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Organised Crime in Ireland: A Policy Analysis of the Introduction of Organised Crime to the Irish Statute Book

A thesis submitted to the Dublin Institute of Technology in part fulfilment of the requirements for award of Masters (M.A.) in Criminology

By

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September 2008

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Declaration

I hereby certify that the material that is submitted in this thesis towards the award of the Masters (M.A.) in Criminology is entirely my own work and has not been submitted for any academic assessment other than part-fulfilment of the award named above.

Signature of candidate:……..

Date:……..

Abstract

This thesis is an examination of the policy process employed in the introduction of organised crime to the Irish Statute Book. Part 7 of the Criminal Justice Act 2006 creates, for the first time in Irish criminal law, specific organised crime offences. This thesis examines the different definitions of organised crime that have been proffered by various academics since the 1960s and highlights the difficulties that exist in coining an all-encompassing yet specific definition for the phenomenon. The methods by which Part 7 of the Criminal Justice Act 2006 became law are also scrutinised. The views of various interest groups are reviewed and the impact that those views have on the policy making process is evaluated.

Acknowledgments

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1.0 Introduction

The Criminal Justice Act 2006 was one of the largest pieces of criminal justice policy enacted in Ireland. Its content is vast and covers an array of criminal justice issues. It is divided into fifteen parts and has one hundred and ninety seven sections. The Act signalled an overhaul of the criminal justice system by altering existing legislation and introducing new provisions. The purpose of this research is to analyse Part 7 of the Act. This part of the Act is entitled 'Organised Crime' and creates specific organised crime offences for the first time in Ireland.

This thesis seeks to carry out a policy analysis of how this particular part of the Act came into being and the processes that it followed. To this end various policy process and analysis models were reviewed and used to conduct the study. Studies of policy analysis and policy transfer have increased and it is possible to gain many different insights from the available information. The research design was mainly concerned with governmental debates and the input of experts in the field of criminal justice. This information is then combined with organised crime theories to conduct an analysis of Part 7 of the Act.

Since the definition of what constitutes organised crime is such a complex and intricate concept a study of organised crime theory is also carried out. The aim of the research is to identify why the definition that was enacted was chosen and the factors that influenced this choice. There have been many and varied theories of organised crime. They begin with the traditional Mafia style concept and have evolved to study different elements of organised crime such as the social relationships involved.

One of the findings of this research is that the Criminal Justice Act 2006 was in contemplation for three years before being enacted. The policy process was conducted in a disorganised fashion and the ultimate piece of legislation was largely attributable to one government Minister. The research also finds that no widespread detailed research was carried out about the nature of organised crime prior to making it a criminal offence and recommends that research should be carried out at this juncture with a view to coining a suitable Irish definition of organised crime so that in the future a more tailored piece of legislation might be adopted. A further finding relates to the influence of international covenants on domestic legislation and how these covenants can lead to unsuitable legislation being introduced. The redundancy of the public consultation process is also apparent.

The research will begin with a detailed analysis of organised crime theory, this begins with the original theories of the 1960s up to the present day and highlights the many difficulties that are involved in defining the concept. An examination of policy analysis is also carried out and this explains some of the different policy models. The next chapter deals with the methodology and the type of research methods that were employed. The findings chapter highlights the many contributions that were made by expert interest groups and track the progression of Part 7 through the Oireachtas. Chapter 5 is an analysis of the findings and explores some of the deficiencies in the policy making process. Finally the research concludes with the main findings and recommendations.

2.0 LITERATURE REVIEW

This research study looks at organised crime in the context of the policy adopted in the Criminal Justice Act 2006. Therefore there was a need to review the criminological theories regarding organised crime to facilitate an analysis of the policy adopted in that regard.

The study of organised crime is a relatively new departure in criminology. It began first in the United States in the late 1960's when Donald Cressey was appointed head of the Presidents Commission on Organised Crime. This set the wheels in motion for extensive research in the area. The problem of defining the concept dominated the study of the area for many years, and perhaps even still to this day. This is evident from many academics (Gomez-Cespedes, 1999; Von Lampe, 2001; Albanese, 2000; Hagan, 1983; Maltz, 1976) and 104 different definitions can be viewed on von Lampe's website. In Ireland we have nothing like the wealth of knowledge about organised crime that is available in America, and this is probably due to the fact that it only became an issue here in the aftermath of Veronica Guerin's murder in 1996 however the limited amount of Irish literature will also be reviewed.

2.1 Traditional Descriptions of Organised Crime

Donald Cressey developed the most influential model of organised crime in the late 1960s. In 1967 he was appointed head of the President's Task Force Commission on organized crime and was to undertake the first major analysis of the subject. The Task Force Report gained great credence when it was released and Cressey, after the publication of his book 'Theft of a Nation' in 1969, became known as an expert in the field (Albini, 1988). He referred to organised crime as the 'Confederation' which he later referred to as the Cosa Nostra. The literal translation of this is 'this thing of ours' (Hagan, 1983:55). He painted a picture of a secret illegal underworld which was infiltrating the legitimate business world. Their activities of choice he claimed were 'extortion, usury, illegal sale of lottery tickets, chances on the outcome of horse races and athletic events, narcotics and untaxed liquor' (Cressey, 1970: 130). The real threat identified was that illicit profits were making their way into legitimate businesses. People who lived in deteriorated parts of cities were the most vulnerable and worst affected. Cressey believed that organised crime would flourish when there was a 'break down in law and order' which was caused by alliances forged between the organised

criminals and public officials (Cressey, 1970:129). This breakdown of law and order that Cressey describes is not dissimilar to Merton's theory of anomie (Merton, 1938).

Albini (1988: 342) describes Cressey's idea of organised crime as 'one consisting of a bureaucratic organization, with a hierarchy of ranks, a code of conduct for members, and one, above all that functioned as a secret society.' Fulcher and Scott (2007: 263) further outline the code of conduct that Cressey believed governed the Cosa Nostra. This code comprised five principles. The first of these was loyalty. This was expressed by respecting other families business interests and remaining silent about the operations of the family. The next two principles are both linked with masculinity, they are honour and courage, these principles required respect for women and senior members and the ability to withstand punishment without complaint. Commitment to the family's way of life was also a prerequisite. Finally, and possibly in Cressey's analysis the most important principle, was rationality. This is the extent to which organizations develop in complexity in their desire to attain an 'announced' criminal 'objective' (Cressey, 1972: 11 cited by Albini 1988: 342). Rationality is the principle by which the family moves higher along the spectrum of organised crime, at the most advanced and sophisticated level the family is at its most rational. The most developed organization in Cressey's analysis was the Cosa Nostra, this had evolved so that it had 'a "Commission" that oversees, plans, and coordinates' (Albini, 1988: 342) a complex web of illicit activities.

Albini's 1988 evaluation of the Cressey model provides some insight into its inadequacies. Albini like Cressey first began researching organised crime in the late 1960s. Outlined below are some of the problems Albini found with the widely accepted Cressey model. Firstly, Cressey had no research experience in the area of organised crime and he believed that study of the phenomenon was dangerous and terrorizing, he was not a specialist in the area and the only information he had was gleaned from the government, the police and one underworld informant who, Cressey later disregarded as unreliable. From 1950 an illusion of a national secret crime network prevailed in American society, this was resultant from the Kefauver Hearings which had coined the phrase the 'Mafia'. This secret society element was an inherent factor in the Cressey model that had never been proven. Albini suggests that Cressey failed to carry out an examination of the history behind organised crime and its origins. He accepted the official facts and figures that were furnished to him unquestioning, and failed to

carry out sufficient further research in the intermittent period between the Task Force Report and his book, 'The Theft of a Nation'.

Cressy only examined the higher echelons of organised crime and this was the Cosa Nostra. Albini suggests that he placed too much emphasis on the issue of ethnicity, which is a variable that only becomes relevant when it occurs in conjunction with other variables. However, despite the failings of the Cressy model its contribution to the study of organised crime has been significant, as Albini (1988: 351) states 'we find that Cressey has given researchers an explicit model of organized crime. Despite the fact that not all researchers agree with this model, it has offered us a model against which other models can and have been compared.'

Maltz (1976) sought to coin an accurate definition of organised crime. He noted that there had only been one attempt to define organised crime in statute and this was contained in the Omnibus Crime Control Act of 1968 (Maltz, 1976: 340). As an appendix to his 1976 paper Maltz included ten differing definitions, these he concluded had some common characteristics. These commonalities were the commission of crimes, the type of organisation, the use or threat of violence and corruption. However, only the first two elements were necessary for an organisation to exist, the last two 'may be necessary for certain types of organized crime but not for all "crimes that are organized"' (Maltz, 1976: 340).

