

## **Crime and International Co-operation**

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### **Introduction**

It is difficult to talk rationally about trends in organised crime and about rational international responses to it. As John Maynard Keynes observed, politicians are often the slaves of some defunct economist, and this is equally true of most criminologists and, sadly, many bankers and policing organisations too. The only people who are really on top of this particular market are the *successful* criminals themselves, including the professionals – accountants and lawyers - who knowingly assist in laundering the proceeds of crime, and who are increasingly required as our controls on cash deposits get tighter.

I wish to commence by making a conceptual point. Terminology and clarity in the use of it *is* important. People often use the terms ‘crime’, ‘criminals’ and ‘organised crime’ fairly interchangeably, but whatever the benefits of this vagueness for making claims on resources and powers, it is risky. It is risky because it is easy for people to counter that there is no evidence that *most* villains use any sophisticated laundering techniques at all, nor that they are part of any disciplined hierarchical organisation, but rather that they operate in loose local or at most regional networks. We may counter that we never said that *most* villains were ‘organised’: what we are interested in is the higher echelons of offenders, or what one might term the ‘serious crime community’, *whatever crimes – from fraud to drugs trafficking – its members may be engaged in*. Furthermore, even if offenders are not organised in an obvious hierarchical way, this apparent lack of organisation makes it no easier for them to be dealt with: if anything, the contrary. (Indeed, they make proposals such as criminalising membership of criminal organisations such a fruitful source of income for lawyers.) But ‘crime’, ‘criminals’ and ‘organised crime’ all mean different things. We all know that crime, for example, is a far from homogeneous category, and that even ‘serious crime for economic gain’ is very open-ended. Perhaps Serious and Organised Crime may be the best compromise.

### **International Criminal Co-Operation: the Offender’s Perspective**

First, I want to present this issue from offenders’ perspectives. Although some groups and networks may commit several different sorts of crimes, one way we can cut ‘crimes’ is into the forms of criminal activity: drugs of different types, frauds of different types, extortion, etc., and to examine the different levels of international activity that each represents. Another ‘cut’ – which can be added to the types of crime engaged in - is by the *business functions* that are implicit in crime. These business functions are:

1. Financing the preparations for crime
2. Obtaining the physical or corporate tools of crime, domestically or internationally
3. Finding the people to carry out the crime

4. Effecting the crime, e.g.
  - Selling drugs or prostitution & other illegal services
  - Obtaining income from extortion
  - Obtaining goods or income from fraud
5. Reimbursing crime participants
6. Laundering the *profits* of crime

Then we may look at the extent to which these (a) require or (b) permit internationalisation. It is easy to see that, most drugs excepted, these roles *can* all be performed on a purely domestic basis. Even in the corporate fraud world, one can purchase one's company anywhere in the world from a local lawyer or from the host of company management firms conveniently advertising their wares in the flight magazine, *The Economist*, or the *International Herald Tribune*, prices graded according to

- (a) the reputation and legislative framework for secrecy;
- (b) the standing of the jurisdiction in the international business community; with a loading for
- (c) the associated costs of incorporation, which typically are higher in jurisdictions where some regulation has to be paid for.

It is important therefore to understand the internal logic of offenders' preferences, including the ways in which their lack of access to offenders in other countries or confidence in their integrity, etc. affect these preferences.

### **Factors influencing International Responses**

We might usefully divide action against trans-national crime into

1. demand factors; and
2. supply factors.

First the factors influencing demand for international co-operation, some of which I have heralded when discussing offenders' 'needs'. On the demand (or 'need') for international control side, what has changed arguably is not so much the *nature* of international crime but its technology and its magnitude, difficult though magnitude is to demonstrate. There has always been international fraud, narcotics trade, art crime, and smuggling of persons. Indeed, my historical work on bankruptcy fraud (in *The Phantom Capitalists*) found sophisticated scams in the nineteenth century (and, indeed, going back to the 17<sup>th</sup> century) that were no less difficult to deal with than are their equivalents today, especially since there were then no sophisticated global credit reference agencies or accounting firms to exchange data and judgements of trustworthiness across borders.

