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# The organization of 'organized crime policing' and its international context

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## Keywords

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# The organization of 'organized crime policing' and its international context

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**Abstract**

This article reflects upon a decade of developments in the organization of organized crime policing, particularly within the international context. The review illustrates that the policing (in its widest sense) of organized crime is based on certain prerequisites. Other actors besides law enforcement agencies have key roles to play. The creation of an appropriate instrumental framework is equally as important as having competent and appropriate agencies in place. The multiplicity of interests beg questions about what is feasible in the co-ordination of organized crime policing, given that organized crime is a global phenomenon beyond the scope of any one agency or jurisdiction to deal with alone.

**Key Words**

co-operation • international law enforcement • mutual legal assistance • transnational criminal investigation • transnational policing

## Introduction

How policing is organized depends on perceptions of what needs to be policed. In the 10 years since Michael Levi's overview introduction to a previous thematic volume on organized crime, little has changed to warrant amending his axiomatic observation that 'the term "organized crime" is frequently used but difficult to define' (Levi, 1998: 335; see also Levi, 2002, 2007). What has changed is the perception of the threat of organized crime. The largely sterile definitional debate, driven it might be argued more by a

need to determine (a pecking order of) law enforcement organizational remit than by a comprehensive strategic approach to dealing with organized crime, has been superseded by political debate fuelled by a variety of paradigms. Hence organized crime is variously characterized in terms of nationwide conspiracy; ethnic grouping; socio-political elites and state-organized crime; professional or white collar crime; ongoing illicit business enterprises; a global phenomenon; a core threat to democracy; and, increasingly, as having a terrorist nexus (Winer, 1997; Dupont, 2006; Leong, 2007: 2–27— though see Levi, 2007 for a more cautious review of the crime for profit–terrorism connections). Police that!

These multiple, parallel paradigm evolutions underpin the notion that organized crime has grown 'beyond the competence of the traditional criminal justice investigative agencies' such as police forces and customs agencies (Findlay, 1995: 282; see also Sheptycki, 2007). State security agencies now assume responsibilities for, and play a more significant role in, tackling organized crime, particularly where a nexus with terrorism is perceived (see Björnehed, 2004; Picarelli, 2006; Brodeur, 2007; Holmes, 2007; Swanstrom, 2007). If organized crime is indeed a global phenomenon, by definition it must be beyond the capacity and capability of any one national government to control (see Love, 2003; Robb, 2006). Picarelli summarizes the consequent vulnerability, identifying the transnational marketplace in which organized crime groups operate as a multi-centric world: 'attempts to regulate the mechanisms of the multi-centric world using state-centric laws create illegal markets for goods that individuals, as consumers, continue to desire, such as narcotics, or collectives require, such as small arms' (2006: 22). The very mechanism of regulation and control creates the potential illicit markets for criminals to exploit. It is a global problem to which any potential or aspirational global solution suffers from the political reality of different national priorities and perspectives within the diplomatic arena, and different agency priorities and powers within the nationally-structured, multiple jurisdictional arena. Organized crime is a common menace without a common criminal code.

It follows, therefore, that collaborative and co-ordinated effort is required to translate different and differing national capacities and capabilities into an effective multilateral mechanism against organized crime and so appropriately organize organized crime policing in its international context. The question arises, given the uncertainty of definition, the variation in perception and premise, and the inherent complexity of multi-layered, multi-actor collaboration, to what extent effective or even efficient organization of organized crime policing is possible at all (Edwards and Gill, 2003).

## Prerequisites for policing organized crime

This article takes as its starting point the idea that 'policing' organized crime, particularly within an international context, includes more than just the functions of law enforcement agencies. From this premise it follows that consideration of the organization of organized crime policing should be viewed holistically, so as to set police organizational infrastructure into the context of the organization of organized crime policing.

What, then, are the prerequisites for 'policing'—in its widest sense—organized crime in an international context? How might these be characterized?

First, there has to be behaviour defined as criminal that needs to be policed. Here it is necessary to qualify further 'international context' by distinguishing between 'international crimes' and 'transnational criminality'. For the purposes of this article the former are held to be those offences within the competence of the International Criminal Court [ICC]: genocide, crimes against humanity, war crimes, and the problematically defined aggression (Kittichaisaree, 2001). During negotiations defining the competence authority of the ICC, both terrorism and drugs trafficking were proposed as 'international offences' in addition to those itemized above. The former was excluded on the grounds that to attempt to prosecute terrorism through the ICC would be to run the risk of politicizing the court, thus undermining its apolitical legitimacy; the latter was excluded because it was concluded that the court 'would not have sufficient resources to deal with the lengthy and complicated process of investigations which should be more efficiently left to the respective national authorities and their bilateral or multilateral co-operative arrangements' (Kittichaisaree, 2001: 227).

Transnational criminality is defined here as offences against any given national domestic criminal law, perpetrated across national boundaries. This generic label therefore covers behaviours generally recognized as comprising organized crime (e.g. trafficking illicit commodities from source countries to market countries: see Albanese, 2004; Bagley, 2004; Galeotti, 2004; Hignett, 2004; Lintner, 2004; James, 2005) but also includes offences such as child sex tourism in which individuals travel outside their domestic jurisdiction and commit acts for which, through asserted extraterritorial jurisdiction, they could be prosecuted within their home jurisdiction, regardless of whether the act is a crime in the location where it was committed (Seabrook, 2000). Whether the transnational criminality is of an 'organized' or individual nature, the same functional foundations are required to support policing, both in the form of investigation leading to prosecution and that of regulatory and other initiatives intended to prevent or minimize the potential for crime to be committed.

Investigating and prosecuting transnational criminality is dependent upon governments' and national authorities' political willingness to invest resources in collaboration or in assuming responsibility for a trial that could theoretically take place in more than one jurisdiction if the behaviour transgressed more than one national criminal code. It is the organization of transnational organized crime policing which is the focus of this article.

