

Criminal defiance in Europe and beyond

*From organised crime
to crime-terror nexus*



Petrus C. van Duyne
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Crime can be seen as an act of defiance against the rule of law, particularly if it is committed with intent. This intension is often to make unlawful gains, whether by theft, corruption or taking part in illegal markets, which in Europe are most often cross-border in nature. This entails that criminal defiance is not just a national issue: theft or fraud can be committed locally, while handling the illicit proceeds may require a cross-border movement. Obviously not every state faces the same defiance, or prioritises the same defiance. That may induce stronger states, for example the USA in its 'war-on' policy, to exert pressure on smaller states to accept the same interpretation (and legislation) of criminal defiance. Such 'legislative imperialism' may itself be considered as defiant.

Criminal defiance is risky: the authorities do not like to be seen as 'soft' and must visibly 'hit back'. So successful criminals must keep a low profile, though some crime groups, such as the criminal motor-cycle gangs, defy this principle by ostentatious conduct. Likewise, in the case of grand corruption in states where corruption has become endemic, we see criminal defiance, in the case of some eastern European countries the defiance by oligarchs, being a public matter.

The 20th Cross-border Crime Colloquium, hosted in 2019 by the Willem Pompe Institute of Utrecht University, presents this peer-reviewed volume to which 32 authors from all over Europe have contributed. It covers a broad range of expertise and original research projects: from the UK, Germany and further to Russian Siberia and back to the frayed fringes of the Mediterranean shores where a host of migrant workers is ready to defy fate for a better life.



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Table of contents

<i>Petrus C. van Duyne</i> Introduction	1
<i>Alexandra Neag</i> Organised crime legislation in Romania: A case of policy transference?	21
<i>Dina Siegel</i> Russian Organised Crime in Europe	51
<i>Jurij Novak and Roman Vladimirovich Kravtsov</i> The Wild East: An introduction to organised crime in Siberia	77
<i>Petrus C. van Duyne and Igor Svyatokum</i> Corruption and oligarchy in Ukraine: The tenacity of a problem	107
<i>Ombretta Ingrassi</i> Organised crime's lawyers, from lawful defence to the 'bridge function': The case of the Sicilian Mafia	139
<i>Anna Sergi</i> Between the Devil and the Deep Blue Sea: A research agenda to investigate organised crime in seaports	165
<i>Alan Doig and Peter Sproat</i> A policy in search of an evidence base and a credible means of implementation?	187
<i>Daan van Uhm and Toine Spapens</i> Illegal trade in protected birds in the Netherlands: Three criminological perspectives	217
<i>Stefano Becucci</i> Human smuggling to Italy through the Libyan coasts	245

<i>Joseph Whittle and Georgios A. Antonopoulos</i> Assessing the operation of irregular migration from Eritrea and the smuggling / criminality nexus	275
<i>Magdalena Perkowska</i> Organised forms of illegal migration: The case of Poland's borders	295
<i>Arthur Hartmann</i> Twenty-five years of legislation and law enforcement against money laundering in Germany: Facts and opinions	325
<i>Ilaria Zavoli and Colin King</i> Preventive AML in the UK property market: Inside views from the sector	353
<i>Emanuele Sclafani and Anita Lavorgna</i> Money laundering schemes through real estate markets: A system- atic review	373
<i>M.R.J. Soudijn and W.H.J. de Been</i> Law enforcement and money laundering: Big data is coming	399
<i>Olga Batura, Gabriëlle op 't Hoog and Niels van Wanrooij</i> Why do we know so little about illicit trade in cultural goods? An analysis of obstacles to collecting reliable data	427
<i>Marc Balcells</i> Old dogs, new tricks: The use of technology by Italian archaeolog- ical looters	449
<i>Ulrike Heitmüller and Klaus von Lampe</i> The rocker phenomenon in Germany: Perceptions and government responses to outlaw bikers in an historical perspective	477

Benny van der Vorm and Petrus C. van Duyne
The retribution of the Erinyes: Combatting outlaw motorcycle
gangs from the perspective of ‘undermining’ criminality 505

Sigrid Raets and Jelle Janssens
Betwixt and between: Examining the evolution of the crime-
terror nexus 531

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Petrus C. van Duyne

Introduction: On criminal defiance

It looks like a small deviation from common usage: replacing the usual ‘war on-’ rhetoric by ‘defying crime’. What is the added value of a new phrase when since Nixon, there is consensus on the ‘war on crime’ issue? Well, the added value is quite simple: the consensus is wrong as there is no war against crime, not even metaphorically. If that were true, it would imply a kind of civil war or an insurgency complete with a state of emergency. However, we do not have such wars. We only have fellow-citizens who break the law. Further, if the state would wage a war against law breakers, we would have civil wars all around. But we do not have; that is not the case in Europe or other industrialised countries.