Obviously, new cross-border payment instruments have come into being, which are capable of being exploited criminally across frontiers. An example is the credit card, where one quarter of UK-issued card fraud (and a much higher percentage of French-issued card fraud, though this is because of their smart card plus PIN at point of sale) occurs outside the UK, though much of this is because our tourists have their cards stolen or copied overseas rather than because crooks steal cards in the UK and physically transport them elsewhere. Unless Spanish thieves are in league with British ones – which in this context is relatively rare – it would be a mistake to call it

international organised crime, *though both preventing credit card fraud and dealing with criminal cases do require cross-border co-operation*. In addition, there are the *counterfeiting* cases which, as a recent NCIS report by Wayne Smith stressed, are using commonly available programmes from the Internet and then manufacturing fakes: clearly this is a new crime and, to the extent that the Net could be considered international in character or the cards are used overseas, this is trans-national organised crime (though it can be done in small units divorced from major crime groups). In addition to EU fraud, the cross-border oil tax scams about which Alan Block has written rely on trans-national paperwork for their success, and require cross-border co-operation to combat. However, the advance fee frauds that litter our mailboxes or approaches that are prevalent in international hotels are not particularly modern, though the speed of international travel may make people feel a greater sense of control and give crooks a more certain getaway.

Paradoxically, despite the greater physical ease of drugs trafficking with contemporary transportation, recent advances in biochemistry have democratised the drugs market up to a point by making its supply less an accident of geography and climate, thus creating *less* need for trans-national transportation and foreign currency than previously. (Though the preferences for laundering may have an international logic.) So synthetics can be produced locally by competent local chemists, and even the damp and cool climate of Wales can grow cannabis at any time of year. Nevertheless, electronic funds transfer and international travel mean that the *process* of crime commission, and the dispersal of both the proceeds and the offenders across borders, have speeded up, creating a need for *faster* reaction and co-operation than existed before. As our recent report for the UN demonstrates (*Financial Havens, Banking Secrecy and Money-Laundering*, by Blum, Levi, Naylor and Williams, 1998), the growth in the number not just of tax havens but also of perniciously investigation-frustrating asset protection regimes in otherwise impoverished small island economies makes international crime control difficult, running up against conventional notions of sovereignty and democratic independence: freedoms that we are all formally committed to.

This brings me nicely to the '*supply side*' factors in international measures to deal with crime. These take two sorts of forms: mutual assistance in criminal justice and crime prevention. And they include both public and private sectors. There is no doubt at all that in the 11 years since the UN Vienna Convention and the Basle declaration of principles of banking regulation, we have moved an almost unimaginable extent on both prevention and mutual assistance. However frustrated some may feel when we are running operations and looking at the different legal regimes for undercover operations – to take a high point of divergence – or for the collection and transmission of evidence in fraud cases (especially for those of us in common law countries), there is no doubt that at a formal level, there are more international instruments in place and a greater focus on their *implementation* than ever before. To the extent that consistency of message is important, it is noteworthy that the Council of Europe, the European Union, FATF (and its regional offshoots), and the Organisation of American States have increasingly harmonised their activities in relation to corruption and money-laundering, assisted by the pre-accession requirements for EU Candidate members. Everywhere, the system of peer review and upwards pressure on performance is making a difference, the crucial feature of this second stage of strategy being the monitoring of *implementation*, not just of the legislation itself. One should

not be too naive about this: where co-operation threatens the economic core of the state's activities, a formalistic façade can be erected in which the practice of regulation differs from its apparent form. Furthermore, there are differences in quality of personnel available, and the bottom end states often cannot afford to pay for the levels of regulation available and recommended by their wealthier brethren. Whether an unintended side-effect of the OECD's harmful tax avoidance initiative will be to drive away some 'good business' from the offshore finance centres and give them greater incentive to take the bad business remains to be seen.

