

**STRUCTURES, STRATEGIES AND TACTICS OF  
TRANSNATIONAL CRIMINAL ORGANIZATIONS:  
CRITICAL ISSUES FOR ENFORCEMENT**

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## **Introduction**

In trying to decide what to focus on in this opening presentation I found myself wandering from one critical issue to the next, losing in the process any remnant of a coherent paper. Rather than to fight this tendency, I gave in to it. I have dubbed it affectionately the 'David Bayley School of Issue Analysis' (perhaps appropriate since I am fortunate enough to be staying in the 'Grabosky David Bayley Wing' during my stay here in Canberra). David is a list maker - ie. if you want to understand this, that or whatever, there are 'this many' crisp points to consider. For this paper of mine, I pondered what topics I would write about if I were giving all of the papers at this conference and I have arbitrarily come up with 8 issues that relate to the structure, strategies, tactics, or enforcement of transnational crime.

### **1. Politics, Resources, the Media and Transnational Crime**

While most issues related to social control or moral regulation have a political aspect to them, discussions related to organized crime and transnational crime are steeped in politics - from the creation of illegal markets in the first place, to the declarations of the size of the 'threat' and the passing into force of extra-ordinary legislation to attack the problem. Rather than ignoring these pressures - or acknowledging them and then ignoring them - government policies and law enforcement strategies instead must see *distortion of purpose* to be always a possibility and therefore to guard against it. An informed, rather than an entertained public, via the media's presentation of accurate transnational crime information would be a place to start.

I fear that we are doing to the concept of 'transnational crime' what we did to 'organized crime', and 'corruption'. That is basically to turn the concepts into a misdirected (or undirected) vehicle for additional resources, increasing powers, and a justification for over-riding privacy considerations, sovereignty rights, and due process. These concepts share the advantage of being easily exploited. Each can imply whatever the speaker wants it to be: a massive threat; a theatrical legacy; or petty criminals and hoodlum bikers. The police, politicians, public and media tend to see the term organized crime and alternatively transnational crime, as an undifferentiated blanket under which most 'serious' crimes can be shoved. The concept of organized crime has become mythologized to the point of total distortion, rendering it useless for anything but political mileage and the bargaining for resources by law enforcement. Leading some critics to suspect that those results might have been the objective. The same is happening I would argue to the other 'sister' concepts.

The mention of the words organized crime and transnational crime has the power to draw the press, win votes, acquire law enforcement resources, gain public support for various legislative or enforcement crackdowns. The arguments are often intertwined so that the actual crime issues get lost. For example the Canadian rhetoric that served as part of the justification for the renewed funding of the 1996 Anti-Smuggling Initiative, included such matters as: the confirmation of federal leadership, helping Canada meet its international commitments, public visibility of law enforcement and the sending of a message that the federal government was committed to free competition in an open market. All worthy objectives - having little to do with the control of smuggling or crime of any sort.

Some people refuse to use the word 'globalization' for the same sorts of reasons - over-use and a tendency to slide everything and anything under the concept of globalization. However, no matter how narrowly or broadly you might feel comfortable about using the "g" term, there have been changes in the way business and finance are being conducted. These changes in technology, commodity routing, and labour markets have had an effect on the forms of transnational crimes. However, labeling every crime that has the remotest 'transnational' aspect as being 'transnational crime' sullies the concept.

## 2. Dissecting the Activity - Less Rhetoric and More Empirical Research

Nothing I am saying this morning is meant in any way to diminish the importance of transnational crime and the numerous issues that relate to transnational crimes. In fact the reverse is true. However, if the threats from transnational crimes are everywhere, and are massive, and are out of the control of any one nation or any group of nations, then societies might as well throw up their hands and retreat. Retreat into gated communities or/and hand over privacy rights, Charter protections, or due process considerations to the state in exchange for 'more' protection against this ill-defined enemy.

