



Organized Crime, Illegal Markets, and Police Governance¹

Yvon Dandurand²

A discussion of organized crime and governance is not complete until it addresses the question of police governance and its impact on the fight against organized crime, illicit markets and money laundering. Given the relative failure of law enforcement to control organized crime and contain illegal markets, a focus on police governance forces us to consider how law enforcement priorities are set and law enforcement strategies adopted and implemented. This in turn may lead us to conclude, as I am about to suggest, that we need to both increase the effectiveness of law enforcement efforts and reduce our expectations with respect to the impact that law enforcement can really have on controlling organized crime and illicit markets.

In our discussions thus far, we acknowledged that public awareness of organized crime and its consequences is an important starting point, but that we also need to find more effective ways to control organized crime and counter its activities. Most of us recognize that law enforcement and regulatory enforcement are crucial elements of effective action against organized crime, yet we must also recognize that the actual impact of law enforcement is usually quite limited.

Countering organized crime requires establishing effective police governance and accountability. Governance includes key management issues such as policy formation and implementation, the determination of priorities and strategies, the allocation of resources, deployment strategies and decisions, the implementation of standards, the prevention of corruption internally, and the maintenance of internal discipline. It follows that weak governance can undermine the effectiveness of police actions against organized crime.

At the same time, transnational organized crime entails policing in a transnational context and, with this, come the pressing and complex governance and accountability issues presented by the growth of cross-border policing,

¹ Presented at the International Conference on Organized crime and Better Governance, held by the Organised Crime Observatory, Palais des Nations, Geneva, November 1, 2019.

² Professor Emeritus, School of Criminology, University of the Fraser Valley, and Fellow and Senior Associate, International Centre for Criminal Law Reform and Criminal Justice Policy, British Columbia, Canada.

transnational policing, and the growing reliance on multi-jurisdictional police teams. In many instances, one is not talking about a single police force, but broad and ill-defined security networks.³ As Walsh and Conway explained, “(m)achinery that is struggling to cope with the governance and accountability challenges presented by the domestic operations of home based police forces may well prove seriously deficient when confronted with the formers’ activities on other sovereign territories, or domestic operations by foreign based police forces”.⁴

We must also keep in mind the unavoidable fact that prohibiting certain activities and services, and thereby making some markets illegal, creates juicy opportunities for organized crime. Such prohibitions also lead to unrealistic public expectations about the role of law enforcement in enforcing them or eliminating the resulting illicit markets.

In many ways, the prohibitions and accompanying criminalization also heightened the risk of corruption in law enforcement agencies, one of the clear lessons to be drawn from decades of the so-called war on drugs. Criminal organizations conspire to buy the complicity of key officials, particularly law enforcement and criminal justice officials, and often succeed in weakening law enforcement initiatives and operating with relative impunity. Indeed, the most successful criminal organizations tend to be those that are able to make systematic use of corruption and intimidation to weaken official controls and law enforcement.⁵ This, we are forced to acknowledge, is one of the many reasons why current law enforcement initiatives to protect fisheries, forests, or the environment against organized crime activities are unfortunately doomed to fail.⁶

Because of the dynamic nature of organized crime, police and prosecution services must constantly refine and perfect their strategies. They need to take into account how criminal elements are themselves acting strategically so as to defeat detection and prosecution. They must move beyond reactive responses and adopt strategic and proactive approaches to the investigation and prosecution of organized crime. They must also be able to sustain their efforts over time, something which in itself also presents some real difficulties.

However, it seems to me that we are not always very clear about exactly what we expect law enforcement to do to counter organized crime. In fact, we witnessed a progressive shrinking of law enforcement promises or undertakings in that regard.

³ Whelan, C. & Dupont, B. (2017). Taking stock of networks across the security field: A review, typology and research agenda, *Policing and Society*, 27(6): 671-687.

⁴ Walsh, D.P.J. & Conway, V. (2011). Police governance and accountability: Overview of current issues, *Crime, Law and Social Change*, 55: 61-86, p. 74.

⁵ Narcotics Control Board (2011). *Report of the International Narcotics Control Board for 2010*, pp. 1-12.

⁶ See: INTERPOL (2016). *Uncovering the Risks of Corruption in the Forestry Sector*. Lyon: International Criminal Police Organization - INTERPOL.