With appropriate offences created under national criminal and customs law being used as the basis for prosecuting transnational criminality, there then needs to be in place a domestic court system with competency to

conduct trials and adduce evidence from foreign jurisdictions if necessary: Australia, for instance, enacted the Foreign Evidence Act 1994 to ensure evidence from overseas could be lawfully adduced. The latter function requires formal mechanisms for investigative and trial co-operation, termed mutual legal assistance, a label that covers four basic functions: evidential assistance in a variety of forms to facilitate an investigation and subsequent testimony; service of court process to facilitate trial administration; extradition to ensure an accused faces trial; and post-conviction asset recovery to ensure that convicted persons cannot enjoy the proceeds of their crime upon completion of their sentence.[1]

The trial stage can be achieved only if there are competent authorities with capacity and capability to conclude investigations in transnational criminality and bring a case to prosecution. Competent investigative authorities require investigative powers sufficient when deployed proportionately to secure necessary evidence; logistical resources with which to mount such an investigation; and staff equipped with appropriate skills, experience and expertise.

Policing in its widest sense goes beyond investigation, leading to prosecution and enforcement of the criminal law. Prevention of crime is also part of the repertoire in 'policing' criminal behaviour. In the context of organized crime, prevention includes regulatory measures that provide opportunities to identify suspicious financial transactions and counter-measures to inhibit money laundering (Lander, 2006). Reconceptualizing the threat of organized crime as a national security issue, as the then President Clinton did in his Presidential Decision Directive 42 enacted through Executive Order 12,978, both dated 21 October 1998 (Harfield, 2003: 223; see also Swanstrom, 2007; Cabinet Office, 2008), broadens the scope for preventive activity to include upstream interdiction: extraterritorial intervention beyond the geographic boundaries of the domestic criminal jurisdiction (Home Affairs Committee, House of Commons, Minutes of Evidence 29 January 2008, question 30). This is a different paradigm from the traditional policing focus on investigation, prosecution and enforcement of the criminal law, and from prevention through regulation. It presumes that precursor elements of organized crime harm are going to be initiated abroad and that if such behaviour in and of itself cannot be prevented, then at least it should be prevented from entering into the domestic jurisdiction. It is a perception that requires a different political will, different agency resources and thus a different organizational framework.

In both the arena of investigation leading to prosecution and prevention (ranging from industry regulation to upstream interdiction) the degree, extent and potential for successful activity on the part of the authorities is dependent upon knowledge: knowledge about criminal behaviour and markets; knowledge about the criminals; knowledge about the financial and importation infrastructures needed to facilitate illicit transnational trafficking; knowledge about the communities towards which the criminality is directed; and, not least in importance, knowledge about the criminal law codes, capacity and capability of foreign partners from which is derived the common understanding necessary to make collaboration successful.

There is significant contemporary debate about the application and role of knowledge in policing (Ericson and Haggerty, 1997; Brodeur and Dupont, 2006). The conceptualization of the relationship between knowledge and intelligence enjoys no consensus (Dean and Gottschalk, 2007; Ratcliffe, 2008). Turning rhetoric into practice, regardless of premise, is not unproblematic (Ratcliffe, 2002; Kleiven, 2007; Kleiven and Harfield, 2008; Ridley, 2008). Dysfunctional, counter-productive organizational pathologies within policing intelligence systems (Sheptycki, 2004) 'undermine the credibility and the efficaciousness of the entire enterprise even while they feed on the increasing sense of panic' (Sheptycki, 2007a: 74) in what he describes as the 'paradox of the security control society'.

Overarching these tactical prerequisites is the strategic prerequisite of legitimacy: the expectation on the part of citizens that State agents and organizations, having been invested with significant coercive powers, will use those powers with integrity, free from corrupt influence, only when it is lawful, necessary and proportionate to do so (Ashworth, 2002). The risk of deliberate or unwitting process laundering—in which agencies achieve lawfully in a foreign jurisdiction that which they could not lawfully achieve in their jurisdiction (Gane and Mackarel, 1996)—increases exponentially with ever more flexible and ever more frequent resort to transnational criminal investigation methods and international law enforcement co-operation. An effective governance framework is needed to achieve legitimacy for the multi-faceted policing of organized crime.

Between jurisdictions that can resource the prerequisites identified above, collaboration can take place on the basis of 'equal enough' peers, if there is consensus about the common cause. But not all jurisdictions have such capacity and capability. And even where it exists, not all jurisdictions are politically disposed towards collaboration. This creates vulnerabilities and network gaps similar to those identified by Picarelli in terms of illicit supply and demand, creating opportunities for organized crime groups to exploit the absence of effective policing or, where authorities are weak, to buy the absence of effective policing through corruption. Collaboration on the basis of unequal peer status takes place in the form of capacity-building or post-conflict police and criminal justice sector reform. Where this is not possible or is rejected, the foreign jurisdiction itself becomes part of 'the problem' to be policed.

Such are the functional pre-requisites around which the organization of policing organized crime is structured within the international context: domestic statute law; courts with relevant competency; instruments of international co-operation; agencies with appropriate powers and capabilities; preventative capability; upstream interdiction; the capacity to generate, manage, share and apply knowledge; all within an appropriate framework of good governance and legitimacy. What, then, have been the organizational developments in the past 10 years in relation to these pre-requisites?

## A decade of developments

Developments in the past decade have been neither a tidy nor systematic progression. Is this symptomatic of the fact that the wider co-ordination of organized crime policing is an aspiration beyond achievement or a factor of circumstance? This review focuses on the identified prerequisites but, alongside the co-operative measures outlined below, there have been developments connected to the post 9/11 responses in the so-called 'war on terror' that have reinforced the context of collaboration amongst certain partner nations. Equally, responses to 9/11 may have alienated or deterred other states from participating in initiatives against organized crime because of political animosity towards the jurisdictions from which the initiatives originated. The organization of organized crime policing is not apolitical.

