



Organised Crime (Threat) as a Policy Challenge: a Tautology

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Purpose:

To analyse some of the key concepts and beliefs related to the risk of organised crime and compare it to the empirical state of affairs, particularly related to criminal finances.

Design/Methodology/Approach:

Analysis of criminal files and databases.

Findings:

In the past two decades, since the fall of the Berlin Wall, 'organised crime' has been proclaimed a threat to society. However, who is threatening with what, while the phenomenon (if there is anything like that) is ill defined? It looks like policy makers are trapped in a kind of tautology, unless there is also a non-threatening organised crime.

The threat assessments, which are composed by national governments and Europol are plagued by fuzzy concepts about threats, risks and risk formula which share that characteristic. The formula and concepts used thus far appear to have resisted operationalisation due to the lack of proper definitions to be usefully applied.

Inherent to these unsolved problems is the causality issue. Who causes what harm? To approximate an answer to this question the author takes the laundering of crime-money as a proxy variable. What harm does laundering do to the financial system, thereby exerting a threat. Inspection of the scarce data shows that this threat cannot be substantiated, either to the real estate (usually considered menaced) or the financial system (per definition threatened).

Either the problem is not big at all or the authorities have not taken their responsibility to provide a proper knowledge basis. The author pleads to break out of this tautological threat rhetoric and to replace this by a proper analysis and a responsible methodology.

Research limitations/implications:

The data are limited to what has come to light during criminal investigations. However, they are not contested.

Practical implications:

The research made plainly clear that claims about the risk of crime-money are not substantiated by empirical facts

Originality/Value:

This kind of research has not been carried out thus far.

UDC: 343.341





Keywords: organised transnational crime, laundering, risk

1 OMINOUS SHADOWS ON CIVIL SOCIETY

The usual way organised crime is being presented to the public does not bode well for civil society. In various dark colours the phenomenon of 'organised crime' is depicted as a threat looming ahead. We are presented with an evil, which knows no rules, nor national borders, is transnational and fluid etc. It is claimed that 'it' has gained new strength after the end of the Cold War, 1989. This is an interesting observation, not because of the pretended 'gain of new strength', but because at this time distance of two decades we should be able to look back to acquire a lot of 'wisdom by hindsight'. What may such a retrospection tell us about the nature and threat of 'organised crime', now and in the past?

As would be normal in most disciplines, one would address these questions by summarizing this collective experience the details of which are usually laid down in various registers, which may be summarized in annual reports. That is how scholars can write the history of the economy, labour developments or public health issues. However, concerning 'organised crime' we face a discrepancy between what is politically and socially highly prioritised and the efforts to record the prevalence of its manifestation. If there are any proper records of organised crime, they are incomplete, confusing and usually fragmentary (Vettori, 2006). Lacking theoretical cohesion and a proper definition as yardstick (von Lampe, van Dijck, Hornsby, Markina, & Verpoest, 2006), they are different to interpret over time as well as between countries. We find bits and pieces against the background of a black-and-white threat imagery which evokes much political activism (van Duyn & Vander Beken, 2009). However, that activism hardly addresses the fundamental questions we have to raise about the meaning of threat if we want to understand it properly and analyse it in practical terms.

In the first place, we have to deal with the question of the 'who' and 'what'. To threaten is a transitive verb. So, who are the subject and the object of any statement about 'threat'? Replacing the terms at both sides of the verb by 'organised crime' as actor and 'society' as the object clause, is only grammatically meaningful. This is similar to statements as we find in the introduction of many opening statements of the various official threat assessment reports: the grammar is OK, but semantically they are confusing. If we want to make such a threat statement semantically and empirically meaningful we have to do more. We have to single out, delineable phenomena in which actors, their deeds and observable effects can be identified and interpreted. This requires more specification than the mere summing up of threats emanating from markets, 'organised crime groups' and 'criminal hubs' as has been presented in Europol's latest threat assessment (Europol, 2009).

In the second place we have to address the 'threat question' itself: what is an 'organised crime threat' supposed to mean by itself (is there also a non-threatening organised crime? I will return to that later).