In North America, if not also elsewhere, we have gone from stating law enforcement objectives in terms of “eliminating and eradicating” organized crime, to “dismantling” criminal organization, to “combating” organized crime, and then to “weakening” criminal organization, and finally to “disrupting criminal networks”. But what do we mean exactly by “disrupting criminal networks”? How is this understood by law enforcement officials? Does it simply amount to punctual, disjointed and unsustainable investigations, occasional crackdowns, and sporadic prosecutions? What results can this kind of approach realistically be expected to yield? Does it mean indeed that we have finally agreed to accept organized crime as inevitable? For me, the idea of disrupting organized crime evokes the image of a boy poking a hornets nest with a short stick; nothing too good can come out of that.

Law enforcement leaders often express a defeatist attitude and justify their lack of fervor for the battle against organized crime and money laundering by stating an apparently obvious conclusion: “We are not going to arrest our way out of this”. In my view, this amounts to an attempt to manage public expectations by playing down the role of law enforcement as part of a broader strategy. It barely hides the equally obvious fact that regulating and criminalizing various conducts cannot possibly have any real effect unless these measures are supported by effective enforcement.

In my province, British Columbia, the lack of effective law enforcement against organized crime and money laundering has led a keen observer to conclude that, “(...) both police and prosecutors have essentially checked out of the zone, out of frustration with statutes and court decisions which have made it extremely difficult to pursue financial crime investigations.”⁷ There obviously are some genuine obstacles to effective law enforcement action against organized crime, financial crime and money laundering, but they in no way justify inaction.

Police Crackdowns and their Limited Impact

In reality, as surprising as this may sound, law enforcement operations against organized crime are still rarely devised as part of a broad and well thought out strategy to directly confront and reduce organized crime. Disrupting organized crime activities is presented as the goal of law enforcement operations. Unfortunately, in the near complete absence of an evidence-based comprehensive enforcement strategy, these disruption efforts often amount to little more than occasional police crackdowns. Furthermore, there rarely is much thought given to what may be the unintended, counterproductive, or detrimental effects of such disruption.

⁷ German, P. (2019). *Turning the Tide: An Independent Review of Money Laundering in B.C. Real Estate, Luxury Vehicle Sales & Horse Racing*, Ministry of the A.G. of British Columbia, p. 19.

Most police forces face situations of mounting public pressure to demonstrate that they are taking decisive actions to address a particular public safety threat or crime issue attracting public concern. Whenever they face a resurgence of violence, a “moral panic”, or some credible media reports of organized crime scandals, they are understandably tempted to resort to some kind of spectacular response to forcefully convey the message that the issue is being addressed and that the desired public safety results are imminent. The creation of a special squad to address the issue or the launching of a special initiative to “crack down” on the perpetrators both fall within that category of responses, yet their effectiveness is dubious at best.⁸ They may seem to offer an acceptable substitute to longer term, strategic and intelligence-based crime reduction responses, but their costs, limited impact and potential counter-productive effects ought to inspire greater caution in their use.

Police crackdowns are sudden and dramatic surges in police activity or increases in police officer presence and enforcement activities either for specific offences or for all offences in specific places. Crackdowns can be categorized along a number of important dimensions, including the extent to which the initiative involves increased police presence and enforcement actions in an area, the tactics used by police officers, the geographic area in which the initiative is concentrated, and the specific offences or groups that are targeted. Some crackdowns emphasize police visibility only, whereas others emphasize police interventions. According to Scott, a primary objective of crackdowns is to create, in the criminal population, the perception of an increased threat of apprehension and intervention.⁹ Other crackdowns may aim to increase the transaction costs for certain criminal activities.

In a typical crackdown, the intended effect of the initiative is rarely spelled out in any great detail and the public support they frequently attract seems to be partly the result of the fact that their objectives are defined in very vague terms, such as “reclaim the streets”, “disrupt crime”, “give a message to the criminals”, or “eliminate human trafficking”. Such statements of law enforcement objectives are more akin to political slogans than to a policing strategy. They typically defy any attempt to measure their success.

Crackdowns are typically costly and therefore only conducted over a fairly short period of time. Even when immediately successful in addressing a given issue, crackdowns do not appear to have a long-term crime reduction effect.¹⁰ As such, they do not constitute a sustainable intervention strategy, nor an effective use of

⁸ Sherman, L. (1990). “Police crackdowns: Initial and residual deterrence”, in M. Tonry and N. Morris (Eds.), *Crime and Justice: An Annual Review of Research*. Vol.15. Chicago: University of Chicago Press.

⁹ SCOTT, M. (2003). *The Benefits and Consequences of Police Crackdowns*. Washington, D.C.: U.S. Department of Justice, Office of Community Oriented Policing Services, p 3.

