

Table of contents

Crime and commercial activity: an introduction to two half-brothers <i>Petrus C. van Duyne</i>	1
The vulnerability of economic sectors to (organised) crime: the case of the European road freight transport sector <i>Tom Vander Beken, Karen Verpoest, Annemie Bucquoye, and Melanie Defruytier</i>	19
Controlling the flow of money or satisfying the regulators? <i>Jacky Harvey</i>	43
Electronic payment systems and money laundering: beyond the internet hype <i>Ton Schudelaro</i>	65
An assessment of prospective changes in cross-border crime after Estonia's accession to the European Union <i>Anna Markina and Jüri Saar</i>	91
The crusaders: Swedish companies in Russia and the Baltic states handling uncertainty and criminal threats <i>Nils Bagelius</i>	107
Adventure capitalism and economic crime in the countries of transition: the case of the Czech Republic <i>Miroslav Scheinost, Vladimír Baloun and Drahuše Kaderabková</i>	143
Criminal sub-contracting in the Netherlands: the Dutch 'koppelbaas' as crime-entrepreneur <i>Petrus C. van Duyne and Mark J. Houtzager</i>	163
Organised crime, Norwegian style <i>Per Ole Johansen</i>	189
Explaining the emergence of the cigarette black market in Germany <i>Klaus von Lampe</i>	209
The ecstasy industry in the Netherlands in a global perspective <i>Tom Blickman</i>	231

Drugs and organised crime in Bulgaria <i>Tihomir Bezlov</i>	261
Trafficking in women in Bosnia and Herzegovina <i>Almir Maljevic</i>	277

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Crime and commercial activity: an introduction to two half-brothers

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Economic half-brothers and banalities

Commercial activity and (organised) crime have an awkward relationship – like two half-brothers, one of whom is born out of wedlock. They are different but also have too much in common for them to be able to deny their relationship, though the legitimate brother attempts in vain to do so (or is obliged, grudgingly, to admit to it). Time and again their paths cross: often times the legitimate economic brother finds himself victimised; sometimes he obtains an advantage from his half-brother, and at other times he behaves in ways similar to those of his relative. After all, they are family and share a legal-illegal interface (Passas, 2002). On the other hand, his criminal half-brother will brag about his upperworld relationship, claiming that he is just a businessman too. However, despite their similarities and the relationship between them, they still are illegitimate relatives. While the legitimate entrepreneur may be victimised, the illegitimate one is either a ‘victim’ of the law or of one of his fellow crime-entrepreneurs. That makes a fundamental difference: the criminal half-brother has to devote more energy to the search for means of survival than does the legitimate one.

The criminal part of the family, the crime-entrepreneurs and their crime-markets, have, under the heading of ‘organised crime’, for some time captured ‘global attention’. Recently this attention has been heightened by increasing use of the qualifier, ‘transnational’, though the trade in contraband has taken place across borders since time immemorial. So-called ‘transnational organised crime’ is considered such a worldwide threat that it has even been the subject of a United Nations convention (2000). The imagery behind it is that of the police fighting a formidable and sophisticated foe operating in well-thought out criminal organisations in highly complex markets. This image, which has been advanced to justify the claim for more investigative powers, has found little support from independent researchers (Reuter, 1983; Weschke and Heine-Heiss, 1990; Paoli *et al.* 2000; Van Duyne, 1995).² Hence it remains a hypothesis, albeit one not strictly formulated as such.

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² It should be noted that assessment research commissioned by the authorities does not lend much support to the hierarchy model either.

Let us pose an alternative, counter hypothesis, taking Greek philosopher Protagoras' adage – "Man is the measure of all things" – as a starting point. What is the human measure of the 'organised-crime' phenomenon and its related crime economy? To answer this question we will follow Euclid's simple method, positing a few axioms and seeing what can be deduced from them. Let us assume that our protagonists are not more complicated as human beings than their law-enforcement antagonists, and see what mundane picture we obtain as compared to the one conjured up by the law-enforcement rhetoric.