Addressing the first, the 'who' question may at first sight be the simplest task. By drawing up a list, or a typology of all the perpetrators thus far recognised as





'organised', one may think to fulfil this task easily, perhaps to be updated with a few 'catches' later. However, there is a basic flaw in this approach. This listing is dependent on the validity of the underlying definition of 'organised crime'. Unfortunately, there is hardly any valid definition of 'organised crime'.¹ Lacking a proper definition there is a tendency of drawing up a list of 'usual suspects', starting with the mafia-like criminal organisations and ending with crime-entrepreneurs in the underground market of prohibited substances (mainly 'drug barons') and criminal service providers (often sex traffickers or migrant smugglers). It is not very likely that one will find many corporate criminals and co-operations of fraudsters on such an 'organised crime' list, such as the Madoffs and Stanfords. However, times and opinions are changing: criminal cartel perpetrators have been prosecuted for 'participating in a criminal organisation' (van Duyne, 2007a) and convicted to 180 hours community service, marking the difference with the 'usual criminal' (damage more than € 100.000). But irrespective of including such offenders occasionally in the 'organised crime set', one is turning in circles: first we denote certain subjects as 'organised', then we raise the question 'who threatens', which is answered by listing again the same subjects.

In threat assessments as issued by Europol (2009) one finds a modernised approach: looking at markets and organised crime groups. In essence this represents a watered-down version of earlier attempts to describe 'organised crime'. The phrase 'organised crime group' is apparently considered so much self-evident that it does not need a definition. Subsequently any unspecified form of criminal profit oriented cooperation can be subsumed under this concept. There is nothing wrong with elaborating the concept of 'criminal cooperatives'. But while doing so it soon becomes apparent that the 'organised crime' concept is redundant and should be deleted from the conceptual register (van Duyne & van Dijk, 2007).

The second question is equally vexing if we do not consider a reformulation. The question is: "What is an 'organised crime' threat?" It looks like we have here a built-in tautology. Is 'organised crime' always threatening? If yes, the addition of 'threat' is redundant, because we do not have a 'non-threatening organised crime'. If the answer is 'not always', we have an interesting follow-up task of identifying the 'non-threatening organised crime' in order to differentiate it from the threatening variety. If we shrink back from recognising 'non-threatening organised crime', we have to resort to the tautology again. But then the question actually amounts to: "What is the future of 'organised crime'?", as a threat is always ahead of us, even if only a split second. But how to know the future?

2 PAST, PRESENT AND 'OC THREAT/RISKS'

For the study of the broad field of what is vaguely denoted 'organised crime' (or the whole virtually endless abstract collectivity of organised criminal groups)

¹ There is a substantial amount of literature on defining 'organised crime'. For a recent summary: see Van Duyne and Van Dijk (2007), and Van Duyne (2003). See also the link to the end reports of the EU project 'assessing organised crime' on the Cross-border Crime Colloquium website: www.cross-border-crime.net





the recommendation of the so-called European Multidisciplinary Group in 2001 to convert the yearly organised crime situation reports into a 'future oriented' threat assessment may be considered a milestone, though not a shiny one. It was followed by a muddy path of deliberation which led to the decision of entering the methodological swamp of the Organised Crime Threat Assessments which Europol was to produce from 2006 onwards. The background for this decision was the dissatisfaction with the situation reports which presented the (perceived) state of affairs of a certain year in the Member States of the EU. Policy makers thought that this could not contribute to a *future* oriented strategy. Policy makers had to be prepared for the 'looming threat ahead', and be risk oriented: 'knowledge based' (See for a historical account: van Duyne & Vander Beken, 2009).

This orientation was in agreement with much of the present discussion on 'organised crime' in which the concepts of 'threat' and 'risk' play an important role.² One can use these concepts interchangeably, though the negative loading of the concept of 'threat' seems to be more fitting to 'organised crime', while 'risk' is more a statistical concept. Apart from such semantic valuations, the Organised Crime Threat Assessment yearly issued by Europol can equally be called risk assessments. The question is: is there any clarity in these concepts?

Let us first look at what is the least ambiguous concept: risk. In whatever loose way it is often used, in the profession of actuary it comes simply down to $p = \sum x_i/N$: the likelihood that an event x of a certain class will occur given the total set of events X . Though the statistical models in the insurance industry have become more complicated, the basis remains something like: the probability that someone's ski-holiday ends with a broken leg is the number of broken 'ski legs' divided by the total holiday skiers in a given time series of winter holiday seasons. Of course, the number of broken legs must be multiplied by the average medical costs to determine the expenses of the insurance and your related premium for next year.

This is a clear approach. However, is it applicable to the 'organised crime' topic? The answer is a simple and straightforward 'no': we do not have an 'organised crime' denominator due to the lack of a valid definition which can delineate the total set of 'organised crime occurrences' (the N). Talking about the risks by unspecified 'organised criminal groups' does not help to overcome this caveat. All proposed organised 'risk formula' as suggested by Savona, Antoniou and Vettori (2005), among others, are for this reason void, even if they may look impressive.³ Apart from their formal defects, they have never been tried out too. For good reasons.