¹⁰ Nunn, S., Quinet, K., Rowe, K., & Christ, D. (2006). Interdiction day: Covert surveillance operations, drugs, and serious crime in an inner-city neighborhood”, *Police Quarterly*, 9(1): 73-99, p. 75.

resources. The success or impact of a crackdown is rarely measured carefully. When a crackdown appears to produce an immediate impact on a crime problem - often nothing more than a predictable geographic displacement effect - little attention is given to ascertaining whether that impact is a lasting one or whether achieving it was worth such a considerable investment of resources. In that sense, police leadership often manages to avoid being held accountable for resorting to such initiatives and that is, I would suggest, part of what makes them so appealing.

By the same token, participation in a crackdown can significantly raise the public profile of the police leaders involved. Ambitious officers everywhere have figured out that a special initiative, whether it is the creation of a new squad, a special task force, or a “crackdown” offers significant potential for future promotions. Given that the results produced by such initiatives are rarely measurable in the short term, it is therefore possible for someone to reap the benefits of their new public profile without being too concerned about whether the initiative is a success or not.

One should perhaps also note the attempts made to systematize disruption activities. For example, several years ago in Canada, the Royal Canadian Mounted Police (RCMP) attempted to use intelligence-led policing methods as a model to prioritize organized crime investigations and disruption activities (Sleipnir). It designed a threat-measurement technique and a “harm prioritization scale” using strategic intelligence analysis data to assess and rank-order the relative threat posed by organized criminal groups to Canadian society.¹¹ It also relied on a “disruption attributes tool” using forms filled out by field personnel to explore the perceived disruption of key attributes of a targeted organized crime group’s business (e.g., core business, financial, personnel) following a disrupting police intervention.¹² Unfortunately, it is unclear what results this approach actually yielded in terms of improving the effectiveness of targeted police interventions.

Crackdowns, as controversial as they might be, are likely to remain a popular police strategy and a poor substitute for good strategic planning, evidence-based approaches and methods, and sustained longer-term enforcement initiatives. They are easily attacked, even if they tend to be politically popular. Because the net benefits of that approach over others are rarely if ever assessed, one is not likely to arrive at a definitive answer about its merits.

General Impact of Disruption Activities

We must ask ourselves what the real impact of disruption activities on organized crime might be. A most immediate impact is often crime displacement. For

¹¹ RCMP (2007), *Using intelligence-led policing as a model to prioritize organized crime investigations: a Canadian perspective*, Ottawa: Royal Canadian Mounted Police, PowerPoint presentation, available at: scm.oas.org/pdfs/2007/DPT00005T.ppt.

¹² Ratcliffe, J. H. (2016). *Intelligence-led Policing* (2nd Edition). New York: Routledge.

example, Mexican-based organized crime groups are diversifying their product lines and fractionalizing their organization to avoid disruption and dismantlement.¹³ The pattern holds true in both the digital and the physical crime universes.¹⁴ Just as crackdowns on urban sites with high crime levels tend to be followed by crime geographical relocation, actions taken in relation to illegal website and online networks used for cybercrime tend to be followed by relocation of criminal activities somewhere else in cyberspace.

Police interference and disruption are most likely seen by criminal groups as simply part of the business risk to be mitigated and managed. As was suggested earlier by another speaker, disruptive law enforcement actions certainly engender greater sophistication on the part of organized crime groups, including the use of various technologies and methods to anticipate and foil disruption activities. Disruption also tends to generate violence, particularly among competing criminal groups for whom the weakening of one organization by a police intervention is an opportunity to grow their own business, or within a criminal organization where individuals and factions compete for ascendancy following the arrest or neutralization of prominent group members. Additionally, disruption activities can increase the risk of police corruption, as criminal organizations attempt to bribe their way out of sporadic police interventions or, better still, direct police interventions against their competitors.

Clearly disruptions strategies are no substitute for proactive enforcement strategies based on sustained efforts to understand the structure of the targeted criminal organizations, the changing nature and modes of their operations, or the dynamics of the markets they exploit.¹⁵

Measuring the Success of Law Enforcement Activities

We are still lacking adequate metrics to measure the relative success of various enforcement strategies against various forms of organized crime. The media are full of reports emphasizing the number of kilos of drug, the number of firearms, or the amount of money seized as a result of police crackdowns and investigations. These are hardly suitable measures of success in neutralizing criminal organizations.¹⁶ As Professor Passas mentioned earlier today, law enforcement organizations have learned to “fake success” and that leads not only to a lack of accountability but also

¹³ Public Safety Canada (2019). *2019 Law Enforcement Roundtable on Drugs - Meeting summary*. Ottawa, PSC, September 2019.

¹⁴ Wood, E. et al. (2004). Displacement of Canada’s largest public illicit drug market in response to a police crackdown, *Canadian Medical Association Journal*, 170 (10): 1551-6. Ladegaard, I. (2019). Crime displacement in digital drug markets, *International Journal of Drug Policy*, 63: 113-121.

