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United Nations Office on Drugs and Crime



**THE UNIVERSITY
OF QUEENSLAND**
AUSTRALIA

CRIME SCENE DO NOT

PALERMO ON THE PACIFIC RIM

Organised Crime Offences in the Asia Pacific Region

FCCT, Bangkok, August 31, 2009



THE WIDER PROBLEM



Alphonse (Al) Capone, 1931
(1899-1947)

'Valentine's Day
Massacre', 1929





BACKGROUND



Nicolò Rizzuto, (*1924, Sicily)



Pablo E Escobar Gavira (1949-93)

The Globe and Mail, Monday, Oct. 27, 2008

News in Canada A5

CRIME Reputed patriarch of Canadian crime family walks free

Nicolò Rizzuto, 84, gets suspended sentence, probation after plea bargain

BY MICHAEL TREMPER
He had been described as the patriarch of a Canadian crime family with a reputation that spanned the world that only two years after his arrest was led from his cell and released from his cell. He was walking away a free man.

In a plea bargain, the 84-year-old patriarch of the crime family in Canada's most infamous organized crime families received a suspended sentence and probation after a plea bargain.

A former mob boss, Rizzuto was charged with a suspended sentence and probation after a plea bargain.

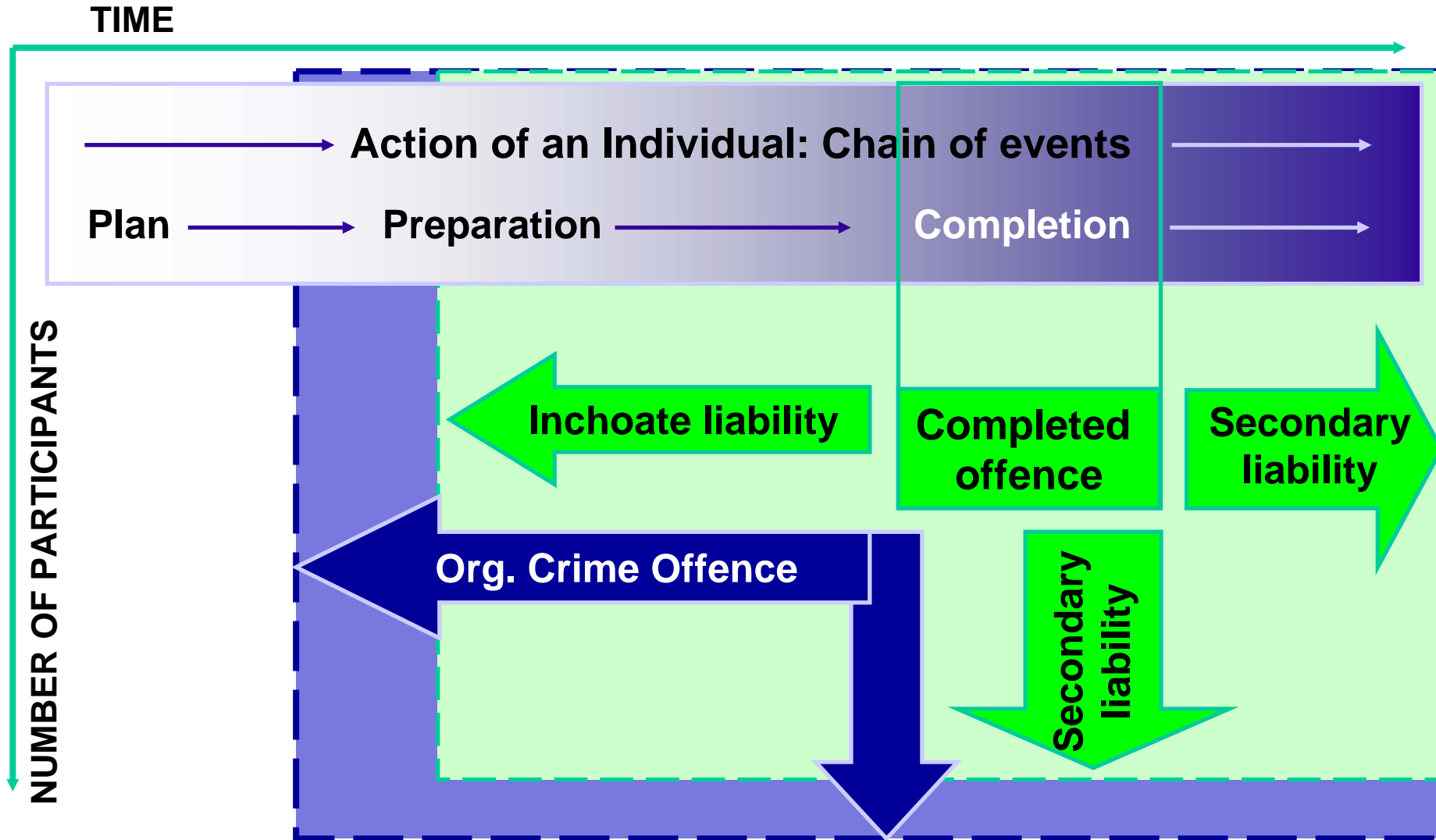
A veteran organized crime leader who spent days in prison, Rizzuto was charged with a suspended sentence and probation after a plea bargain.