In a presentation given in Toronto by Jonathan Winer, former US Deputy Assistant Secretary of State,<sup>1</sup> Winer characterized the Canadian view of global security issues as being 'soft security', and as a criticism, referred to us as a country where "the rights of people trump the rights of 'states'".<sup>2</sup> A dominant theme in Winer's talk was that Canada's 'soft' approach was no match for what he termed "Global Security and Concrete Mega-Threats".

Well - what should one do in the face of "global security mega-threats". One ought to dissect the threats and try to understand who is threatening who and what can be done to reduce the threat. Unfortunately, the advocated response tends not to be an empirical approach but rather more rhetoric. Each description of the threats must get greater, more dramatic or else it is not news. My concern is that it may be hard to top a description that has used up all of the 'good words' ie. *global/ security/mega/ and threat* all in the same phrase!

I am suggesting that the situation is serious enough to warrant some even greater action than rhetoric - ie. the activity that is necessary in order to 'understanding' what are and what are not real threats. The argument would then be to cut out the rhetoric that blankets everything and target what is '*fixable*' and '*serious*'. The absence of either of these two characteristics renders the use of limited resources, possibly the risking of lives, and the creation of varying states of panic or despair a pointless and stupid exercise *unless the exercise is about something quite entirely different*.

The multiple agendas and hidden constituencies complicate the process of formulating, enforcing, and assessing the success of an enforcement policy - and equally important, make it difficult or impossible to *reverse* a policy that fails to have any useful effect in terms of its nominal objectives. Some policies of course may also make a situation worse, rather than merely having no impact. This addresses the issues raised by John Braithwaite and others

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<sup>1</sup> February 22, 2000 at the University Club

<sup>2</sup> A section of his paper that he did not present stated that Canadian banks were attractive to Russian organized crime because of our lack of money laundering laws. This must have been written prior to the Bank of NY/Russian money laundering fiasco! He appeared to be using 'soft security' as a synonym to refer to the 'human security' policies of our Department of foreign Affairs and International Trade that have been advanced within the past two years - and much hated and/or misunderstood by some United States officials.

regarding the need to consider the ‘cost’ of enforcement and enforcement policies - in terms of *dollars spent vs. gain* but also in terms of the *unanticipated or unaddressed consequences* directly stemming from the enforcement strategies. (In other papers and presentations I have emphasized some of the dangers seemingly inherent in an approach that prioritizes ‘going after the illicit proceeds’ if adequate restraints are not in place.)

### 3. Focus Upon Criminal Markets

Understanding transnational crime will require a **market by market analysis**. Yet, this is not typically how the topics are dealt with by governments. There is pressure to pass special laws or grant the police extra powers in order to combat transnational crime/organized crime with a working assumption that this covers a range of fairly uniform activities - ie. all of the criminal activity that is seen to fall under those terms. In reality one of the *few* things that they do have in common is the desire for profit. Sophisticated frauds, schemes, and thefts, involving both illicit as well as legit commodities, all operating according to market principles that ensure a profit to the players. The players blur between the total legitimate to the total criminal with a fascinating central zone occupied by ‘business persons’ knowledgeable enough to exploit the gaps in legislation, regulatory or enforcement mechanisms.

Market by market analysis would make us acknowledge that, aside from the profit motive, the separate markets are very different one from the other. For example, issues involved in smuggling of humans may be vastly different from the issues involved in drug smuggling. And in fact even the activity of smuggling humans is not a uniform one - different methods, different degrees of exploitation and violence, different motivation and objections. This is not to deny that criminal groups may be involved in more than one illegal commodity and in fact in smuggling operations this is usually the case. However, within any one enterprise, who is the victim and who is the criminal - and when are States complicit in the smuggling activity?

Research carried out in Canada by Fred Desroches<sup>3</sup> is part of a growing body of empirical research that indicates that even ‘high level drug traffickers’ come in many different sorts - with many different working arrangements among the members of the network. The key finding was that the majority of traffickers were individual entrepreneurs who could quit, aspire to move up in the ‘occupational’ chain or change and work with the competition. The respondents spoke of *dealing networks*, loosely coupled with links to the importing source. From ‘a distance’ this is a “transnational crime” with all of the enforcement difficulties inherent in cross-jurisdictional policing. Conceived differently, you have a chain of ‘local’ criminal transactions that impact most directly on local communities.