¹⁵ Levi, M. & Maguire, M. (2004). Reducing and preventing organized crime: An evidence-based critique, *Crime, Law & Social Change*, 41: 397-469.

¹⁶ Mackenzie, S. & Hamilton-Smith, N. (2011). Measuring police impact on organised crime, *Policing: An International Journal of Police Strategies & Management*, 34 (1): 7-30.

to the reinforcement of misguided and ineffective enforcement policies and strategies. The problem is not unique to this aspect of law enforcement. In fact, there continues to be a general lack of credible performance measures for law enforcement agencies beyond the somewhat misleading reliance on crime statistics, the number of crimes reported to the police, the level of public confidence in the police expressed in public surveys, or the celerity of police response to calls for service. Clearly, a new performance measurement framework for organized crime policing agencies is urgently needed.

Limited Impact of Law Enforcement on Organized Crime Activities

The same forces that benefit legitimate businesses - globalization, ease of communication and technology – have made organized criminal networks and markets more resilient than ever. In fact, technology has enabled whole new illegal industries. New forms of digital crime emerge daily requiring the constant development of specialized investigation approaches. For example, the Internet has made new and more effective avenues available for the marketing and selling of endangered animals and illicit wildlife products, frustrating traditional law-enforcement approaches.¹⁷ Law enforcement agencies struggle to address cybercrime in a coherent manner.¹⁸ Some observers even wonder whether we could soon be facing an era where digital crime can no longer be effectively policed.¹⁹

Police leaders everywhere have at times been forced to admit police forces' inability to control organized crime and the relatively limited impact of their current strategies. In Canada, the former Commissioner of the RCMP admitted that the federal police force had noticed a resurgence in outlaw motorcycle gangs or organized crime activities, but also that essential investigation resources had been diverted away from organized crime investigation and prosecution.²⁰ In the Netherlands, a report of the Dutch police's union referred to ineffective practices against organized crime and a lack of police capacity to combat it, and the Dutch minister for justice and security acknowledged the problem.²¹ In Great Britain, the head of the National Crime Agency (NCA), admitted that organized crime in the UK operated all but unchecked and called for a fundamental re-examination of the

¹⁷ Haysom, S. (2019). *In Search of Cyber-Enabled Disruption - Insights from the Digital Dangers project*. Geneva: The Global Initiative against Transnational Organized Crime, February 2019.

¹⁸ Walker, S. (2019). *Cyber-Insecurities*. Geneva: The Global Initiative against Transnational Organized Crime, March 2019.

¹⁹ Horsman, G. (2017). Can we continue to effectively police digital crime?, *Science and Justice*, 57: 448-454.

²⁰ Stone, L. (2017). "RCMP's Bob Paulson sounds alarm on organized crime in exit interview", *The Globe and Mail*, June 29, 2017.

<https://www.theglobeandmail.com/news/politics/rcmps-bob-paulson-sounds-alarm-on-organized-crime-in-exit-interview/article35507580/>.

²¹ "Netherlands becoming a narco-state, warn Dutch police", *The Guardian*, February 20, 2018. <https://www.theguardian.com/world/2018/feb/20/netherlands-becoming-a-narco-state-warn-dutch-police>

policing model, including police governance. In her view, the fragmented structure of police forces is leaving Britain with “little to no capability to respond to modern, global criminals”.²²

Successful investigations that are actually capable of weakening or dismantling international criminal organizations are still fairly rare. That failure to seriously confront organized crime is clearly evidenced by its troubling proliferation and its penetration of every sector of social, commercial and economic activity, as well as the escalation of gang violence. Violence itself, including assassinations, develops into a marketable commodity.²³ Impunity reigns. Yet, the fact that most law enforcement strategies have thus far largely proved ineffective in combatting most forms of organized crime is something that has received surprising little attention. This, we all suspect, is due to the fact that the necessary law enforcement performance data do not exist. It is unfortunate, as Professor Zvekic observed during this meeting, that so many law enforcement agencies have been able to continue to promise to combat organized crime and corruption without really doing much about it.

Tactical targeting of individuals and groups is insufficient. What law enforcement agencies need is a capacity to develop a better understanding of the markets (licit and illicit) that fuel organized crime, including financial markets. Organized crime has evolved into complex, flexible, highly adaptive networks, but law enforcement methods are often failing to adjust or are lagging behind. Current approaches are flawed because of a lack law enforcement agility to match the fluidity and adaptability of criminal networks. Furthermore, despite attempts to systematically use law enforcement data and apply relational analysis for intelligence purposes, including for mapping and understanding criminal networks, law enforcement understanding and penetration of networks that span across borders are still extremely limited.