"There's the message the justice system is sending out," said the justice minister, "that the justice system is sending out."

accepting only a wash of cash that he often studied in his office.



LIMITS OF CRIMINAL LIABILITY





PALERMO CONVENTION

“The purpose of this Convention is to promote cooperation to prevent and combat transnational organised crime more effectively” (Article 1)

- criminalisation of participation in an organised criminal group, Art 5;
- criminalisation of money laundering; Arts 6, 7;
- criminalisation of corruption; Arts 8, 9;
- confiscation and seizure of assets; Arts 12-14;
- extradition of offenders, Arts 16, 17;
- mutual legal assistance, Art 18;
- investigation and law enforcement cooperation, Arts 20, 26-29;
- protection of witnesses, Arts 24, 25.



PALERMO CONVENTION

Art 5(1)(a)(ii): Participation in an organised criminal group

Art 5(1)(a)(ii)	Elements of the offence
Physical elements	<ul style="list-style-type: none">• Taking an active part in<ol style="list-style-type: none">a) Criminal activities of the organised criminal group (art 2(a)); [or]b) Other activities of the organised criminal group [with special knowledge, see below].
Mental elements	<ul style="list-style-type: none">• Intention [to actively participate] (art 5(1) chapeau);• Knowledge of<ul style="list-style-type: none">○ Aim and general criminal activity of the organised criminal group, or○ The organised criminal group's intention to commit crimes.• If (b) above: knowledge that participation will contribute to achieving the criminal aim.
Procedural matters	Intention and knowledge may be inferred from objective factual circumstances, art 5(2).



MODELS OF ORG. CRIME OFFENCES

Conspiracy (common law, Qld)

Participation model (int'l law, NZ, Canada)

- Difficulties defining 'criminal organisation';
- 'Guilt by association', esp. if membership/association is an offence

RICO enterprise model (US, Philippines)

- Very cumbersome definitions and offences (difficult for juries)

Registration model

- Positive registration (Hong Kong, Singapore, Malaysia, Brunei)
- Negative declaration (Japan, SA, NSW)
- Counterproductive, pushes groups further underground, further consolidation of more powerful groups.



CANADA'S ANTI-BIKER LAWS (2001)

Bill C-24 (2001)

criminal organisation, s 467.1(1)

s 467.13: instruction to commit an offence by a constituting member
(instructors/directors)

s 467.12: commission of an offence (soldiers)

s 467.11: participation in or contribution to any activity
(enhancers/ facilitators)

criminal offences

(any/other) activities of the criminal organisation

HONG KONG



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Societies Ordinance 1997

Offences	Unlawful societies	Triad societies
Managers, assistant managers, office bearers	S 19(1) 3yrs/HKD100,000	S 19(2) 15yrs/HKD100,000
Members, acting as members, attending meetings Paying money, giving aid, control of books, accounts, seals, lists of members etc	S 20(1) 1yr/HKD20,000 (1 st offence) -	S 20(2) 3yrs/HKD100,000 (1 st offence) S 20(2) 3yrs/HKD100,000 (1 st offence)
Allowing premises to be used	S 21(1) 1yr/HKD50,000 (1 st off)	S 21(2) 3yrs/HKD100,000
Recruitment of members	S 22(1) 2yrs/HKD50,000	S 22(2) 5yrs/HKD250,000
Procuring aid/support	S 23(1) 2yrs/HKD50,000	S 23(2) 5yrs/HKD 250,000

