

# **(Transnational) Organised Crime, Laundering and the Congregation of the Gullible**

## **Policy making: to fear or not to fear**

‘To be or not to be’ is as much a question as to fear or not to fear. The question whether to fear may even be more important than that concerning the abstract being itself. This is particularly the case when fear transcends the individual state of mind and becomes something shared by a community. Who does not believe in the existence of the devil puts himself at a distance from that part of the community who harbours such a belief. This can be observed in many areas of daily life, also outside religion. Some manifestations of fear are grist to the mill of policy makers and politicians. Fear of crime is one such a manifestation. As a matter of fact, the history of criminal policy making has demonstrated that fear is too good not to be exploited: it is easy, it is cheap and the exploited fear does not need to have an equivalence in reality.

It is easy because the politician always touches a chord with the public in among whom such a fear is potentially always present. For this reason it is at the same time intellectually cheap. One can skip subtle sociological or criminological argumentations in which one can become entangled with the result of being seen as ‘soft on crime’ or at least ineffective. The target and argumentation can remain one-dimensional. The simplest threat dimension is ‘the other’: foreigners, lower class, ethnic offenders or a combination thereof. In this regard, the French president Sarkozy did politically the right thing by being tough against the Rumanian Roma’s roaming in France in the summer of 2010. I abstract from the moral aspects.

Forms of crime not stemming from ‘others’ do not sufficiently touch the right emotional chord: one can observe this with economic and environmental crime. Consequently, announcements from the authorities that the fight against fraud and economic crime will be re-intensified, rarely get a follow-up after a first phase beyond which the initiative tends to peter out (Van Duyne, 1988; 2010).

Most important: fear of crime needs only a faint correlate with reality. There must be something, that is true, and that something must be suffi-

ciently recognisable to feed some fear. This makes the fear management again cheap. The fear is easy to evoke and people fearing something are ready to believe its reality: fear creates gullibility. And who does not share it is not part of the community or mainstream, which implies less personal credibility. Indeed, 'to fear or not to fear', is a real existential question.

Policy making abounds with examples of such fear management. After the Second World War we had four decades of foreign policy fear management: "The Russians are coming". But they did not come (to the west) until after 1989 and then articles about organised criminal Russians abounded (Rawlinson, 1996; Williams, 1996). Now that fear has waned and so has the number of publications. Public health has its fear management too: the Mexican swine disease is a recent example, which was fortunately soon falsified, but not until after huge expenses and the creation of a lot of concern among the population. It is an example in which the private sector, in this case the pharmaceutical industry, was clearly an interested player and a 'fear stakeholder' – with a handsome dividend.

As a matter of fact, next to the state, the health industry is the most sophisticated fear managing agency, competing in this regard with the adjacent private security industry. How much money is squeezed out of gullible customers in the belief that certain products protect against ill-health, ugliness or against the effects of old age? Next comes the private security industry which in essence does not sell security but threats for which it offers its services. In this regard it does not differ from salvation religions, which first declares mankind to be naturally sinful and lost and then offers salvation. All this is quite common and should be considered as tokens of a good commercial policy albeit it is often on and sometimes over the edge of plain deceit.

This contrasts with the role of the state which must not act as a commercial fear company: it has to *serve* the public with a transparent 'evidence based' policy. This is in theory, because the lure of a cheap fear policy is strong. This is certainly observable in the field of 'organised crime' and related subjects. Woodiwiss and Hobbs (2009) described the policy making in this field under the related heading of 'moral panic'. In 2004, I described the *fear management* concerning organised crime in the Netherlands (Van Duyne, 2004). Was this a correct interpretation?

Though there seems to be mutual agreement, I have become uneasy with these interpretation models. What is wrong or missing? Well, one essential piece in these models: real fear or panic. Surveying my own experience of the past 25 years, I did not observe much fear but well-balanced policy makers and civil servants quietly moving policy papers and no public fear or panic. I think we are in need of a re-interpretation.

## The political congregation model

The themes of organised (transnational) crime and crime-money have a traditional high, even global threat value. Only recently were they surpassed by (Islamic) terrorism. At first sight these themes seem to be perfect examples to underline the fear management (or moral panic). However, despite this officially proclaimed threat value, there is something missing: where is the real, existential fear that is to be managed? To the average citizen the threat value of 'organised crime' (and its derivatives) remains abstract. It is a distant phenomenon, mainly brought to his knowledge through the media with more entertainment than threat value. And then he relishes the broadcasting about 'organised crime'.<sup>1</sup> Otherwise citizens are rather afraid of everyday street crime, for example the nuisance created by various marginalised youngsters, particularly from ethnic minorities.

The interesting question then is: given the ambiguous status of fear, how is it that criminal policy concerning these threefold threats evolves, justifies, succeeds and maintains itself nevertheless? The answer to this question constitutes a multi-faceted narrative, partly national, partly international. Because of the nature of the themes, the sections of *organised*, *'transnational'* and *crime-money* will overlap. The connecting dimension of this triptych is the official belief in the fearsome nature of these subjects. However, belief is a state of mind of whose genuineness we can never be certain: is it real or a social and political desirability motivated by various interests? All we have are recorded statements put forward in a social and political context: a 'community'. To the degree such a community harbours the same expressed beliefs we may speak of a (political) *congregation*.

To what extent is this metaphor correct? In the ways these themes are addressed one recognises recurring characteristics. In the first place there is the role of problem owners or threat stakeholders. These have a certain common (moral) interest in promoting their theme. This relates to a second feature: the use of emotive language to convey the seriousness of the theme. The third characteristic fits into this emotive framework: the inflationary 'colouring' of reality. This may range from one-sidedness to manipulation of facts and figures or the wilful disregard of them. This inflation is a built-in bias, as there are no problem owners with small problems. For this reason problem owners are rarely problem solvers. The fourth characteristic is related to the previous one: problem owners need an audience of believers, a

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<sup>1</sup> Naturally, inhabitants of Naples, Mexico or other hotspots of crime and corruption will indulge less in such entertainment.

‘congregation’. Lonely problem owners are tormented souls and if heard in the end, that may well be decades after their death.

In my previous publications I overlooked this model which was already used by Bruun *et al.* (1975) in their characterisation of the shaping of international drug policy, though they used the denotation ‘*gentlemen’s club*’. They describe how the development of the global drug policy before and after the Second World War was determined by a small group of gentlemen sharing the same beliefs and dominating the international debate. I replace the denotation ‘*gentlemen’s club*’ by ‘congregation’ and not only because at present women are allowed, but because of the importance of the belief factor.

This metaphoric congregation has to be projected in a virtual ‘information space’: let us say an imaginary church building. For good reasons, the front rows of the targeted audience consist of Members of Parliament as their comprehension is often as limited as their memory. Behind them are the rows of policy makers from the responsible ministries followed by interested private institutions. On the wings one finds the respectable audience from the scientific community. They are respected information gatherers and producers because of their aura of Objective Truth finding. Therefore they are supposed to be impartial and no problem owners. Reality proves to be different though. Scattered around the space one finds the mobile audience of the media. They are omnivore problem owners: professional information gatherers, producers, mediators and story sellers, all in one. They sense when a single story, a juicy anecdote, has a potential to develop into a longer lasting theme. The ‘general public’ is the broadest and usually passively consuming audience. Some fill vacant seats in the back but most watch the performance on the screen outside while halting before moving on. Their mental representation consists of fragmented pictures.

In the following sections I will investigate to what extent policy making reality corresponds with characteristics of this metaphor.

## **‘Organised crime’ and the EU Congregation building**

If the organised crime theme is a subject of fear management, it is far from unique. As a matter of fact it was preceded by eight decades of a similar management concerning illicit drug abuse with which it fused in the course of the 20<sup>th</sup> Century (Van Duyne and Levi, 2005; Woodiwiss and Hobbs, 2009). In this political drug portfolio the United States has been the most prominent fear evoking actor (Himmelstein, 1983). From the second half of

the 19<sup>th</sup> Century onwards fear of drugs was firmly planted into the consciousness of the public, irrespective of its correspondence with reality (Courtwright, 2001). Occasionally statistical representations were even fabricated (Courtwright, 1982). The ways in which these fears were expressed repeated themselves, sometimes even as a duplication. For example, during the First World War there was a scare in the UK that the Germans would undermine the fighting capacity of the soldiers by spreading the use of cocaine; during the Cold War there was a similar fear that communist China tried to undermine the morale of the West by furthering heroin addiction. The absence of facts to underline these fears appeared to be irrelevant. The irrelevance of facts can be observed when these have to compete with human tragedy. The death of a French tourist who in 2008 jumped into an Amsterdam canal after the consumption of psychedelic mushrooms, weighed more than all the experts' reports warning against a prohibition of this stimulant (Van Duyne, 2008). Eighty years before there was a panic about the small cocaine market in London after the death by overdose of a well known actress (Van Duyne and Levi, 2005, p. 26).