Maltz decided that formulating a definition for organised crime could be fruitless as it would not be all encompassing. He felt that formulating a typology would be more appropriate however, this was not to be an easy feat. A typology only based on the means of committing crimes was insufficient, it would have to include other elements such as objective, which could be either political or economic. The result was a definition of what constituted a crime, coupled with a variety of different means that could be employed, for example violence, economic power and deception. These were not mutually exclusive and any one or combination would suffice to satisfy the means requirement. The third necessary element was that of objective, these could be either political or economic, were not mutually exclusive but could co-exist; depending on which objective prevailed it would manifest itself in different ways (Maltz, 1976: 342). Maltz endeavoured to develop a workable definition and typology of organised crime, the lack of which was, according to Albini, one of Cressey's 'major

flaws' (Albini, 1988: 346). Maltz's work shows how the study of organised crime was developing and the need for a common definition on which research could be based, for without a common understanding of the subject area there would remain difficulties in developing any one theory.

In 1983 Hagan also asserted that trying to define organised crime was fruitless. He stated that:-

> *a continuum model of organized crime suggests that rather than viewing the concept as a matter of kind (i.e., is it or is it not), it is far more useful to view it as a matter of degree, that is, "[t]o what extent does this group and/or its operations resemble organized crime?"* Hagan (1983: 52).

He questioned the practice which had developed of coupling organised crime with the Italian American Syndicate (IAS), and criticised Cressey's bureaucratic model. One of the problems he found was the desire to attach a specific scientific meaning to a term which had a varying public definition. Hagan sought to develop the continuum model which had previously been proposed by others (Albini, 1979; Smith, 1975, 1978). His method for doing this was to pick an ideal type of organised crime for analytical purposes; the Cosa Nostra was one such ideal type. This ideal would be at the top of the continuum with other criminal groups at different points along the continuum. The procedure for placement on the continuum was dependent on the existence or non-existence of different dimensions. The first of these dimensions related to the state of organisation, whether it was a hierarchical structure, restrictive membership or it employed secrecy. The second dimension involved the use of threats or violence. The third dimension was the type of goods being provided, if they were in public demand and if they were profitable. Finally was the issue of immunity and how it was obtained, either through corruption or enforcement. The rationale behind the continuum model was that the more dimensions a particular group satisfied the more aptly it exemplified organised crime.

Haller (1992) searched for an alternative view of organised crime. He felt that although Cressey's theory had been widely influential it had limited relevance, but despite this Cressey's view 'remains a standard interpretation' (Haller, 1992: 2). One of his criticisms of Cressey was that he described the family as the business enterprise. Haller suggests that the

family served a different purpose and that members were independently involved in legal and illegal ventures. The first function of the family, Haller suggests, is that it provides male bonding and social prestige. He compares it to a Rotary club, in that, although a Rotary club may consist of businessmen, the club itself is not a business. Secondly, the family was a valuable way of making contacts. These contacts would help younger members get established and would also provide links to criminal entrepreneurs outside of the family. The third function of the family was to provide predictability. This was achieved through honour and derived from mutually accepted codes of behaviour. In the legitimate business world predictability is obtained through the government and the law, but in the underworld the code of conduct serves as an informal type of government.

2.2 Recent Theories of Organised Crime

Albanese (2000) looked at the causes of organised crime and asked the question 'do criminals organise around opportunities for crime or do criminal opportunities create new offenders?' (2000: 409). He found that both scenarios exist but felt that an understanding about when and in what circumstances they occur was necessary to implement effective strategies to combat organised crime. The first problem and most pressing for present purposes Albanese identifies is the lack of a sound and certain definition of the concept. This according to the U.S. General Accounting Office was the reason crime control efforts had been unsuccessful (Albanese, 2000: 410). He found that a consensus as to an appropriate definition was emerging and that there were four principle elements, these are; a continuing organisation, an organisation that operates rationally for profit, the use of force or threats and the need for corruption to maintain immunity from the law. Organised crime, argues Albanese, is a part of a larger category of behaviour known as organisational crime. He suggests that there are more similarities than differences between organised crime and white collar crime.

Having looked at the definition of organised crime Albanese moved on to examine what constitutes an organised crime group. A group needs only two or more people to operate, they are not necessarily culturally driven, and they can be product driven. Different groups work together and so ethnicity is not a valid explanation. It has been found that it is the market rather than ethnic structures that dictated criminal activity (Adler, 1985 cited by Albanese, 2000). Albanese then examines what is meant by a criminal opportunity. Criminal opportunity, he finds, is twofold. Firstly, there are those that provide easy access to illicit

funds without incurring risk and second, are those that are created by motivated offenders. Examples of the first type of opportunity would be gambling, narcotics and those made possible by social and technological change. The second type of opportunity arises from bribery and extortion. Albanese suggests a model to examine the relationship between organised crimes, groups and opportunities. There are three predominant elements in prophesising organised crime, opportunity factors, the criminal environment and the skills or access required to carry out the activity.

Von Lampe (2003: 4) argues that 'we need a conceptual framework that allows for empirical existence of any conceivable constellation of the phenomena that fall under the umbrella concept of organized crime, regardless of whether or not they resemble commonly known events or stereotypical imagery'. He feels that an analytical model is the most appropriate one for understanding and furthering research in the area. The causal model, von Lampe argues, is too simplistic. For example, Cressey's model only accounts for four factors. The advantages of an analytical model are in his opinion that they account for the complexities and multifaceted nature of organised crime and they fulfil the needs of organised crime research. His analytical model comprise three core elements, the actors who participate in organised crime, the structures that connect the actors and the criminal activities engaged in. It also includes three environmental elements namely, society, the government and the media. Von Lampe stresses that the importance of models is not in presenting final conclusions; their use is as heuristic devices that guide research.

Kleemans (2008) states that the abundance of political, public and media attention that organised crime has received in recent times has not been met with a similar abundance of sound empirical research. Kleemans suggests that in the study of organised crime too much emphasis is placed on the role of ethnicity and a more appropriate focus should be on social relationships. Looking at social relationships is useful to explore how organised crime groups form and the various networks that are involved. In a paper co-authored with de Poot the notion of social opportunity structure in organised crime is examined. Kleemans and de Poot (2008: 69) define social opportunity structure as 'social ties providing access to profitable criminal opportunities' which is 'extremely important for explaining involvement in organized crime.' They analysed the criminal careers of 1000 offenders who were involved in 80 recorded cases of organised crime. In this analysis they looked at life-course criminology. This involved an examination of when offenders became known to the authorities, how

people became involved in organised crime and the criminal careers of the ringleaders. This study of organised crime is an interesting new departure from the traditional practice of trying to define the concept. It signals a major shift away from older factors such as ethnicity and crime families. A problematic aspect of the study however, is that the data used is from the police and the Dutch Judicial Documentation System, and it only explains cases where the offenders involved have been apprehended.

2.3 Policy Analysis

Criminal justice policy analysis is an area of criminology that has gathered momentum in recent years. Ismaili (2006: 256) describes it as 'a separate subfield within criminology' and Jones and Newburn (2002: 175) comment that different explanations have been proffered for the convergence of crime control policy but these approaches 'have much to gain from a more detailed consideration of both the idea of 'policy' and more particularly, the processes through which it comes about.' It appears that there has been a shift in thinking among criminologists away from the results of policy towards the means and methods by which it materialises. Jones and Newburn (2002: 179) argue that we know little about how penal policy comes into being as previous work in the area has been mainly descriptive and 'rarely based upon systematic analysis of the process of policy formation.' Jones and Newburn (2007) identify two problems with past policy analysis. Firstly, the notion of policy has been taken for granted in that studies have focused on its impact rather than its origins and secondly, political scientists have focused on areas other than crime control. They comment that extensive research has been carried out in areas such as health and education but criminal justice policy has been neglected.

Ismaili (2006) adopts a contextual approach to examine the policy making process. He argues that the main benefit to this approach is 'its emphasis on addressing the complexity inherent to policy contexts' (2006: 257). The aim of Ismaili's contextual approach is to enhance the development and analysis of public policy. He states that to understand public policy researchers need to focus on the policy making process namely the actors involved in the process. These include 'the public, professionals and politicians' and 'the sites where participants interact and policy decisions are made' (2006: 260). This suggests that debates in government Houses and submissions that are made by interested parties to the policy making process are key in conducting a policy analysis. Ismaili outlines the criminal justice policy

community, this policy community encompasses ‘all actors or potential actors with a direct interest in the particular policy field, along with those that attempt to influence it – government agencies, pressure groups, media people, and individuals including academics, consultants and other “experts”’(Pross, 1986 cited by Ismaili 2006: 262). For the purposes of this research debates that took place in the Oireachtas, government committees and interested parties such as the Human Rights Commission make up the criminal justice policy community.