## Appropriate legislation

The USA set the benchmark for domestic legislation to investigate and prosecute organized crime as far back as 1970, when the Racketeer-Influenced Corrupt Organizations Act (RICO) was enacted as Title IX of the Organized Crime Control Act: legislation that sought nothing less than 'the eradication of organized crime in the United States' (quoted in Levi, 2002: 883); an objective, perhaps more ambitious than realistic, founded upon a rationale consistent with the 'alien-conspiracy' theory of transnational organized crime as an external threat to which the battle must be taken (Geary, 2000), and reinvigorating the internationalization of US criminal law enforcement, at the intersection of US foreign and criminal justice policies (Nadelmann, 1993).

Few rushed to copy the US. The UK, in particular, remained unpersuaded that RICO-style legislation needed to be introduced because existing trafficking and conspiracy offences could be used to achieve the same ends, nor was there a need to have a vehicle upon which investigations and trials could be moved from state into federal jurisdiction (Levi and Smith, 2002; Home Office, 2004: 40): a particular co-ordination gap in the US with over 50 separate criminal law jurisdictions.

Elsewhere there has been limited success. Japan enacted a law in 1991 intended to curb the power and activities of the Yakuza: the *bōryokudan taisaku hō* (abbreviated to *bōtaihō*: Hill, 2004: 102). With measures more regulatory than robust, in comparison with RICO, and with continued evidence of links between senior political figures and the Yakuza, commentators have questioned 'the commitment of Japan's political elite to serious, proactive organized crime countermeasures' (Hill, 2004: 113).

Other domestic legislatures amended laws and criminal codes with a view to making it easier to prosecute suspected conspiracies in relation to specific offences (one generic model of anti-organized crime legislation) or to prosecute membership of a criminal organization (the second generic legislative model which begs questions about defining a criminal organization).

New Zealand enacted the new Harassment & Criminal Associations Act 1996, aimed at gangs and gang bosses and in 2008 set up an Organized Crime Agency, paralleling that in the UK. Canada amended its existing criminal code, redefining a criminal organization and removing the burden of proof requirement to evidence protracted criminal organization activity over a five-year period. Article 140, the Dutch Penal Code, was amended in 2000 in respect of participation in criminal organizations (Levi and Smith, 2002).

UK legislative developments started with the consolidation and regularization of covert investigation powers (Regulation of Investigatory Powers Act, 2000), to bring the methods required for investigating organized crime into compliance with the Human Rights Act 1998 (Harfield and Harfield, 2005). Two years later there was further consolidation of counter-organized crime powers in the Proceeds of Crime Act [POCA] 2002, which created the Asset Recovery Agency [ARA]. Asset recovery was not new, being already connected in a way that was more the product of political history than logic to certain drugs trafficking and other offences, but the POCA extended the circumstances and means in which authorities could chase criminal profits. There followed two key White Papers (Home Office, 2004; Home Office, 2006): the second elaborating ideas initially articulated in the first, which proposed nothing less than a paradigm change in dealing with organized crime structured around reducing criminal profit opportunities, disrupting criminal enterprises and their markets, and increasing the risk to key criminals of being prosecuted or otherwise having their assets seized.

The Serious Organized Crime and Police Act 2005 [SOCAP] created a new agency to disrupt and defeat organized crime. It also gave English and Welsh prosecutors new investigative powers of coercive questioning (thus involving prosecutors directly in the investigative process for the first time), and regularized 'plea-bargaining' through a structure for rewarding with reduced sentences those who turned Queen's Evidence (SOCAP Part 2, Chapter 2). The Serious Crime Act 2007 created Serious Crime Prevention Orders as a means of restricting the ability of individuals to facilitate organized crime: pre-emptive policing aimed at disruption rather than a preventive measure intended to reduce criminal opportunities; a significant extension of what policing means in terms of the organization of policing agency functions.

Lack of appropriate domestic legislation creates havens in which certain behaviours are not criminalized–and so cannot be policed–and from which fugitives cannot be extradited. This in turn creates pressure for harmonization.

## Instruments enabling co-operation and collaboration

Multilateral conventions together with bilateral treaties seek to eradicate domestic legislative lacunae and provide mechanisms for mutual legal assistance in the investigation and prosecution of transnational criminality

(European Union, 2000; Murray and Harris, 2000; Jones and Doobay, 2005).[2]

State attitudes to the negotiation of mutual legal assistance treaties vary according to geopolitical circumstance. Multilateral conventions suffer a perceived disadvantage of securing only the lowest common denominator of consensus but have the not insignificant advantage of documenting and so reinforcing international norms. For particularly powerful states, prioritizing the negotiation of bilateral treaties over multilateral conventions can be a means of achieving asymmetrical arrangements better suited to individual foreign policy and pragmatic enforcement interests than to the wider global community interest in reducing transnational organized crime. The United States is a case in point, negotiating what is essentially a unilateral assistance treaty with the Cayman Islands, favouring the US (Gilmour, 1995: xxi; Harfield, 2003; Harfield, 2007). Through its annual International Narcotics Control Strategy Report the US certifies those nations deemed to be actively assisting the US in the control of drugs trafficking. Countries that do not 'earn' certification are automatically denied certain types of US economic aid and assistance (Zagaris, 1998: 1408).

Mutual legal assistance is characterized as a judicial co-operation mechanism, premised as it is on the Roman or Napoleonic criminal code tradition of an investigating magistracy or investigating prosecutor (both of whom form part of the judiciary in such jurisdictions). This creates some problems for Common Law states in which the constitutionally neutral judiciary plays no role in criminal investigation. In England and Wales, investigators have to channel their requests either through a court or an agency designated as a judicial authority for the purposes of making mutual legal assistance requests: the Crown Prosecution Service being one such designated agency.