Given the scale and profit margins of the drug trade operating in this market requires some organisation. Hence, the merging of the image of drug traffic, 'organised crime' and the big criminal money goes without saying. It represents a very natural confluence of fears.

The connection of 'organised crime' and the drug market is not only imaginary: in the 1970s and 1980s the drugs markets developed quickly in the Western world and to provide such a demand market commercially, more professional criminal organisations sprang up steadily. This was a natural outcome of the combination of the pull of the market and the weeding out of many amateur entrepreneurs (Dorn *et al.*, 1992). Amateur drug traders were and have always been a constant group of providers and an attractive target for the police: busting them boosts success numbers. So the police clamped down on (or stumbled over) the weaker market parties who were replaced by more professional and often violent commercial risk takers: sow the wind and reap the whirlwind.

Though the connection of the concept of organised crime and the drug market has an historically long-term presence, other criminal markets such as human trafficking/smuggling were also labelled as organised crime. This gave such crimes an extra threat dimension. However, Spencer (2008; for the UK) and Papanicolaou and Antonopoulos (2010; for Greece) made clear that the low 'organised crime' level of the criminal networks involved in bringing illegal migrant into a country have little in common with the usual imagery of the media and law enforcement authorities. At present there is a keen awareness of 'organised crime' connections with all sorts of profitable

crimes. In the recent UN threat assessment report (UNODC, 2010) these have been grouped around virtually all crime-markets, consequently diluting the whole concept of organised crime.

Public awareness of a composite or complex societal phenomenon does not arise spontaneously like the awareness of a flooding river. Hence, it is of interest to investigate how this awareness raising proceeded and how to interpret such a process. Was it really an intentional creation of a threat image as a kind of fear management as Van Duyne (2004) claimed or is the congregation concept more appropriate?

To answer this question I will review the history of the awareness raising concerning organised crime. I will first give an outline of the emergence of its awareness in selected countries of the European Union to be followed by a more detailed description of the Netherlands.

#### **a. The European awareness/fear raising**

In the European Union the threat awareness raising did not follow a unified path. Italy did not need an awareness raising. It has already been struggling for more than a Century with its organised crime phenomenon: the Sicilian Mafia and similar organisations in the South of the country. In Germany the topic of organised crime had already obtained political recognition during the 1980s (von Lampe, 2001). In the other countries ‘organised crime’ was still considered as something ‘outlandish’: an Italian or an American problem.

This complacency changed radically in 1992, when in the summer two Italian judges were killed: first the famous judge Falcone, then his colleague Borcellino. These brutal killings had an enormous impact outside Italy, particularly in Germany, France and the Netherlands. The EU was about to establish an inner market with a free flow of people, capital and goods. With these brutal killings politicians became concerned that the Mafia would ‘cross the Alps’ and spread out over the ‘Europe without frontiers’. Against this background the French and the Italian Ministers of Justice rushed to convene the EU Council of September 1992, with the UK in the chair. The preparation seemed to confirm the UK suspicion that the conference was just a ritual theatre or as my colleague in the Dutch Ministry of Justice qualified it: a *non-event* (Van Duyne, 1995, p. 2-3).

The concern of the UK was only partially correct: if the meeting was a politically superficial ritual dance, they were wrong in thinking that it would be just a once-only event. As a matter of fact, it would grow into a prolonged series of policy making steps the impact of which would be far-reaching,

even if each of them had its own ritual dance characteristic. This ritual around the proclaimed threat was taken as serious as the threat itself which the delegates believed to be real, or professed to do so. Because, was it all ‘really real’? If we assume that the concern was serious and genuine, I think it is justified to expect a commensurate intellectual and thorough effort to develop a real ‘evidence based policy making’. Was this expectation fulfilled: what did this effort look like?

In the alarmist atmosphere of 1992 (“the Mafia is coming”), there was not much time (or interest) for intellectual input. Rather, there was a pressing need to issue whatever report on the nature of the threat. *Whether* there was a threat was not the question: there *was* a threat and the Member States had to report on the situation in their countries. The countries that were the first to report on ‘organised crime’ were France and Germany. However, the French report (January 1993) appeared to be a rushed job with much copying from known Mafia literature and the mentioning of a Mafia presence in Menton: in the casino. The most quoted author was the late Falcone.

In Germany, where research on organised crime had already been conducted in the late 1980s (Rebscher and Vahlenkamp, 1989; Weschke and Heine-Heiß, 1990), the awareness of organised crime had a longer history than in other European countries (with the exception of Italy). Nevertheless, the killings in the summer of 1992 evoked also much concern among the German authorities: was the mafia also heading for Germany? Stories of Mafiosi extorting their fellow Italian restaurant owners abounded (Lindau, 1987). In haste a stock taking of (alleged) criminal Italian influence in Germany was carried out. The outcome did not seem to be impressive. Thinly spread, mainly in the southern part of Germany, connections between Italian restaurants and ‘organised crime’ in Italy were suspected. Despite leaked headlines, no publication followed. The methodology was considered too weak while the findings were insufficiently worrying to justify a follow-up investigation.

In the UK policy makers soon switched from an initial scepticism to a staunch belief in the threat of ‘organised crime’. In 1993, it hosted at Bramshill the *Organised Crime Conference: a Threat Assessment*. The first sentence of the briefing paper of this conference strikingly illustrates the intellectual level and accuracy of insight of the new awareness: “Organised crime has many definitions; this may be because it is like an elephant – it is difficult to describe but you know it when you see it.”<sup>2</sup> The subsequently issued

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<sup>2</sup> The author attended this conference and noticed that the rhetoric did not match the easy-going, relaxed and cosy atmosphere, reflecting anything but fear or ‘moral panic’. As the rhetoric seemed to be intended for external effects, journalists were allowed to attend most sessions. The latter did not look very petrified

briefing paper of NCIS: “*An outline assessment of the threat and impact by organised/enterprise crime upon United Kingdom interests*”, conveyed an ominous but unsophisticated threat image. In bombastic language it warned that “*behind the words [organized crime] in this paper lurk some of the most brutal international criminals ever known*”. Given this picture, it is not surprising that the briefing’s list of groups of criminals look very much like a gallery of ‘usual suspect’: mainly foreign criminal groups involved in traditional crime markets: drugs, fire arms to which an array of other crimes with an ‘organised crime potential’ was added. Bikers were mentioned as an indigenous organised crime group (NCIS, 1993).

During the Home Affairs Committee hearing in the following year, a similar imagery could be observed. Concerning the definition of organised crime the opinions ranged from “not possible and not useful” to a virtual tautology (organised crime concerns serious crime, because serious crime is always planned). The foreign criminal element was reconfirmed as preponderant, mainly connected to drug trafficking, but a British ‘organised crime potential’ was also admitted.

Other countries were slower in their awareness raising though the problems they faced did not essentially differ from their neighbouring countries. Belgium is a good example for this finding. Between Belgian and Dutch crime-entrepreneurs there were traditional interactions. During the 1950s organised butter smuggling flourished and in the 1980s there were many crime-enterprises involved in organised VAT fraud carousels, drugs transports and money transfers (Van Duyne, 1990; 1995). Nevertheless, up until the mid-1990s, in Belgium, the concern about or even the attention to ‘organised crime’ was slow to develop. Even a conspicuous ‘organised crime’ example did not arouse attention. This case concerned a major cross-border VAT and excise carousel with mineral oil, penetration of the underworld corrupting the customs and on top of that the involvement of a *real* American La Cosa Nostra figure (Van Duyne and Block, 1994). Nevertheless, only two detectives from the Brussels Judicial Police were available to handle this case. The same applied to one of the largest XTC production rings in Europe, consisting of a Dutch-Belgian criminal network. In the Netherlands this was tackled by an organised crime squad of 60 staff while in Belgium only one (financial) detective was available. An interesting case of overstaffing juxtaposed with serious understaffing (Van Duyne, 1995, p. 91-94).<sup>3</sup>

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by the rhetoric either, but were delighted to forward some screaming headlines to their papers.

<sup>3</sup> The VAT-dodging of the Belgian operators attracted the attention of the fiscal authorities which led to the trail of precursors and the cross-border network (Van Duyne, 1995, p. 91-94).



Clearly, Belgium was not really thrilled by 'organised crime'. Nevertheless, in 1996, the administration came into action. The reasons for this move at that time are difficult to determine: there were no spectacular organised crime cases to evoke a sudden concern. Maybe the organised crime issue was generally 'in the political air'; maybe the Belgians did not want to lag behind the Netherlands, where the Parliamentary Commission on (organised) police investigations issued a report totalling ten volumes. Irrespective of such plausible reasons, the government drafted an action plan in which it announced all sorts of measures to fight 'organised crime', such as witness protection, special investigative techniques and a better data collection. Two years later, a Parliamentary Commission for the investigation of organised crime in Belgium was established. The commission was a Senate Commission, which is rated politically as less important than a similar commission of the Chamber. The investigators issued an assessment report on 8<sup>th</sup> December 1998. After having done its work the commission was followed by a 'slumbering' successor commission.