### **The Impact of International Crime Control Efforts**

So what can we estimate to be the effects of these international measures against trans-national organised crime? First, I want to make a conceptual point that is awkward for those of us who are enthusiastic crime control internationalists: is there any reason to suppose that if we take out particular groups, we will reduce the size of the criminal market as a whole? Is it better if we have the same amount of crime but that is not 'organised' to the same extent? Are we prepared to call 'same amount of but less organised' crime (a) improvement, (b) the same or (c) even worse than before (because we do not then know where the criminals are)? In other words, is it *organised* crime (or even worse, *international organised crime*) that is the primary social threat or are we mainly bothered about the fact that there is so much crime? This is an important question because it dictates what sorts of performance criteria we ought to be using to evaluate success. (Of course, in some offences like corruption and some frauds, crime levels may be hard to ascertain even from intelligence or social surveys. But it is unfortunate that so little attempt has been made by the Home Office to incorporate any fraud questions in its well established British Crime Surveys – see further, Levi and Pithouse, forthcoming, *White-Collar Crime and its Victims*, Oxford UP.)

It also leads us to some difficult policy questions. If we clamp down hard on those offshore finance centres that are making some real efforts to *reduce* money-laundering, will we simply move the money to jurisdictions over which we have less control and which have no inhibitions? From what we know about markets, profitability tends to generate ingenuity to sustain itself, and so we get bartering of cocaine from Colombia for heroin from Turkish groups in Europe which threatens our carefully constructed web of anti-laundering provisions, *though at some point, that part of the proceeds of drugs sales that constitutes 'profit' has to be stored in some medium of value.*

### **Trends in Crime**

It is easy, when focusing on a trend, to concentrate on the *rate of growth* of a particular phenomenon. This is fine for tackling emerging problems, but it may have an unintended consequence of focusing us on the new, forgetting the proportion of the total that it occupies. An illustration may be found in the area of credit card fraud, where alarm at the rise of counterfeiting and, especially, the electronic 'skimming' of one card number onto another or the abuse of Internet sales, may blind us to the risks posed by longer-existing phenomena such as the simple use of lost & stolen cards at retail outlets (see Levi and Handley, *The Prevention of Plastic and Cheque Fraud*

*Revisited*, Home Office, 1998). More generally, we may become obsessed with ‘computer fraud’, forgetting that deceptions involving massive inter-personal deceptions or collusion between people within and outside the firm or government department are far more important sources of fraud.

This brings me nicely back to money-laundering. Laundering is, of course, a *derivative* crime, stimulated by the need to hide the source of funds and/or transfer them into safer territories or forms of saving. It therefore follows that that *the need to launder* entails that:

1. The offender wishes to save the proceeds of crime (rather than simply spend them);
2. The offender wishes to search out a relatively safe medium of storage for his/her investments. The preference will depend on the judgement about
  - (a) the relatively safety of the method (from the authorities, including trustees who themselves might steal the money, perhaps appreciating that the launderer will seldom be in a position to complain, though Kalashnikovs may be more effective than the courts as a method of airing and redressing grievances). We should note that this vulnerability in turn is affected by the form of the criminal income – tax at one end, and drugs/terrorism at the other of the seriousness spectrum – and by the identity of the pursuer countries – with the US being the most feared because of its jurisdictional reach - and
  - (b) the relative costs of and income from storage.

*Even if the vast majority of criminals do not launder in a sophisticated way, we may still be rationally concerned about those that do.* If I may be critical for a moment about popular discourses about money-laundering and organised crime, *we need a more subtle view about market segmentation in criminal organisation and methods than we often see in the media.* Given the desire to launder (rather than simply having a good time), the choice of method appears to be affected by:

1. the offender’s own technical knowledge of anti-laundering controls;
2. the offender’s access to professionals who are willing to help him/her;
3. the amount of money involved, which affects the methods that is makes sense to use and the regularity of use of those methods.