Mike Levi’s analysis of credit card fraud, another major ‘transnational crime’, revealed a diverse array of criminal involvement - in terms of the sophistication, the tightness of the networks, and in terms of the local vs. international dimension. As Levi states:

*“Interviews both with fraudsters and with the police confirm the portrait of socially and culturally distinct fraudster networks in the Montreal research of Mativat and Tremblay (1997)<sup>4</sup>, though the smaller size and the greater population density of England and Wales than Canada means that it is easier and quicker for British criminal groups to operate in different regions of the country. But none of the above*

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<sup>3</sup> Fred Desroches. 1999. “Drug Trafficking and Organized Crime in Canada: A Study of High Level Drug Networks”. Paper prepared for the Nathanson Centre.

<sup>4</sup> F. Mativat and P. Tremblay. 1997. “Counterfeiting Credit Cards”, *British Journal of Criminology*, 37, pp. 165-183.

*indicates that plastic fraud is disorganized; what it means is that different forms of crime require different levels of organization and that there is no one optimal size of firm for plastic fraud overall”.*<sup>5</sup>

An empirical understanding of how the transnational markets operate should reveal essential information relating to the next two issues.

#### **4. Evaluating Transnational Crime ‘Threats’**

The international literature reveals sparse and/or unreliable evaluative information on the impact of transnational crime and the impact of law enforcement efforts against these crimes. These evaluations require estimates that in many instances are what the police might refer to as SWAG - ‘scientific wild-assed guesses’! Aside from anecdotal accounts of successes, police make little attempt to link their strategies to an empirical measurement of danger or risk and it may be that this would be impossible to do in any real way.

While other criminals groups are also ‘policed’, the public police in Canada focus in a concentrated manner upon the more traditional and more visible criminal operations, ie. biker gangs, Italian ‘Mafia’, Asian gangs. Cynically these groups might be seen to be an enforcement delight - in part because they will always be front-page news, the ‘stories’ are understandable to the public, and the criminal activities lend themselves to unverifiable estimates - most notable, the amount of the drugs seized or shipped. Bikers even advertise, have clubhouses, wear sign of their backs and persist is going on their rides. I am not suggesting that outlaw bikers do not need to be policed. I am also aware of the business persona of many of the bikers and their ability to corrupt and influence. I am suggesting however that the ‘policing tasks’ that are required in order to focus on these groups may be closer to traditional police work than what must be directed against some other forms of transnational crimes. And this may explain why, perhaps quite appropriately, the public police target these specific groups. There may be a comfort-level, which encourages the police to focus on the most visible and in some ways the more traditional groups.

I will argue further that the public police are handicapped in any effort that they themselves might make to change their targeting in this area of enforcement. The public police in Canada as in Australia and other countries are ‘resource dependent. Their funding comes from governments and in exchange they must meet certain expectations of their political masters and of the public and of the media. “Biker wars” and other ‘visibly violent’ groups are sexier and far easier for the public and politicians to understand than are the criminal deal-making and the massive financial frauds.

On Saturday (February 26, 2000) all of the Toronto newspapers carried long articles and headlines about the sentencing of the “Rothchilds of the Mafia” (the Cuntrera-Caruana ‘kingpins’ - Alfonso Caruana and his two brothers) to long prison terms. Last year the police arrested the ‘Gretzky of Organized Crime’! RCMP Superintendent Ben Soave referred to it as a “significant blow to so-called untouchables” and Deputy Commissioner Zack Zacardelli was quoted as saying:

*“This encompasses everything we’re trying to do - going after the heads of the organizations. I hope the message is clear. The borders aren’t going to stop us. Organized Crime took a big hit here.”*<sup>6</sup>

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<sup>5</sup> Michael Levi. 1998. “Credit Card Fraud”, *Journal Of Contemporary Criminal Justice*, November, p. 382.