What we have is criminals defying the state and its rule of law. The myriad ways in which that happens is determined by the national criminal codes and can range from criminal negligence to capital crimes such as assassination. Opposed to this, the state defies criminals by means of its extensive criminal and administrative law apparatus: deterring and preventing potential law breakers and detecting and punishing actual offences. From this multitude states have regularly singled out types of crime groups or offenders and explicitly declared ‘war’ on them. Prohibited substances and their organised traffickers were most often targeted, not only in a warlike rhetoric, but also with a more severe and an extended repressive ‘criminal law armament’. After more than a century we know now that this brought no ‘victory’ on these criminal markets. Not because law enforcement was ‘beaten’, but because criminal traders continue to defy the authorities as long as the profit incentive is stronger than the deterrence. The authorities rather heeded an old capitalist saying: do not fight the market (Van Duyne and Levi, 2005).

In science there is the principle of parsimony, stating that from a set of models with equal explanatory power, the one that is most parsimonious in its assumptions should be adopted. I think the principle of criminal defiance is a sufficiently parsimonious point of departure to look at the many facets of crime as well as its crime control. This does not entail a ‘simplification recipe’ for the commission of all sorts of criminal and corresponding law enforcement actions. Actually, the act of defiance is mostly followed by a mixture of orderly routines and disorderly improvisations (Van Duyne, 1996). For example, the state may defy ‘organised crime’ to the point of even proclaiming a ‘war’, while its investigative routines are guided by the wrong assumptions about the targeted organised crime groups, which are much less organised, powerful or rich than assumed (Van Duyne, 2003). Take the outlaw biker gangs, prioritised by Europol as examples of organised crime. In the Netherlands they are even attributed with an aggravating qualification: they would ‘undermine’ the rule of law of the underworld. But do we need such an assumption to come into action? Their brazen defiance is sufficient to counteract with all legal tools as we will see.

Most criminals do not defy the state as blatantly as the outlaw biker gangs. It is true, some criminals have done so, such as Al Capone (Schoenberg, 1972) and more recently the Mexican drug baron El Chapo. But their defiance evoked the full might of the law enforcement apparatus against them – to their own undoing. Criminal defiance remains rather silent, neutralising the underworld through corruption. Or they may be useful in solving problems by using their ‘muscle’, usually at a local level (see von Lampe, 2016: ch.11).

The behavioural perspective of defiance is broader than that of a state defying criminal opponents. It may also apply to the community of states which in their foreign affairs more often than not defy each other continuously. But that is diplomacy, not illegal; rather, that is determined by who wins the game. The dealing of the presidents Trump and Zelensky of Ukraine is illustrative: Trump started with cajoling, but with the stick of delivering (or withholding) military aid to Ukraine hidden in the background. Then during an informal telephone call, with the military aid still stockpiled, Trump played his card by defying Zelensky with a ‘request’, rather, ‘a favour’ he could not refuse. Was the latter willing to collect ‘dirt’ against the democratic candidate Biden by exposing potential law breaking by his son? Was this extortion, defiance or both? Apart from extorting the Ukrainian president, it defied US standards of at least ethical, if not criminal, conduct and, therefore, it had to remain hidden.

As is known, it led to the failed impeachment procedure due to a political acquittal by the Senate.

Organised crime: The construction of defiance

As remarked in the previous section open criminal defiance is anything but a guarantee of success. This implies that smart organised crime entrepreneurs refrain from extolling their successful acts of defiance. In contrast, law enforcement authorities must go loudly public: they must make much of their actions against crime if they want to remain credible, certainly when they defied organised crime with a war-like rhetoric. And any denial by allegedly organised criminals is taken as a proof of its existence. 70 years ago the USA launched, from this solid conviction, its mission of convincing the international community of the existence of Organised Crime and of the need to adopt the USA framework of legislation and policing. The first breakthrough of this legal imperialism was the war on drugs (Bewley-Taylor, 1999); more recently it has been the subject of Transnational Organised Crime (Van Duyne and Nelemans, 2011).

Few states could avoid this American ‘legal imperialism’, as Mattei and Nader (2008) call it and certainly not the Post-Socialist states in Central and Eastern Europe, such as Romania, as described by *Alexandra Neag* in her chapter on Romania and OC. Did Romania not already have a law against criminal associations, which could have been taken from the shelves and updated? Yes, it has one from 1860: the Law on Criminal Associations, but this was deemed insufficient by the US and the EU. The author discusses how it had to be replaced by what the US, and later the EU, presented as appropriate through the various platforms they dominate: the United Nations, the Council of Europe, Europol and other European institutions and international police organisations. That was a defiance Romania could not and did not want to resist: The big price was the EU membership. Romania complied; rather over-complied, by removing the qualification ‘serious crime’ from its OC definition. However, removing that component seemed to have swelled the incidence of reported OCs: from 16.072 (in 2007) to 27.280 (in 2018) an increase of almost 70% in a little more than a decade. If OC is a defiance, a stroke of the legislative pen can increase it beyond all proportion or, conversely, reduce it again.