Even the most sceptical can expect a certain amount of change over time in the techniques adopted, or at least in the *places that are used* as intermediary or ends at the layering and integration stages (where these are distinct). It would be strange, though theoretically possible, if there were no effects at all on laundering behaviour of the anti-laundering measures and of offender *perceptions* of those methodologies. This may be manifested in increased laundering costs, which allegedly have risen from 6-8% at the beginning of the 1980s to up to 20% by the mid-1990s (UNDCP *World Drugs Report*, 1998: 141). (Though to know how the *amount* of laundering has changed, or even whether people are doing the same sort of thing but demanding more ‘rent’ for taking heavier risks, cannot be deduced. To the extent that offenders are well informed, how do we find out about the extent of what they have done, except where the flows are so gross – for instance, the flows of money into Austrian banks from Indonesia in the first quarter of 1998 – that they cannot be accounted for except arguably as illegal capital flight?)

But we run the danger of assuming that which has to be proven: a high level of sophistication or awareness by offenders. Offender flexibility – in techniques for

offence commission and with money - may be much lower than we believe. Nor, given how little we know about how people (especially those unconvicted, but even those later convicted) laundered money in the past, is it easy to work out just what is *new* about the techniques they are using. Although some excellent work has been done on money-laundering typologies by and for the FATF, it is as well to admit that despite this work, we lack a sophisticated understanding of the incidence and prevalence of current techniques even from the *systematic* analysis of detected cases, let alone from those that are *undetected*: the vast majority, if the implications of the gigantic disparity between estimates of laundering volumes and the tiny sums ordered to be confiscated are properly absorbed. We need to be less confident in our statements about money-laundering.

### **Money-laundering methods: some case studies**

The World Drugs Report (UNDCP *World Drugs Report*, 1998: 138 et seq.) sets out some techniques as:

1. 'Smurfing', where 'the cash is exchanged for bearer cheques or international money orders, which are then deposited into the trafficker's account by an intermediary of the same organization....In most cases [smurfs] need know nothing beyond the amount of cash they are required to convert and their fee'.
2. 'The use of cash-intensive businesses in money-laundering is extremely prevalent.
3. Accounting techniques under which the difference between the artificially high invoice price and the real price of the goods and services is deposited offshore. As the Report acknowledges, this is used also by those who wish to avoid taxes and duties.
4. Private investment techniques, including 'loan backs', where the launderer makes an investment with a loan secured on his offshore funds, which is then repaid.
5. Use of non-bank financial institutions, such as cashing in large single premium payments, getting a refund on part-used plane tickets; and cashing in casino chips.
6. Investment in government bonds as bearer instruments, presumably for cash.
7. Opportunistic lending/acquisition of companies on the verge of bankruptcy; and
8. Exploitation of underground banking systems.

Let us take as an example the case against the Amado Carillo Fuentes 'cartel'. A US Internal Revenue Service affidavit filed in April 1998 states that Fuentes gained control of the Banco Anahuac in June 1996 and 'may have' laundered *\$100 million a month* in drugs trafficking proceeds. This is an enormous amount of money. How did they do it? They bought for only \$3.5 million a 20 per cent stake via a holding company, and they used this as a legitimate front to send money to other accounts that they had opened. It could hardly be said that these methods were very sophisticated.