Ismaili (2006) further categorises this policy community into the subgovernment and attentive public. The former is comprised of elected officials and unelected actors. Interest groups are a part of the unelected actors, ‘[e]ach group is committed to influencing the outcome of public policy, although the degree to which they are ultimately successful is subject to considerable variation’ (Ismaili, 2006: 264). Interest groups that represent professionals and people working within the criminal justice system are generally the most influential. The reasoning Ismaili gives for this is that governments ‘can ill-afford to develop policy that will be met with criticism from professionals’ (2006: 265). The attentive public glean most of their information from the media and this results in their perceptions of the criminal justice system being unreliable.

Jones and Newburn (2007: 20) refer to the ‘dearth of empirical studies of the policy making process in the sphere of criminal justice and penal policy.’ They stress that ‘it is important to recognize that public policy represents the outcome of a set of processes, rather than an event itself’ (2007: 21). Jones and Newburn utilised Kingdon’s (1995) general theory of public policy making and found that even though his ideas were formulated over a decade ago, his method was of ‘great value’ (2007: 22). Kingdon (1995) outlined three process streams, firstly the problem stream which identifies areas that require attention, secondly, the policy stream which involves policy ideas and proposals and thirdly, the political stream where interest group campaigning and policies circulate. Kingdon argued that these three streams are normally independent of each other but there are crucial times when then converge and ‘solutions become joined to problems and both of them are joined to favourable political forces’ (Kingdon, 1995: 10 cited by Jones and Newburn, 2007: 21).

Rock (1995) has also examined the opening stages of criminal justice policy making and made some interesting observations on the process. In his model new policy ideas tend to originate from a small number of officials, usually new recruits who have a ‘questioning eye’

(Rock, 1995: 3). He suggests that the attention a policy receives increases as it becomes more urgent or more beneficial for political alliances. Personal attributes of a policy maker such as character, influence and reputation are important at the inception stage as they can give credence to a new policy. The powerful policy innovator tends to steer a smoother course.

Rock suggests that initially new policy ideas rarely have a place within their department, they are slotted into other areas that are not prepared for them and may appear forced or disguised. He argues that 'new ideas must often remain somewhat cloaked, incoherent, unfocused and underdeveloped until they have been allowed to become an explicit object of attention' (Rock, 1995: 5).

When the ideas are presented it is often done in a cautious manner in the fear that something may go wrong. These ideas are then progressed through various government committees, at each committee stage the idea is put before a slightly wider audience and outsiders are invited to comment. The comments from these outsiders will be anticipated in advance and work will have been carried out to ensure a placating response can be delivered. This process 'amounts to a dialectic in which policies enter the public domain step by step, being sent out to ever wider social circles and presented for possible acquisition, and returning each time transformed' (Rock, 1995: 14). This model that Rock presents is applicable to the Irish system of policy adoption and is particularly useful in analysing the development of the Criminal Justice Act 2006.

Jones and Newburn (2007) have carried out extensive research on the notion of policy transfer and convergence. They suggest that Bennett's framework is a useful starting point for examining this phenomenon. Bennett (1991) identified four routes for policy convergence three of which are relevant from an Irish perspective. The first is emulation, this occurs when a state draws on the experience of another country before adopting a particular policy. The second is elite networking and relates to the influence of transnational groups who share information on common problems. The last route of relevance for Ireland is harmonization, this is where policies are adopted because of intergovernmental organisations and national interdependence and often relate to policies that are required by the European Union. The fourth route suggested by Bennett is penetration, this occurs when countries are forced to adopt policies and is more relevant to third world and developing countries.

Tonry (2004: 1) has criticised recent crime control policy in England and describes the methods employed in formulating policy as 'tumultuous and schizophrenic'. He argues that

despite the Labour governments aim of introducing evidence-based policy it appears that regardless of evidence the government's real determination is to be seen as 'tough on crime'. Tonry (2004: 1) describes recent English legislation as 'harsh and symbolic policies for which there is no supporting evidence'. Tonry (2004: 25) argues that poor legislation cannot be blamed on 'ignorance, naiveté, or inexperience' as the English ministers are surrounded by 'talented and well-informed civil servants', the root of poor legislation then, according to Tonry, is 'ideology and political self-interest' which manifests in the form of knee jerk proposals and the adoption of American 'tough on crime' measures.

The models and methods of policy analysis outlined above are useful tools in conducting policy analysis. Each theory has its own strengths and weaknesses and different elements of the aforementioned theories were drawn upon in conducting this policy analysis.

2.4 An Irish Perspective

Campbell (2007a: 8) notes that 'the phenomenon of crime, in particular organised crime, is a principal concern in twenty first century Ireland, and individual safety and public protection are of fundamental importance to citizens, communities and politicians.' While this may be so, relatively little has been written about organised crime from an Irish perspective and this is surprising especially considering the plethora of legislation that has been introduced since the murder of investigative journalist Veronica Guerin in 1996. Meade (2000: 13) suggests that on the very afternoon of the murder 'seeds of an organised crime panic were been sown.' He also notes that in two years, between 1994 and 1996, there was a 424 *per cent* increase in the number of stories in *The Irish Times* which included the term 'organised crime' (Meade, 2000: Footnote 23). Campbell (2006: 316) also comments on the aftermath of the Guerin murder and suggests that '[p]opular and political will converged in a desire to undermine the power of the "overlords" and "godfathers" of organised crime and to recoup their assets.'

Rather than analysing a particular policy, Campbell looks at numerous legislative provisions that have been introduced and how these measures are signalling a move away from due process towards crime control. While her research is very helpful in outlining and summarising the changes that have been brought about since 1996 to tackle organised crime she does not deal specifically with part 7 of the Criminal Justice Act 2006 or utilise a policy analysis perspective. Part 7 of the Criminal Justice Act 2006 is entitled 'Organised Crime'

and deals specifically with the definition of organised crime and it is this part of the Act that forms the basis of this thesis.

3.0 METHODOLOGY

3.1 Qualitative Analysis

The primary focus of this study was the criminalisation of organised crime in the Criminal Justice Act 2006. A qualitative analysis approach was taken in conducting this research. One of the reasons for this methodology was because the piece of legislation in question has not been used in this jurisdiction and there was no similar piece of legislation extant in this State prior to the inception of the Criminal Justice Act 2006 and so there was no means of comparison or exploring how it has been used in practice.

The nature of the study was a policy analysis and as such it is a documentary analysis. This was an area of criminological inquiry which was not suited to quantitative methods as it related to legislation. Noaks and Wincup (2004: 12) comment that there are areas of crime such as organised crime where '[o]nly qualitative research has the potential to provide some insights into these crimes.'

Hobbs (2000) notes the difficulty in conducting research in the field of organised crime and attributes this difficulty to the fact that people involved in this type of activity conduct their business in private. It is only when the criminal justice system intervenes that an analysis can be carried out.

> *The covert, non-institutionalized base from which professional and organized crime operates favours the use of a range of largely interpretive approaches. Until gangsters, armed robbers, fraudsters and their ilk indicate their enthusiasm for questionnaires or large scale social surveys, ethnographic research, life histories, oral histories, biographies, autobiographies and journalistic accounts will be at a premium.* (Hobbs 1994: 442 cited by Noaks and Wincup 2004: 12)

Travis (1983) recommended choosing a particular research method based on the type of information needed to answer a given research question. He encouraged the use of qualitative methodology 'especially in the realm of criminal justice policy analysis' (1983: 46). Maxfield and Babbie (2001) note that evaluation research is becoming increasingly popular. They suggest that it is more akin to a research purpose than a method and it is appropriate for policy analysis and policy intervention. They define policy intervention as 'a process of determining whether the intended result was produced' (2001: 345). The aim of this research was to examine the way in which organised crime has been defined and introduced into Irish

legislation and how this definition came into being. The qualitative evaluation approach was adopted as it was the method best suited to the objective of the research.

Rock (1995) strongly advocates the use of committee data for policy analysis. He states that 'it is the committee that chiefly supplies the knowledge and methodology of policy makers and politicians' (1995: 8). He argues that committees are the most important element of policy formation whose arguments originate vague and through various political processes they develop. The committee and Oireachtas debates were the main source of information utilised in this study as they were the best source of information on the policy process.