The default organization for the management of mutual legal assistance (including extradition requests) is through national central authorities: units or departments within a national government whose role is to transmit and receive formal requests from bona fide judicial authorities. Usually this function falls to the ministry of justice, although in Britain, notwithstanding the recent creation of a Ministry of Justice, the functions of the UK Central Authority [UKCA] are performed within the Home Office, which in turn forwards requests to the Crown Office, Scotland, or the Northern Ireland Office as required. Central authorities ensure that requests received can be lawfully executed and then assign the request to the appropriate domestic agency for execution. The product is returned to the central authority of the requesting state via the central authority of the requested state. In the absence of a central authority or any form of international agreement between requesting and requested states, diplomatic channels of communication provide the last resort.

A common complaint amongst investigators is that formal mutual legal assistance is too slow a process, involving as it does a variety of actors and agencies. Following the creation of the European Judicial Network,[3] comprising officials from central authorities, between 1999 and 2001 the EU mutual legal assistance community undertook peer evaluation of mutual legal assistance functionality within the EU. The three-year evaluation of the then 15 EU Member States produced literature comprising individual national reports, three annual reports and a final report[4]. The study found (inter alia) that mutual legal assistance was not as 'inefficient and powerless' (Final Report: 3) as it was often reputed to be, yet resources and language skills were generally insufficient and implementation of international treaty obligations amongst Member States was variable. The European Union sought to fast-track mutual legal assistance in its 2000 Convention on Mutual Assistance in Criminal Matters [EUCMA] by permitting direct transmission between judicial authorities.[5] Nothing in EU intergovernmental treaties prevents individual Member States negotiating bilaterally their own arrangements that go further than the minimum provided for in the EUCMA.

The Schengen (1990)[6] and the Prüm (2005)[7] Conventions address issues at the next tier down in the co-operation organizational hierarchy: spontaneous cross-border collaboration including hot pursuit of escaping fugitives and cross-border covert surveillance, as well further enhancement of intelligence exchange. These instruments allow, within defined circumstances, agents from one Member State to operate spontaneously within the territory of another state.

Going further, the EU is taking a conceptual leap beyond mutual assistance to embrace mutual recognition.[8] The rationale underpinning mutual recognition is that, with like-minded and trusted states there should be no need to engage in lengthy and bureaucratic mutual legal assistance processes. There should be no objection, in principle, to a court in the requesting state issuing an order that can be directly executed by the appropriate authorities in the requested state. Ratification of and adherence to the European Convention on Human Rights and Fundamental Freedoms 1950 is the theoretical basis for common norms and values upon which trust can be founded. Mutual recognition has two manifestations: the European Arrest Warrant, already in force (Alegre and Leaf, 2003),[9] and the more controversial, and not yet in force, European Evidence Warrant.[10]

Mutual legal assistance underpins effective transnational criminal investigation. If the organization of mutual legal assistance does not function effectively, then the policing of organized crime in its international context is impeded. The EU is leading the way in establishing a regional collaborative infrastructure for this aspect of the organization of organized crime policing. The extent to which this framework can incorporate Third Party States from outside the Union is constrained although post 9/11, there has been a sustained political drive towards compromise and collaboration.

## Investigator collaborative structures

Formal mutual legal assistance is often preceded or supplemented by informal international law enforcement liaison and collaboration also known as police-to-police or customs-to-customs routine (non-coercive) enquiries.

This liaison landscape is varied in organizational character, comprising Third Pillar innovation within the EU, international investigator NGO and a multi-layered agency liaison community.

Sheptycki has described the changing police architecture in Europe: increased nationalization of policing effort through the creation of new agencies or the merger of existing organizations (2007b: 54–7), but, as discussed, the organization of organized crime policing goes beyond policing agency infrastructure. Out of Article 29, Treaty of Amsterdam, and the initiatives promoting its aspirations (the Tampere Programme, the Hague Programme, the EUCMA), have come Europol reconstituted as an EU institution (for formal exchange of intelligence between investigators); Eurojust (for formal mutual legal assistance collaboration between prosecutors, who in many EU States lead investigations)[11]; the European Chief Police Officers' Task Force (an informal forum intended to influence strategic direction in European policing but hampered by disagreements about which agencies should represent which jurisdictions); and Joint Investigation Teams (a mechanism promoting direct collaboration on individual investigations involving two or more EU Member States: Rijken, 2006).[12] Following a shaky start in 2005 when just three JITs were established, there were in 2007 35 JITs.[13]

All of these initiatives have the strategic purpose of promoting and enabling co-operation and tactical organization in the policing of transnational (organized) criminality. Space available here limits this survey of the landscape to just a few key features but even this is sufficient to illustrate the changing character of the organization of organized crime policing at EU level. The era of institutional creation to foster and provide a foundation and conduit for collaboration (Europol, Eurojust and the European Judicial Network) has given way to an era in which international instruments are increasingly facilitating direct collaboration between domestic authorities, at least within the EU region and some EEA Third Party Signatories to EU instruments. But initiatives are not confined to the EU framework. Outside the EU there is a different characterization of co-operation: on the one hand there is a global institution for practitioners; on the other there is a global network of individual agency liaison staff.

Non-governmental, Interpol (founded in 1923, reconstituted in 1956: Deflem, 2002) represents an association of practitioners exchanging information including that necessary to investigate transnational criminality. The resources available in each member jurisdiction define the limits of its capability in different locations around the world. Interpol's inherent weakness lies in differential member capacity. Its inherent value is that it remains the one practitioner network with the widest geographical reach, which is why, even though Europol arguably negates the need for Interpol within the EU, the two organizations will continue to co-exist in that region. But such utility notwithstanding, as international law enforcement co-operation increases in frequency and complexity, the number of individual agency and regional networks is increasing as agencies organize their resources to promote direct contact in preference to channelling their communications via intermediaries.