This leads to the conclusion that there is no determinable threat of 'organised crime'. I realise that this conclusion is to many as unsatisfactory as it is unwelcome to professional threat production institutions like Europol or the UNDCP. After all, we do have criminal brotherhoods and organisations like the Sicilian Mafia, the Camorra, 'Ndrangheta or the Nova Corona Sacra, which are anything but harmless (Paoli, 2003). And we do have crime-entrepreneurs, large and small, who are organising the delivery of coveted contraband to consumption countries;

² One find this 'risk approach' in the anti-money laundering policy as well (see Gelemerova, in press).

³ See Savona et al. (2005): $OC\ Risk = OC\ Probability \times OC\ Harm$





and people are victimised by cooperating con men stealing savings from naive investors or the public fund.⁴ But all these past or on-going inroads into our society cannot methodologically be converted into a meaningful risk or threat assessment formula: ' $p = \sum x/N = . . .$ ' Extrapolating from an unsorted set of manifestations of 'something criminally organised' to the future (threat) is like making a weather forecast without barometers, thermometers or models.

Let us pursue the path of the hypothetical insurance company which considers to launch an 'organised crime insurance policy', because in this industry one finds the real experts of risks and harm. The last thing an insurance company would ever do is to cast away the past, because that is the statistical basis for the parameters of all the insurance policies: the time series of premiums, incidents and compensations. Compare this with what the 'high-level' European policy makers did. They cast away the past as not informative for the 'future looking'.⁵ The second thing an insurance company would do is determine causal relationships, as these determine the claims being rejected or honoured and the endless law suits if these relationships are disputed. Without the past for statistics and without clear event-damage causality there are no insurable events.

Compared to this professional background criminal policy makers and higher police officers continue to dabble like amateurs in this foggy criminal field without signposts, maps or data. There are the Europol 'OCTA-maps' drafted from 2006 onwards. However, these lack an accountable methodology (which – if it exists – is kept secret) while one may wonder whether and to what extent their rough mapping has an added value compared to collecting the same information from internet. I doubt whether it will pass a Wikipedia-test.

The conclusion of the previous section is that no insurance man will get involved in selling 'organised crime insurance policies', unless he is a con man: making customers believe that there is an identifiable threat-harm causality.

Assuming (officially) that there are no con men in high places (but how certain is that?), we face the puzzling question: Why do politicians persevere in the undertaking of proclaiming 'uninsurable threats'? The answer is simple: because of a combination of belief and mutual interests resulting in a problem-owner industry in which 'organised crime' stakeholders get on very well (van Duyne, 2004).⁶ This becomes apparent as soon as such interests become converted into real institutions (with budget, building and staff), as has been described by Spencer and Broad (2010) concerning the UK institutions: the Serious Organised Crime Agency (SOCA) and the United Kingdom Human Trafficking Centre (UKHTC).

4 A recent example coming to notice at the time of completing this article concerns a well-organised medicaid fraud in the US in which 74 arrests have been made. The Armenian criminal group established 118 phoney clinics filing false treatment claims to the amount of € 117.

5 More accurately, they neglected the task of recording the in- and output of their special anti-organised crime units, with the exception of Germany where organised crime statistics were maintained. Unfortunately this database was under-employed in view of the required in-depth studies (Kinzig & Luczak, 2004).

6 Verhage (2009) has elaborated this mutual interest in the upholding of the anti-money laundering regime against the threat of the crime-money. However, in the end the greatest threat to the integrity of the financial system came from greedy and irresponsible bankers and defrauding states, like Greece, the global anti-laundering regime has grown into the most costly global apparatus.





3 CORRELATION, CAUSALITY AND A HIDDEN VARIABLE

Let us return to our insurance man: what will he do if (against all odds) he still wants to probe the viability of his 'organised crime' insurance product while avoiding getting entangled in law suits about causal relationships and contested liabilities? For commercial reasons he will keep the banner of 'organised crime' flying, in which he does not differ from policy makers or Europol. But meanwhile he will carry out a breakdown of a whole series of contemporary and historical criminal events to find measurable components in the social, economic and governmental landscape. Next he will try to find out which of these components can be converted into variables which represent social, economic and governmental values which can be the input for an extensive regression analysis. This approach was followed by Daniele and Marani (in preparation) for Italy. They used foreign direct investment as dependent variable and a number of countable crime events as independent 'proxy variables' (like extortion and murder) for the 'mafia presence'. They demonstrated a negative correlation between the approximated 'mafia presence' and direct (foreign) investment in those regions: 'mafia' as approximated in this way could be interpreted as a disincentive for investment. However, they do not conclude to a *direct* causality between 'organised crime' as an independent variable and direct investment as dependent variable. Underlying this partial correlation is another variable: '(negative local) institutional environment'. Read: corrupt (local) government, either as an independent economic disincentive variable or an underlying causal factor for the 'organised crime presence'. If the latter causalities hold the component 'organised crime threat' can rather be substituted by the variable: 'threat by corrupt government'.

