drug use and drug trade. Parties to the Convention are ‘concerned with the health and welfare of mankind and are conscious of their duty to prevent and combat the evil of drug addiction.’ The preamble of the Convention in 1988 shows a similar position, whereby drug trafficking is described as ‘a danger of incalculable gravity’ which adversely affects ‘the economic, cultural and political foundations of society.’

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231 Room and Paglia, 1999, p. 308.
232 Ibid.
233 Ibid.
234 Ibid.
235 UN, 1988, p. 48.
236 UN, 1961.
238 Ibid.
and threaten the stability, security and sovereignty of states239 is also made. The rhetoric based on threat is also evident in international agreements, such as UN Commission on Narcotic Drugs, 2009, the annual General Assembly resolutions and statements of UN officials.240

But the pursued policies have not been successful. Instead of review and reconsideration of international drug policy the 1980 brought more of the same.

The failure of the system to accomplish the ‘drug free world’ is acknowledged by the members of the international control system. However their next step is a call to redouble the efforts, and pursue the same direction more strenuously than before.241 In general the dominant rhetoric in the debate on drugs control is expressed in terms of a fight between the forces of good and those of evil; As the Italian delegate, during the yearly meeting of the Commission on narcotics Drugs in 1995, puts it: ‘We are fighting against one of the most severe scourges affecting mankind.’242 The control efforts are framed in as a war against an enemy which remains impersonal and slightly abstract. The French delegate states: ‘Drug control is a daily struggle, we are fighting the scourge on a daily basis.’ And ‘we use warlike language, but the ‘war on drugs’ is about to be lost, if not already lost according to some. So we need a resolute, no defeatist line... In France there is a relentless fight against drugs.’243 These citations and the efforts of the international community show that drugs are securitized, and seen as an existential threat that should be tackled before it gets even worse. The tone in drug control efforts is ‘war language’ and is such a frame any call for flexibility tends to be seen as unacceptable.

Only recently, in June 2011, a report of the global commission on drug policy was published. This commission consist of, amongst others, Kofi Annan, George P. Schultz, Ernesto Zedillo and Javier Solana. The report states that the global war on drugs has failed, and calls for a fundamental reform in national and global drug control policies.244 One of their recommendations is experimentation of governments with models of legal regulation of drugs to undermine the power of organized crime is encouraged. This recommendation applies especially to cannabis.

Initially drug policies were developed to achieve outcomes in terms of a reduction in harm to individuals and society, such as less crime better health and more economic and social development. However the results of the drug policies are being measured primarily in other terms, namely the number of arrests, the amounts seized or the harshness of the punishments. These indicators do not tell us how successful policies are in improving the ‘health and welfare of mankind’, but rather point at

241 Room and Paglia, 1999, p. 312.
243 Ibid., p. 1695.
244 Global Commission on Drug Policy, 2011.
processes.\textsuperscript{245} Contrary to the effects of criminalisation of people dependent on drugs, countries that have treated citizens dependent on drugs as patients in need of treatment, instead of criminals deserving punishment, have demonstrated positive results in crime reduction, health improvement and overcoming dependence.\textsuperscript{246} This indicates that there are other options than criminalization that can be explored and might have positive results.

The report also states that if national governments feel that decriminalization policies will save money and deliver better health and social outcomes for their communities, the international community should support and facilitate such policy experimentations, and learn from their application. A debate about a regulated and taxed market for currently illegal drugs is a policy option, and should be explored. Becker et al. compare outputs and prices when a good is legal and taxed, with outputs and prices when the good is illegal.\textsuperscript{247} Amongst others, their conclusion is that a monetary tax on a legal good could cause a greater reduction in output and increase in price than would optimal enforcement. This conclusion even recognizes that producers may want to go underground to try to avoid a monetary tax. This means that fighting a war on drugs by legalizing drug use and taxing consumption may be more effective than continuing to prohibit the legal use of drugs.\textsuperscript{248} The creation of a regulated market may reduce the power of organized crime and improve the security of citizens. Investing in activities that stop, especially young, people from experimenting and using drugs in the first place is a very valuable investment.