The major US federal agencies each have liaison officers posted to the major US embassies overseas. The Australian Federal Police has an extensive network around the world: 88 agents in 33 locations in 27 countries as of July 2007 (interview, senior AFP agent). It also materially supports the Pacific Transnational Crime Co-ordination Centre, a regional intelligence and information sharing facility (interview, senior PTCCC secondee). From the UK's Serious Organized Crime Agency [SOCA], created in 2006, 140 liaison officers are posted in 39 countries as of March 2008 (interview, senior SOCA official). A SOCA officer also heads the Maritime Analysis Operation Centre [MAOC]: a collaborative effort based in Lisbon, Portugal, also involving agencies from Spain, France, Germany, Italy and Ireland. The MAOC is an example of upstream interdiction. Its role is to identify transatlantic trafficking routes and request and then co-ordinate the naval resources of the participating nations to intercept vessels at sea, thus preventing delivery of the illicit cargo to Europe.[14]

The role of the liaison officer is not always straightforward and is constrained by the political circumstance of the host nation and the fact that liaison officers have no authority to investigate directly in their host nation (see for instance Galeotti, 2006). The liaison community operates within a context of routine frustrations and multiple agency agenda (Bigo, 2000; Block, 2008a, 2008b): 'international bargains can be a means of empowering particular domestic actors' (Goldstein, 1996: 562). All of which multi-layered organization begs the question, why are those jurisdictions that can afford to, creating their own networks when Interpol and Europol exist? The answer would appear to be, universally, that establishing an agency-based network of liaison officers offers greater added value and return in terms of assistance negotiated than working through a third party. Such agenda diversity militates against the wider organization of collaboration in organized crime policing that could be achieved through Interpol and Europol.

## Agencies with appropriate powers

It is in the arena of agencies with powers that go beyond those deemed necessary for 'ordinary' policing that there have been particularly important developments in the organization of organized crime policing, with the UK working its way through two generations of new agency within the decade.

In 1998, the six English and Welsh Regional Crime Squads (originally there had been nine), which since the mid-1960s had been run as regional police collaborative ventures to tackle criminality that crossed police force boundaries, with a non-executive national co-ordinator based in London, were merged into the National Crime Squad [NCS] (Police Act 1997, Part II). Commanded by an executive Director General (the rank equivalence of

Chief Constable), the NCS was a significant departure from the British tradition of policing locally delivered, locally accountable.

The statutory remit of the NCS, which seconded its officers and levied its finances from local police forces, was to prevent and detect serious crime 'of relevance to more than one police area in England and Wales' (Police Act, 1997s. 48(2)). Through a service level agreement negotiated with the Association of Chief Police Officers, the NCS supported local force intervention against organized crime as well as conducting its own national- and international-level investigations.

At the same time as the NCS was established, the National Criminal Intelligence Service [NCIS] was re-constituted as an independent sister agency (Police Act 1997, Part I). The NCIS's remit was 'to gather, store and analyse information to provide criminal intelligence'; and to provide such intelligence and otherwise support UK law enforcement both in Britain and overseas (Police Act, 1997s. 2(2)). Designed to be discrete from the investigation and prosecution process it, too, departed from the local policing model in a number of key respects. The NCIS's theatre of operations was the whole of the UK, not just the criminal jurisdiction of England and Wales. In accommodating the UK's Interpol National Central Bureau and the UK's Europol bureau, NCIS was the principal (but not exclusive) gateway to UK law enforcement for foreign agencies, and the principal (but not exclusive) gateway to foreign assistance for UK law enforcement. Furthermore it was a multi-agency entity, seconding its staff principally from the police service and from the then HM Customs and Excise [HMCE] but also from other specialisms such as social security benefit fraud investigators.

Using its wide-ranging remit and powers under the Customs and Excise Management Act 1979 which gave it UK-wide jurisdiction, HMCE had repositioned itself from being a revenue agency solely focused on preventing tax evasion on exported, imported and internally traded goods, to also being an 'organized crime' agency defending the nation's borders from drugs trafficking. As part of its worldwide effort in this regard, HMCE had established a network of Drugs Liaison Officers based in various British embassies and regional sub-offices.

Taken as a whole this was an infrastructure with inherent tensions. In the era of New Public Management, regardless of partnership rhetoric promoting collaboration, the reality was that performance indicators pitted agency against agency. Furthermore, the presence of staff seconded from different (competing) agencies within a multi-agency organization gave rise to suspicions (founded or unfounded did not matter) that assistance was provided on a preferential or discriminatory basis according to who was making the request and from which agency the manager of the relevant multi-agency team was seconded. The NCIS 'flagging' system, intended to identify multiple investigator interest in named suspects (and so avoid duplication of effort and the risk of different investigations compromising each other) was only effective in relation to those investigations that were declared on the

system; and, privately, investigators from all participating agencies complained that some investigations were not declared for fear that another agency might be in a better position to intervene and so take credit for the resultant performance measures. A second vulnerability lay in the flexibility and fluidity of organized criminal networks, which meant that criminal suspects could engage in and withdraw from any given criminal enterprise without that fact necessarily coming to note in police intelligence and flagging systems.

This uncomfortable reality was recognized by government. The merger of the NCS, the NCIS, together with elements of the former HM Customs and Excise, HM Immigration Service and MI5 was a re-organizational response to the realization that the pre-existing agencies had 'gone as far as they can in partnership working: to make a real difference and move on, they need to recognize that there are too many overlaps between what the different organizations do and that their cultures sometimes prevent them from working together effectively' (Caroline Flint MP, then Home Office Minister for Policing, Hansard (Standing Committee D), 11 January 2005, column 35). SOCA, it is stressed both by government and the agency itself, is not a police agency but a 'harm reduction' agency that can use law enforcement powers. Politically, the need for such an assertion is clear in the change management of such a significant merger of organizational cultures and traditions. The extent to which such a paradigm shift manifests itself in new and improved practice remains to be seen (Harfield, 2006). It is interesting to note that the Cabinet Office identifies SOCA as a key element in reform of UK national security since 2001 (Cabinet Office, 2008: 4), rather than as a milestone in police reform.