Beneath the misleading garments draped over and around 'organised crime' by politicians, policy makers, law-enforcement officers and hundreds of scholars, there are a number of related 'banalities', or simple behavioural principles. The first one is:

- the illegal half-brother wants to get rich too but does not want to be caught using illegal means;
- the second banality is that for much of the time he needs the cooperation of one or more like-minded, but trustworthy persons;
- the third banality is that following their initial successes they are likely to stay together (for a while);
- the fourth banality is that they simply start with what they have at hand, socially and economically: commercial opportunities, social and economic skills, tools and people with which to pursue their economic aims. Or, in a more dignified formulation: they need 'human and economic capital'.

Apart from the first principle, the other three apply to the legitimate enterprises of the family too. Do we need any additional basic principles to describe the more complex manifestations of criminal entrepreneurial conduct? Staying out of the grip of the law is a very basic drive, giving rise to most observed organisational conduct, ranging from that of an accomplice on the look-out for cops, to more professional counter measures, to sophisticated forms of money laundering. On top of that come the social and economic requirements of the entrepreneurial surroundings, which have to be heeded for survival. To the extent that these are complex, they are reflected in the nature and structure of the criminal enterprise, rather than being a reflection of a complex criminal human mind. One can consider these forms of organisational conduct as reflections of the basic imperative: 'don't get caught'. They are a form of criminal risk management. This is one of the circumstances that impact on group and network shaping (Bruinsma and Bernasco, 2004). As such it is of more importance than the oft-quoted imperative of 'profit maximisation'. The latter, rather than revealing a kind of deeper insight, is merely the legitimate dream of every entrepreneur. Getting caught, locked up, sentenced and stripped of hard-earned assets, are very real negative prospects.

How plausible is this counter hypothesis? If most of the entrepreneurial conduct of organised crime is so shallow why are the images of 'organised-

crime' that have been most salient in recent decades so full of threatening sophisticated criminals? The answer to this question is perhaps simple too, though we have to dig beneath a muddled political surface covering other banalities. In the first place, we have the most interesting case of how the US successfully turned domestic penal policy into foreign policy by means of public fear management (Van Duyne and Levi, 2005; Woodiwiss, 2001, 2003, Bewley-Taylor, 1999). It goes without saying that large-scale political objectives cannot be pursued but on the basis of imagery that is 'larger than life'. The US' working formula consisted of a rough but highly effective form of international public fear management. Its success can be measured in terms of its global impact: most national governments, and in the end the UN, took over the simple fear formula. Indeed, why should the basics of penal policy be less banal than the criminal targets themselves?

In the second place, criminal entrepreneurs grow up and learn together with their legitimate half-brothers. The organisation of the crime trade must keep pace with social, economic, technical and legal developments, which usually imply more complexity. Criminal entrepreneurs who fall behind such developments soon get caught and disappear from the 'organised crime registers' unless they learn from their mistakes. This turns the phrase, 'organised criminals become increasingly more sophisticated', into a tautology or a piece of political rhetoric of which there is too much already.

If things are really that simple, why have the authorities failed to eliminate this renegade entrepreneurial 'organised-crime' relative? Is he just a bit smarter after all, or are the proprietors of the legitimate family business somewhat ambiguous in their attitude?

Vulnerable to crime and crime-fighters

Judging from the many assessments that have been produced in the recent past, the authorities seem to be awe-struck by the 'organised-crime' phenomenon, notwithstanding the fact that the awful image was of their own making. As the threat described in the repeated annual situation reports failed to recede, and as the reports failed to bring any really new insights, many experts realised that a new methodology was required. If the 'organised criminals' were not actually alien invaders but the hushed-up part of the social and economic family, why not focus attention on the family as a whole and assess its vulnerability? In this refocusing of attention the *University of Ghent* has played a pivotal role, as described in the first chapter of this book (Vander Beken, 2005).