These observations shed doubt on claims of really felt fears of 'organised crime' in Europe: far from the whole of Europe was 'thrilling' by 'OC fear'. In the Netherlands, the UK and Germany there were concerns among the police and the Public Prosecution Office which were passed on to policy makers and politicians. These worries were broader than only the dreaded deeds of criminal organisations and concerned also 'collateral' effects of 'organised crime', though these were not specific for 'organised crime'. There were worries about crime-money, the related laundering and corruption. One can subsume these under the general denominator of threat to the 'integrity of society': the public administration, the financial system and the business community, all these pillars of society might be undermined by 'organised crime'. Criminal entrepreneurs might buy their way into higher echelons of society. Though outside Italy there are few examples of such criminal successes, at policy making level such beliefs were harboured and spread around.

Whether or not all these fears were genuine, I think that at EU-broad level the picture is ambiguous and selective. Where there should have been concern, it was not expressed. For example, it is remarkable that in Italy after Berlusconi came to power, there was a decline of political interest in fighting organised crime as well as corruption even though the fear of organised crime in that country is more than justified (Stille, 2006; Newell, 2004; 2006). Where do we notice expressions of concern, let alone 'fear'? Compare this present equanimity of European leaders with the acute collective fear of the 'Mafia crossing the Alps' after the events of summer 1992. While there is more than a grain of truth in the public rumours about Berlusconi

having obtained a substantial number of Mafia induced votes and himself being charged with corruption and having received mafia-money for his *Fin Invest* enterprise, all erstwhile panicking European policy makers have remained silent up until the present day. To speak up is (politically) not done.

The same can be observed about another perceived threat: ‘Russian organised crime’, ‘ROC’ for the professionals. After the demise and break-up of the Soviet Union, the region witnessed a phase of rough adventure capitalism, part of which was criminal, also abroad, for example in the border states of the Baltic. Were the Russians coming after all and did they make an alliance with the Mafia?<sup>4</sup> That claim was believed, though it was most unlikely (Williams, 1996; Rawlinson, 1996). In addition, there was a substantial outflow of capital: licit as well as proceeds from oligarchs robbing their own state. So there was not only fear of ROC, but also fear of the ‘ROC finances’ somehow landing in the West. There were rumours that Russian crime-money was spent on the acquisition of expensive mansions and villas in West London. What happened next? How many suspicious transaction reports have been sent to the British FIU (NCIS at that time) and where is the analysis of suspected criminal Russian investments?<sup>5</sup> Was the fear of Russian organised crime really genuine? Rawlinson (1998) noticed something different: Russian organised crime was sexy, a bit scary and therefore ‘thrilling’. She mentions a high surplus demand of interviews with Russian criminals, inducing normal Russians into earning some extra money by posing as a criminal-to-be-interviewed. Then interest levelled off again. To my knowledge: “All was quiet in the Western front”. Why? Apart from the declining position of Russian crime-entrepreneurs in the Baltic in the second half of the 1990s (Rawlinson, 2001), the Russian Federation may still be endangered by ‘organised crime’, up to the highest level of government. Enough for continued awareness raising. But awareness raising can show a bell shaped curve, with a rise and decline without much discernable changes to the underlying reality.

## **b. Awareness raising: the case of the Netherlands**

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<sup>4</sup> There was a widespread belief, leaked from intelligence forces, that the Mafia, the Russian organized crime and the Yakusa would have held a summit meeting in Prague. According to Williams such an event was highly implausible: who would represent who and make agreements for whom?

<sup>5</sup> According to an analyst the known purchase price of the property was in the range of the UK average property price. When I asked the officer whether they would rectify the earlier much higher figure, he responded: “Certainly not”. So, just like much unpleasant information it became “classified”. There was no Wikyleak at that time.

In the previous section I had to resort to ‘historical snapshots’ due to lack of systematic research. Concerning the Netherlands I carried out a more systematic survey of the awareness or rather, fear raising process in the late 1980s and beginning of the 1990s (Van Duyne, 2004). What was that awareness at that time: was its level too low and did it need an extra boost? The author Fijnaut (1985) thought the threat was not taken serious enough even if he confessed we knew very little of it. However, this wake-up call for the unknown threat did not do justice to the actual efforts of the police and the Public Prosecution Office which were already quite aware of the on-going smuggling enterprises of Turkish, Moroccan, South-Americans and Dutch smuggling groups. There were even specialised crime squads targeting these crime-entrepreneurs. What was lacking, however, was a concerted awareness raising at the level of policy making and legislation. This became the self chosen mission of a small group of influential problem owners.

Naturally, the most important problem owners could be found in the law enforcement agencies: the police and Public Prosecution Office. The latter was strongly represented by the Prosecutor General of the southern resort, Mr. Gonsalves. The latter installed a commission (1987), named after himself, to tackle ‘the’ organised crime problem. Of course, the leverage of such a commission depends on sufficient supporting co-problem owners and on information in order to send the right messages to the right audience. There were sufficient problem owners, while our Prosecutor General had useful hierarchical lines to the Public Prosecution Office and the police while fostering the relationship with the press. For the information task the police is in two ways an important ‘fact producer’: at the operational level it has ‘juicy’ stories and at the strategic level it can broadcast situation reports the reliability of which few dare to contest. If dressed up smartly, both can have an enormous impact. The best dressing is the label ‘secret’ with an icing of ‘research’ on it. So in 1988, there was a ‘secret’ strategic report delivered by a research unit of the national police which was submitted to the Prosecutor General from where it was leaked for a prime time television broadcast. This was much to the disgust of his Assistant Attorney General, who knew that the report was methodologically flawed and deceptive. Worse, though leaked, it remained ‘classified’ which prevented an independent scrutiny of its methodology. That did not matter: the broad headlines and the 8 o’clock news muffled any criticism.

This leak had its desired political effects: the story was accepted and ‘organised crime’ was put on the political agenda where it was to remain. The research department of the Ministry of Justice, which was also researching ‘organised crime’ felt outcompeted: “We [the research department] have

failed to catch the headlines!” There is not always natural love between problem owners.

What did the leaked secret report contain? It gave an account of the results of a questionnaire sent to crime analysts from the crime squads dealing with ‘organised crime’. 200 questionnaires were returned; only 3 criminal groups were rated as ‘highly organised’. However, the way of reporting was such that the fast reader (the media) could easily interpret it as if there were 200 organised criminal groups. And the media did so. Four years later, 1992, the Chief Commissioner of the Utrecht police admitted that the report was actually deceptive. He thought the questionnaire was seriously flawed and referred to double counts. This confession received a small 10 line column on page 5 of a local newspaper.<sup>6</sup>

Despite this initial success of political agenda making, much more political ground still had to be conquered to get the coveted funds and legislation for tackling ‘organised crime’ as the police and Prosecution wanted. In the five years following this first threat awareness raising the ‘organised crime’ theme was steadily warmed up. Various problem owners took care of that and for good reasons. As mentioned before, ‘organised crime’ may be a ‘hot item’, to the public, the average voter, it is mainly a matter of entertainment: thrilling, but not personally threatening. More heat had to be applied to create a sense of urgency among policy makers and Parliamentarians.

In achieving this aim the activities of the various stakeholders showed much synergy while the underworld provided sufficient criminal input. Smuggling undertakings resulted regularly in ‘mega interceptions’, while the apparent instability within the criminal underworld led to occasional, often lethal violence. This produced regular media attention which was amplified by leaked new documents: a new survey of criminal groups in 1991 and a threat assessment and political memorandum in 1992. The resulting broad media coverage heightened the political pressure.

Sometimes this synergy was directly steered ‘from above’. For example the Chairman of the above mentioned commission bestowed special favours to a journalist for writing articles and a booklet on ‘organised crime’ (Van der Roer, 1989), allowing him access to ‘life files’, much to the dismay of prosecutors active in the relevant investigations. Otherwise, any shred of news about ‘organised crime’ was printed or broadcasted and then repeated regularly. The television even broadcasted the ‘organised crime news’ as a special item against a bullet-riddled Dutch flag as a background. The focus was very selective: the underworld of the ‘usual suspects’. Interviews about

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<sup>6</sup> Utrechts Nieuwsblad, 16 December, 1992. If such a deceit would have happened in the field of public health, heads would be rolling.

organised VAT fraud or in which the importance of violence was downplayed were cancelled: “Too little entertainment enough” was the argument. Where was the ‘real’ fear?