There might be a real wind of change. Since most of the current anti-drug and drug prevention policies and conventions were started at the encouragement of the US, the fact that US President Obama has called for a change in drug policies is even more significant.\textsuperscript{249} The 2010 National Drug Control Strategy marked the start of a new approach to the problem of drug use in the US. This approach is founded on scientific evidence and informed by extensive consultation with substance abuse experts, representatives of law enforcement and state and local partners. The so called balanced approach draws upon prevention, treatment, recovery support, law enforcement, interdiction and international partnerships. The ambition is to achieve a 15 percent reduction in the rate of drug use and its consequences over 5 years.\textsuperscript{250} Jelsma states that de-escalation has occurred in more countries, at least in the case of cannabis.\textsuperscript{251} In UN treaties cannabis is being classified in the same category as heroin. But various countries have introduced somewhat more tolerant policies in relation to cannabis consumption. For example, many countries have reduced the priority of chasing cannabis users. In

\begin{thebibliography}{99}
\bibitem{245} Global Commission on Drug Policy, 2011. p. 5
\bibitem{246} Hughes and Stevens, 2007, p. 7.
\bibitem{247} Becker, G. S., et al., 2006, p. 32.
\bibitem{248} \textit{Ibid.}
\bibitem{249} Obama, ‘Drug should be treated as a public health problem’: \url{http://www.cbsnews.com/8301-503544_162-20029831-503544.html} accessed: 1\textsuperscript{st} September 2011
\bibitem{250} National Drug Control Strategy, 2011. p. v.
\bibitem{251} Jelsma, 2010, p. 7.
\end{thebibliography}
other countries there have been changes in the law to decriminalize the possession of small quantities of cannabis.\footnote{Jelsma, 2010, p. 8.}

This shows that global drug policies might change. Instead of warlike language and a radicalized system directed at repressive implementation, a process of reform, modernization and humanization of the control system’s international legal framework might be laid down. In other words, the issue is desecuritized. That is, the issue is moved out of the threat cycle, into the ordinary public sphere.\footnote{Buzan, et al., 1998, p. 29.}

The following part will elaborate on risk, reflexive security and transnational organized crime.

When one looks from the perspective of risk and reflexive security the following image appears. The problem of transnational organized crime is hard to tackle; since the groups have become more flexible and market dynamics are driving forces behind transnational criminal organizations. The most influential organized crime groups are still similar to more traditional crime groups insofar as the fact that both have complex organizational structures and a division of labour and coordination. But they differ from traditional groups in an important way, namely tend to be clearly and self-consciously transnational in their membership and activities.\footnote{Zabyelina, 2010, p. 128.} In other words, they have become global, driven by the idea of generating profit in an international setting. Criminal groups have embraced today’s globalized economy and the technology that comes with it.

Beck states that risks are the modern approach to foreseeing and controlling the future consequences of human action, the various unintended consequences of radicalized modernization. Transnational organized crime might be seen as an unintended consequence of radicalized modernization, or the dark side of globalization.\footnote{Rumford, 2001., p. 2.} Globalization has generated benefits for many, and states have aided international businesses through the promotion of technological innovation, reducing tariffs, non-tariff barriers and liberalizing domestic financial systems. But the fact that organized crime uses the same system as international businesses can be seen as the ‘other’ side, or unintended consequence of these regulations. Kofi Annan writes in the foreword of the UN Convention against Transnational Crime that the gap between the civil and ‘uncivil’ society is one of the starkest contrasts. By civil society the works and knowledge of groups of people who play an essential role in the running of any society are meant. The ‘uncivil society’ consists of criminals, drug dealers and others who undo the good works of civil society and are in ever greater numbers and with ever stronger weapons. These ‘uncivil’ forces take advantage of the open borders, free markets and technological advances that bring benefits to others.\footnote{UNODC, 2000, p. iii.}
Reflexive modernity emphasizes the non-linear aspect, as well as rule finding and reflective judgement, whereas the first modernity was linear, and a question of determinate judgement and rule following. In reflexive modernity the changes are produced internally to the system through feedback loops. Uncertainty is characteristic for reflexive modernity. The complexity of today’s world is fed by the information revolution and globalization, both accelerate changes. With greater complexity, the level of insecurity further increases. The identity and goals of potential adversaries as well as the time frame within which threats might arise are marked by uncertainty.\textsuperscript{257} There is also uncertainty concerning the capabilities against which must be prepared and the type of conflict to prepare for.