Taking the economic angle as their point of departure, *Vander Beken*, *Verpoest*, *Bucquoie* and *Defruytier* give a thoughtful account of their vulnerability approach. The vulnerability approach is not a competing methodology, but an X-raying of an economic sector to find out its degree of receptiveness to crime. High vulnerability does not necessarily imply that the sector concerned is

infected by ‘organised crime’ or even victimised. The sector may even profit from crime, as do the real-estate or yachting markets when wealthy criminals buy the expensive objects traded in these markets in times of recession. The vulnerability study may be complemented with other investigations more directed at criminal groups for example. Vulnerability analyses start with broad descriptions at the level of the total environment before focussing on the micro level of economic entities and business processes.

The economic sector whose vulnerability to crime (and by implication ‘organised crime’) was investigated by the authors is the road freight transport sector. This sector was not selected because the key to success in the trafficking of contraband is to hide the transportation activities. That would lead to a self-fulfilling prophecy. The selection criteria were derived from *sector* and *market* features, that is, the industry’s relative importance in the economy, the low entry thresholds, and aspects such as low transparency. The detailed evaluation of the entrepreneurial landscape and the in-depth analyses of business processes show that the industry’s vulnerability to crime (whether as victim or perpetrator) is, generally, substantial. The authors are modest in their claims concerning the strength of the instrument used for their assessment. Even though much of the procedure is still an ‘art’ – a not uncommon situation in organised-crime research – it provides a rank-order of the indicators, which facilitates decision-making.

That one can speak not only of vulnerability to organised crime, but also of vulnerability to organised crime-fighters, can be deduced from the paper by *Jackie Harvey* of the University of Northumbria. The author poses some intriguing questions, and assesses the validity of politically motivated estimates concerning the extent of money laundering, in the light of macro-economic data. In the first place, the production of money laundering figures looks very much like price rigging at an auction. A few organisationally connected main players drive up the figures while, through mutual cross-referring, they provide the appearance of validity to these numbers (which are then taken by the scholarly community at face value). In the second place, the objectives of anti-money-laundering policy have gone far beyond those of keeping the bad half-brother with his dirty money out of the house. Though the author does not say so in so many words, it has become a rich man’s financial foreign policy (Stessens, 2000, 2001). The power the Financial Action Task Force (FATF) exerts on money laundering exceeds anything one would expect from an informal club. It can blacklist countries and territories for not complying with its recommendations, though this treatment (without appeal) appears to be meted out only to those who are not members. Together with the other auction bidders, such as the OECD, the FATF has directed its attention to the off-shore financial sectors, small territories that once heeded the advice of the World Bank to divert their meagre economic resources to financial services. Interests changed and the rich countries’ officials returned to complaining about these services.

As Protagoras' adage also applies to the goodies of the family, the reader may share the author's puzzlement about the overlap between the various bodies and organs that have some role in protecting the world's finances from bad relatives. Jackie Harvey is most moderate in pointing to the fact that the OECD scratches the back of the FATF (and the other way round: both share the same office facility). As a favour, FATF has included tax evasion in its definition of laundering and focused on the ostracised offshore tax havens. In this way the tax interests of the US and its industrialised allies are served at the same time as the legitimate economy is purged of the influence of tainted offshore relatives.

However, what is the evidence that the targeted 'opaque' countries are actually money-laundering centres? As the financial crime-fighters' zeal has never extended to the collection of valid empirical evidence, the author had to scrape together whatever meagre facts she could find. The outcome should be considered indicative, particularly as the list of countries where money laundering takes place, or that are vulnerable to it, is composed by US bodies. Nevertheless, side by side with countries like Panama we find respectable FATF members like the UK, which is spared the FATF's wrath, however. The evidence of money laundering is inconclusive. Large economies with active financial markets, favourable corruption-index scores and all the anti-laundering measures in place are as vulnerable to money laundering as countries that score lower on these indexes. At any rate there is little statistical evidence that there is much difference. Nevertheless, they are (financially) browbeaten (Stessens, 2001).