In terms of the amount of drugs involved, the interests of the international community, and the duration of the criminal conduct of these criminals, the case is truly significant. In terms of any impact it will have on the amount/ purity/ cost of drugs in Canada, there will be little or no impact.

## **5. The ‘Additional Something’ Inherent in “Organized Crime” or “Organized Transnational Crime”**

The question remains, what makes a crime ‘organized crime’ or even ‘transnational crime’? A transnational operation of any dignified sort will involve some degree of organization, likely degrees of replaceable membership, and some corruption or violence capabilities. This conference focuses on transnational crime rather than organized crime and that helps to avoid some of the baggage that encumbers the organized crime concept and in some ways allows us to look at offenses not typically regarded through the organized crime prism. Financial crimes - often crimes of the financially powerful is a case in point. However - is there some unique dimension that makes certain crimes worthy of ‘special’ legislation, policing powers, and resources.

The difficulty arises that the two terms - organized crime and transnational crime - are used as near-synonyms and therefore it is necessary to understand the link between the two and to differentiate the one from the other. In *Criminal Conspiracies*<sup>7</sup> I defined organized crime as being “a process” rather than a type of crime or a type of criminal. I might still agree with the *process* idea but the question remains - ‘process for what’?

Diego Gambetta<sup>8</sup> as many of you know, argues that the Mafia are first and foremost sellers of *protection*. Some of this ‘protection’ represents extortion but some is genuine given the weakness of the legal enforcement mechanism. Mafiosi may appear in some instances as actual partners in businesses, legal and illegal, but they are brought in as partners precisely because they can provide protection. It is therefore essential to differentiate between the Mafia and certain illegal enterprises in which members of the Mafia might be involved. According to Gambetta, people like Pina Arlacchi’s fundamental error was to confuse the industry or market being protected with the firm doing the protection. For Mafia protection should not be regarded as merely another productive service being sold, but rather the infrastructure within which illegal market activity takes place. This suggests, once again, the ‘correct view’ of organized crime is as a form of governance of the illegal marketplace. Market-by-market research should indicate how wide-spread the payment or granting of protection (or roof) actually is.

Our topics at this conference are transnational crimes - many but not all of these crimes will take place under the protection of an organized crime operation. Hence the two terms are related - but one being present does not automatically mean that the other is there. The criminal activity that is facilitated via the protection offered by organized crime operations may not be transnational and transnational crime may not necessarily be carried out under the protection of organized crime. None of these organized activities can be understood, without understanding the social, economic and political context. In Russia the issues involve systemic exploitation in the face of societal collapse. In other jurisdictions, while perhaps less extreme, the societal conditions will still determine the ‘protection’ that transnational criminals need in order to operate.

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<sup>6</sup> Feb. 26, 2000. *Globe and Mail*, “Canadian mob kingpins jailed” p. A1, “Lengthy Prison terms knock down untouchables”, p. A3; *National Post*, “World’s No.1 Mob chief undone by a phone card”, p. A1; *Toronto Star*, “Drug lord pleads guilty”, p. A2.

<sup>7</sup> Beare, M.E. 1996. *Criminal Conspiracies: Organized Crime in Canada*, Nelson Canada, Toronto.

<sup>8</sup> Gambetta, Diego. 1993. *The Sicilian Mafia – the Business of Private Protection*, Cambridge, Mass.

## 6. 'Locating' Transnational Crime

We too often speak of the current *borderlessness* in terms of the flow of financial transactions, commodities and in some cases people as resulting in an increase in 'transnational crime' - as if there were no local base to the criminal operations.