The context of transnational organized crime is one of a global network (as has been elaborated in 4.1) and this is one of the characteristics of the ‘new’ or non-state centric threats. The network structure shows the greater complexity of the problem and with greater complexity the level of uncertainty further increases. The diminishing impact of geographical space is another aspect of the context of transnational organized crime. For the monitoring of this threat, and of ‘new’ non-state centric threats in general, new kinds of methodologies are needed in order to capture the nature, namely networked, complex and transnational, of this threat. Here the three elements from the works of Beck, namely management, presence of the future and boomerang effect, which are described in the theoretical part, come into play.

The first element, management, refers to governance in a context of risk proliferation, risks cannot be eliminated. A. M. Costa, executive director of the UNODC writes in the preface of the threat assessment of transnational organized crime that most illicit flows go to and emanate from major economic powers. The world biggest trading partners, such as G8, are also the world’s biggest markets for illicit goods and services. The increase in illicit trade is one of the consequences of the vast increase in the volume of trade. It reflects the extent to which the underworld has become linked to the global economy and vice versa as well. The illicit trade of licit and illicit products uses established financial networks, trade and communications systems. When one looks at how far smuggled products travel before they reach their destination, it becomes clear that transnational organized crime has become a very sophisticated and profitable business. Corruption and coercion lower risk while the effective logistics they provide increase their profits.\textsuperscript{258} Within the industrial society the principal objective was the distribution of goods and wealth in conditions of scarcity. The leading idea about risks was that they could be tamed through compensation and insurance. These risks were unintended side effects and could be controlled on the basis of scientific expertise and calculations. Combating transnational organized crime seems to resemble the prevention of ‘bads’ and the technological and industrial progress have led to a situation where risks are no longer manageable side-effects of growth. The goods and bads of technological and industrial progress and the process of globalization seem to have become intertwined, and it becomes hard to combat one part without hurting another.

\textsuperscript{257} Goldman, 2001, p. 45.
\textsuperscript{258} UN 2010, p. ii
The second element, presence of the future, refers to managing possible events in the future. In January 2010, the UN Secretary-General noted that ‘criminal networks are very skilled at taking advantage of institutional weaknesses on the ground.’ Crime undermines governance and stability, and when crime further weakens the state, the state can become locked in a vicious circle, social trust is lost and economic growth is undermined. In December 2009, the Security Council invited the Secretary-General to consider mainstreaming the issue of drug trafficking as a factor in conflict prevention strategies, conflict analysis, integrated missions’ assessment and planning and peacekeeping support. The real problem is the weakness of institutions, these should be strengthened in order to overcome that drug traffickers and other criminal activities set food on the ground, which is seen as a future consequence of weak institutions. Countries with weak institutions might become a playground for, amongst others, organized crime. Combating organized crime is described as serving a double purpose, reducing the direct threat to the state and also constituting a necessary step in the effort to prevent and resolve internal conflicts, combat the spread of weapons and prevent terrorism.

The third element, the boomerang effect, refers to when the intention of a certain outcome associated with the end goal is no longer secure. The inclination is to press the ‘new’, still undefined and highly complex ‘postmodern’ world into the Cold War mindset. Thereby a tendency to reduce the units of analysis to territorially demarcated national states. Despite this general tendency, there is a growing part that recognizes the need to adapt and that the changing context has significant consequences. In the new threat environment the monitoring of threats is moving from an exercise in surveillance-monitoring towards forecasting. The emphasis is more on probabilistic assessment, focusing on general trends. In the case of transnational organized crime, so far responses have been decentralized and fragmented, primarily state-based. The fact that organized has become more fluid contrasts the insufficient sharing of information and weak cooperation in criminal investigations and prosecutions on the part of states.