Investigations of financial crimes, including money laundering and corruption, remain very weak everywhere. The proceeds of these crimes are quite easily dissimulated and protected against law enforcement.²⁴ Financial crime patterns facilitated by modern technology, international banking practices and a lack of corporate transparency, have evolved rapidly and rendered many of the current law

²² “Organised crime in the UK is bigger than ever before. Can the police catch up?”, *The Guardian*, November 22, 2018. <https://www.theguardian.com/uk-news/2018/nov/22/uk-organised-crime-can-police-catch-up-national-crime-agency-lynn-owens>. Also: Townsend, M. (2019). “UK’s organised crime threat at record level, warns National Crime Agency”. *The Guardian*, 12 May, 2019. <https://www.theguardian.com/world/2019/may/11/police-cuts-organised-crime-national-crime-agency>.

²³ Shaw, M. (2017). *Hitmen for Hire: Exposing South Africa’s Underworld*. Johannesburg: Jonathan Ball Publisher.

²⁴ Bullough, O. (2018). *Moneyland: Why thieves and crooks now rule the world and how to take it back*. London: Profile Books.

enforcement practices obsolete. In any event, law enforcement efforts with respect to financial crimes and money laundering are still very limited and unfocussed. For example, one notes a recurring law enforcement pattern in which financial intelligence and other forms of intelligence are amassed that never get acted upon. The actual use of the intelligence thus gathered is often incommensurate with the efforts and costs of gathering it. The thresholds for launching financial crime investigations and, in particular, international investigations are usually very high given the high costs of such investigations and their low expectation of success.

There are clearly massive amounts of suspicious financial transactions that are detected but rarely followed up by effective investigations. A report produced by a panel commissioned by the British Columbia government estimated that \$5 billion had been was laundered through that province's real-estate market in the previous year out of \$47 billion in Canada as a whole. In the words of the report, "there is a lack of the specialized skills and abilities needed to effectively investigate the complex, secretive financial arrangements used to launder money at both the law enforcement and regulatory levels. There is also a complex web of federal and provincial agencies involved, which presents a significant challenge in terms of cooperation and coordination".²⁵ In that same province, Peter German was tasked by the Attorney General to examine why so few money laundering cases ever lead to a prosecution. German found that there were no federal RCMP officers dedicated to criminal money laundering investigations in that province in spite of the fact that such investigations had publicly been identified as a priority for many years.²⁶

In spite of their limitations, current methods of combatting organized crime, including the so-called modern methods of investigation promoted by the United Nations Convention against Transnational Organized Crime (UNTOC) (surveillance, infiltration, use of agents and informants, controlled delivery, etc.), are still useful. They are part of the toolbox, but clearly insufficient. UNTOC's promise of greater international cooperation in law enforcement has been a disappointment. The dynamic nature of transnational organized crime requires countries and law enforcement agencies to constantly refine their cooperation strategies.²⁷ International criminal procedure and law enforcement cooperation have experienced some striking changes since the adoption of the Convention.²⁸ As I argued elsewhere, western nations have poured hundreds of millions of dollars into developing an international cooperation regime, but the results of these efforts

²⁵ Maloney, M., Somerville, T., & Unger, B. (2019). *Combatting Money Laundering in BC Real Estate*. Report prepared for the Minister of Finance and Deputy Premier of British Columbia, Victoria (BC), March 31, 2019

²⁶ German, P. (2019). *Dirty Money - Part 2*. Victoria, Ministry of the Attorney general of British Columbia, March 31, 2019.

²⁷ Harfield, C. (2008). The organization of 'organized crime policing' and its international context, *Criminology and Criminal Justice*, 8(4): 483-507.

²⁸ Sadoff, D. A. (2016). *Bringing International Fugitives to Justice, Extradition and its alternatives*, Cambridge: Cambridge University Press.

have been disappointing.²⁹ In fact, the extreme politicization of international cooperation in criminal matter and other practical and technological challenges are making it more problematic than ever before. Some countries provide safe heavens where criminals can operate with impunity and tuck away and freely use the proceeds of their crimes. They are the weakest link in the chain of international cooperation.

Proactive investigations of major criminal networks are still fairly rare. Given the relatively few successful investigations of organized crime activities, one may well ask: why is law enforcement so inept at detecting and investigating corruption and organized crime, when investigative journalists seem to be far more successful in doing so? In Canada, for example, few if any of the major investigations of corruption cases of the last decade would have been initiated if had not been for the work of courageous journalists? Should we not be troubled by the fact that journalists seem so much more effective than police investigators at unraveling and exposing criminal conspiracies of every kind?