During the Cold War the ‘western world’ feared that “the Russians would come”. There was even a popular comedy movie: “*The Russians are coming!*”, broadcast in the US in 1966. But for that to happen Europe had to wait till the *glasnost* and the subsequent implosion of the Soviet Union at the beginning 1990s. Then the ‘Russians’ really were coming. Not as representatives of a Soviet empire, but as crime-entrepreneurs from a dissolved empire looking for new profitable criminal opportunities as is described by *Dina Siegel* in her chapter on Russian organised crime in Europe. Though the law enforcement agencies perceived themselves as defied by what was considered ‘Russian Organised Crime’ (which as a ‘serious’ phenomenon also got its own acronym: ROC), from the author’s stock taking survey it is difficult to deduce a real defiance by the ROC. Yes, they came to the EU, committed crimes, offered ‘protection’, rather extortion, to the Russian diaspora, which also provided some facilitating embeddedness. And no, they were often only *perceived* as Russians, while there were many Georgians, Armenians and other previous Soviet minorities who swarmed around in the EU. The ‘Russians’ also tried ‘transplantations’, settling criminal compatriots in another country, in this case Italy, defying the local criminals (Galeotti, 1995; Varese, 2011). However, after this initiative there is no mention of a follow-up of the outcome of this ‘criminal colony building’: success or failure? This lack of follow-up data remains a problem in the assessment of this phenomenon: Either the ‘colonists’ returned to Russia (or if not Russian, to their successor states), or their actions represented little more than probes. The only empirical evaluation of police data in Spain could not confirm a Russian domination in the organised crime scene. Moreover, Galeotti (2018) mentions a coming and going of Russians and Caucasians, but mainly transiting through the member states. A lot of fear with little criminal defiance.

Russian organised crime does not stop at the Ural mountains behind which stretches 77% of Russia’s landmass and about 25% of its total population: Siberia, a land of opportunities and adventure. The huge distances and the severe climate does not make it an area that is easy to police: groups of bandits did really defy the authorities, not only in the era of the Empire, but also during the 70 years of socialist rule as *Jurij Novak* describes in his survey of organised crime in Siberia where “*bandits proved so resilient and defiant that even repeated small scale military campaigns . . . failed to suppress them*”. That does not mean that the state gave up and resigned its authority, but that the

criminal contesters proceeded with a relatively open defiance, however often resulting in their undoing.

After the demise of the old Soviet order, organised crime groups could continue to thrive on a mixture of shadow economy and the availability of natural resources: oil, precious stones, wood and wildlife. To this comes the geographic aspect of low population density and some facilitating human circumstances: after their release criminals who served their time in Siberia often linger on. Another human factor is the deep distrust of the population to the corrupt authorities. Criminals with the right underworld connections seemed to be able to defy the rule of law with impunity. However, as the author shows in his description of criminal organisations in two large industrial towns in west and central Siberia, smarter crime-entrepreneurs understood that this ‘business model’ of violence and corruption could falter and instead of continuing this defiance they gradually ‘gentrified’ into licit businessmen. Nevertheless, the author is not optimistic about the continued organised crime presence and corruption in other sectors, such as the natural resources of forests and wildlife amidst a merciless destruction of the environment (Kramer, 2019).

There is no point in defying the state if one has become a part of it, even to the extent of holding the highest office of the country: the presidency. At that level criminal defiance would be little more than clan rivalries for the spoils from the swamps of a rotten, powerless state. As *Petrus C. van Duyn* and *Igor Svyatokum* describe in their chapter on oligarchy and corruption in Ukraine, one can have doubts whether that country is capable of meeting any defiance, let alone defy in its turn (criminal) oligarchic contenders. That does not mean that the Ukrainian population is reduced to tame bystanders. As a matter of fact, it twice revolted against its political-economic corrupt elite: the Orange Revolution in 2004 and the Maidan Revolt in 2013-2014. In particular the latter was considered to be a watershed in Ukraine’s history. Or was it just driven by wishful thinking? Reviewing the shameless state of corruption, the political and economic clout of the oligarchs and the weak ‘guardians of the rule of law’ (law enforcement agencies, the media), the dream of a reformed post-Maidan Ukraine looked shattered. If the government was defied at all, by organised crime or the opposing forces of reform, it did little more than some ritual dancing around the promise of ‘de-oligarchisation’, which was never fulfilled. Foreign partners, among others the US ambassador, the IMF and the Council of Europe, pushed President Poroshenko to implement the law on a

Special Anti-Corruption Court. This resulted in a real defiance and counter-defiance with the President's response consisting mainly of foot dragging while many of the oligarchs retained their position. In the end Poroshenko lost twice over: the battle of the High Anti-corruption Court, which was installed and the 2019 elections which brought in an outsider as a 'new face', Volodymyr Zelensky, as the new president. He became particularly known from his informal telephone conversation with the US President Trump during which his conduct was embarrassingly submissive: no trace of defiance. Still, the authors identify a number of changes in the right direction but are uncertain whether the government will deliver as promised: it would not be the first time that after some overblown defying statements the machinery of the state ran out of steam.