Some of the Dutch researchers, eager to prove their relevance to policy makers –one may qualify them as ‘embedded’ researchers– came to the fore with warning publications. Their admission that they were warning against something unknown did not weaken the seriousness of their warnings (Fijnaut, 1985). Apparently, an unknown menace looks more frightening than a known one. The publications gave the excitement and fear a touch of ‘scientific’ truth, to the delight of policy makers. Beware of ‘embedded researchers’ (see: Van Dijk, 1993; Fijnaut, 1993).

The police also invited politicians to convey to them the ‘right image’ of ‘organised crime’. A good example is the visit of Members of Parliament to the Amsterdam police (1990) during which they were given a presentation about the main organised crime figure in the town. Conducting research on the same criminal organisation at that time, I noticed that the information was obsolete, which did not matter for conveying the right ‘threat image’.

In the course of time the shared rhetoric became shriller, which was clearly observable during the debate on the budget of the Ministry of Justice in the autumn of 1992. I watched how the MPs outdid each other in their zeal of fighting ‘organised crime’. The Minister was strongly urged “to do something”, because “organised crime was on the march” and “nothing is being done”. Given the scarcity of research it was a fascinating debate between uninformed but nonetheless firm believers.

Meanwhile, the police and the Public Prosecution Office did not need extra encouragement: they had made already great efforts to tackle criminal organisations. Unfortunately, in their zeal to ‘defeat organised crime’ decisively by catching the Misters Big they got entangled in illegal investigative methods. This resulted in a scandal, in 1993, drawing attention away from the ‘organised-crime-on-the-march’ subject to the improper investigative conduct and the mud-fight between police chiefs. (This required another form of management; scandal management.) This does not imply that this belief was refuted. Beliefs are seldom refuted; instead they wither away.

Looking back at the same evidence, I question my 2004 interpretation of fear management: was there really a shared climate of genuine fear? I may have jumped to conclusions: what we actually observe is an increasing *fear rhetoric* shared by a relatively small number of problem owners. If one can doubt the genuineness of these fears, the concept of fear management does not apply. The fear rhetoric may have concerned something different: dissent within this small group of problem owners and the adjacent political circles. And that was managed quite efficiently: those who expressed a dissenting

opinion were no longer spoken to. But this is a radically different fear management: it concerns ‘congregation management’.

### **c. Threat, sense of urgency and knowledge standards**

The question raised earlier, a comparison between ‘genuine fear’ and tokens of commensurate efforts is difficult to answer as we have no access to this state of mind. We only know the verbal expressions surrounding the ‘great concern’. These use to be very stylised political formulas. Nevertheless we have to take them for what they convey: an official opinion about the ‘organised crime’ danger. Unless there are contra-indications one has to assume that these reflect some state of mind with serious intentions. It is interesting to compare these with the pace and content of political events, in particular as far as knowledge development is concerned. What happened after the Great Fear of 1992 and what can we say about the development of an ‘evidence based policy making’ in this area?

We have seen that the European policy makers got into action: a year after the first conference in September 1992 the European Commission announced that more insight into the phenomenon should be obtained. This was to be accomplished by an *Organised Crime Situation Report* (OCSR) to be constructed from the exchange and analysis of information by the Member States. The Commission referred to a “mechanism” to collect and analyse the information of the Member States. Each Member State should also provide a description of the “methodology” they used.

Though these ‘high level’ policy makers may have been sincere in their intentions, the follow-up steps raise doubts about how seriously they took the implementation. There was no ‘mechanism’ and no ‘methodology’ worth mentioning. Member States were requested to provide a description of the methodology they used, but few honoured this request. Knowing the responsible police and prosecution services it is safe to assume there was no methodology. This ‘mechanism’ was used for the 1994 and 1995 OC situation report.

I could find no indications that the few ‘methodologies’ which were handed in were evaluated against any standard, such as those from the usual behavioural science methodology to assess their reliability or validity. There are no records of this activity. Does this really reflect serious intentions?

Yes, amazingly it does. The European Council could have halted the process of knowledge building by declaring itself satisfied with the results of these half-baked attempts. But it did not do so, but persevered in developing what it called a ‘methodology’. In 1997, we find a clear sign of that perse-

verance: the belated attempt of *defining* ‘organised crime’. Drafting a definition of a many-faceted social construction is not an easy task: it requires sharp (re-) formulation, testing and retesting to meet the standards of unambiguousness of all component terms and non-redundancy or overlap.

Whether the working group tasked to draft the definition had any knowledge of such requirements is unknown, but given the unsatisfactory outcome it seems very unlikely. Actually, the final EU-definition of ‘organised crime’ violated these basic requirements (Enfopol, 35). The definition stipulated four mandatory and two optional features or criteria which a criminal group had to fulfil to be qualified as ‘organised’. The formulation of these criteria are insufficiently unambiguous to enable the delineation of the denoted features, while some overlap with others: if one criterion is fulfilled the other is fulfilled too. For example: profit oriented crime and laundering. Given the broad definition of money laundering, successfully committing crimes for profit entails laundering, irrespective of whether such laundering is intended.

Alongside this display of perseverance, resulting in an amateurish ‘methodology’, in December 1996, the European Council in Dublin stressed again its serious intentions to fight ‘organised crime’. The Council established an impressive and elaborate structure. To develop a coherent and coordinated approach, a *High Level Group on Organised Crime* was put into place. In 1997, this group developed an action plan to combat organised crime, according to which a *Multidisciplinary Group* was set up to stimulate an integrated approach. In addition, a *Contact and Support Network* (CSN) was established to examine the issue of the measurement of organised crime.

Altogether, it cannot be denied that this represents an impressive display of determination. However, what did all this amount to? Was this structure just a complex stage for a politically ritual dance performance of ‘high level’ civil servants justified by a collectively well maintained expressed fear of ‘organised crime’? Was there really a genuine fear or was it a play of mutually agreed incantations as Vander Beken and Van Duyne (2009) suspect? As a tree is known by its fruits, it is appropriate to take a closer look at the fruit basket.

Summarizing the ‘fruits’, we conclude that the subsequent pace of the development reflected anything but a sense of urgency while the efforts were certainly not commensurate with the firmly expressed ‘forward looking approach’. It is true, from 1999, each year lofty proposals were made about: methodology; knowledge based policy making; strategy development; knowledge management; data collection (quantitative and qualitative) or risk assessment. But underlying these grandiloquently formulated ambitions there was no content: no real understanding of what phrases like ‘methodology’, ‘knowledge based’, ‘data collection’ or ‘risk’ really mean in any tech-

nically operationalised sense. And the measurement of organised crime? A feasibility study commissioned by the European Commission under the so-called *Hippocrates Programme*, observed a lack of unity of definitions and operationalisation (Vander Beken *et al.*, 2003, p. 236). Nevertheless, no measurement has seen daylight. The same applies to the measurement of Transnational Organised Crime (Burnham, 2003) to be discussed later.

Finally, in 2005, the decision was taken to draft a *threat assessment*. From 2006 onwards Europol was to produce Organised Crime Threat Assessments (OCTA), which would be a key element in the coming European Criminal Intelligence Model (ECIM). How is still unclear. And what has happened to ECIM? Nobody knows, but the OCTAs have become an annual event.

#### **d. Knowledge denied and knowledge eschewed policy**

Thus far Europol has published four OCTAs and in each introduction the Head of Europol has expressed to be “delighted” to present it to the European tax-paying community which is assumed to be delighted too. But delighted about what? For various reasons the OCTAs are strange products, nothing to be delighted with.

From a methodological point of view they are the products of a secretive mentality: access to its methodology is denied to the public. It is remarkable that Europol succeeds in persevering with this secretive attitude, which is not due to its strength and determination to withstand attacks to open up. There are hardly any attacks: Europol succeeds because of the lack of interest of those institutions which should uphold the principle of transparency and democratic knowledge access. When four years ago (2007), I requested Europol to disclose its (*empty*) questionnaire, its basic instrument, none of the criminologists in this field responded to my request to join ranks. Invoking the Dutch Freedom of Information Act, I got hold of the empty questionnaire.<sup>7</sup>

Inspection of that empty questionnaire revealed that the final product is rather the outcome of a smart *hocus pocus* process than of something which may approach a methodology. In terms of multiple interpretability, ambiguity and particular answer-prompting questions, the questionnaire defies any sound methodology. The 50 explanatory footnotes were apparently not making the task of the respondents easier, let alone guaranteeing that there will be a unity of interpretation. Therefore, it is unknown how the question-

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<sup>7</sup> At first the Secretary General of the Ministry of Justice rejected the request on the grounds that “relations with international institutions might be damaged.” After the subsequent appeal hearing the Minister admitted disclosure.



naire is handled by 27 different police forces. How the responses are finally integrated into one threat assessment is left to the imagination of the reader. The reader will look in vain for concepts such as ‘reliability’ or ‘validation’ (Van Duyne, 2007). It is an example of ‘evidence based policy making’ without concern for reliability or validity, while going to extremes to eschew accountability by maintaining a rigid ‘knowledge denied’ policy (Van Duyne and Vander Beken, 2009).