3.2 Documentary Analysis

The major element of research in this study was the collection and content analysis of relevant documentary material. The material was comprised of primary and secondary data. Jupp (1989: 33) describes primary data as 'observations collected at first hand for the specific purpose of addressing the criminological issues in question.' The sources of primary data used in this research are outlined below.

Secondary data was also collected and analysed, Jupp (1989: 33) defines this type of data as 'observations collected by other people or other agencies with other purposes in mind.' Data triangulation was carried out by combining and exploring the content of the primary and secondary data.

3.3 Primary Data

Legislation

The Criminal Justice Bill 2004 and the Criminal Justice Act 2006 form the basis for this dissertation and so were central to all research. All Irish legislation is available to the public and can be accessed through the Irish Statute Book online at www.irishstatutebook.ie.

Oireachtas Debates

The Oireachtas debates were available on the Oireachtas website at www.oireachtas.ie. This site offers both current and historical debates. The current debates section had debates from Dáil Éireann, Seanad Éireann and from the Committees. It was then possible to search debates from different months and sessions. The debates are a contemporaneous record of all the proceedings that were carried on in the Dáil or Seanad on a particular day therefore, they are a reliable account of the thinking behind criminal justice policy as they highlight and

record all issues that were raised on the topic. The debates are constantly updated. All proceedings before 7 pm are published before midnight and the remainder are added the following day. The government debates are also available in hard copy from many libraries and can be manually searched. It was also possible to track the Bill's progress through the Dáil and the Seanad and the Committee stages.

The Department of Justice, Equality and Law Reform

The Department of Justice, Equality and Law Reform was contacted and asked to provide information on the particular piece of legislation being examined. This researcher was directed to the freedom of information section. The relevant website was www.foi.gov.ie. It was also possible to make a freedom of information request there is a charge for each request processed.

The initial person contacted felt that because the particular piece of legislation was very large that it was more beneficial to pursue a different avenue and organised for a member of the Criminal Law Reform team to provide information on the subject being examined. It was decided at this stage to examine the information being provided and if there were issues arising from this information that needed further clarification then a specific freedom of information request could be made.

The information was received via email and provided useful links to other organizations and jurisdictions which were influential in coining the definition. The information that was forwarded included an extract from the Ministerial presentation on proposals to amend the Criminal Justice Bill 2004 which was given to the Joint Committee on Justice, Equality, Defence and Women's Rights on the 7th September 2005. In addition to this information, section notes on Part 7 of the Criminal Justice Act 2006 were provided. These notes were complied specifically for the purpose of the relevant part of the legislation. They provided useful information on Canadian case law and showed the types of challenges that legislation on organised crime can face. After examining the information provided the freedom of information procedure was not used as it was felt that the relevant material could be accessed elsewhere.

Journal Articles

Journal articles formed a significant part of the research for the study. Much has been written on both organised crime and policy analysis. Articles were accessed mainly through the electronic journals section of the DIT library website. Other journals which are not available online were accessed in hard copy. The hard copy versions were available from the DIT library. Another journal of interest was the Judicial Studies Institute Journal. Judges publish articles in this journal and this provided an interesting viewpoint especially from a criminological perspective. The journal was accessible online at www.jsijournal.ie.

Reports

Many organizations have published reports on the area of organised crime. The Human Rights Commission made observations on the way in which the government intended criminalizing organised crime. This report is available on the Irish Human Rights Commission website at www.ihrc.ie. This report or observation on the Criminal Justice Bill 2004 is a ten part document. Part one of this document is devoted to the criminalising of organised crime. The Human Rights Commission examined the conformity of the proposals with constitutional rights and made suggestions.

The Joint Committee on Justice, Equality, Defence and Women's Rights published a Report entitled 'Review of the Criminal Justice System' in July 2004. This report is available from the Oireachtas website. This report has a section on criminal law offences directly related to gangland activity and includes submissions from various groups and individuals.

In 2007 Europol published the EU Organised Crime Threat Assessment. This publication is available through a link on the Department of Justice website. The report was useful as it examines the way in which organised crime groups are constituted across Europe and the main criminal markets that they engage in. It also comments on organised crime groups specific to certain countries and how these groups conduct cross border crime and the dynamic relationship between the regions.

3.4 Secondary Data

Canadian Case Law

Canadian case law has been very influential in the drafting of certain Irish legislation. Many of the groups who made submissions to the government mentioned Canadian case law in their discussions about the criminalising of organised crime. One case in particular, that of *R v Accused No. 1 and Accused No. 2* (2005) BCSC 1727, deals with many of the contentious issues raised by certain groups. Canadian case law is available to the public on the Canadian law website at www.canlii.org. It is possible to search all judgments given by the Superior Canadian Courts on this site. Cases mentioned within cases are highlighted with a hyperlink and it is possible to link directly from one case to another.

Law Reform Commission

The Law Reform Commission is an independent body established in 1975. Its main function is to keep the law under review and make recommendations for its reform. The possibility of Law Reform Commission activity was also adverted to and it was decided to contact them. When contacted, the Law Reform Commission stated that organised crime was not included in their proposed 'Third Programme of Law Reform' which has since been launched. Although it was suggested it was not adopted.

3.5 Ethical Considerations

As this research study is based on new legislation and its origins there are no research subjects involved. All the material used is available in the public domain. The person contacted in the freedom of information section of the Department of Justice, Equality and Law Reform freely provided information that was available to the Department and was helpful in every way. The only information that could not be accessed was advices that were received from the Attorney General's office as these were confidential communications. The Oireachtas debates are a matter of public record however care was taken to ensure that excerpts and quotations were correctly cited and referenced.

4.0 FINDINGS

This chapter explores the influences on the policy making process and the different stages proposals go through before being enacted into law. It looks at the different interest groups that were invited to discuss pertinent issues and examines their responses to the proposals.

4.1 Joint Committee on Justice, Equality, Defence and Women's Rights

In November 2003 a decision was taken that the Joint Committee would review certain aspects of criminal law in Ireland. On the 26th November 2003 a representative from the criminal law reform division of the Department of Justice, Equality and Law Reform made submissions to the Joint Committee and presented it with some points that the Minister for Justice sought to address. The first issue dealt with on that occasion by the representative was organised crime. The Committee invited submissions from experts in the area of criminal justice and on the 28th November 2003 began holding its public consultation process on national television. Over a period of six days different experts were given the opportunity to make comments on the criminal justice system and the areas that the government was considering reforming. Many of the submissions made and questions asked referred to gangland crime and Veronica Guerin was mentioned on more than one occasion. The tone that was set in these public sessions focused very much on addressing the perceived organised crime problem.

The Joint Committee published a Report on a 'Review of the Criminal Justice System' in July 2004 and it took into account the submissions that are outlined below however, the title of the relevant section is 'Criminal Law Offences directly related to Gangland Activity' and speaks of criminalising organised crime to deal with gangland activity. The members acknowledged that it would be difficult to prove but overall, the creation of such an offence was welcomed. The submissions made to the Joint Committee that are relevant to this study are outlined below in chronological order. All of the references mentioned below are available online on the Oireachtas website and can be accessed according to the date that each speaker addressed the Committee.

Mr. Gerard Hogan S.C. – 28th November 2003

In relation to the area of organised crime he suggested that the RICO Act in the United States had been hugely effective and recommended that the committee should speak to an American lawyer or prosecutor with experience of that Statute. This would allow the committee to gain an understanding how it worked effectively against organised crime in the United States.

Irish Human Rights Commission – 2nd December 2003

The Irish Human Rights Commission was represented by three people on the third day of the public presentations. Professor Binchy stressed the need for clarity in the law arguing if this is not present then people could not know when they fall foul of the law. He stated that "[i]t is not good enough to define an offence which will certainly catch criminals but may also catch others acting in a perfectly lawful fashion." He went on to comment that defining a gang was a 'dead end'.

Mr. Farrell was concerned that the concept of a criminal gang was loose and highlighted the difficulty in defining it. He was concerned with where a line could be drawn for example did it span from major drug barons to stealing handbags in shops. He was of the view that it was practically impossible to define and not really effective.

The Bar Council – 2nd December 2003

Three representatives of the Bar Council were present and all were of the view that there were difficulties with the question of gangland offences. One of their problems with the concept was defining a gang. It was highlighted that people drift in and out of these gangs. It was also submitted by the Bar Council that as broad a range of models as possible should be examined in this context and that these models should not be confined to the common law jurisdictions.