Indeed, not running out of steam by keeping up the tension by an on-going defiance is important for bringing the criminal contenders in a state of defence, as is described by *Ombretta Ingrasci* in her chapter on the defence lawyers of the Sicilian mafia. The history of the Sicilian mafia can indeed be described as a history of mutual defiance with the government, with periods of high and low intensity. For example, in the 1970s when the state was defied by the Red Brigade's violent actions of bombing, kidnapping and murder, there was less attention paid to the mafia. Meanwhile a mafia war had broken out in which the Corleone family headed by Totò Riina, strived for dominance, defying his fellow-mafiosi as well as the state. The violence spread and in the end proved to become Riina's undoing. The murders of the judges Falcone and Borsellino in the summer of 1992 evoked strong indignation all over Italy and led to a sharp increase in the number of prosecutions and in incarcerated mafia bosses. At this point the author observes a change towards a need for specialist lawyers: *not* the usual technical criminal law lawyers for pleading the defendants' discharge. What the imprisoned Mafiosi needed was a social and organisational service: a lawyer as 'bridge' to the outside world for communication, passing small bits of paper to give instructions for managing or laundering their assets to so they could maintain information flows. These 'bridge lawyers' were not only attracted through monetary incentives (the "hungry motive"), but also through their kinship relationships with the bosses and their mafia-families. Does that observation fit into the frame of criminal defiance? It was certainly a defiance of the prison security system that intended to cut the mafia from their lines of communication.

The communication aspect also plays a role in the research project by *Anna Sergi* on contraband trade in the international harbours; rather, illicit cargoes going *through* these facilities. Worldwide the harbour authorities face the problem of balancing speed and efficiency of container handling against delays caused by intercepting contraband (mainly drugs) slipping through the system. What is more important: a container with 1.000 kilos of cocaine or the speedy contractual delivery of the licit cargo? Any investigation would result in cargo remaining frozen. The cargo handling system is highly automated, but still needs the human factor for getting the right container to the right place either to be emptied or transferred to the next logistic point. Getting contraband ‘into and out of’ implies a lot of ‘human resources management’ which comes partly down to knowing ‘who does what’ in the long chain of handling. That knowledge can be brokered or used directly for loading and landing. It is assumed, as was the case in the New York Waterfront history, that defying this closed harbour security system is not a matter of an individual customs officer, but requires a higher level strategic collusion (Jacobs, 2006). However, at that level hidden criminal stakeholders often succeed in defying all attempts to shed light on suspected collusion. In consequence, the alleged corrupt interaction between sophisticated criminal groups with officials at a strategic level remains a nebulous area with many suspicions and few facts.

Equally nebulous, is the situation where the government loudly defies organised crime groups, but where there is no evidence of OC wrongdoing. A state of affairs that loudly contrasts with ‘evidence-based policy making’. This appears to be the case with the threat of organised crime involvement in local government procurement as presented by *Alan Doig* and *Peter Sproat* in their chapter on a UK pilot on organised crime and procurement. What is the case? In 2016, the Home Office issued a report *Organised Crime Procurement Pilots Final Report* because in its perception that local public procurement can be highly attractive to organised crime groups. Naturally, that was a challenge that had to be met. But the Final Report did not define the concept of an organised crime group, which is remarkable in the light of so much concern. What about evidence? The researchers set out to do an extensive query in academic publications and policy papers of any kind: they looked for evidence of organised crime groups mentioned before the publication year 2016 (which may have informed the Final Report) and after that year. They searched so to say in every nook and cranny, but no evidence of the combination of local procurement and organised crime was found. Pilot studies showed that there

was evidence of concern, but not concern based on evidence. While the authors remain courteous and euphemistic, one can say that in view of the impressive pile of academic and policy papers and institutions involved, it looks very much like ‘defying in the void’.