To What Extent Is Organized Crime Really a Law Enforcement Priority?

The fight against organized crime competes with other law enforcement priorities. Proof of this can be found in the frequent diversion of police resources (experienced investigators, crime analysts, forensic experts, etc.) away from organized crime investigations, as was the case in Canada after a relatively minor terrorist attack.³⁰ For example, how do we reconcile the public discourse about the seriousness of the threat posed by organized crime with the fact that crime analysts who are so critical to the success of any sophisticated effort to understand and corner criminal networks are frequently diverted to deal with other more parochial or trivial law enforcement priorities, or simply to satisfy bureaucratic requirements (such as preparing data for the agency's glossy annual report).

The Role of Police Governance and the Setting of Law Enforcement priorities

Unfortunately, too little attention is being paid to the development of effective police governance models, including the role of civilians in governance, policy setting, and oversight. Performance measurement and accountability mechanisms are often weak. In fact, most countries struggle to find a balance between preserving some level of law enforcement independence to protect it against undue political interference, and the need for deeper accountability for police practices, conducts, use of resources, and results.

²⁹ Dandurand, Y. (2015). Implementation of transnational criminal law: Issues and challenges, in Boister, N. & Currie, R. J. (Eds.), *Routledge Handbook of Transnational criminal Law*. London: Routledge, pp. 437-451.

³⁰ Stone, L. (2017). "RCMP and Organized Crime (Commissioner Bob Paulson): RCMP's Bob Paulson sounds alarm on organized crime in exit interview", *The Globe and Mail*, June 29, 2017. <https://www.theglobeandmail.com/news/politics/rcmps-bob-paulson-sounds-alarm-on-organized-crime-in-exit-interview/article35507580/>

There is always a risk of police lawlessness and corruption. There is also a risk of collusion between police, politicians, and criminal elements leading to the institutionalization of organized crime. As Bayley and Stenning remind us, a fundamental problem that confronts every democracy is how elected governments can “create and manage police so that they act in the public interest while avoiding the temptation to use them for their own partisan advantage”.³¹ Noninterference in investigations and other operational matters “can wax and wane as a virtue”.³²

Not all police organizations understand and accept the need for civilian input and independent oversight over the setting and implementation of law enforcement priorities. Yet, the setting of law enforcement priorities and concrete goals with respect to organized crime is crucial.

How are law enforcement priorities established and maintained? In many instances, the main determining factor for priority setting is the budgetary process during which the need for sustained and intensive law enforcement efforts is often sacrificed to the need to balance a budget. In other instances, issues whose impact is primarily local receive the attention of decision makers, while those affecting other communities are seen as a low priority. This is the case, for example, when law enforcement agencies deal with transnational crimes whose impact is primarily felt in other countries or jurisdictions. This is at play when local law enforcement priorities are set with respect to the control of certain types of transnational crime, such as migrant smuggling or human trafficking, depending on how these issues are locally defined and whether they are perceived as a threat.³³

Several other factors affect decisions about law enforcement priorities and activities, including the perceived likelihood of success of an investigation or prosecution, media and other public pressures on law enforcement, local law enforcement priorities as perceived by the population or revealed through surveys, the level of proactive engagement of police boards or police commissions. One often notices how narrow local law enforcement priorities compete with and prevail over broader crime investigations whose immediate impact is not necessarily obvious to the community, as is often the case for various forms of financial or covert organized crime. Finally, in the case of cross-jurisdictional enforcement taskforces, their operations often lack the strong governance and oversight

³¹ Bayley, D. H. & Stenning, P. C. (2016). *Governing the Police: Experience in Six Democracies*. London: Transaction Publishers, p.1.

³² Idem, p. 148.

³³ Dandurand, Y. (2017). Human Trafficking and Police Governance, *Police Practice and Research*, 18 (3), 322–336. Also: Dandurand, Y. & Jahn, J. (2020). The failing international legal framework on migrant smuggling and human trafficking, in J. Winterdyk and J. Jones (Eds.), *The Palgrave International Handbook of Human Trafficking*, Switzerland: Palgrave Macmillan, Cham.

structures needed to independently review enforcement priorities and provide direction.

At the community level, organized crime rarely seems to score high on the priority scale, unless it is associated with local violence or another immediate threat to that community. Law enforcement priorities, when defined at the local level, tend to be relatively parochial. Local communities are not necessarily averse to law enforcement strategies that simply eliminate an immediate threat or result in displacing crime to another community. When guided by the wishes of the immediate community they serve, police end up prioritizing enforcement actions focused on local street gangs, particularly when they are violent, as opposed to focussing on major criminal organizations that are more adept at controlling violence within their own ranks or leave it to minor players in the gang landscapes.