## Preventative effort

Prevention initiatives at government and intergovernmental level have taken a number of forms. The Financial Action Task Force [FATF] has, since its inception in 1989, continued to promote action in individual nations against money-laundering (http://www.fatf-gafi.org). Since 9/11 it has re-emphasized the focus on inhibiting and preventing terrorist funding. The G8, through the work of the Lyon Group of law enforcement experts and the various sub-groups derived therefrom, particularly in the arena of hi-tech crime (Sussman, 1999), has worked to promote norms and active collaboration. Beside the drafting of good practice protocols, the G8 24–7 emergency response and immediate assistance network for computer crime investigation has long-since incorporated additional jurisdictions from outside the G8 and the concept of such a network has subsequently been enshrined in the Council of Europe Cybercrime Convention (Article 35), which has a global reach and has been ratified by non-European countries like the US, and signed but not yet ratified by Canada, Japan and South Africa.[15]

Individual governments have produced policy papers on addressing issues raised by organized crime that include prevention initiatives. President Clinton's administration devised the US International Crime Control Strategy [ICCS] in 1998, which included objectives to prevent international financial crime, criminal exploitation of legitimate international trade, the protection of US borders against smuggling, the fostering of international co-operation and the rule of law and extending the first line of defence beyond US borders.[16]

Australia also envisaged promotion of the rule of law and fostering regional co-operation as key tools to prevent organized crime from reaching Australian shores, positing the rationale within regional security and the need to protect and promote trade (Australian Parliament, 2003; DFAT, 2003).

The EU has published its own Strategy for the Prevention and Control of Organised Crime (OJ 2000/C 124/01, 3 May 2000). Its recommendations included strengthening the collection and analysis of data on organized crime, preventing penetration of organized crime into the legitimate public sector, and increased co-operation with applicant states and other countries.

Whether any of these polemical statements have made significant contributions to the organization of policing organized crime is debatable. But in one respect they did contribute to the elaboration of the prevention paradigm to include upstream interdiction: in the words of the first goal of the ICCS, extending the first line of defence beyond national borders.

Criminal justice sector reform (CJSR) in post-conflict, unstable or emerging societies has, since the turn of the century, increasingly been asserted as necessary to prevent organized crime penetrating and corrupting weak administrations and economies. CJSR takes the form of police reform, court system reinforcement (one of the prerequisites hitherto omitted from this discussion) and prison system reform (Holm and Eide, 2000; Youngs, 2004).[17] Only with a robust criminal justice sector can states on the periphery of strong societies play their part in preventing the spread of organized crime. The extent to which such assistance has specific goals and achieves them has been called into question (General Accounting Office, 2001).

## Knowledge management and information sharing

The EU strategy for preventing organized crime called for better data collection and analysis in relation to organized crime. The manifestation of this aspiration is Europol's annual Organized Crime Threat Assessment (OCTA). The OCTA for 2007 outlines its role:

> The OCTA helps to close the gap between strategic findings and operational activities. The OCTA helps to identify the highest priorities, which will then be effectively tackled with the appropriate law enforcement instruments. The OCTA suggests strategic priorities, but it needs to be realized that the OCTA

itself is not detailed enough to pinpoint specific criminal investigations. (OCTA, 2007: 7)

In terms of organizing the policing of organized crime in an international context, the OCTA purports to be key document. It draws its information not only from law enforcement but also from the private sector and academic analysis. What is less clear is the extent to which the OCTA influences the gap between pan-European strategic aspiration and tactical deployment of investigators within any given agency and national jurisdiction. Potentially there is considerable diversity of response amongst national jurisdictions to what Europol identifies as the priority issues. This is overcome to some extent by having generic crime-type priorities with which no one would disagree: drugs, crimes against persons, financial and property crime, terrorism, forgery (Europol Annual Report, 2007). There is a danger of such assessments becoming self-fulfilling prophecies (Sheptycki, 2007b: 63), a concern in part corroborated the experiences of a former Europol analyst (Ridley, 2008). Other studies have also revealed differences in organizational approaches to and understandings of intelligence and data sharing amongst different national secondees posted to Europol (Kleiven and Harfield, 2008).

Much delayed has been a key tool in intelligence sharing, the Schengen Information System (SIS II), intended to serve as a database accessible to EU and Schengen Member States (House of Lords, 2007). In preserving its own border controls, the UK is not a full Member State of Schengen and so is denied access to immigration intelligence held on SIS II: a gap that potentially undermines the effectiveness of organized crime policing.

One of the key roles assumed by SOCA (Home Office, 2004: 7–11) is to develop a better understanding of the nature of the threat posed by organized crime to the UK. The 2004 White Paper, asserting polemically that 'the threat we face from organized crime, often operating across international frontiers and in support of international terrorism, has probably never been greater' (Home Office, 2004: 1), conceded that the scale of the problem was actually unknown (despite the UK Organized Crime Notification Scheme, Gregory, 2003). However it nevertheless adopted a worst-case scenario premise and proposed new strategic paradigms, better use of intelligence and new asset recovery powers as a tactical menu to 'defeat' the uncertain and imprecisely understood threat. Better understanding of organized crime and the harm it causes, goes the argument, will better direct the organization of intervention resources.