When one looks at the new branch of criminology, that of *green* criminology, one would not expect at first sight much of a criminal defiance. Rather this might be the stuff of the rural constable or, if it reaches the media, a ‘far-away’ problem. This is wrong on both counts and is convincingly brought to the fore by *Daan van Uhm* and *Toine Spapens* who give an account of the organised trafficking of protected bird. It is a form of organised crime, committed by, and on behalf of, the upperworld. The professional organisers operate under the cover of licit firms mingling their criminal traffic with the paperwork of their legal businesses: forging certificates, changing identities of smuggled birds, faking veterinary documents, but also plain smuggling by hiding animals within licit cargo, often causing casualties. Once the cargo has arrived at the traders’ storage, the commodity is not stealthily sold at dusk from the boot of a car to shady customers, but right in the upperworld to wealthy and ‘respectable’ clients pleading to be unaware of the criminal origin of their coveted possession. But what about the harm? The authors summed up the ecological damage and health risk, including the risk of virus spreading, written down before the corona virus outbreak in December 2019. If the plausible hypothesis of the corona stemming from the illegal wildlife market in Wuhan is confirmed, the harm caused by this kind of organised crime has now been brought home in a globally cruel form of a pandemic.

Irregular migration and tempting fate

It is generally known that engaging in illegal or at least irregular migration is not a pleasure trip. In fact, many await a dire fate: if not badly treated and robbed on the way to the country of destination, there is the risk of the two extremes of drowning or dehydration during sea or desert crossing. While the suffering may defy description, the death toll of the Mediterranean crossing of around three thousand in 2018-2019, does not deter luck-seekers to follow

their predecessors.¹ However, the apparently unabated flow of migrants to the EU is proof of the drive to defy all dangers. The following three chapters shed light on the various aspects of the organisation of these travels.

Human smuggling to Italy through the Libyan coast is researched by *Stefano Becucci* using data from the Italian Ministry of the Interior. In addition, 21 refugees were interviewed in three reception centres, over the period 2017-2019. Of course, statistics give only an abstract indication of vulnerability and victimisation, such as the finding that 15% of the migrants consists of minors of whom 77% travelled unaccompanied. The author identifies two types of organisation: the Chain Network and the Hub Network. The Chain Networks consists of independently operating organisers, usually handling the transit travel from border to border. The operators know each other sufficiently to provide mutual services, something that is important for delivering their migrants to the next border crossing. The migrants then pay for the distance they have covered. It is a combination of improvisation and trust (von Lampe, 2012).

The Hub Networks are more organised in a hierarchical way using local operators, but directing them from one point, often Libya, the place of embarkation to Italy. At that place these ‘travel organisers’ do not need to defy the law, as there is none. There is only the lawlessness of warlords or of the military in Libya itself.

While the findings of the research of Becucci have not much in common with the organised crime imagery of many policy papers on human smuggling, the research project on the irregular migration from Eritrea is even more at odds with this policy making consensus, as set out by *Joseph Whittle* and *Georgios A. Antonopoulos*. As a matter of fact, views and experiences of the 30 Eritreans who were interviewed in this project defied most of the common images of victims getting into the claws of Snakeheads, ruthless exploiters, debt bondage, loan sharks and misleading recruiters. Given the oppressive nature of the Eritrean regime and its feared open-ended military service, many Eritreans do not need tricks or deceptions from recruiters or smugglers. Moreover, while the EU Commission claims that 90% of refugees and migrants

¹ Data on deaths of migrants compiled by IOM’s Global Migration Data Analysis Centre.
www.iom.int/news/mediterranean-migrant-arrivals-reach-76558-2019-deaths-reach-1071

have paid organised criminals, in this research there is little supporting empirical evidence for this claim. Eritrean smuggling is a family matter in which the resources are clubbed together by the extended family and friends' networks. Comparing empirical findings of the irregular migration with the UNICRI (2005) findings underline the gap between the reality 'on the ground' and the 'political reality'. Reality on the ground is too fragmented to be covered by one political picture (Aronowitz, 2012).

Poland is another example of an uneasy juxtaposition of a 'political reality' defied by what can be observed 'on the ground' as presented by *Magdalena Perkovska* in her chapter on irregular migrant smuggling across the Polish part of the EU's external border. As is known, Poland is one of the Eastern EU countries which resists with tooth and nail the distribution of refugees from the Mediterranean (*i.e.* Muslims or coloured people). If we take the number of arrests for illegal border crossing (2004-2018) of this category of people as a criterion, the situation looks as follows: hardly 5% of the arrests concern people from the Mediterranean or Middle-East; 77% concerns the trespassers from Ukraine, Belarus, Moldova and Russia, frequently seasonal workers. Of course, the Border Guards regularly apprehend trespassers at the border, accompanied or guided/smuggled by a local from either side of the border. And yes, in some cases there is enough evidence for a 'higher' charge of participating in an organised crime group of which the author provides a lively illustration. Though this was one of the more professional and structured crime groups, the penalties imposed were relatively lenient: for the leader three-and-a-half-year imprisonment (maximum ten years) and for the more peripheral offenders a probationary sentence. Otherwise the author concludes that the ways of operating the cross-border smuggling reveal the usual pragmatic loose networks. The author concludes by defying the official transnational organised crime imagery concerning illegal migration which "*creates a negative image of the 'wandering stranger' (foreigner/migrant) that unfortunately fits perfectly into current public policy . . .*" This image she declares for good reasons to be refuted: by the Polish government's own public data.