Given this plausible interpretation, our professional insurance policy developer faces a problem: should he insert an exception clause in case the 'organised crime harm' is attributable to corrupt governance? As far as Italy is concerned, this makes sense given the institutional differences between the provinces north and east of Rome and the 'dark south'. But if it is accepted that the real threat is not 'organised crime' but 'mal governance', his insurance product becomes unmarketable. Indeed, there is no saleable organised crime insurance policy with a '*Berlusconi exception clause*'.

This risk-insurance angle is an interesting approach, but difficult to pursue when the independent crime variables (the proxies for 'mafia') become less discernable at local or regional level. This is particularly the case with merchant crime-enterprises selling commodities and services from one place to another, sometimes at great distance. Here we face a real problem in determining correlations, let alone answering the causality question. Hence, in that case we will have no insurable 'organised crime' threat.

4 CRIME-MONEY, THE SINISTER THREAT?

Despite this logical conclusion, criminal merchants who set up and run illegal trading organisations are considered each and together a threat. At first sight that





makes sense, but such a *prima facie* truth does not answer the question “how?” Let us also look for a proxy to the hypothetical ‘organised crime’ threat and choose the relationship between illicit trade and the financial conduct of criminal traders. Increased illicit trade entails a high financial circulation of crime-money. As soon as these dirty monies enter the legal financial system they are supposed to be a threat to its integrity: they are laundered. Or are they a threat while they are still outside the financial system? Do we observe here a threat after all?

Again we are badly informed, apart from the drug market of which there is some kind of international statistics collection organisation at the United Nations. As far this markets is concerned the latest UN figures show a market with on average steadily declining prices since 1986. The cultivated area of herbal drugs has decreased somewhat, while the interception rate of cocaine and heroin has increased.⁷ Nevertheless, huge profits are still being made, though there is much disagreement about the total drug traffic profits (see: Keh, 1996; Walker, 1999; Reuter & Greenfield, 2001). Irrespective of the amount of profits which are estimated (or believed) to be made, a substantial amount is supposed to be laundered. And that activity has been proclaimed a threat in itself. However, concerning this financial proxy variable the latest UN World Drug Report 2009 (United Nations Office on Drugs and Crime [UNODC], 2009) is practically silent, except for a few general shallow remarks.⁸ Where and how does the amalgamated drug money pose a threat? To these moneys we must add the large revenues of other profitable crime-sectors, such as fraud, economic and environmental crime; and art crime, a truly forgotten ‘organised crime’ niche (Charney, 2009).

All these crimes for profit result in an annual global revenue of well over one trillion Euros, according to an older UN (gu)estimate (Keh, 1996: disputed, over-quoted, clearly political motivated but never repudiated). In the whole literature on organised crime, and certainly on money laundering this is a constant and generally accepted threat: the huge criminal revenues affecting the integrity of the financial system. In addition, their wealth also allows (organised) criminals to buy their entry into the ‘control chambers’ of society. Or otherwise, criminals (whether or not of the ‘organised’ brand) succeed in penetrating the business community, while undermining fair competition. Some sectors are declared as particularly endangered, such as the real estate sector. These statements are taken at face value with an assumed implicit ‘organised crime’ involvement. However, what is the substantiation of this claim thus far?

Again, hard data are scarce. Thus far we unearthed only one really long time series of empirical evidence: the confiscation files of the Dutch Public Prosecution Office since 1994. This database allowed us to identify per convicted person: the confiscated bank accounts, the cash money and the real estate, and in addition

⁷ UNODC drugs world report 2009

⁸ The same applies remarkably to the UN report on transnational organised crime threat: a few references to proceeds and laundering (less than 10) without any elaboration (UNODC, 2009). Also at UN level, as far as this subject is concerned one is surprised by the gap between proclaimed and intellectual seriousness. It looks as if the UN’s drug bureau had to catch up with Europol’s OCTA, including its shallowness.