In focussing on the cross-border 'transnational' aspects, we remove the serious crime activity from the *originating* political, economic and social context within which the criminal activity might be better understood or explained. If we could agree that the three 'big' transnational crime commodities today are drugs, fraud and counterfeiting it is clear that each of these activities have both a local and a global aspect.<sup>9</sup> Hobbs quotes Strathern<sup>10</sup>:

*"Networks are the media through which individuals and groups move between the local and the global, but this does not indicate the kind of structural determinism suggested by many writers on organized crime. Networks here refer to metaphors for relationality...relations between individuals vary according to differentiation in demographic dispersion, familial composition, ethnic distribution and integration, commercial practice, trading patterns, the economic backcloth of the legitimate culture and then particular use of space. Organized crime is not experienced globally or transnationally, for these are abstract fields devoid of relations."*<sup>11</sup>

If our focus is dominated by the 'transnational' aspect, we may be ignoring not only the local aspect as outlined above but also what might be seen to be the lower level crimes that are part of the transnational crime processes. Empirical research reveals a complex mix of criminals that range from the sophisticated 'specialists' to the 'opportunists' - all operating within the same crime field. Empirical research, such as ethnographic studies of serious crime networks, directed at individual criminal markets, reveals that the dialectic between the local and the global determines both legitimate as well as the illegitimate markets.

## 7. Policing of Transnational Crime: Re-Newing the Policing Organizations

This point refers more to the *organization* of policing for organized crime/ transnational crime enforcement rather than the *operational* efforts within the given structure. While the two are related, police work in the area of transnational crimes is hampered by the antiquated structures that are in place. The RCMP has been in existence for over 125 years and during that period there have been numerous 'reorganizations' that have seen the number of Deputy Commissioners and senior management swell in numbers or decrease in numbers. However, over all, the basic structure and orientation has remained somewhat the same. There remain remnants of the perception that the police can be and ought to be *generalists* who are able to spontaneously become *specialists*. Whether that is still true is debatable.

Police forces around the world are seeking answers to these contradictions. All are seeking new and better ways to meet the changing demands of changing crimes. The Australian Federal Police has perhaps made the most headway in terms of these structural changes. The following are some of the areas that are causing degrees of inefficiencies within policing:

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<sup>9</sup> See Dick Hobbs. 1998. "Going Down the Glocal: The Local Context of Organized Crime", *The Howard Journal*, Vol.37, No.4, November, pp. 407-422.

<sup>10</sup> M. Strathern. 1995. "Afterword: relocations" in *Shifting Contexts: Transformations in Anthropological Knowledge*, London, Routledge.

<sup>11</sup> Hobbs p.419.

### ***Deployment of Officers: The Best People in the Appropriate Jobs***

The difficulty for the police is to ensure that the most qualified officer for a particular task is actually in that position. This is compellingly obvious in areas of responsibility such as economic crime, high technology crimes, and the integrated proceeds of crime units. We speak about the sophistication of the 'new' order organized criminals/ transnational criminals and money launderers and yet they are still being 'policed' publicly in many cases by non-specialist units that suffer from a disruptive movement of officers into and out of the areas of specialization.

While on a case by case basis, senior management might be able to intervene to ensure that a particular officer is kept within a particular function, however this tends to be the exception due to the machinery that moves the personnel around within the organization. While there is a policy that attempts to give managers of specialized units such as the Integrated Proceeds of Crime Units (13) across Canada greater say as to who joins their unit, successful intervention even in these 'elite' situations is still rare, or at best unpredictable.

Another way to gain expertise within police work is to hire the expertise from outside. While the police are making wider and perhaps increasingly better use of civilians these non-member employees soon discover that there is no career path to keep their salaries from falling behind a competitive position in the private market.

In the United States the wide range of "agent" levels may respond to some of these difficulties. Thus we have the Federal Bureau of Investigation (FBI), Customs, Alcohol, Tax and Firearms (ATF), DEA, and so on, to investigate crime usually of a trans-jurisdictional complex nature.

Perhaps the most interesting model is the Australian Federal Police (AFP). Several key changes have been implemented: teams vs. ranks, and rewarding individual capability (among other changes). While few in Australia would argue that these changes have been perfectly implemented, the changes address some of the critical issues that are common across police services internationally and are therefore worthy of study.