Though these threat assessments should ‘look ahead’, they look like stills: what is their time perspective? There are now four annual OCTAs, each year depicting threats, but when one looks for a year-to-year comparison for obtaining a time line, one looks in vain. Which threats are being realised, which are waning or have successfully been fended off? Checking the 2009 OCTA for comparative references to previous years, one finds two references. What is a threat assessment methodology without testing its realisation? Any insurance firm tests insured threats against their realisation over fixed time spans to assess its liabilities and to determine the premium. But what does Europol and the surrounding policy making community do with these expensive annual threat products? The literature remains silent about it, while the director of Europol continues to be delighted with presenting the umpteenth OCTA. Are these products only to the delight of its directors and the policy making congregation?

What are the reasons for this sad state of affairs? There is no written evidence which can provide an explanation. Surveying the literature one is rather struck by the silence surrounding this costly enterprise. After the defects of the methodology have been exposed, there were no reactions within the political or police community: no questions raised and no debate opened. Within the scientific community silence prevailed too. Not only was there no active support for my Freedom of Information action from fellow researchers, there was also no academic follow-up debate, with the exception of Hamilton-Smith and Mackenzie (2010). This implies that Europol can continue unopposed, and it does so, with an expensive invalidated ‘forward looking’ instrument paid from the public fund, while the thought of testing the added value has never occurred.

What does all this amount to? Let us make a temporary summing-up. Since the mid-nineties we can speak of a clear awareness of the threat of ‘organised crime’. This found its expression in a shared fear rhetoric and various action plans, policy making structures, legislation to enlarge policy powers and in an outspoken wish to obtain more insight into the phenomenon. On the other hand we observe a slow pace and amateurism with which knowledge development is carried out and the perseverance of a secretive ‘knowledge denied’ policy. We find no thorough analysis of definitions,

scrutiny of the ‘methodologies’ or testing of outcomes. There is also no inquisitive attention from the democratic watchdogs: the European and national parliaments acted as true or at least as silent believers. Few questions were asked which contributes to the lack of accountability.<sup>8</sup>

Is this state of affairs due to collective complacency between like minded officials and politicians, the ‘congregation’, maintained by lack of critical opposition? Indeed, questions are rare when belief becomes strong.

## **The next scene: transnational organised crime**

Alongside the usual ‘organised crime’ concept a strengthening attribute emerged: ‘transnational’. Did the threat image evoked by the ominous two little words ‘organised’ and ‘crime’ need reinforcement? An extra threatening dimension to strengthen one’s case? This would be in the line with my thesis about fear management. But that is wrong. The historical origin of the transnational organised crime concept was radically different from that of the organised crime concept. But in the end the adjective ‘transnational’ was hijacked and transplanted into the organised crime concept. How did that occur?

The ‘transnational’ label did not start with a flash of inspiration to add that adjective to the existing ‘organised crime’ brand name. Nor was it added because of a real concern about the transnationality of organised criminals. And it has certainly not the US based origin as is claimed by Woodiwiss (2003). As a matter of fact it was introduced in 1974, at a time when ‘organised crime’ was still considered an Italian or American problem. The concept developed during the preparations for the Fifth United Nations *Congress on the Prevention of Crime and the Treatment of Offenders* in Geneva, 1975.<sup>9</sup>

The first reference is found in a 1974 working paper prepared by the UN Secretariat called: “Changes in forms and dimensions of criminality – transnational and national”. The angle from which this issue was approached was fundamentally different from the present one. The focus was on the victimisation of the *developing countries* by transnational crimes committed by *multinationals*, which undermined their economy and “sapped their strengths”. Though the overarching concern was about ‘crime as business’, it encompassed besides ‘traditional’ criminality specifically economic or white collar crime and corruption. The report expressed the need of “more effective control over the abuse of economic power by national and transnational

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<sup>8</sup> With the exception of the Dutch Socialist Party, 2007.

<sup>9</sup> Held in Geneva, 1-12 September, 1975. The report was issued 1976.

enterprises” and in section 55 it pointed at the “*illegal (or at least deviant or economically harmful) behaviour of transnational and other powerful and potentially monopolist trading partners . . .*” Various sections in the report read indeed as a ‘leftist’ or at least progressive proclamation.

Five years later, in 1980, at the Sixth UN Congress in Caracas these ideas were amplified. The attention was again directed at the transnational victimisation of the developing world: “Transnational offenders and offences beyond the reach of law” (agenda item 5). The poorly ordered list of offences in section 159 contains items which are after 30 years still most acute: corruption, economic and organised crime (almost by default), consumer fraud and marketing “dangerously unsafe products”. And with ‘the powerful’ the text does not refer to sinister drug barons, but those who can exert legitimate power and, if not illegally, at least unethically, thereby remaining “beyond the reach of law”. The Caracas Declaration stated in the unanimously accepted Resolution 7 that “multinational and transnational corporations [. . .] contribute to such abuses” and ended with the recommended that “*the Member States should work on the further improvement of civil and penal laws against abuse of economic and political power*”.<sup>10</sup> Altogether the debates, conclusions and the resolutions were worthy of a progressive criminological or sociological conference and the concept of transnational (organised) crime was strongly connected to international social injustice and a need for international solidarity. There was no threat imagery, not even concerning the white collared octopus of corrupting transnational corporations. Instead moral concern was expressed.

This progressive tune would not last. Though I could not find background material in the public domain indicating a displeasure from the US or other industrial powers (the residences of the ‘powerful’), the preparations for the next UN Congress revealed that a change had set in. It was not a *coup*, but an act of diluting the achievements of the 6<sup>th</sup> Congress. It started in 1981 in the General Assembly. The working paper of the Secretariat observed a worrying rise of crime worldwide which aroused “*deep concern*” and the “*suspicion that certain crime control policies . . . may no longer be adequate*”. There is no specification of what particular crime control policy would be inadequate, but it is plausible that the policy of the previous UN Congress was intended. While the subject of economic crime was not abandoned (there is even a section on environmental crime), conventional forms of crime and the related victimisation got more emphasis. And with crime and victimisation the General Assembly did not mean white collar or corporate

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<sup>10</sup> United Nations (1976) *Fifth UN Congress on the prevention of Crime and the treatment of offenders: report* (A/CONF.169/15/Add.1). New York: United Nations

crime or victimised developing countries. Instead, the focus was shifted to traditional crime categories. Wrongdoing transnational corporations “beyond the reach of law” vanished altogether from the scene.

Alongside this shift in emphasis the Secretariat also worked towards a strengthening of the role of the UN: “*Since the United Nations is expected to play an important role . . . by promoting regional and international cooperation.*” In this connection the UN “*congresses have become a more effective instrument in promoting regional and international co-operation . . .*” In the end the UN and its Secretariat saw its change to the new focus ‘rewarded’ with a new role. From this new organisations would spring.<sup>11</sup>

What happened to the ‘transnational’ dimension? It did not disappear, but together with the economic crime issue was diluted and ‘bleached’. New in the text of the 7<sup>th</sup> UN Congress (1985) was the emphasis on *organised crime* and the need to “eradicate” drug trafficking. This was packed in “other resolutions” at the end of the document.<sup>12</sup> New was also a smartly interwoven herald of the present anti-laundering policy. This was not only directed at confiscation of crime-money, but it contained in essence already *all* provisions that were to be imposed globally in the fifteen years after the FATF came into action in 1989: it was recommended to review or adopt laws related “*to taxation, the bank secrecy and gaming houses to ensure that they are adequate to assist in the fight against organised crime and the transfer of [ . . . ] proceeds across national boundaries*”. It was the first international token of the global exportation of the US anti-money laundering policy. It even preceded the US own anti-laundering legislation of 1986.

Meanwhile, the *transnational* organised crime subject was turned into a state of slumber, despite the observation that much of organised crime is ‘cross-border’. In the next five years, towards the 8<sup>th</sup> UN Congress in Havana it would come to the fore again, sometimes under different names, like ‘transboundary’ or ‘transborder’. There was no attention to coherence in terms or definitions. As a matter of fact there was hardly any intellectual discipline worthy of such important subjects or threats: the wording in general and the definition of organised crime in particular were loose and incoherent. The substantiation of observations and statements from (research) literature was seriously wanting. No one cared and for good reasons. The rapporteurs were happy to have a hat stand-concept on which they could hang all sorts of threatening criminal phenomena, while they knew their UN

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<sup>11</sup> New dimensions of criminality and crime prevention in the context of development: challenges for the future. Working paper prepared by the Secretariat, 16 April 1986, p 21-22

<sup>12</sup> Seventh United Nation Congress on the Prevention and Treatment of Offenders, New York, 1986, section E: Other resolutions and decision adopted by the Congress”

audience would not scrutinise their reports against the criteria of logic, coherence and empirical evidence. It was a good example of a closed preparatory congregational decision making.