Serious and Organised Crime (Control) Act 2008 (SA), s10

Terminology	Declared organisations
Elements	
Structure	<ul style="list-style-type: none"> • association of members (s 3) of the organisation (s 3)
Activities	<ul style="list-style-type: none"> • organisation represents a risk to public safety or order
Objectives	<ul style="list-style-type: none"> • organising, planning, facilitating, supporting or engaging in serious criminal activity.
Determination of purpose, s 10(4)	<p>AG may be satisfied of the purpose of the association regardless of whether or not</p> <p>(a) all the members or only some members associate for the purpose;</p> <p>(b) members associate for the purpose of organising, planning, facilitating, supporting or engaging in the same serious criminal activities or different ones; and</p> <p>(c) members also associate for other purposes.</p>
Information to be considered when making declaration, s 10(3).	

s35(1), (2): “criminal associations”

S 35(1), (2)	Elements of the offence
Physical elements	<ul style="list-style-type: none">• associating with another person;• at least six times over a 12-months period;• the other person is either<ul style="list-style-type: none">○ a member (s 3) of a declared organisation (s 10); or○ the subject of a control order (s 14).
Procedural matters	Certain associations to be disregarded, s 35(6).
Mental elements	<ul style="list-style-type: none">• knowledge or recklessness that the other person was (s 35(2)):<ul style="list-style-type: none">○ a member (s 3) of a declared organisation (s 10); or○ the subject of a control order (s 14).
Penalty	5 years imprisonment



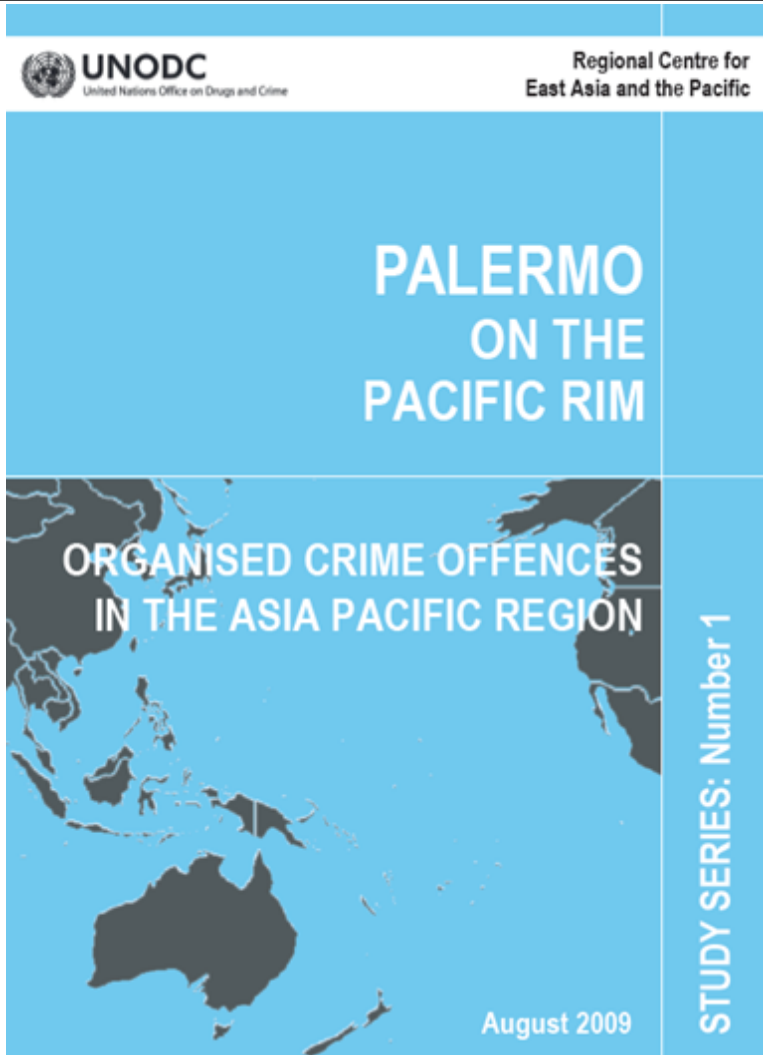
THE WAY FORWARD

- **Differentiate between different types and levels of involvement in a criminal organisation:**
 - Higher penalties for senior leaders and financiers who also have requisite mens rea
- **New offences/new aggravations to connect substantive offence with criminal organisation:**
 - E.g.: ‘trafficking in drugs on behalf of a criminal organisation’; ‘selling firearms to a criminal organisation’,
- **Definition of criminal organisation must reflect unique characteristics of organised crime** and not be used against political organisations, legitimate enterprises, and ideologically motivated terrorist groups.
- **Wider adoption of Palermo Convention in the region.**

QUESTIONS & ANSWERS



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Australian Government
Australian Institute of Criminology



AFP
AUSTRALIAN FEDERAL POLICE



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