Ivana Bacik – 3rd December 2003

Ivana Bacik is a barrister and Reid Chair of Criminal Law, Criminology and Penology at Trinity College, Dublin. Professor Bacik was invited to made submissions at the public consultation process. She noted that an organised crime provision had been introduced into Canadian law in 1997 and was critical of the introduction of similar legislation in this jurisdiction. She was of the view that the existing law on joint enterprise and common design

in conspiracy[1] and the common law on incitement[2] were sufficient to cover these matters and stated that "any idea that a criminal organisation offence should be introduced here should be opposed and I hope the committee does not consider it." In relation to Ireland's obligation under the United Nations Convention against Transnational Crime she stated that instrument requires the establishment of offences around participation in an organised crime group where transnational crime is involved and was different to the issue of domestic organised crime.

The Director of Public Prosecutions, Mr. James Hamilton – 8th December 2003

Mr. Hamilton highlighted the difficulties in defining a criminal gang in a way that was not "circular" and stated that there may be constitutional difficulties in criminalising somebody in legislation. He felt that the proposed new offences would add little to our legal code. If evidence was available to suggest that a group were operating in a criminal gang then a prosecution could proceed under the current law of conspiracy.

Mr. Barry Galvin, former head of the Criminal Assets Bureau – 8th December 2003

Mr. Galvin commented on the fragmented nature of organised crime groups and the fact that they could be operating in unison one month and at war with each other a month later. He thought that legislation could be put in place for certain gangs but doubted the longevity of any solution. He further remarked that the number of cases in which legislation of this type could be utilised was very limited and would not address the majority of gang related crimes occurring.

Professor Finbar McAuley, University College Dublin – 8th December 2003

Professor McAuley felt that organised crime in Ireland was not the threat it was presented to be and that which did exist was essentially concerned with trafficking in drugs and people for prostitution. He felt that legislation should not be introduced if matters were already adequately catered for by existing criminal law as this would represent duplication. He criticised the idea of throwing legislation at the problem especially considering that it was

[1] A conspiracy is an agreement to do an unlawful act. People do not need to sit down together and draw up a plan nor do they have to meet in order to enter into a conspiracy. It means that people are pursuing the same unlawful purpose in combination (Charelton et al, 1999).

[2] "A person may "incite" another to do an act by threatening or by pressure as well as by persuasion" Lord Denning MR *Race Relations Board v. Applin* [1973] QB 815.

generally law abiding citizens that were creating a demand for the illicit goods and services. He felt the problem could not be erased from existence and should be looked at in terms of white collar crime and the revelations of the Tribunals.

The Minister for Justice, Equality and Law Reform, Michael McDowell – 9th December 2003

The Minister also spoke of the difficulties involved in outlawing membership of a criminal gang. He said these difficulties lay in the fact that relationships in gangs were fluid alliances and temporary. He noted that these gangs were not like the Mafia or the Triads and did not operate in the corporate sense. The Minister said that he was examining Canadian law to see if similar provisions could be introduced in this jurisdiction to deal with 'home grown, organised criminal gangs'.

The Irish Council for Civil Liberties – 28th March 2006

The Irish Council for Civil Liberties was invited to speak at the public consultation stage but did not address the Joint Committee on the issue of organised crime at that time. Representatives went back before the Joint Committee on 28th March 2006 and made submissions on the issue. Mr. Conor Power spoke on this topic and noted that the suggested organised crime section had been lifted *verbatim* from the Canadian criminal code. Two matters were specifically highlighted by the group. First was the issue of duplication, it was submitted that where an offence is already adequately covered by existing law and the proposed new law does not enhance the law it is unnecessary duplication. Second concerned the definition of organised crime. The group submitted that the proposed definitions were not real definitions; they were phrased in the negative and focused on what the prosecution did not need to prove.

4.2 The Criminal Justice Bill 2004

The Criminal Justice Bill 2004 was presented in the Dáil on the 6th July 2004 and on the 15th February 2005 the Minister for Justice moved that the second stage be taken. The Minister for Justice then proceeded to introduce the Criminal Justice Bill in the Irish language (Dáil Debates, Vol. 597 No. 5). As initiated the Bill consisted of five parts and thirty five sections, by the time it was enacted into law on the 16th July 2006 it had fifteen parts and one hundred and ninety seven sections.

Organised crime did not feature in the original draft Bill even though submissions had been specifically invited on that topic in November 2003. The Minister for Justice received many criticisms in the Dáil for the manner in which the Bill was introduced. Mr. Jim O'Keefe noted on the 17th February 2005 that the Minister had 'attempted to circumvent the legislative process' by initiating a Bill that he intended to heavily amend and yet put the unamended Bill before the Dáil for debate. Indeed this was an issue for many members of the Dáil. Mr. O'Keefe also took issue with the fact that the Minister himself had highlighted problems with criminalising organised gangs at the public consultation process and proceeded to introduce the Bill without such a provision but referred in his introductory speech to including a provision at a later stage (Dáil Debates, Vol. 598 No. 1). On the 2nd June 2005 Mr. Michael Higgins commented that it was 'outrageous to introduce a Bill on Second Stage while planning to add new sections at Committee Stage' as it deprived the Deputies an opportunity to discuss the entire Bill (Dáil Debates, Vol. 603 No. 5). There were many more comments of this nature made by members at various stages.

In a Ministerial Presentation made to the Joint Committee on the 7th September, 2005, the Minister for Justice addressed the issue of organised crime. He noted the problems involved in criminalising organised crime and stated that it was proposed to implement measures to give effect to European Union and United Nations measures. These provisions would be based on the Canadian model and were not "the panacea to deal with membership of criminal gangs", the problems previously outlined would continue as proving the offence would be difficult however, he was of the view that:-

> *I should propose to put this offence into our law on the basis that there is an argument for having it on the Statute Book, even if, as the Canadian experience suggests, the occasions on which it can be successfully prosecuted may be comparatively rare.* (Joint Committee on Justice, Equality, Defence and Women's Rights, Vol. No. 95)

The Minister did not put forward at that time or any other time the "argument for having it on the Statute Book."

After this Ministerial Presentation to the Joint Committee the Bill continued through Second Stage in the Dáil. On the 18th October, 2005, Mr. Boyle commented on the way legislation was being processed through the House, he stated that "it is the presentation of a Bill that is followed by a briefing followed by a debate from which a whole new Bill results"(Dáil

Debates, Vol. 607 No. 5). One comment made by Mr. Sean Ardagh on 28th March, 2006, when the Minister for Justice moved the motion for including organised crime offences in the Criminal Justice Bill 2004 and which merits quotation in whole, sums up the views of many members of the Dáil and the type of organised crime they thought they were discussing when the topic came up. Mr Ardagh said as follows:-

> *I would like to speak about the question of organised crime, which needs to be examined. We all know about the gangs in west Dublin and Limerick, for example. Other criminal gangs which are not connected with political parties have emerged from paramilitary organizations in recent years. We are examining this issue in the proposed amendments, which will make it an offence to be a member of or participate in a gang with the intention of going out to commit an offence. The question of terrorism on the global stage increased in importance in the aftermath of the events of 11th September 2001. I am delighted that it has been proposed to make it an offence for a gang to conspire to commit offences abroad. That is welcome. It is often suggested that people should be prosecuted for committing offences if they gain personally from those offences. The amended Bill will also make it a specific offence to commit a crime for the benefit of an organisation as a whole.* (Dáil Debates, Vol. 617 No. 1)

On 10th May 2006 the Minister for Justice moved amendments to the Bill to include Part 7 entitled 'Organised Crime' before the Select Committee. In explaining this inclusion the Minister alluded to the United Nations Convention Against Transnational Organised Crime and the Joint Action of the European Union on making it an offence to participate in a criminal organisation, he said that the amendments relating to organised crime were necessary for Ireland to comply with these instruments and he did not propose to go to the United Nations and tell it that Ireland already had sufficient domestic law to deal with the issue. In his words he "would not get away with that in the context of what is happening in Europe" (Select Committee on Justice, Equality, Defence and Women's Rights, Vol. No. 77). He also stated that the circumstances in which such an offence would be prosecuted were rare and gave the example of a supergrass as a situation where it might apply but nevertheless there was value in having such an offence in law. He said that he had "a full appreciation of the limitations of the exercise and I am not claiming that it will wipe out organised crime in

Ireland." The amendments were moved and agreed upon; suggestions put forward by other members that non proof elements of the offence should be excluded were discarded.