At the national level, a lack of law enforcement cooperation and coordination can also be a major governance issue. In fact, it frequently is. For example, the UK 2018 Serious and Organised Crime Strategy acknowledged a number of governance issues, including the fragmentation of law enforcement agencies and the lack of effective coordination: “At the local, regional, national and international levels, we will align our collective efforts to respond as a single system. We will improve governance, tasking and coordination to ensure our response brings all our levers and tools to bear effectively against the highest harm criminals and networks”.³⁴ The Head of the National Crime Agency, also claimed that the fragmented policing structure and therefore governance have left Britain with little to no “capability to respond” to modern, global criminals. “It is absolute madness”, he added, “to tackle 21st-century global crime with police officers deployed according to a 19th-century arrangement.”³⁵ The 2018 National Security Capability Review noted that transnational organized crime had grown faster than any country has been able to respond to and that urgent measures are required to build a law enforcement capacity to respond to that threat, as part of the whole-of-government approach to serious and organized crime.³⁶

Capacity Issues

There is an extremely limited law enforcement capacity to conduct sustained and complex fraud and financial investigations and, hopefully, there is also a growing realization of the need to increase that capacity. We may ask: what prepares regular

³⁴ United Kingdom (2018). *Serious and Organised Crime Strategy*. London: HM Government, November 2018.

³⁵ <https://www.theguardian.com/uk-news/2018/nov/22/uk-organised-crime-can-police-catch-up-national-crime-agency-lynn-owens>

³⁶ United Kingdom (2018). *National Security Capability Review*. London: HM Government, March 2018, p. 23.

police officers to investigate illegal trafficking in wood and related products³⁷, illegal fishing activities³⁸, illegal mining activities³⁹, or the illicit trade in pharmaceuticals⁴⁰? Who is doing the necessary market analyses? What is the capacity of law enforcement to conduct successful cross-border investigations and prosecutions in these complex matters?

Law enforcement agencies often lack the capacity to implement their own professed enforcement strategies. For example, every basic manual on organized crime investigation repeats the same tired mantra: “follow the money”. A key law enforcement strategy normally consists of targeting proceeds of crime and “following the money” so as to deprive criminals of the proceeds of their crime, their profits. In fact, however, that strategy rarely produces the results it promises due to a lack of capacity to execute it properly, consistently, and in a timely manner. Money laundering and related financial crimes rarely get the attention they deserved. Financial crimes are often treated as private matters between the “parties”, a matter for civil law; victims of financial crimes are often expected to gather and produce their own evidence to confirm their victimization.

Acquiring and retaining the necessary expertise to conduct complex investigations is, at best of times, a complicated process. Cyber-expertise has a short lifespan and cyber competence is difficult to acquire. Expertise from other areas is less immediately transferable into the cyber realm. Cyber-crime is therefore an area where civilians are more likely to have much greater expertise than traditional police.⁴¹ Law enforcement agencies have begun to rely more heavily on civilians who possess the necessary skills to support complex corruption, financial crime, cybercrime and environmental crime investigations. Unfortunately, these civilians are often poorly integrated into and retained by police organizations as part of major investigation teams.⁴²

³⁷ Bunei, E. K. (2016). The hunt for the precious wood: Illegal trade of sandalwood as an international enterprise in Kenya, *Society and Business Review*, 12, 63-76. INTERPOL (2019). Global forestry enforcement: Strengthening law enforcement cooperation against forestry crime.

³⁸ Phelps Bondaroff, T. N. (2015). *The Illegal Fishing and Organized Crime Nexus*. Geneva: The Global Initiative against Transnational Organized Crime, April 2015. Also: INTERPOL. (2019, June). Fighting illegal, unreported and unregulated fishing. <https://www.interpol.int/en/News-and-Events/News/2019/Fighting-illegal-unreported-and-unregulated-fishing>.

³⁹ Hunter, M. (2019). *Pulling at Golden Webs: Combating criminal consortia in the African artisanal and small-scale gold mining and trade sector*. ENACT / Global Initiative against Transnational Organized Crime.

⁴⁰ Tinti, P. (2019). *Dark Pharma: Counterfeit and Contraband Pharmaceuticals in Central America*. Washington (D.C.): Atlantic Council / Scowcroft Center for Strategy and Security, June 2019.

⁴¹ Harkin, D., Whelan, C. & Chang, L. (2018). The challenges facing specialist police cyber-crime units: an empirical analysis, *Police Practice and Research*, 19 (6): 519-536.