1. The wife of a principal 'lieutenant' opened two accounts in February 1994 at the Republic National Bank in Miami, listing an *inactive* social security number of her account application. Until April 1997, the balance was never more than \$75,000, but for the next three months, more than \$645,000 was wired in and four cheques totalling \$571,000 were drawn on the accounts. In other words, fast money in and out.
2. Another 'lieutenant' deposited five *consecutively numbered* cheques drawn on the account of a Mexican *cambio* totalling \$1,191,332 into his bank account. (Incidentally, neither reported all his income to the Mexican tax authorities over this period, though one did report \$500,000 in one year: the other did not report any

income for four years, though he was registered as an employee of the Mexican National Electric Company at a monthly salary of \$1,250!) What might one deduce from this? Either that the launderers were exceptionally stupid or ill informed, and/or that they did not expect any American banker or FINCEN to pick up what – at least in retrospect – seems to be a very modestly disguised trail. The length of time between major crime commission and detection was comparatively small, given the inherent nature of co-operation, even if the sums laundered were quite substantial during them. One should grant that the method of purchasing control over the banking group was quite subtle, but if major Mexican crime groups - with their unlimited access to professional help and the ability to pay for it - are using such crude methods for laundering such large sums, what does this tell us about what other groups are doing?

Another major Mexican investigation involved Raul Salinas, brother of former Mexican President Carlos, who in February 1999 was jailed for 50 years for his role in murdering his brother in law, former Attorney General Ruiz Massieu. Investigators claimed in September 1998 that they had just uncovered 140 domestic and foreign bank accounts linked to him, making a total of 289 accounts containing \$243 million, of which \$95 million was in Mexican accounts. The Mexican courts have cleared Salinas of money laundering – which might require proof that the funds came from drugs or particular crimes – but the purchase of 120 homes, land, ranches and apartments demonstrate that real estate remains a major (if not new) method of placement without any obvious need for reintegrative methods. His defence was that for some (not self-evident) reason, all these funds were passed to him by friends as a sort of broker for investment on their behalf.

The contexts of different countries provide different opportunity structures for laundering. Companies overseas may remit dirty money to non-resident accounts in Central European countries such as Slovenia, which had previously been opened by foreign citizens as agents of companies from off-shore finance centres (from the Channel Islands, for example). Funds from the company accounts were sent by foreigners to their private non-resident accounts with other banks in the Central European country, or else they drew it out in cash and simply smuggled it abroad (though they then might have difficulties in depositing funds without arousing suspicion). In one case, a Latin citizen told a Central European banker of his need to expand his operations, and guaranteed the loan of £500,000 on the basis of a deposit of this sum in the same bank by another Latin citizen. This deposit had in turn been remitted from non-resident accounts of several foreign companies from offshore centres. The loan was made to the corporate borrower abroad, upon which the borrower terminated the loan, leading the bank to call in the guarantee. The credit deal documentation was used to legitimise the deal to the Latin country.

Privatisation in Eastern Europe has provided, and continues to provide, abundant means not just for politicians and managers to under-value businesses and buy them up at under-value but also, via the purchase for cash of vouchers, to enable launderers to buy into companies. On the other hand, one must question why even launderers would wish to buy into some of the desperately unprofitable businesses that have been privatised: one would not want to take the risk of losing funds that have been so painstakingly acquired through drugs trafficking or other crimes. It appears to be more common simply to try to break the continuity of the money trail by changing money into cash and then depositing it elsewhere, though the number of places left

where this is possible for *large* deposits is diminishing. (Though British criminals may be willing for Dutch bureaux de change to report the currency transactions, because by the time the authorities follow them up, they will be back home again! However, given international co-operation, they might expect a visit at home subsequently.)

This in turn raises a wider question: granted that suspicious transaction reports may be made, what will the authorities do? Unless they have the resources or some ready basis for surveillance, they simply have an open-ended suspicion with no demonstrable predicate offence, especially none within their jurisdiction. As mutual co-operation in sharing transaction reports proceeds, this *may* generate investigation in the 'home country' – if such a concept makes sense – but again, there may be problems in finding the originating crime.

So to conclude, we *have* made enormous strides in co-operation, and henceforth, the EU, FATF and the Council of Europe will be monitoring the *speed* of responses to requests for assistance, giving us a better database than gut feelings or ad hoc cases, even if these aggregate data mask those individual cases that are the ones that really matter or where corruption rears its ugly head.