Money laundering

The fight against crime money and its management by criminals, commonly qualified as money laundering, can be seen as a long drawn-out global battle,

at least in the eyes of the Financial Action Task Force on money laundering. Who is being defied by this criminalisation? In principle all criminal law breakers who have obtained an ‘unlawful advantage’. The predicate offences covers the gains from all sorts of crime, ranging from shoplifting, contract killing or to financial crime, tax crimes included. Some countries take a selection from this broad range of crimes, other jurisdictions have chosen for an ‘all crime’ coverage. That does not contribute to a clear overview of the effects of this global undertaking. The FATF declares itself successful (of course) but is still warning in the usual sonorous voice against the threats of money laundering which have not changed much since 1990. So, it is justified to raise some simple critical evaluative questions, as is done by *Arthur Hartmann* in his chapter on money laundering in Germany. He poses the questions: (a) can we assess the AML-regime properly?; and (b) if that fails, are there other reasons for maintaining these regulations? Though these questions have a universal relevance, the author limits his study to Germany and the effects of AML on serious crime types such as organised crime and terrorism. The author took stock of various aggregate data from the German FIU, police and indictments and courts as yardsticks for effectiveness of the fight against OC and terrorism financing. But the author found that from the official data no conclusion about effectiveness could be deduced: the number of dismissals of laundering suspicion remained too high and the number of indictments and convictions too low. Subsequently the author addressed the second question: are there other valid reasons for this cumbersome and expensive system? Based on a thorough investigation of Boberg (2018) the author concluded that the enormous effort of the German FIU and obliged entities could not be justified by other empirical data. Finally, the truth came out: after a reorganisation of the FIU the true priority of chasing hidden tax moneys emerged. The author wonders whether this change of focus defies the basic rights of citizens.

While Hartmann underlines the question “what is all this good for?” raised by Van Duyn *et al.*, (2018), at the level of policy making there is no place for such defiance of mainstream thinking. No economic corner is allowed to slip attention, least of all the real estate sector. For good reasons: having a safe roof is a basic need. This same need is true for criminals, albeit supposedly fulfilled with crime-money. So, the inflow of proceeds into the property market must be prevented. This implies that the estate agents have an important guarding task: they are obliged to comply with the anti-money laundering regulations lest they may be punished by their supervising authority. The estate

agents' view on this regime is presented by *Ilaria Zavoli* and *Colin King* in their chapter on money laundering prevention in the property market. Though the real estate agents' obligation to report suspicious transactions had been imposed earlier, compliance had turned into a routine tick box action. Now he is obliged to think and act in terms of risk assessment. Naturally, the industry gets training to remain updated, which becomes ever more elaborate. That is unavoidable; the property market evolves and has more laundering opportunities to offer than mere buying and selling: letting and subletting property that may defy Suspicious Transaction criteria. In addition, online estate agents add another untouchable element as a new vulnerability to the ever-expanding circle of guardianship against crime-money.

What is lacking for policy making and also for up-to-date training, is a systematic documentary overview of what has emerged from academic research on money laundering and real estate. This is presented to us in the chapter by *Emanuele Sclafani* and *Anita Lavorgna*. The authors carried out a literary query resulting in 95 academic articles, after filtering from a wider initial document collection. The first finding that strikes the reader is the modest numbers of scholars doing research in this field, despite the continuous and sometimes alarmist attention by policy makers to property and to laundering. Naturally, if you defy researchers but don't pay them for their efforts nor allowing access to data, you do not get much research done. Also, the publications are not evenly spread: the USA and Dutch publications are dominant and accounted for 32% of the whole set. Unsurprisingly, 43% of the laundering publications concerned the drug market and white-collar crime. The *modus operandi* mentioned in half of the studies is concentrated in two categories: front men and over- or under-pricing of property; less creative criminal money management than is usually claimed. Does 'property laundering' defy the market by inflating prices? Most unlikely, according to an expert publication: "*given the fact that the volume of criminal proceeds invested in the real estate market is just a tiny fraction of overall investments and transactions on an annual basis*" (Schneider, 2004: 114). Are we defied by the enlarged shadow of a little mouse? (Van Duyne *et al.*, 2009)