When explaining Part 7 to the Seanad on 30th June, 2006, the Minister for Justice stated as follows:-

> *Part 7, which includes sections 70 to 79, inserts new provisions to deal with organised crime. This is becoming an increasingly serious issue both domestically and internationally. The Bill's provisions will enable Ireland to give effect to commitments arising from the UN Convention on Organised Crime, as well as in the European Union's joint action on this same subject. This Part of the Bill creates a number of new offences relating to participation in or assisting in the carrying out of criminal activities by organised gangs. It also extends the definition of "conspiracy" to cover conspiracies to carry out criminal acts, not only in Ireland or against Irish citizens but also conspiracies to carry out criminal acts abroad.*
>
> *As I stated in regard to these provisions, it will be very difficult to successfully bring proceedings thereunder given the nature of the activity and the methods used by criminal gangs. However, that should not stop us from providing the law enforcement agencies with all the legal powers necessary to counteract these gangs. It is equally important that we be in a position to take our place internationally in the fight against organised crime.* (Seanad Debates, Vol. 184 No. 9)

The members of the Seanad generally welcomed the provisions for dealing with organised crime and seemed to accept that there may be difficulties in proving the offence, however, the type of gangland crime that they were referring to was of the kind reported in the media that was occurring in Dublin and elsewhere throughout the country and that these new provisions would help to break down the control that gangs had in certain areas of the city. The Seanad seemed to see Part 7 as a solution to domestic organised crime. On 3rd July 2006 the sections relating to organised crime were put to the Seanad and agreed to.

The Criminal Justice Act 2006 was signed into Irish law on 16th July 2006 and Part 7 was commenced by Statutory Instrument No. 390 of 2006 to come into force on 1st August 2006. To date there have been no prosecutions for any offence contained in Part 7.

4.3 Canadian Case Law

In 2005 there was a constitutional challenge to the validity of s. 467.13 of the Canadian criminal code. The case is known as *R v. Accused No. 1 and Accused No. 2* (2005) BCSC 1727. In that case the accused persons argued that the definition of organised crime contained in s. 467.1 of the Canadian criminal code, which was the definition applicable to s. 467.13, was unconstitutional as it was vague and over-broad. Section 467.1(1) is as follows:-

> *"criminal organization" means a group, however organized, that*
>
> *(a) Is composed of three or more persons in or outside Canada; and*
>
> *(b) Has as one of its main purposes or main activities the facilitation or commission of one or more serious offences that, if committed, would likely result in the direct or indirect receipt of a material benefit, including a financial benefit, by the group or by any of the persons who constitute the group.*
>
> *It does not include a group of persons that forms randomly for the immediate commission of a single offence.*
>
> *"serious offence" means an indictable offence under this or any other Act of Parliament for which the maximum punishment is imprisonment for five years or more, or another offence that is prescribed by regulation.*

The Honourable Madam Justice H. Holmes found that s. 467.13 as it incorporated the s. 467.1 definition was vague and therefore the challenge succeeded. This case highlighted some of the many difficulties involved with criminalising organised crime.

5.0 ANALYSIS OF FINDINGS

5.1 Policy Analysis

The policy process through which Part 7 of the Criminal Justice Act 2006 became enacted will now be examined. Rock's 1995 model of the opening stages of criminal justice policy making seems to apply to the method by which Part 7 came into force. Firstly, the idea was put before the Joint Committee by a member of the law reform division on instructions from the Minister for Justice. This gave credence to the policy as it was suggested by a strong influential character. The Joint Committee then entered the public consultation process where the unelected actors of the subgovernment, as described by Ismaili (2006), were invited to make submissions on particular issues which included the area of organised crime. The policy of criminalising organised crime to deal with the increase in gangland activity was met with scepticism by most of the interested parties. The former head of the Criminal Assets Bureau felt that such measures could be used for certain gangs but was not a long term solution to the problem. This idea of a policy being effective to deal with certain individuals contradicted submissions that were made by the Irish Human Rights Commission and the Irish Council for Civil Liberties that law should apply equally. The general consensus that emerged from these public hearings was that such a provision was problematic for many reasons and that the existing domestic law was sufficient to deal with the problem.

Perhaps it was in light of the public consultation submissions that when the original Bill was presented to the Dáil the relevant provisions were not included but they were alluded to by the Minister for Justice in his introductory speech in the Irish language. This resembles Rock's (1995) notion that because new policy ideas do not fit in with existing legislation they are 'cloaked' and presented in a gingerly fashion in the event that something goes wrong. The introduction of the Bill in the Irish language, although commendable for many Acts, could not be considered the most appropriate language for an introductory speech for one of the most radical reforms of the criminal justice system in recent times. The legalistic terminology is something that many people do not understand in the English language and is even more complex for non fluent Irish speakers. This could be seen as an attempt to 'cloak' some of the more radical intended amendments. It may also have occurred in this way to avoid criticism from professionals. Ismaili (2006: 265) suggests that support from such groups is 'considered vital and their support essential'.

In the debates that followed the Minister stated that the Canadian situation was being assessed and matters were being considered. Many comments were made by members of the Dáil on the incompleteness of the Bill as presented and the lack of an opportunity to discuss the Bill in full. Several additional provisions were presented to the Dáil on the 28th March 2006 and these included the provisions in relation to organised crime. Rock (1995: 6) suggests that new proposals must be 'phrased politically' meaning that they should be designed to win approval from other politicians and powerful organisations. It appears that these provisions could not have been presented at a more opportune time, especially from the perspective of organised crime, as there had been widely publicised gangland activity, included shootings, on a main motorway in Dublin a few days previously. These incidents were specifically referred to by members of the Dáil (Dáil Debates, Vol. 617 No. 1). The mood in the Dáil was welcoming of the politically phrased provisions as a means to combat domestic gangland activity. The situation was ripe for the government to be seen to implement such provisions.

The manner in which this Act was introduced took an unusual course from the interested party perspective. Ismaili's (2006) 'unelected actors' of the 'criminal justice policy community' were invited to make submissions on pertinent issues in 2003 before an initial Bill had been drafted. This to a large degree meant that once the public consultation process was completed there was no need to revisit the interested parties as officially their views had been aired. This paved the way for the Bill to proceed through the Oireachtas stages without significant external input.

The policy progressed through the Committee stages as outlined by Rock (1995). The manner in which the Bill was being progressed was criticised by members of the Dáil. When addressing the issue of organised crime before the Joint Committee in September 2005 the Minister justified the inclusion of an offence of organised crime on the Statute Book on the basis that there was an argument for having it. This argument was never expanded upon. It appears that the Minister's stance seemed to focus primarily on the necessity to comply with United Nations and European Union requirements. Recommendations made by the Bar Council that as broad a range of models as possible such be examined, not only common law jurisdiction models, seems to have been ignored. This practice departs from Ismaili's (2006) suggestion that professional interest groups tend to be the most influential as little if any of their concerns regarding the criminalising of organised crime were heeded.

It appears from an analysis of the findings that there was an element of policy transfer involved in Part 7 of the Criminal Justice Act 2006. Using Bennett's (1991) model it is possible to identify three of the four routes suggested for policy convergence. The first route of emulation occurs when a state draws on another country's experience before adopting a policy. In drafting Part 7 Canadian law was relied upon and the constitutional issues that had arisen in that jurisdiction were studied. In correspondence received from the Department of Justice, Equality and Law Reform there was no indication that the laws in relation to organised crime in any other jurisdiction, common law or otherwise, were taken into consideration. The Irish Council for Civil Liberties commented on the fact that the suggested organised crime section had been lifted *verbatim* from the Canadian criminal code. It appears that no independent research into the nature of organised crime in Ireland was carried out. Indeed in the Ministerial Presentation given to the Joint Committee on the 7th September 2005 the Minister for Justice stated that 'the proposed offence will be based on section 467.1(1) of the Criminal Code of Canada but is also compatible with the definitions in the international instruments' (Joint Committee on Justice, Equality, Defence and Women's Rights, Vol. No. 95).

The second route of Bennett's convergence that can be identified from this particular piece of legislation is elite networking. According to Bennett (1991) this relates to the influence of transnational groups who share information on common problems. Ireland's relationship with many international organisations means that there is ample opportunity for issues such as organised crime to be discussed. One example of how information on organised crime is shared is through the Europol Organised Crime Threat Assessment (OCTA). An Garda Síochána, as part of its contribution to the OCTA, annually assesses organised crime in Ireland and these observations are taken into consideration by Europol. Bennett (1991) also identifies harmonization as a route to convergence. This takes place when a country is required to adopt policies due to membership of organisations such as the European Union. This was a stated objective of the Minister for Justice in implementing Part 7 of the Criminal Justice Act 2006.

5.2 The Definition of Organised Crime

It has been shown in the literature review chapter that defining organised crime has created many difficulties for criminologists. This problem was also highlighted by many of the expert interest groups that were invited to make submissions in 2003. Indeed the difficulty in

defining the concept of organised crime led most of the contributory groups to recommend against adopting a specific organised crime offence. Under the domestic law as it was before the enactment of the Criminal Justice Act 2006 it was possible to prosecute organised criminals under conspiracy, while this still remains there is now a statutory definition making organised crime a specific offence carrying a maximum penalty of five years imprisonment. The commission of a serious offence for a criminal organisation carries a maximum penalty of ten years imprisonment. The situation as it now stands means that there is an unnecessary duplication in the law.