### ***Collaborating Across Police Services and Strategic Intelligence Sharing***

Police forces nationally and internationally have been criticized for the lack of collaboration, sharing of intelligence and cooperation across the separate policing jurisdictions. At times this failure has directly jeopardized investigations. Less than ideal working relationships have been acknowledged in countless reports. These same reports always conclude that 'relations are better now than they have been in the past'. However, as the same criticisms are repeated years later, one must question the optimism of the improvement.

I would argue that early training - early indoctrination if you choose - and the tolerance of senior management to 'information hoarding' are two significant determining factors for how well the police work with each other and other agencies. Training is changing quite radically within the RCMP and there is a strong emphasis on the importance of collaborative operations. However the traditional process of sending an RCMP recruit to Regina 'Depot Division' to learn, among other things, that 'if they make it through training' then they are the crème of the Canadian policing community, did not assist collaborative "partnership" operations.

The joint force/ IPOC model seems to be the model that is increasingly relied upon internationally. The success of joint force policing, combined with international partnerships, was illustrated by the recent sentencing of Alfonso Caruana. In New Zealand the Combined Law Agency Group (CLAG) provides a linkage across the separate districts. In Australia various joint force operations plus the National Crime Authority serves this function.



Not unique to Canada but apparently universal is a resistance or an inability for police services across jurisdictions to make a long-term commitment to criminal intelligence work---strategic as well as tactical. The “commitment” tends to come in phases and is reliant on *who* is in charge at any moment in time. An excellent strategic intelligence system can be rendered useless by the lack of a commitment from the manager at any given period in time. Strategic intelligence is vulnerable to personalities and budget cuts in ways that other aspects of police work are not. There is some evidence that criminal intelligence units or organizations go through cycles which may be due to an inability to maintain a high-energy commitment to something that does not always appear to *directly* link to immediate results.

### ***Promotion and Recognition Within the Services***

Attention must be paid to the role that media coverage and headlines plays in the internal rewards within police services. During the Fall 1999 in Canada several police investigations were compromised (or risked being compromised) by the spectacle of senior police officers notifying the media to have their video cameras on-site where arrests of suspects were to be made. Following these ‘big busts’ were typically the two or three days of self-congratulatory interviews that did not always give credit to the full-range of policing partners who had participated in the more boring, preliminary aspects to any successful investigation. If an officer get rewarded most predictably in terms of the high-profile busts that he/ she takes credit for, then there is little motivation to share the glory - or the intelligence that is essential to make the cases.

## **8. Alternative Policing Options for Transnational Crime Enforcement**

Today in Canada the sophisticated crimes are often ‘policed’ by *private police* outside of the formal justice system and therefore usually generating no crime statistics which serves further to hide the amount of this type of criminal activity. Transnational crime investigations involve numerous issues that can be more *expediently* dealt with by the private police if there is a paying victimized client - no sovereignty issues, no drawn out Mutual Legal Assistance Treaty (MLAT) process, usually a generous budget, no evidentiary restrictions since the case most likely is not intended to end up in court.

The down-side is that there will be most likely no formal criminal sanction, no records, questionable accountability regarding ‘policing’ strategies, and there is not always a willing paying client who has a vested interest in stopping a particular form of transnational crime. The offenses most likely to be addressed are those where corporate profits are at risk.

I would argue that we must get more serious about:

- the lack of timeliness of using MLAT s internationally;
- some agreement as to the balance between sovereign issues and international crime issues;
- again - still - a re-examination of what is gained by criminalizing certain drugs;
- and finally, taking a *human security perspective*, a commitment to strategies that include non-enforcement ‘alternative’ approaches to combat either transnational crimes or the harm from transnational crimes. There must be greater awareness that government policies - both domestic and international - and policing strategies - both domestic and international - in some circumstances can produce more harm than good and therefore must be carefully monitored and evaluated.