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(valuable) moveable items ranging from cars, horses, jewellery, to kitchen utensils (van Duyne, Soudijn, & Kint, 2009; van Duyne and Soudijn, 2010).

The preliminary results (project still in progress) revealed that:

- the majority of the 440 criminals (not all 'organised') having a bank account had a modest saving or deposit with a median value of € 18.000. 20 % had a bank account of more than € 100.000;
- foreign banking played a less important role than has always been assumed: 94 % of the value of the bank accounts was in Dutch banks. The proportion of confiscated cash and deposited money in banks 1: 1,2;
- real estate is just one of the outlets for crime-money, but the median value of the acquired real estate did not surpass the average value of houses. A small minority had more than one piece of property, some even a substantial amount, but these exceptional occurrences were widely spread over time (10 years) and space;
- the division of accrued wealth was very skewed, confirming a previous finding (van Duyne & de Miranda, 1999): "Many move few, and few move very much", underlining that estimates using the arithmetic average produce inflated figures.

This is a rough summary of the analysis of role of criminal finances in relation to the financial underworld. Undeniably, the database contains a number of wealthy criminals, but thinly spread over time. But: "Where was the threat?" This question could not be answered above the level of anecdotes, whether it concerned the threats from (organised) drug traffic or economic criminality.

This was not the only attempt to answer this financial threat question. We should also mention the methodologically debatable research of Unger (2007), based on the equally defective 'Walker model' (Walker, 1999). Not surprising it arrived at an inflated laundering figure of € 18,5 to € 25 billion for the Netherlands paying no attention to the underlying skewed frequency distribution. As far as the threat of crime-money is concerned, the authors had to hark back to old World Bank warnings of the 1990s (partly themselves recycled from older sources) instead of deducing them from their own empirical findings.

The research project of van Duyne and Soudijn (2010) was not the only serious attempt to make sense of the 'knowledge source' of the authorities. Following the survey of van Duyne (2007b), Verhage (2010) also tried to penetrate the statistical fog surrounding the Belgian databases concerning money-laundering. All she could unearth were tokens of indifference and incompetence concerning information management, and that against the background of such a looming threat.

5 BREAKING OUT OF THE TAUTOLOGY

The threat of 'organised crime' as a policy challenge implies a tautology with a circular reasoning implicitly contained in the two little words 'organised crime'. Indeed, there is no non-threatening 'organised crime' and which threat is not also a policy making challenge? Then to double the circle policy makers and police draw up an usual suspect list which are then considered recognised 'organised





criminals', for which reason they are threatening. Or the policy makers water-down the concept by inserting less contested concepts like 'organised criminal group'. But let there be no misunderstanding: the total of these group constitute 'organised crime'. Subsequently, data which could be the foundation of a time series trend analysis to shed light on these claims are discarded in favour of 'future oriented' thinking based on the shaky methodology of Europol (van Duyne, 2007c).

This line of thinking is not a by nature given phenomenon. The research literature contains much off-mainstream publications, some if it by now 'classic' (Block & Chambliss, 1981, Block, 1991), casting a different light on the subject: organising crime as a way of doing things.⁹ In our research, having compared smugglers and economic crime-enterprises of various sorts, we came to the conclusion that the level of organising in the corporate crime field uses to be more sophisticated (van Duyne, 2006). There is also more collusive, if not corruptive interaction between perpetrators and the underworld to facilitate commercial criminal operations (Pashev, 2008 for VAT fraud; Tijhuis, 2006; Naylor, 2008; and Charney, 2009 for art crime). Some of these notions have filtered through to Organised Crime Threat producers at Europol and UN level. But lacking theoretical and methodological rigour, they were just fit into an endless enumeration of threatened or threatening regions and markets.

Extrapolating from this – thus far still unsystematic – empiric stock taking *per sector*, one may follow a more fruitful course: developing hypotheses about the future trends of these explored sectors, given a proper methodological control of the accompanying variables like criminal policy and related market factors. This requires more analysis per criminal sector and a stricter methodology than is common in this field. A suggestion for such a more precise approach has been put forward by von Lampe (2010) in his discussion of the prevention of 'organised crime' by paying more attention to separate components and a set of interconnected situations.

Such a trend extrapolation, could be considered a substantiated threat assessments not based on ill-designed questionnaires and police hunches ('intelligence'). It must be added (sadly) that the present state of data collection and management hampers such an undertaking. If policy makers and law enforcement agencies are really worried about organised crime developments, this would be the first challenge to address and to break out of the self-made tautology.

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⁹ For a proper overview of literature, see von Lampe et al. (2006)





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