It is fascinating to observe how crime fighters in general and an informal crime-fighting body like the FATF (though officially backed by the great powers) are able to carry on virtually unopposed. The story about the hype surrounding the new Internet technologies, and the potential money-laundering opportunities supposedly provided thereby, is recounted by *Ton Schudelaro*. As soon as opportunities arose for making financial transactions more efficient by using Internet technology, great concern was voiced. It is remarkable that everyone simply repeated and quoted whatever the FATF thought fit to assert. For years the fear of Internet-related money laundering was disseminated broadly, while nobody raised the simple question: how many cases of Internet-based laundering do we actually have?

Schudelaro took the trouble to go through all the sources and found one case in which criminals established a bank in Antigua, advertised their financial secrecy services on the Internet and absconded with \$10 million after a public warning from the authorities. However, this was not a case of money laundering but embezzlement and deceit. Some of the victims hoped perhaps for a neat laundering service. As no new evidence of Internet-related laundering emerged, the FATF simply stopped mentioning it in its annual reports. However, the lesson that was learned from this crime-fighter's conduct was not that the responsible broadcasting of serious warnings must be accompanied by fact-finding and proper expert analysis. Rather, some expressed the opinion that the

absence of evidence actually demonstrated the cleverness of the criminals. This reminds us of Church Father Tertulian's saying, 'Credo quia absurdum'. Crime-fighters are true believers indeed. Beware of true believers.

Half-brothers in transition

The relation between the licit and illicit economies is flexible, and is determined more by the surrounding entrepreneurial landscape than by cunning and planning. This applies to the evildoers as well as to those on the good side of the thin blue line. The entrepreneurial landscape in Central and Eastern Europe has changed considerably and is far from consolidated. The Baltic republics have just entered the European Union, the Russian Federation is still groping for some economic order, while the Czech Republic has experienced the naïve rush toward a market economy without professionalising the control side – a circumstance that has opened the gate to many get-rich-quick fortune-seekers. Not all of them are irredeemable felons, neither are they repentant lost sons in a sinful economy; rather, most are ordinary individuals who simply take advantage of criminal opportunities as they present themselves.

Naturally one cannot generalise about a territory that stretches from the Baltic Sea to the Danube. Estonia faces the wealthy Scandinavian countries while it has the huge and unruly Russian hinterland at its back. It is not surprising that the law enforcement experts, whose opinions are presented in *Anna Markina's* chapter on the changes that were predicted to take place in Estonia after its accession to the EU, expected an increase in crime across the country's borders. This concerned not only the next-door Russians, but also Asians, who also have an interest in the global (crime-) trade and the movement of goods. Would criminals from the East converge on Estonian territory? The experts expressed their concern that this would happen, assuming a fusing of interests, for example, concerning export (smuggling) facilities. True, the Estonians have their criminal entrepreneurs too: the fleshpots of Brussels are coveted by licit as well as illicit entrepreneurs. In addition, price differences due to differential tax and excise rates have contributed to a thriving cross-border trade in alcohol and tobacco (Van Duyne, 2003). More changes are expected after Estonia's accession to the Schengen countries, though one may wonder whether crimes between the Schengen countries should still be counted as 'cross-border' crime.

Licit entrepreneurs are risk takers to no lesser a degree than their illegitimate relatives, though they must observe different rules of the game, even when they have to carry on their activities amidst criminal entrepreneurs and have to deal with them on the same footing. The difficulties encountered in this interaction are reported by *Nils Bagelius*, who tells us the saga of the Swedish 'business crusaders' in Russia and the Baltic states. It involves the management of risks and uncertainties, questions about the persons with whom to deal, trust and control, and realising in time when the moment has come to draw the curtains and leave