The definition of organised crime as enacted is almost identical to the Canadian definition with a small number of additions and alterations that are mentioned by United Nations and European Covenants. For example the Canadian and United Nation definitions require three or more people to form a criminal organisation and the European Union definition requires two or more people. The European Union definition is in line with Albanese's (2000) suggestion that an organised crime group only requires two or more people to operate. The reason why Ireland chose to adopt the Canadian/United Nation version of three or more people is unclear especially considering that the United Nations Convention Against Transnational Organised Crime although signed by Ireland on the 30th December 2000 had not been ratified as of the 13th August 2008.

The mere adoption of a definition that has been coined elsewhere does not take due account of the fact that Ireland as a nation experiences its own criminal justice problems; this is due to geographical, cultural and social factors. Despite acknowledging that criminal gangs in Ireland were not like the Mafia and did not operate in a corporate sense, the Minister for Justice adopted a definition which in some respects is similar to Cressey's model. Cressey (1970) was the main proponent of the Mafia style criminal organisation and referred to a military type structure that operated for profit. The definitions in section 70 of the Criminal Justice Act 2006 require a structured group that operates for financial or material benefit. Cressey's model, although still influential, has been largely discredited. Maltz (1976) decided that attempting to define organised crime was fruitless because no single definition could adequately encompass all elements and eventualities. This appears to have been the problem with the Canadian attempt, as its efforts to be all encompassing was criticised by the courts because it was too vague.

Vagueness was one of the main concerns of the Irish Human Rights Commission and the Irish Council for Civil Liberties. The Human Rights Commission felt that defining a criminal gang presented difficulties and was ultimately a 'dead end' as it was not acceptable to define an offence which along with catching criminals could also catch people who had acted lawfully. The Irish Council for Civil Liberties also raised issues with the definition as it was negatively phrased and had elements that did not require proof. These concerns are in line with the shift from due process to crime control that Campbell (2007a) highlights. Campbell took issue with certain aspects of the Criminal Assets Bureau's procedure in court, for example proof is on the balance of probabilities and hearsay evidence is admitted. Although not quite as radical, the organised crime provisions still require proof beyond a reasonable doubt, the necessary elements of proof have been reduced and facilitation of an offence does not require knowledge of a particular offence the commission of which is facilitated.

Hagan (1983) discovered that it was difficult to attach a scientific definition to a term which had a varying public meaning. It is apparent from an analysis of the Oireachtas debates that the terms organised crime and gangland activity are used interchangeably. When the politicians speak of Veronica Guerin and other gangland style murders they are attributing blame to organised criminals. The Minister for Justice on the other hand seemed to recognise that the type of organised crime that he put into legislation would be insufficient to prosecute the vast majority of the gangs operating in the country. This varying understanding of meaning among the politicians can be seen in a comment made by Mr. Ardagh on the 28th March 2006 when speaking about the gangs in west Dublin and Limerick he said that the new provisions would make it 'an offence to be a member of or participate in a gang with the intention of going out to commit an offence' (Dáil Debates Vol. 617 No.1). It appears clear from reading the debates that although the members of the Dáil accepted that there would be difficulties in securing convictions under the provisions they still envisaged that they would be applicable in a domestic context.

In more recent times Albanese (2000) found that the lack of a certain definition of organised crime was one of the main reasons why crime control efforts had failed. If that is the case then Irish efforts to prosecute organised criminals solely on the basis of participation in a criminal organisation will fail as the definition that has been introduced is not sound or certain. The definition that has been introduced does not take into account the unique characteristics of Irish criminal organisations, it appears that the definition was almost directly transferred from Canadian law without any investigation being carried out into the

similarities and differences between criminal organisations in Ireland and Canada. Studies into the nature and operation of criminal organisations are problematic. Hobbs (1994) identified the unwillingness of members of these criminal organisations to engage with researchers and Kleemans and dePoot (2008) were only able to conduct empirical research into organised criminals who had been apprehended. However, the difficulties that arise in this context do not suggest that research that may have assisted in coining a tailored Irish definition of organised crime should have been neglected. The resultant definition is an amalgamation of three different definitions and does not take into account the nature of Irish gangs.

6.0 CONCLUSION

Up until the introduction of the Criminal Justice Act 2006 alleged members of criminal organisations were being prosecuted for offences that they committed in the same way as non gang members would be prosecuted. The main offences engaged in by these gangs are drug dealing, property offences and murder; this resulted in draconian mandatory minimum sentences being introduced in 1999 for drugs over the value of €13,000. It appears from this analysis that despite the introduction of organised crime offences into Irish legislation people who are involved in organised crime activities will continue to be prosecuted for the specific offences that they commit. This is due to the unworkable definition that has been adopted. Law enforcement efforts will continue to target the activities of criminal gangs rather than the criminal organisations themselves.

Defining organised crime has caused problems since the concept first came under criminological scrutiny and it does not appear that this position has changed. The futility of Part 7 of the Criminal Justice Act 2006 can be seen in the fact that two years after it came into force there have been no prosecutions under its sections. The need to comply with international covenants also seems to have decreased in importance; this is evident from the fact that although the United Nations Convention was signed in 2000 and these provisions were introduced in 2006 it has not been ratified. These factors call the necessity of Part 7 into question and suggest that there has been a needless duplication of the law. Such unnecessary duplications signal a shift towards a more regulated and coercive criminal justice system and offend the notion that citizens should be exposed to the least amount of regulation necessary.

This analysis has also investigated the policy process for enacting legislation and the ability of politicians to conceal certain proposed provisions until a politically apt time. The policy process is an interesting mix of checks, balances and manoeuvring which is presided over by elected officials. The relative redundancy of the public has also been seen. They were referred to by Dáil members when highlighting areas for attention but it appears that the only way for the public to get information on the policy process is from the media. Inviting interest groups to make submissions on certain topics on national television before a proposed Bill had been drafted had two political benefits. Firstly, it meant that the experts were confined to speaking about a general topic rather than criticising proposed legislation and secondly, it allowed the public to feel included.

It has been seen that policy transfer is a very real phenomenon. In fact the criminalising of organised crime in Irish legislation was a blatant example of policy transfer. The Irish definition was coined without any specific examination of the area and with no regard to Irish circumstances. Conforming to international obligations overrode the need to enact legislation that was tailored to Ireland's criminal justice problems.

The method by which legislation progressed through the Oireachtas was heavily influenced by Joint and Select Committees before being presented to the Dáil. It appears that if there are to be any realistic prospects of prosecuting organised criminals in this jurisdiction then extensive research will have to be carried out examining the nature of organised crime in Ireland and also the measures that a broad range of other countries have implemented and their successes and failures. If such research was carried out then an amendment could be enacted which would enable a concerted effort to bring criminal organisations to justice.

A further finding of this thesis has been the importance of policy analysis within criminology. If this ill-conceived part of the Criminal Justice Act 2006 managed to find its way into legislation without any opposition then it is possible that there are many other redundant and badly drafted provisions on the Statute Book. Indeed in an era when criminal justice policy is moving increasingly towards crime control and legislation is being introduced as Tonry (2004:25) suggests for 'political self-interest' reasons, policy analysis is becoming more important as a means of keeping legislative practices in check.

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Criminal Justice Act 2006

PART 7

Organised Crime

70.—(1) In this Part—

"act" includes omission and a reference to the commission or doing of an act includes a reference to the making of an omission;

"criminal organisation" means a structured group, however organised,

that—

(*a*) is composed of 3 or more persons acting in concert,

(*b*) is established over a period of time,

(*c*) has as its main purpose or main activity the commission or facilitation of one or more serious offences in order to obtain, directly or indirectly, a financial or other material benefit;

"Irish ship" has the meaning it has in section 9 of the Mercantile Marine Act 1955;

"serious offence" means an offence for which a person may be punished by imprisonment for a term of 4 years or more;

"structured group" means a group that—

(*a*) is not randomly formed for the immediate commission of a single offence, and

(*b*) does not need to have formally defined roles for its members, continuity of its membership or a developed structure.

(2) For the purposes of this section facilitation of an offence does not require knowledge of a particular offence the commission of which is facilitated, or that an offence actually be committed.