Progress in this field is slow. SOCA has received bad press because of lengthy delays in producing its own annual national organized crime threat assessment (O'Neill, 2008), which subsequently appeared. Nor do Members of Parliament seem convinced that the public is yet getting value for money from the agency in terms of improved knowledge and resulting successful intervention.[18] Relationships with UK local forces have been strained but are improving (Haynes, 2008), a vital factor in the incentive to share intelligence with SOCA, which has inherited, along with most of the

NCIS's functions, NCIS's anecdotal reputation amongst investigators for being an intelligence black hole. If SOCA is to develop a better understanding of the harm resulting within the UK as a consequence both of domestic and transnational organized crime, then positive and mutually beneficial relationships with police forces who have responsibility for policing domestic organized crime at the sub-national level are vital. (The organization of organized crime policing at local force level is discussed in Harfield, 2008.) What is apparent in the present new era of knowledge-based policing (Harfield and Kleiven, 2008) is that the criminals are one step ahead in terms of their practice adaptation based on acquired knowledge of law enforcement methods and approaches (Morselli and Petit, 2007).

## The organization of organized crime policing

The pre-requisite so far omitted from consideration in this article is that of good governance and legitimacy; an issue that has attracted vigorous debate and is intrinsically linked to the organization of organized crime policing. There is widespread concern that new national and transnational entities and processes, together with specialist liaison networks, are emerging that sit outside existing governance and accountability frameworks (den Boer, 2002). A democratic deficit has been asserted as a consequence (Loader, 2002). The fact that police co-operation sits within the third pillar of the EU should not preclude governance mechanisms based within the first pillar (Schalken and Pronk, 2002); whilst the fragmentation of the policing terrain is a significant impediment to effective governance, creating accountability problems beyond the competence of 'traditional models of constitutional control' (Sheptycki, 2002: 323).

Indeed Sheptycki goes further, arguing that it is not just accountability that does not fit easily within the existing and emerging police structures but that the police structures themselves do not necessarily reflect the reality of what has to be policed (Sheptycki, 2007b: 59): corroboration for the notion asserted at the outset that perceptions of what needs to be policed define organizational parameters. Equally, organization can be subject to political whim. The 2004 White Paper on fighting organized crime in the 21st century notwithstanding, within a year of SOCA becoming operational, immigration (both legal and illegal) has assumed greater political significance than the issue of transnational organized crime as a whole, and serious consideration was given to subsuming SOCA within the new UK border control agency (Cabinet Office, 2007: paragraphs 5.68–5.69). In the event, and 'on balance', the suggested merger was deemed not to be appropriate but it is the fact that SOCA's institutional abolition was considered at all so soon after its creation that betrays not so much flexible and responsive government, as a potential lack of strategic drive, confidence and commitment once a direction is identified.

These are all expressions, albeit from different perspectives, of the same issue: the activities, agencies and authorities involved in 'policing' organized crime in the international context are so diffuse as currently to defy co-ordinated organization. Practitioners and agencies establishing their own formal or informal liaison networks, for instance, is not necessarily a deliberate evasion of governance structures so much as a practical solution to real problems of policing for which no adequate governance framework has yet been devised.

England and Wales provide an example of the difficulties inherent in organized crime policing within a single jurisdiction. At the national and international level SOCA has been created to detect and disrupt the harm caused by organized crime groups. At the level of the 43 individual local police forces, each force has to fend for itself (Gilmour, 2008) within the parameters of its own force boundaries, performance indicators and available resources (which vary significantly between forces). At the intermediary level, once served by regional crime squads, new collaborative partnerships are emerging on an ad hoc basis: coverage, capacity and capability is varied across the jurisdiction and in some places is non-existent (Harfield, 2008: 70). The organization framework and process that attempts to manage and assign responsibility for investigating organized crime, and if resources permit disrupting it to reduce harm,[19] is the philosophy of intelligence-led policing as articulated in the National Intelligence Model [NIM] (Flood, 2004), to which organizational adherence, although mandatory, is variable.

At the transnational level, the basic premise of the NIM is being replicated in the European Criminal Intelligence Model [ECIM], seen as an alternative to a pan-European criminal law enforcement agency or centralization of effort through Europol and Eurojust. The ECIM, it is suggested, could be a vehicle for organizing and co-ordinating investigations into transnational organized crime within Europe (Brady, 2008: 106). But this is only within Europe. At the global international level, individual agency, criminal justice policy and foreign policy agenda in relation to transnational organized crime, diffused through the geopolitical prism, limits consensus, constricts collaboration and denies meaningful opportunities for large-scale organization and co-ordination. This may not be of great consequence to individual transnational criminal investigations, but in terms of the other aspects of policing organized crime, potentially inhibits the globalization of effective response.

The spectrum of difference and similarity in capacity, capability, circumstances and conceptualization of international law enforcement co-operation and mutual legal assistance may drive new and emerging collaborations outside established transnational and international frameworks such as the EU. New coalitions of the willing may emerge as perceptions of the problems to be policed evolve.[20] Will it transpire, for instance, that increasing focus on the uncertain nexus between organized crime and terrorism redirects effort towards the 'high policing' of only

those forms of organized crime (or, more accurately, organized crime networks/groups) that demonstrate a terrorist nexus (pursuant to the 'war on terror'), and away from policing the 'ordinary' organized crime activity targeted at drug users and would-be immigrants, resourced through transnational criminal trade in illicit commodities, where the major direct and indirect harm of organized crime is felt daily within local communities? [21]

This article has set out to demonstrate two things: first (at the descriptive level), a sample of the developments in the organizational practicalities of organized crime policing over the past decade and second (at the comprehension level), the fact that the policing of organized crime must be viewed in the widest sense and not just in terms of 'police agency' function. The role of other criminal justice sector actors, and the ways in which these roles are organized, are equally important to our understanding the organization of organized crime policing. Sheptycki's innovative ethnographic approach towards greater insight into organized crime policing focuses on 'the police' (Sheptycki, 2007a). It could usefully be extended to incorporate all those involved in 'policing' so as to identify all the different influences informing different aspects of the overall organization of responses to organized crime. His call for transparent, democratically-based transnational co-ordination of organized crime policing effort is not uncontentious for those who prefer nationally-based accountability, but the nation state is now challenged by the market state (Bobbitt, 2003, 2008; Robb, 2006), and nation state law enforcement structures are challenged by the free market of transnational crime in which the illicit–legitimate nexus (the corruption necessary to sustain large-scale organized crime) poses as great if not a greater threat to society in general than does the crime–terror nexus. A need for an effective means of transnational co-ordination seems beyond debate. Yet experience in the past decade of developments suggests that the overall organization of organized crime policing remains vulnerable to multiple agenda that militate against such co-ordination, even within single agencies and national jurisdictions, let alone within the international context. There is simply too much to manage, even if only the agencies and actors are considered and not the crime phenomena themselves!