But what if all these little mice are brought together in a huge data base as Big Data seem to promise? In the chapter on this subject the authors *M.R.J. Soudijn* and *W.H.J. de Been* make clear that this label 'Big Data' may be too easily attributed. The aspirations of IT-experts are high, law enforcement feels defied by the new technologies, the application of data mining on property

laundering hovers on the horizon. Nevertheless, the authors find more plans and intentions as a result of big data analysis rather than actually solved property laundering cases. This is not only due to insufficient technological know-how or the complexity of money-laundering cases. Most laundering techniques are quite old. Developments are also slowed down because of legal restraints and civil and human rights principles against open 'fishing'. Money laundering presupposes reasonable suspicion of law breaking. If such a condition is met, the analytical data analysis can be set into action. However, using the data techniques as are available in the private sector for criminal justice aims for which they were not collected may entail a tremendous extension with persons deviating from a commercial standard. This deviation is easily converted into a suspicion: 'possession or financial conduct requiring an explanation'. More concrete: connect all databases (private financial industry, fiscal, medical and lifestyle data) to find out who lives beyond his means. This can easily feed a laundering suspicion without a known predicate offence. This open data fishing may lead to a digital control technique as is thus far only realised in China. Though we have not (yet) a Great Helmsman, an open fishing approach with big data mining tools may lead to an absolute information power in the pond, a state of affairs that is more concerning than squeezing out the last laundering sinners.

Art crime

Cultural property, art, is historically one of the most vulnerable victims of war and crime, very often combined. They may be vandalised, stolen or paraded as trophies of a triumphant general and his army: from Caesar to Napoleon, the Nazis to the plundered museums in Iraq. This vulnerability is internationally recognised and has found its way in numerous conventions, from the Hague 1954 Convention on the Protection for Cultural Property to the most recent 2017 Council of Europe Convention on Offences Relating to Cultural Property. To emphasise this recognition there are many resounding statements about the importance and seriousness of art crime. Art crime can be a form of organised crime or organised crime can make use of art crime (Dobovšek, 2009). One can have it both ways: art can be a 'victim' of organised crime, e.g. used for extortion, but it can also be an instrument, for example being

used for laundering the proceeds of other crimes (Nelson, 2009). The US Department of Justice ranks art crime just behind drugs and arms in terms of highest-grossing criminal trades (US Department of Justice, 2011). In contrast to such firm statements, there is mainly fragmented and anecdotal evidence to underline their validity. The EU recognised this inconsistency and commissioned *Ecorys* to study the illicit trade in cultural goods in Europe. As a part of a proper empirical stock taking, a number of fundamental preceding questions must be addressed: why do we know so little? In the chapter of *Olga Batura, Gabriëlle op't Hoog and Niels van Wanrooij* we find a well elaborated answer to this question. As this knowledge subject is so multi-faceted, the answer cannot be one-dimensional. The authors found many institutional and organisational obstacles to creation of a proper database with a potential for cross-border comparison and data exchange. Naturally, there are also good practices, such as the Leonardo database of the Italian Carabinieri, though its statistical potential is uncertain, is the latter being required for a proper risk assessment and strategy building. Obtaining a comprehensive EU-wide art crime database is still far away.

Though these authors formulate a basic requirement for an anti-art crime policy, the real defiance is to be found proverbially 'on the ground', and for some forms of art crime literally *in* the ground, as described by *Marc Balcells* in his narrative of the tomb raiders in Italy: the *tombalori*. Because in ancient times the dead were supposed to need things in the hereafter, many artefacts were buried with the deceased. The richer the deceased the richer the gifts and after several centuries Italy became covered with tombs (of the rich) from Etruscan times onwards till the end of pagan Rome. As there is a large international market for antiquities, the temptation for digging for some extra income is strong, certainly where there is a multi-generational tradition. That does not mean that there is no development in this field: the image of impoverished farmers doing backbreaking work with shovels and wheelbarrows is by now obsolete. The author describes how the *tombalori* modernised their *modus operandi*. The rod, shovel and pickaxe became 'mechanised', the barrow a pick-up car or van and the marketing of the excavated artefacts became a more distant operation: no risky dragging around with the objects themselves but sending pictures. At first Polaroid pictures were sent around and today the pictures of what is 'in the store' are shared in chatrooms. This requires again some mastery of IT skills and information processing and storage. Of course, this is one side of the picture: a 'defied' police forms the other side. Making

pictures for customers implies creating and storing criminal evidence. Organising crime on a criminal market remains an ever-evolving matter of mutual defiance.

Defying outlaw motorcycle gangs

It is interesting to observe how institutions and societies respond to criminal threats as a bidding defiance to the law. Is this interpreted as a wilful undermining of the public institutions and societal order, or as a less pertinent law breaking? A sensible criminal will strive to lower his risks by remaining invisible: defy the law but let no one see it, lest the authorities will pick up the gauntlet. The latter choice is characteristic for the outlaw biker clubs such as the Hells Angels who show a proper pride in their continuous defiance of public order. Naturally the authorities must respond to that. In two chapters devoted to this phenomenon we can follow the different responses in Germany and The Netherlands.