⁴² Freeze, C. & Chan, D. (2017). The RCMP needs more specialists/civilians; understaffed; etc. RCMP at a crossroads: Who will lead the charge in an age of sophisticated crime?, *The Globe and Mail*, June 28, 2017.

Finally, one can observe a proliferation of specialized enforcement agencies to deal with specific forms of organized crime and the growth of various illegal trades and illicit markets. The resulting issues of law enforcement coordination, interagency exchanges of information, intelligence sharing, and competition for law enforcement resources simply cannot be neglected. They obviously require a much more complex level of governance and oversight.

Frail International Law Enforcement Cooperation

As we were reminded by a previous speaker, the main purpose of UNTOC was to “promote cooperation to prevent and combat transnational organized crime more effectively”.⁴³ Yet, in spite of the progress achieved over the last twenty years at the bilateral, regional, and international levels, international cooperation in the investigation and prosecution of serious crimes still needs considerable strengthening. The proliferation of cooperation arrangements, however necessary, did not prove to be an appropriate substitute for a more comprehensive, integrated international legal framework for cooperation in criminal matters, one in which the separate modalities of cooperation are used in a more effective and complementary manner.⁴⁴

Numerous practical, legal and political factors hamper such cooperation. The most common ones include differences in cultural and legal traditions, languages or political orientations. To these we must add the jealous protection of state sovereignty, the absence of enabling legislation, the absence of channels of communication for the exchange of information and intelligence, divergences in approaches and priorities, and corruption of public officials.

It is easy to see that international cooperation did not grow fast enough to keep up with the pace of change in patterns of transnational crime, the movement of criminals, and their growing technological sophistication. By most accounts and in most parts of the world, this international cooperation regime remains very weak, fragmented and capricious.⁴⁵ Current international cooperation mechanisms and processes are largely inefficient in light of new technological developments and constant shifts in criminal patterns, not to mention the paralyzing politicization of international cooperation in criminal matters.

<https://www.theglobeandmail.com/news/national/rcmps-michaud-outlines-changes-hed-like-to-see-after-paulsons-retirement/article35497482/>

⁴³ United Nations Convention against Transnational Organized Crime, 2000, Article 1.

⁴⁴ Dandurand, Y., Colombo, G., & Passas, N. (2007). Measures and Mechanisms to Strengthen International Cooperation Among Prosecution Services, *Crime, Law and Social Change*, 47: 261-289, p. 288.

⁴⁵ Dandurand Y. & Chin, V. (2015). Implementation of transnational criminal law: Issues and challenges, in N. Boister and R. Currie (Eds.), *Routledge Handbook on Transnational Criminal Law*. London: Routledge, pp. 435-452.

Since existing methods of cooperation remain utterly complex and frequently insufficient, they are increasingly replaced by informal and much more controversial alternatives.⁴⁶ Some observers have expressed a concern over the emergence of national and international entities and processes, together with specialist liaison networks, functioning outside existing governance and accountability frameworks.⁴⁷ Others have deplored the fact that the current system through which law enforcement agencies request electronic data from foreign governments during the course of criminal investigations is broken. The resulting frustration has prompted some governments to engage in a number of behaviours that threaten human rights and disrupt the free exchange of information and intelligence across borders.⁴⁸

Conclusion

I am afraid I offered you more questions than answers. It seems that law enforcement agencies have been particularly inept at controlling the exploitation of illegal markets, including illicit financial markets. It seems also that we may have reached a point where we must reconsider what we can reasonably expect law enforcement to do to curtail the rapid growth of organized crime. Does that not mean that we must attempt to more precisely formulate the role we expect the police and other law enforcement agencies to play in fighting various forms of organized crime? Surely, we cannot leave it totally to law enforcement agencies to define their role and goals with respect to organized crime, money laundering, corruption, and financial crimes, neither can we leave it to them to measure the success of their own efforts. A greater level of accountability is required, and perhaps some of the answers lie in developing better governance mechanisms for both the organizations and the activities involved in countering organized crime.

.-.-.-.

Vancouver, May 2020

⁴⁶ For example, with respect to extradition, see: Sadoff, D. A. (2018). *Bringing International Fugitives to Justice: Extradition and its alternatives*. New York, NY: Cambridge University Press.

⁴⁷ For example, see: Harfield, C. (2008). The Organization of “Organized Crime Policing” in its International Context, *Criminology and Criminal Justice*, 8 (4): 483-498.

⁴⁸ Baton, J. (2018). Reforming the mutual legal assistance treaty framework to protect the future of the internet, *Ohio State Law Journal Furthermore*, 79: 91-112.