The policing of organized crime is characterized by the strengths of flexibility and innovation, with opportunities to achieve successful prosecutions and reduce harm within a transnational context. But the organization of organized crime policing suffers a number of weaknesses: significant differences in capacity and capability between jurisdictions; different and indifferent attitudes towards treaty negotiation, ratification and implementation; different attitudes and agenda in relation to mutual legal assistance and international law enforcement co-operation. Over-arching these issues is the threat to the legitimacy of organized crime policing (particularly in an international context) arising from the lack of overall organization around which to structure an effective governance framework.

Whereas the past decade of developments has been characterized by progress in the tactical practicalities of organized crime policing in its widest sense (which in turn has defined how the wider organization of such activity has developed), the next decade needs, arguably, to be characterized by creative (though evidence-influenced) conceptualizations of the threat and what is threatened in order better to understand how organized crime will feed off the variant state-types now being identified. This in turn will inform the organization of policing and its governance. The state context within which organized crime must be understood is changing. The implication of not recognizing the changing context is that the organization of organized crime policing will only ever be reactive and defensive, and not necessarily focused on the most effective interventions.

## Notes

1   Extradition is a function of mutual legal assistance but one that has its own corpus of treaty law. It is often treated and studied separately from the other mutual legal assistance functions. States whose jurisdiction is based on Roman or Napoleonic law usually have a constitutional bar on extraditing their own citizens to stand trial abroad, in which circumstance they undertake to prosecute on behalf of the requesting state. At times, this proves difficult and/or impolitic to organize, raising important issues of transnational witness protection, e.g. the tension between the UK and Russia over the alleged polonium poisoning of an émigré in London by a former Russian intelligence service officer.

2   Crime suppression conventions include the UN Convention against Transnational Organised Crime (2000) and the Council of Europe Convention on Cybercrime (2001). Mutual legal assistance instruments include bilateral treaties and multilateral instruments such as the EU Convention on Mutual Assistance in Criminal Matters 2000 [EUCMA].

3   98/428/JHA, OJ 1998/L 191/4.

4   *Final Report on the First Evaluation Exercise: Mutual legal Assistance in Criminal Matters*, 8648/01 CRIMORG 55, 10th May 2001.

5   The UK still requires all requests to be sent to the UKCA because of the complexity of the multiple UK criminal jurisdictions.

6   *International Legal Materials*, 1991, 84.

7   10900/05 CRIMORG 65, dated 7th July 2005; also 13728/07 CRIMORG 145 dated 11th October 2007. For UK perspectives see Home Office Memorandum on Justice and Home Affairs, dated 16 July 2007, and House of Lords (2007).

8   OJ 2001/C 12/02.

9   OJ 2000/L 190/01.

10  The proposal for a Commission Framework Directive on the EEW is set out in COM (2003) 688 Final.

11  There is also provision for liaison magistrates (96/277/JHA, OJ 1996/L 105/1). Their role is to facilitate the construction and execution and mutual legal assistance requests and as such there is a risk of duplicated effort where Eurojust Member States also have exchanged liaison magistrates. The distinction is that liaison magistrates are located on-site in a requested state whereas Eurojust operates centrally out of The Hague.

12 Council Framework Decision 2002/465/JHA OJ 2002/L 162/1; *Model Agreement for setting up a JIT*, 7061/03 CRIMORG 17, 7th April 2003.

13 Conclusions of 3rd meeting of the National Experts on JITs, 29th–30th November 2007, 5526/08, CRIMORG 14, 22nd January 2008.

14 Home Affairs Committee, House of Commons, Minutes of Evidence 29th January 2008, question 36.

15 By 2008, 23 countries had ratified the Cybercrime Convention; 22 had signed but not ratified. Russia has neither ratified nor signed it.

16 The ICCS is summarized and commented upon in a special thematic issue of Trends in Organized Crime, 1998, volume 4(1).

17 Alongside CJSR is the related activity of Security Sector Reform [SSR]. The terms are sometimes used synonymously but SSR focuses on state security, intelligence and counter-terrorism issues whilst CJSR, occasionally posited as a sub-set of SSR, focuses on the criminal justice sector.

18 Home Affairs Committee, House of Commons, Minutes of Evidence 29 January 2008, especially questions 20, 21, 24, 27, 39, 40, 41, 42 and 45.

19 Sheptycki makes the point that most 'high policing' activity achieves only 'low policing' results (2007b: 61).

20 For example, MI5 files inadvertently left on a train recently revealed one co-operative coalition through the designation: 'For UK, US, Canadian and Australian eyes only' ('Official who lost Iraq files in clear breach of rules', *The Independent*, 13 June 2008, p. 18).

21 SOCA's statutory functional focus is organized crime rather than terrorism; a strategic direction reinforced by the fact that SOCA can use covert investigation powers only for the prevention and detection of crime and not in the interests of national security (Statutory Instrument 2003/3171). Yet the Cabinet Office asserts (2008) that SOCA is a key element of the national security infrastructure. This demonstrates some policy ambivalence in a jurisdiction in which the nexus between organized crime and terrorism is not as robust as in other parts of the world.

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