The German response is set out by *Ulrike Heitmüller* and *Klaus von Lampe* in their historical narrative. They describe how the perception of the *Rocker* (German name for the motorcycle gangs) shifted over the years. At first it was perceived as a noisy juvenile crime thing, something to be addressed piecemeal. If they had been left alone, that may have been more or less the German outlaw biker policy. But they were not left alone. The killing of a police officer (2010) by a Hells Angel who was acquitted because of self-defence, evoked a hostile atmosphere in the country against the rockers. Internationally they received enhanced attention due to an outlaw bikers' war in Scandinavia and Canada, providing Europol an opportunity to show its worth. A very stimulating factor was that this incident could be connected to a Europol monitoring project, the so-called Analysis Work Files (AWF), databases collecting and collating intelligence. Naturally such investment and efforts should be devoted to 'serious and organised crime' and thus, the outlaw bikers landed in the organised crime field – at least in the perception of police and policy makers. Did the outlaw biker clubs change themselves? That is not at all certain. Sure, they still indulge in their violent defiance of each other and the world, sufficient for the justification of a counter-defiance.

This indulgence was demonstrated in other countries too and for a long time the outlaw biker clubs (or gangs) got away with this unsocial behaviour

until the tide turned, as for example in the Netherlands, which is elaborated by *Benny van der Vorm* and *Petrus C. van Duyne*. In this country the problem of the outlaw biker gangs was over the years considered as an example of organised crime. To that qualification another dimension was added: *undermining* the rule of law. Naturally a matter of grave concern. The authors point at the lack of clear concepts, which did not prevent the Minister of Justice from investing € 100 million in the fight against ‘undermining criminality’. The outlaw bikers were the first to experience this change in criminal policy which was broadened by an *integrated* approach in which the criminal law was sided by administrative, civil law and fiscal law enforcement. For example, the administrative law gives the mayor the power to refuse or revoke licenses needed to open a clubhouse or run a restaurant. The civil law has the tool to dissolve and ban clubs as a legal person if they are in conflict with public order: once banned being a member is a criminal offence. The tax authorities – together with the prosecution – can seize and confiscate assets if illegally obtained. Though heralded as something special, in the USA this was a well-tried procedure to keep criminals out of vulnerable sectors (von Lampe, 2016: 389-390).

With all the legal batteries in place, it was nevertheless not an easy or glorious path to success: there were legal setbacks, many appeal hurdles, while the criminal finances of the outlaw biker clubs remain opaque. They are either genius launderers or their financial position is modest, as their way of life seems to be rather an existential defiance of mainstream society than a rational business model for creating a criminal enterprise.

The crime-terror nexus

The subject of the final chapter of this volume, written by *Sigrid Raets* and *Jelle Janssens*, may be considered as the ‘summit’ of criminal defiance: the act of terror. As such, terrorism is already bad enough, but what if terrorists appear to foster close connections to common criminals, or, perhaps even worse, were common criminals themselves before they restarted their life as terrorists? One can think of many other variations of such a closeness, or ‘nexus’ as policy makers and scholars tend to call it, between these two crime categories. This subject seems to concern a field with a lot fear and a shortage of facts or clear conceptualisations. These, the authors line-up in a systematic

way and with a lucid style, covering some twenty years of study. It is true, some terrorists have turned to common crime or to other criminals to replenish their war chest. A famous example is the career of Stalin (Montefiore, 2009): growing from bank robber to head of state, though deep inside remaining a terrorist. Also, (petty) criminals emerged as suicide bombers and shooters in Belgium in 2016. Indeed, terrorist groups recruited some of their followers with a criminal background. For some operations the terrorists needed firearms, which were acquired from other criminals, operating in the arms black market. This was also observed in the wars in the western Balkan during the 1990s (Prezelj, 2010). But that does not imply that there is an interwovenness between common crime and terrorism (Wanrooij and Sapulete, 2019). There are also operational similarities, *e.g.* in terms of offenders' risk control through resorting to broad networks. But similarity is not social or criminal closeness. Therefore, the authors warn us not to take such similarities *a priori* as evidence of closeness between both fields. What is mentioned as a clear dividing line between the two is the motivation. A criminal just operating for profits has an additional motive to that of the terrorist. The defiance of property crime must remain implicit with the offender laughing up his sleeve. For the terrorist this hidden pleasure would be a sin: he must be *seen* as defying the state and all that is connected to it.²

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² General remark: All numbers in this volume will be in *normal European* notation: a comma for the decimals and a full stop for the thousands.

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