This was the first stage towards the recognition of a global transnational organised crime threat: a warming-up and a consolidation of various interests. What was announced in 1985 bore fruit: the Secretariat of the UN saw its role in international criminal policy making confirmed, while the US reaped the recognition of its dual crime fighting agenda three years later: drugs and money packed in the convention of Vienna (1988). The international 'threat flags' were being unfurled. Meanwhile the attribute 'transnational' had been accepted too.

What followed till the big event of 1994, the World Ministerial Conference on Transnational Organised Crime, was a series of steps which consolidated this theme in terms of programmes, (*ad hoc*) expert working groups and commissions. It implied a proliferation of internationally institutionalised problem owners, each contributing to a rising rhetoric as time went by: a concatenation of incantations, lacking substantiation and clear analysis, which did not look much different from what happened in the European Union with 'organised crime'.

The World Ministerial Conference at Naples, 1994, proceeded as planned, only marred by the event of the notification to the chairing Berlusconi that he was the subject of a criminal investigation. For the UN the politically most important gain was safeguarded: the general reconfirmation of the principle that transnational organised crime would be covered by a UN convention. The delegates agreed on the Naples Political Declaration and a Global Action Plan: it consists of a lot of copy-pasted texts about threats formulated earlier.

After this event, a 'ball game' developed: to and fro between the UN Secretariat, the 9<sup>th</sup> Congress and the Member States. In the end the ball was safely placed at the feet of the *Ad Hoc* Committee for the preparation of the intended Convention on Transnational Organised Crime (December, 1998).

Judging by the frequency of the deliberations the said Ad Hoc Commission took its task very seriously: sections or sentences were added and deleted more than 150 times. In the end the draft text was presented to the General Assembly. With a torrent of rhetoric depicting in darkest colours the threat of 'transnational organised crime' the delegates finally 'canonised' the proposed Convention at Palermo, December 2000 (Woodiwiss, 2003).

The substantiation of the preparatory documents as well as of the Convention itself had not much improved compared to the preceding documents: there was the same poverty of references being made up by 'belief statements'. At this level of political conviction there appears to be little need for

evidence. The Palermo event was the summit of the World Leaders and those who did not believe knew that this was not the place to display this.

To seal the conference, the Secretary General and his entourage were taken to the newly established Mafia museum in the infamous mafia town Corleone. There they could see that transnational organised crime was ‘really real’. However, the believers were fooled: when I went to Corleone the day after, the museum was closed. A museum employee who opened the door told me that the museum still had to be equipped. One may wonder what exhibition had been presented to the High Delegates.

What had been achieved? The efforts of the diversion of the original international attention to business crime at UN level before 1985 resulted in a Convention with two supplementary protocols: one against the trafficking in persons and another against the smuggling of migrants. That is not insignificant. When we look at the main document concerning Transnational Organised Crime, our attention goes naturally to its definition. Does the formulation which is intended as a *global* definition do its work? That is, does it delineate something? The answer to this question is short: no, it does not.

The definition provided in article 2 is the following:

*“Use of terms: For the purposes of this Convention:*

- (a) “Organised criminal group” shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit;
- (b) “Serious crime” shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty;
- (c) “Structured group” shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure;”

This is very broad. As a matter of fact, the broad scope confirmed the fear of the Norwegian representative that *“that the Convention would have an excessively wide scope”*.<sup>13</sup> Van Duyne and Nelemans (2011) analysed this definition in more detail. I restrict my criticism by pointing at the low maximum penalty of four years imprisonment, the combination with money-laundering (art. 6), and the strange description of ‘structured group’, which

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<sup>13</sup> Travaux Préparatoire of the negotiations for the elaboration of the United Nation Convention against Transnational Organised Crime and the Protocols thereto, footnote 21.

is defined by what it is *not*, even including that it does not need to have a developed structure.

Can we interpret this process from around 1985 up until 2000 as the development of a global Congregation of Transnational Organised crime believers? To a certain extent this would be an appropriate interpretation: the texts of the UN Congresses and the preparatory working papers contain many belief statements without substantiation. As observed, references to literature were very scarce: mainly weeklies and journals, such as Forbes Magazine, 1980. I found only two academic studies (Tritt and Herbert, 1984; Arlacchi, 1988). Most of the texts were larded with irrefutably general always-true statements, duly preceded by the ritual phrase that the Congress observed “with grave concern”, approximating a ritual church service effect.

However, one should not misjudge the rationality of this process nor the dedication of numerous delegates and UN officials who contributed to the outcome. By diluting the original transnational organised crime theme of the 1970s and the beginning of the 1980s (transnational corporate crime) and supplanting it by ‘real’ (organised) crime, the Secretariat and most of the delegates in the Congress posed a theme which was better recognised and accepted by the broadest possible audience. It certainly pleased the industrial world. It was a theme without dissenters, that did not contribute to a critical analysis. As mentioned before, it was also a theme which allowed a confluence of interests: the coveted UN role in criminal matters while the US government could reinforce its international drug war while dripping in its ideas about fighting money laundering. Once the first hurdle in 1985 was taken and the threat of ‘organised crime’, drugs and money were put on the agenda, the next move was the UN drugs convention of 1988 (Convention of Vienna) in which also the anti-laundering policy against drug money was established. Now that the laundering of drug money was criminalised, the time for the next move was ripe: to tackle laundering as a theme itself. For reasons of continuity, the point of departure was the politically uncontested war on drugs: if you fear drugs, you must fear drug money too. But that was only the ‘nose of the camel’ behind which the ideas of a global anti-laundering regime lurked.

## **The spook of the crime-money**

From the very beginning the financial aspects were inherent to the threat image of ‘organised (transnational) crime’, though in the early stages it was not very explicitly mentioned. That changed in 1985, when it was mentioned

together with the onset of the anti-laundering policy, albeit inconspicuously amidst the texts of “other resolutions”. At that time this was sufficient. As remarked, it proved to be a harbinger of more to come: alongside the war on drugs it would soon develop an independence of its own with enormous proportions and global consequences.

The fear of crime-money has many aspects but if these are not connected to the ugly picture of drug barons rolling in their ill-gotten wealth, it has few other anchorages then the moral adage: “Crime should not pay”. Therefore, connecting the issue to an existing fear, like that of drug, was a natural introductory strategy. But there were many other interests, ranging from institutional and personal interests to ideological ‘control freakery’ (Levi, 2007), which are not the appropriate topics for motivating a political audience. Likewise, introducing the crime-money and laundering policy with references to economic crime, tax offences, fraud or other subjects which were debated so lively during the 1975 and 1980 UN Congresses, would not have met a receptive political audience either. Had the audience’s attention within the UN not just been deflected away from (transnational) economic crime? Now emphasising the danger of money from economic crime would look like a policy reversal towards the erstwhile ‘progressive’ orientation of the 1975 and 1980 UN Congresses. That would be an unattractive perspective to the US involved in its export of the international war on drugs.

Promoting both the war on drugs as well as an aggressive policy against crime-money and laundering proved to be politically successful. In 1988, the UN Congress accepted the UN Convention against illicit traffic in Narcotic Drugs and Psychotropic Substances in which the Member States also agreed to take measures to confiscate drug proceeds and to fight the laundering thereof. The next step for 1989 was already prepared: the G-7 summit in Paris at which laundering was on the top of the agenda. The G-7 established an ‘informal’ working group, the Financial Action Task Force on money-laundering’ (FATF) which was to report on the nature and extent of the crime-money and to give recommendations. Of course “with grave concern”.

The FATF report (1990) contained all the ingredients for a broad political acceptance, insofar as this was not already pre-programmed by the “grave concern” expressed by the G-7 a year earlier. For this reasons it did not matter that the FATF 1990 report was a very weak one with unfounded statements and conclusions. It estimated the volume of drug money at \$ 300 billion which was based on three indirect sources, of which the FATF rapporteurs admitted their unreliability. The argumentation went as follows:

- there are the UN estimations of world drug production of \$ 300 billion, but the report qualified it as *very uncertain*;



- there is the estimated worldwide consumption of drug users, which the report rated as of “*doubtful reliability*”;
- then there are the reported global seizures of drugs which in the author’s opinion “*raises significant methodological problems*”

Then, without a single additional transitional sentence as a connecting argumentation, the report stated: “Using these [questionable] methods, the group estimated that sales [of drugs] amount to approximately \$122 billion per year in the US and Europe, of which 50–70% or as much as \$85 billion per year could be available for laundering and investment”. It defies basic Aristotelian logic that one cannot deduce any conclusion from questionable premises. That did not hinder the policy makers: the figures were accepted as true nonetheless. Aristotelian logic has no function for believers.