The rationality of risk is reflexive because the problems it concerns are products of the society that has to deal with them. As stated earlier illegal market forces have become more important than the groups active in the business. Organized crime seems to have become a collection of illicit activities in which some individuals and groups are involved. When one group (of individuals) disappears or is being arrested, another group (of individuals) will replace the former, since the illicit market and the incentives, namely making money, remain.

260 Ibid.
262 Dunn Cavelty and Mauer, 2009, p. 129.
263 UN, 2004, p. 54.
Globalization enables an environment where criminal organization and legal companies can thrive, side by side. It has facilitated the possibility of an international market, which facilitates goods and ‘bads’ simultaneously, organized crime becomes an unintended consequence of modernization. Stares writes ‘the drug trade... has increasingly become a transnational phenomenon, driven and fashioned in critical ways by transnational actors.’\textsuperscript{264} These developments do not stand alone, but can be placed within the general process of globalization of society. The unchecked growth and insufficient regulation, together with the communication possibilities and the instalment of free trade zones, have enabled abuse of the economic and financial systems. As described earlier the process of globalization has encouraged transnational crime as much as it has facilitated legitimate markets. The global drug economy transcends national and regional boundaries and links activities across many parts of the world. Progress in transportation, the expansion of foreign travel, and the developments in information technology have all helped the drug trade.\textsuperscript{265}

\textsuperscript{264} Stares, 1996, p. 16.
\textsuperscript{265} Pryce, 2006, p. 607.
Conclusions

Transnational crime can have a positive and a negative influence on the legitimacy of states.

On the one hand transnational crime endangers political stability and undermines the legitimacy of state regimes. Transnational organized crime uses corruption or violent physical force. One of the results is that public trust in the legitimacy of a given government and political system will be significantly challenged. The resulting instability invites more crime and may prevent the institutionalization of (democratic) institutions, the rule of law and legitimate markets.

On the other hand, it provides states with an incentive to legitimize themselves. As Beck writes: ‘…enemy images, based on a range of places and groups, that facilitates the strengthening and renewal of powerful states hegemonic position.’ There is an important difference between strong and weak states. Strong or powerful states are able to empower themselves, whereas weak states aren’t. The legitimacy of these states is often already challenged, the rise of criminal organizations often occurs in conditions of poverty and/or economic disturbance or political unrest. This implies that corruption, instability and underdevelopment should be addressed; both erode the effective functioning and the integrity of state institutions. Especially in states where institutions are not yet fully developed, legitimacy will be far harder achieved when people who are supposed to be serving the state, are benefiting (in)directly from the activities of criminal organizations.

The combat of transnational crime is sought in law making. This is done by individual states but also by the UN. By presenting transnational organized crime as an international threat and stating that national responses to transnational organized crime are usually ineffective when broader international cooperation is absent, they legitimize their own policies. Policies aimed at combating transnational organized crime need to go beyond national jurisdictions and boundaries in order to eliminate refuge that transnational crime groups find in different jurisdictions, and to locate their structure’s knots in various jurisdictions that are unable or unwilling to cooperate.

One aspect that comes forward is the importance of markets; it appears that the market forces drive transnational crime. When addressing transnational crime, these should be disrupted by countermeasures, and not just the groups that exploit those market forces. Otherwise new criminals will simply fill the void, and new routes will be found. One of the keys is to go after the profits of the criminals, since this is their main motivation. This means for example stopping informal money transfers, and the recycling of money through real estate that make it possible to launder money.

The conditions that may lead to transnational organized crime, such as few economic opportunities or governmental institutions that are not functioning properly, can probably never be completely eliminated. Organized crime can be seen as a globalized ‘bad’, and is integrated in our

\[\text{Beck, 2005, p. 295.}\]
global system. The reflexivity of modernity shows us that one cannot tackle a problem that is inherently connected with one's own society.
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