71.—(1) Subject to *subsections (2)* and *(3)*, a person who conspires, whether in the State or elsewhere, with one or more persons to do an act—

(*a*) in the State that constitutes a serious offence, or

(*b*) in a place outside the State that constitutes a serious offence under the law of that place and which would, if done in the State, constitute a serious offence,

is guilty of an offence irrespective of whether such act actually takes place or not.

(2) *Subsection (1)* applies to a conspiracy committed outside the State if—

(*a*) the offence, the subject of the conspiracy, was committed, or was intended to be committed, in the State or against a citizen of Ireland,

(*b*) the conspiracy is committed on board an Irish ship,

(*c*) the conspiracy is committed on an aircraft registered in the State, or

(*d*) the conspiracy is committed by an Irish citizen or a stateless person habitually resident in the State.

(3) *Subsection (1)* shall also apply to a conspiracy committed outside the State in circumstances other than those referred to in *subsection (2)*, but in that case the Director of Public Prosecutions may not take, or consent to the taking of, proceedings for an offence under *subsection (1)* except in accordance with *section 74(3)*.

(4) A person charged with an offence under this section is liable to be indicted, tried and punished as a principal offender.

(5) A stateless person who has his or her principal residence in the State for the 12 months immediately preceding the commission of a conspiracy is, for the purposes of *subsection (2)*, considered to be habitually resident in the State on the date of the commission of the conspiracy.

72.—(1) A person who, for the purpose of enhancing the ability of a criminal organisation to commit or facilitate—

(*a*) a serious offence in the State, or

(*b*) in a place outside the State, a serious offence under the law of that place where the act constituting the offence would, if done in the State, constitute a serious offence,

knowingly, by act—

(i) in a case to which *paragraph (a)* applies, whether done in or outside the State, and

(ii) in a case to which *paragraph (b)* applies, done in the State, on board an Irish ship or on an aircraft registered in the State,

participates in or contributes to any activity of the organisation is guilty of an offence.

(2) In proceedings for an offence under *subsection (1)*, it shall not be necessary for the prosecution to prove that—

(*a*) the criminal organisation concerned actually committed a serious offence in the State or a serious offence under the law of a place outside the State where the act constituting the offence would, if done in the State, constitute a serious offence, as the case may be,

(*b*) the participation or contribution of the person concerned actually enhanced the ability of the criminal organisation concerned to commit or facilitate the offence concerned, or

(*c*) the person concerned knew the specific nature of any offence that may have been committed or facilitated by the criminal organisation concerned.

(3) In determining whether a person participates in or contributes to any activity of a criminal organisation, the court may consider, *inter alia*, whether the person—

(*a*) uses a name, word, symbol or other representation that identifies, or is associated with, the organisation, or

(*b*) receives any benefit from the organisation.

(4) For the purposes of this section, facilitation of an offence does not require knowledge of a particular offence the commission of which is facilitated, or that an offence actually be committed.

(5) A person guilty of an offence under this section shall be liable on conviction on indictment to a fine or imprisonment for a term not exceeding 5 years or both.

73.—(1) A person who commits a serious offence for the benefit of, at the direction of, or in association with, a criminal organisation is guilty of an offence.

(2) In proceedings for an offence under *subsection (1)*, it shall not be necessary for the prosecution to prove that the person concerned knew any of the persons who constitute the criminal organisation concerned.

(3) A person guilty of an offence under this section shall be liable on conviction on indictment to a fine or imprisonment for a term not exceeding 10 years or both.

74.—(1) Proceedings for an offence under *section 71* or *72* in relation to an act committed outside the State may be taken in any place in the State and the offence may for all incidental purposes be treated as having been committed in that place.

(2) Where a person is charged with an offence referred to in *subsection (1)*, no further proceedings in the matter (other than any remand in custody or on bail) may be taken except by or with the consent of the Director of Public Prosecutions.

(3) The Director of Public Prosecutions may take, or consent to the taking of, further proceedings against a person for an offence in respect of an act to which *subsection (1)* of *section 71* applies and that is committed outside the State in the circumstances referred to in *subsection (3)* of that section if satisfied—

(*a*) that—

(i) a request for a person's surrender for the purpose of trying him or her for an offence in respect of that act has been made under Part II of the Extradition Act 1965 by any country, and

(ii) the request has been finally refused (whether as a result of a decision of the court or otherwise),

or

(*b*) that—

(i) a European arrest warrant has been received from an issuing state for the purpose of bringing proceedings against the person for an offence in respect of that act, and

(ii) a final determination has been made that the European arrest warrant should not be endorsed for execution in the State under the European Arrest Warrant Act 2003 or that the person should not be surrendered to the issuing state concerned,

or

(*c*) that, because of the special circumstances (including, but not limited to, the likelihood of a refusal referred to in *paragraph (a)(ii)* or a determination referred to in *paragraph (b)(ii)*), it is expedient that proceedings be taken against the person for an offence under the law of the State in respect of the act.

(4) In this section "European arrest warrant" and "issuing state" have the meanings they have in section 2(1) of the European Arrest Warrant Act 2003.

75.—(1) In any proceedings for an offence under *section 71*—

(*a*) a certificate that is signed by an officer of the Department of Foreign Affairs and states that—

(i) a passport was issued by that Department of State to a person on a specified date, and

(ii) to the best of the officer's knowledge and belief, the person has not ceased to be an Irish citizen, is evidence that the person was an Irish citizen on the date on which the offence concerned is alleged to have been committed, unless the contrary is shown, and

(*b*) a certificate that is signed by the Director of Public Prosecutions or by a person authorised by him or her and that states that any of the matters specified in *paragraph (a)*, *(b)* or *(c)* of *section 74(3)* is evidence of the facts stated in the certificate, unless the contrary is shown.

(2) A document purporting to be a certificate under *subsection (1)* is deemed, unless the contrary is shown—

(*a*) to be such a certificate,

(*b*) to have been signed by the person purporting to have signed it, and

(*c*) in the case of a certificate signed with the authority of the Minister for Foreign Affairs or the Director of Public Prosecutions, to have been signed in accordance with the authorisation.

76.—(1) Where an offence under this Part is committed by a body corporate and is proved to have been committed with the consent, connivance or approval of, or to have been attributable to any wilful neglect on the part of, any person, being a director, manager, secretary or any other officer of the body corporate or a person who was purporting to act in any such capacity, that person, as well as the body corporate, shall be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(2) Where the affairs of a body corporate are managed by its members, *subsection (1)* shall apply in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

77.—A person who is acquitted or convicted of an offence in a place outside the State shall not be proceeded against for an offence under—

(*a*) *section 71* consisting of the act, or the conspiracy to do an act, that constituted the offence, or

(*b*) *section 72* consisting of the act that constituted the offence, of which the person was so acquitted or convicted.

78.—The Act of 1967 is amended—

(*a*) in section 13(1), by the insertion of "or an offence under *section 71*, *72* or *73* of the *Criminal Justice Act 2006*" after "the offence of murder under section 6 or 11 of the Criminal Justice (Terrorist Offences) Act 2005 or an attempt to commit such offence", and

(*b*) in section 29(1), by the insertion of the following paragraph after paragraph (*k*):

"(*l*) an offence under *section 71*, *72* or *73* of the *Criminal Justice Act 2006*.".

79.—The Schedule to the Bail Act 1997 is amended by the insertion of the following after paragraph 28:

"Organised Crime.

28A.—An offence under *section 71*, *72* or *73* of the *Criminal Justice Act 2006*.".

UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME

Article 1

Statement of purpose

The purpose of this Convention is to promote cooperation to prevent and combat transnational organized crime more effectively.

Article 2

Use of terms

For the purposes of this Convention:

(a) “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;

(b) “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;

(c) “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;

(d) “Property” shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets;

(e) “Proceeds of crime” shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence;

(f) “Freezing” or “seizure” shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority;

(g) “Confiscation”, which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority;

(h) “Predicate offence” shall mean any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in article 6 of this Convention;

(i) “Controlled delivery” shall mean the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence;

(j) “Regional economic integration organization” shall mean an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to it; references to “States Parties” under this Convention shall apply to such organizations within the limits of their competence.

European Union definition of criminal organisation

98/733/JHA: Joint action of 21 December 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union

Article 1

Within the meaning of this joint action, a criminal organisation shall mean a structured association, established over a period of time, of more than two persons, acting in concert with a view to committing offences which are punishable by deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty, whether such offences are an end in themselves or a means of obtaining material benefits and, where appropriate, of improperly influencing the operation of public authorities.

The offences referred to in the first subparagraph include those mentioned in Article 2 of the Europol Convention and in the Annex thereto and carrying a sentence at least equivalent to that provided for in the first subparagraph.