It is interesting to observe how this new belief developed social-linguistically. How did that go? (a) Assume a receptive mindset to whatever the High Level spokesmen say. (b) Statements of the latter are rarely directly affirmative: they are formulated in the subjunctive modus: ‘could’, ‘might’ and ‘may’. (c) These are often surrounded by a few always-true statements to which truth value they get associated. (d) By a process of (re-re-re) quotation these ‘could’, ‘might’ and ‘may’ are turned into ‘is’ and the content of the whole is turned into a ‘canonised truth’. This facilitated the acceptance of later claims. Later the FATF easily upped this figure to \$ 500 billion, which the UN later increased to one trillion dollars. By then the estimate also included other forms of profitable crime, among them corruption (Keh, 1996).<sup>14</sup> These ‘truths’ found broad acceptance, also among scholars.

Critical papers falsifying this ‘methodology’ (Van Duyne, 1994) had no effect on the gullible audience, which likewise greeted later inflationary figures despite continuing independent critique (Naylor, 1999; Reuter and Greenfield, 2001). What is very bad must have very big figures. That is part of the political socio-psychology of the threat imagery: there are no small or medium sized threats, particularly not in a community. Levi (2007) even observed an evangelical tone in the FATF 2000 report: “*Spreading the Anti-Money Laundering Message Throughout the World*” and which FATF-style regional body with a US member or observer could withstand this?

It is interesting to observe a difference between various sceptical behavioural scientists and many macro-economists. In contrast to the above mentioned critics, economists like Unger and Walker took the estimates of the FATF as their uncontested point of departure and bolstered it with their own

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<sup>14</sup> Another more well known socio-linguistic truth making is the report on the alleged weapons of mass destruction of Saddam Hussein, slipping from subjunctive to affirmative with lethal consequences.

big number game. Naturally, the institutional proponents of the AML regime (OECD and IMF) preferred to bring in such supporters from the economic discipline to add “gravitas” (Aldridge, 2008). And add “gravitas” they did.

However, closely reading that added weight from the economic supporters lands us again in the congregation of the (economic) gullible. Taking the much quoted article of Quirke (1997) as an example and point of departure, it is remarkable how careless the macro-economic approach is. At first Quirke equates laundering with earnings in the (illegal) underground economy, thereby widening the field of application tremendously. Later he narrows the concept to the formulation of the Vienna Convention of 1988. However, in the subsequent estimation modelling this definition is again abandoned in favour of the broader one. The measurement of the input variables concerning crime is equally highly questionable: police data from Interpol, which is dependent on what countries deliver (no questions about database pollution!). These crime data encompassing all reported crimes are used as a proxy variable for laundering. Sometimes it seems that the author concentrates on crimes for profit such as fraud and drug dealing of which a fair amount of laundering is plausibly expected. But in the main table of results (which really matters) one does not find this mentioned. The effect of *real* laundering by which the hidden money flows back into the economy in a ‘*whitewashed*’ form is not mentioned. In short, Quirke’s paper represents a fine example of econometric modelling and the application of regression analyses, however it lacks any rigorous methodology or strict conceptual analysis. It does not take a critical distance or tests hypotheses, but merely endorses the official assessments, such as those of the FATF. Understandably, it is an IMF paper confirming the official stand, enjoying much prestige and for that reason widely quoted by the big crime money adherents.

Also widely quoted are the alleged consequences of the presence of crime-money within the economy. But when we look back and inquire which macro-economic effects have unambiguously been confirmed, we see no confirmed predictions.<sup>15</sup> What macro-economic changes have occurred which could be causally connected to a certain volume of crime-money or laundering: the interest rates, demand for money or exchange rates? The presented regression outcomes concerning the negative correlation between crime (measured by the rough Interpol figures) and economic growth may be

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<sup>15</sup> Reuter (2007) mentions two well-known instances in which money laundering *may* have reached such a scale that it caused macro-instability for a country. These involve Latvia in the 1990s (also having too many small banks, Russian money inflow, bad legislation and governance; Rawlinson, 2001) and the Dominican Republic in 2002. If there are other examples, they have escaped the attention if the proponents of big threats.

significant statistically, but there is no accounting for potentially intervening factors (e.g., the age distribution (the proportion of youngsters) or mal governance). Worse, there is no independent criterion variable. It is remarkable that this and similar semi-scientific IMF publication has remained virtually unchallenged. Attempts to falsify are rare, or are neglected as is the case with the interesting example in Hinterseer (2002, p,76):

After questions from Congress in 1997, the Criminal investigation Division of the FBI investigated the \$ 3 billion surplus in the San Antonio branch of the Federal Reserve under the assumption that large amount of surplus cash correlates with laundering. However, the investigators (certainly no critics of the usual assumptions) found all sorts of money flows related to sport events, tourism, normal economic growth and other licit activities, but could not identify a correlation with laundering. This rare example of falsification found its place in a footnote only.

There are simple believers and sophisticated ones. Unger and her staff (2007) and John Walker may represent the sophisticated variety: one could call it the ‘high scholastic’ of the crime-money and laundering theology. The comparison with the medieval scholastic is deserved. Just as the medieval approach used the existing body of knowledge to ‘prove’ the correctness of the Christian dogmata, so the approach originating from Walker (1995) strives to confirm the existing ideas around crime-money and laundering.

What do these ‘laundering scholastics’ do? Summarised, their research combines fuzzy concepts to an equally fuzzy estimation methodology, the results of which are neatly processed in a regression analysis, which invariably proves the official stand (Walker and Unger, 2009). However, these outcomes are not tested against other external criterion variables and (known) falsifying findings (see the example above). Methodological critique is not mentioned or responded to in later publications.

Looking at the conceptual fuzziness, it seems that at first sight the meaning of crime-money is clear: it covers all income from crime. Nevertheless, uncertainty slips in with tax fraud and illegal savings from non-compliance: e.g. illegal savings by environmental crime. This source of crime-money is also important, because it affects one of the key variables of the Walker model: *distance*. With income from criminal savings distance is irrelevant: laundering occurs at the spot by tampering with the books. As a matter of fact, moving these monies to another jurisdiction would attract unwelcome fiscal attention because it could create a paper trail: phoney expense invoices to cover withdrawals. Given the estimated size of tax fraud and other economic crimes, this neglect undermines much of the Walker model (Reuter and Truman, 2004; Verhage, 2010).

Even if we solve the crime-money definition, there is still the problem of defining money-laundering. In Unger *et al.* (2007) we find 18 definitions in the first chapter, but no choice of any of them for the elaboration of the Walker model in the following chapters. In Walker and Unger (2009) we find no definition at all, but we find nevertheless the restriction of that part of the crime-money the authors claim is not laundered: “*criminals have to eat, sleep, drive fast cars, and pay accountants and lawyers.*” A strange restriction given the repeated finding that much of the crime-money is actually spent on this display of lifestyle, while to prevent laundering in the high-price consumption sector, the anti-laundering regime has been extended specifically to these ‘high-spending’ sectors, and accountants and lawyers have been brought into the anti-laundering regime, though only in Europe.

Most important are the flaws in the measurement of the volume of crime-money and laundering. In the first place, the measurement involves so-called ‘experts’ (e.g. policemen) to estimate how much money is gained from particular categories of crime and how much of that is laundered. This approach seriously compromises the basic measurement requirements of *validity* and *reliability*, given the potentially uncontrolled bias of those non-calibrated ‘experts’.<sup>16</sup> Recalculating police estimates in life criminal cases, I had frequently to size down much of net profits while using the same underlying evidence as the detectives (Van Duyne, 1997). This downsizing can also be observed during prosecution and trial and not only because judges or the jury are lenient or the defense lawyer is allegedly smarter than the prosecution (which is not a real achievement), but because of too high raw estimations by the police and prosecution (Meloan *et al.*, 2003; Verhage, 2010).

Another serious methodological flaw is the extrapolation from the arithmetic mean which requires a higher measurement level than is allowed in this kind of research. Estimation by experts are usually at an ordinal scale for which the median is the appropriate central index. Also, the frequency distribution of the criminal income is invariably skewed: a high frequency of low-income criminals with only a few high earners (Van Duyne and De Miranda, 1999; Van Duyne and Soudijn, 2010). Using the average with such a frequency distribution leads to a systematic overestimation. That does not do justice to the empirical findings. In our research on the criminal asset confiscations we found a very skewed distribution of confiscated cash or bank accounts: a median of € 4.700 versus an average of € 70.000. There are no

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<sup>16</sup> Reuter (2007) wrote an extensive critique on the Walker approach and judged the ‘expert’ approach with: “There is no reason to trust experts for purposes of aggregates.” Reuter’s observations were included in the proceedings of Ungers little insiders conference. Two years later there is no sign that Walker and Unger ever responded or referred to this or similar critique: outside the narrow circle of like-minded there is very little debate, also in science.

indications that in other countries the frequency distribution of criminal wealth will be much different. A survey of wealthy crime-entrepreneurs in North-Rhine-Westphalia (with criminal connection to the Netherlands) yielded just 6 cases with a confiscated wealth above € 100.000 cases.

Our data are open to a twofold criticism: (a) a bias because of the population, consisting of convicted offenders and (b) shortcomings in the financial investigation because international asset tracing is yet in its infancy (after 20 years). On the one hand, even if this is a plausible criticism, if the flow of crime-money is that massive as officially claimed, the statistical chance of surfacing should be rated much higher than was found in these empirical studies.

Other data likewise contradict the Unger findings. The 2006 FIU tables (Van Duynes, 2008; tables 11 and 12) show a large flow of money to the Dutch Antilles (€ 127 million), which nevertheless gets the lowest attractiveness score of 1 against the highest attractiveness score of Luxembourg: 55,4 (Table 2.14). Of the huge hypothetical money flow of € 1,5 billion from Rumania (of all countries!) there exist no corroborating evidence either. This casts serious doubts on the alleged € 18 billion crime money either being laundered or “for laundering” (which is not the same) in the Netherlands while € 21 billion would flow into the country.

Abstracted from such and other inconsistencies and the conceptual muddle, the lack of any pretence to falsify may be related to the willing acceptance by the Dutch authorities: it is ‘safe research’. It fits into the prevalent discourse within the congregation of problem owners. As a satisfied high ranking police officer expressed to us: *“Even if we know it is not true, we can use such a figure (€ 18 billion) for priority setting”*. Not all stakeholders of the congregation are staunch believers: there are also many pragmatic opportunist members who realise that the shared fear has a great potential to further their objectives. To these calculating Congregationalists one should reckon the globally extended financial security industry, named by Verhage, (2009) as the Anti-laundering Complex. They claim to sell risk-management, but they reap the fruits of fear and gullibility.

## **To fear or not to fear, that is the question**

Is this state of affairs a matter of amazement? No, it is part and parcel of the sociology of policy making: politics is not about getting to know and understand things, but getting things done. To get things done, there must be emotion and as remarked in the introduction, one of the politically best exploit-

able emotions is fear. This is not a revelation: it is a built-in *leitmotiv* in most democratic and international policy making. But our themes do not arouse much emotion among the public: which citizen is afraid of money laundering (Harvey and Lau, 2009) or transnational organised crime? These are abstract subjects, compared to ‘real life’ gangsters and hoodlums (as presented by the entertainment industry). And who is really shivering at the thought of money-laundering? A publication of money laundering by (a) bank(s) is unlikely to create a bank run, otherwise Switzerland would have been run over by panicking financial tourists, which is not the case. Or how many account holders would have lined up to withdraw their money if the Royal Bank of Scotland would have laundered a few billions of Euros? However, they did line up a few blocks when the bank threatened to collapse due to incompetent, greedy and over-self-confident management.

The survey of the evidence of these interconnected policy making fields appears to refute my earlier thesis about fear management in favour of a better fitting congregation model. In all three cases the opinion making and preparatory decision making took place in circles of like-minded problem owners who do not need to be convinced of a looming threat: that is built-in as they are its stakeholders. There is no need for a fear management but for a consensus maintenance management. In this management the heavy rhetoric of *fear-words* and political ritualism play an important role: who dares to oppose the common rhetoric and break away from the rituals? “Share our fears, or else . . . fear the consequences of exclusion.” To fear or not to fear, that is the question indeed.

Despite this refutation the fear component is not fully absent. In the case of *organised crime* there was a sincere concern among a small circle of specialist stakeholders in various countries. But it became subordinate to the subsequent congregation building. It was converted or manipulated to be conveyed to the next circle of policy makers and Parliamentarians with the media as an information outlet. In the triangle of law enforcement agencies, policy makers and the media the heat was kept high by this small circle of stakeholders seconded by a few embedded researchers. Occasionally the circle was broadened, for example when a Parliamentary Enquiry or hearing was to take place. However, it would be exaggerated to speak of universal concern and fear: some people or even countries just went along, not because they were convinced of the depicted threat but because it was the safest course to follow. In Europe, as soon as the major Member States were convinced that there must be something like ‘organised crime’, no Member State could afford to have no or very little organised crime. Fortunately, given the open borders in the EU, those Member States who were short of their own organised crime could always refer to foreign crime-entrepreneurs

exporting contraband or humans to the victimised neighbouring country. And where there is criminal profit it has to be repatriated which is money-laundering. This closes the international ‘organised crime’ circle. Hence, there are always facts which can be interpreted within the shared conviction. But subsequently we observe the absence of a sense of urgency and an empty ritual of ‘evidence based policy making’ which amounted to amateurism and a ‘knowledge denied’ or at least ‘knowledge eschewing’ stand. This was not fear management but a congregational policy of keeping doubts out.

Shaping the *transnational* organised crime theme can also be interpreted as a clear case of congregation building. By means of a process of smart ‘dripping in’ and idea-association the Secretariat succeeded in ‘uploading’ a new conceptualisation to the already existing UN congregation. For this theme and at this level I think it incorrect to speak of fear manipulation, despite the avalanche of shared swollen threat rhetoric. Was this shared rhetoric only a matter of mutually expressing political consent? This function cannot be denied, but in addition it also restrains potentially dissenting opinions: no deeper questioning of assumptions and no testing of contradictory evidence lest to be lashed with the general rhetoric. This creates at least a ‘knowledge eschewing’ attitude.

In the case of the *money-laundering* issue the situation does not look much different, if only because to a large extent the same players were involved as the crime-money problem is part of the transnational organised crime theme. But in the shaping an anti-laundering regime a much broader external audience had to be grasped, brought into line or subdued: the whole financial industry and a large number of states and territories, some of them had much to lose in participating in the anti-laundering policy (Sharman, 2008). Achieving this objective proved to be remarkably easy: the tool of blaming and shaming supplemented by blacklisting appeared to be highly effective (Stessens, 2000; 2001). And who dared to raise a dissenting voice within the closed FATF and/or ‘Egmont congregation’?

This inward looking congregational management explains partly the lack of interest in external evidence, debate or performance measures. Why debate? The believers ‘debate’ among themselves. Why measure performance as Harvey (2008) suggests, when the conventions and the legal regimes are considered good in themselves, while an evaluation may falsify beliefs? This attitude is reinforced when the majority of the congregation consists of legal specialists, to whom laws and regulations are the things that really matter. For example, the success of the money laundering regime is not measured by external criteria, but by legal and institutional structures being in place. The same applies to the Transnational Organised Crime Convention. Research on facts rates lower than reporting on the number of ratifications.

Is this the whole picture? The ritual singing of convention chorals, threat assessment refrains and laundering hymns? This sounds more ironic than it is in reality. In fact it is a grim reality with an enormous range of external effects. ‘Soft law’ with compelling ‘recommendations’ has been allowed to prevail over formal law (Stessens, 2000); ambiguous and mal-delineated criminal clauses have been adopted furthering an erosion of the principle of *lex certis* (Gelemerova, 2011); we are on the brink of allowing the reversal of the burden of proof and the abolishment of self-incrimination. And all this to fend off a threat to which we still apply the same rhetoric as 25 years ago. But when we look back at those past 25 years, we may wonder whether all this legal and human right erosion has not been in vain: which threat has been removed from the horizon due to all these sacrifices?

Against the background of the ‘knowledge denied’ and ‘knowledge eschewing’ policy of many competent law enforcement institutions the question must be raised about the critical mass of research. I think it meagre, which state is badly covered by volumes containing (sometimes stale) papers which could have been published under any ‘organised crime’ umbrella. Research on original data is scarce, due to this knowledge inhospitable attitude.<sup>17</sup> And if access to databases is granted, it is often at the price of becoming ‘embedded’ which does not further the basic research principle of ‘*conjecture and refutation*’ as stressed by the philosopher of science Popper. It would be an intriguing exercise to make a frequency table from the research literature with confirming and falsifying studies. This leads to the question of the task of the researcher. In my opinion this is not to confirm, but to falsify, to reject. A researcher is no part of any congregation and lends no support to uphold any belief. That was the state of science in the scholastic ages. A researcher does not serve, he denies and rejects any belief statement until he is defeated by his own falsification. If he fulfils this role, he will better serve society by dispelling threats being mainly fostered within the congregation of the gullible.

I have said.

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<sup>17</sup> See for example the conference volume *Combatting transnational Crime: concepts, activities and responses*. Eds. P. Williams and D. Vlasses (2001), issued by ISPAC, an advisory council to the UN. It is collection of papers, a few with new, most with old or no dates or just old ‘usual themes’, like the need for cooperation.



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