

Disrupting or Confronting Organized Crime: The Role of Law Enforcement

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The 24-hour Conference on Global Organized Crime – November 10, 2020

Centre for Information & Research on Organized Crime, IASOC, ECPRSG, Global Initiative
Against Transnational Organized Crime

Too little attention is given to the fact that most law enforcement strategies tend to be largely ineffective in controlling illicit markets, dismantling organized crime groups or preventing them from infiltrating and perverting legal markets. This, we all suspect, is due to the fact that the necessary law enforcement performance data do not exist. However, we may have reached a point where we have no choice but to reconsider what can reasonably be expected of law enforcement in terms of curtailing the exponential growth of organized crime. We need to formulate much more precisely what role the police and other law enforcement agencies can and must play in fighting various forms of organized crime. Law enforcement goals are routinely defined in terms of disrupting illicit markets or dislocating criminal networks. But what, we might ask, is the net impact of such disruption activities?

To start with, let's keep in mind that when we prohibit certain goods, activities or services, we create illicit markets and, very importantly, we create rich opportunities for organized crime. As we do this, we encourage unrealistic public expectations about what law enforcement can actually do to control these illicit markets. Yet, there is not much point in regulating or criminalizing various markets unless we can actually enforce these regulations and prohibitions.

We should also be concerned by the fact that, in many ways, attempts to control illicit markets also heightened the risk of corruption in law enforcement. Was that not one of the most important lessons drawn from decades of war on drugs? Indeed, the most successful criminal organizations tend to be those that rely on corruption and intimidation to weaken official controls and law enforcement. That is one of the many reasons why current law enforcement initiatives to control illicit markets or to protect fisheries, forests, or the environment against organized crime so often fail.

Globally, law enforcement operations against organized crime, particularly transnational crime, are still relatively ineffective. Successful investigations and prosecutions that can actually weaken or dismantle international criminal organizations are still very rare. That failure to seriously confront organized crime is clearly evidenced by the proliferation of organized crime groups and their penetration of every sector of social, commercial and economic activity.

Investigations of financial crimes and corruption remain very weak, limited and unfocussed. The proceeds of these crimes are quite easily dissimulated, laundered and protected against law enforcement. Financial crime patterns facilitated by modern technology, international banking practices and a lack of corporate transparency, have evolved rapidly and rendered many of the current law enforcement practices obsolete. Similarly, law enforcement agencies struggle to address cybercrime in a coherent manner. Some observers even wonder whether we could soon be facing an era where digital crime can no longer be effectively policed.

Law enforcement agencies have been particularly inept at controlling the exploitation of illicit markets, including illicit financial markets. Police leaders everywhere, at one time or another, have been forced to admit their inability to control organized crime and the relatively limited impact of their current strategies. They lack the capacity to succeed. Yet, all this receives surprisingly little attention. Law enforcement performance data either do not exist or are not made public. As a result, as Professor Ugi Zvekic recently observed, many law enforcement agencies were able to continue to promise to combat organized crime and corruption without really doing much about it.

We have reached a point where we have no choice but to reconsider what we can reasonably expect law enforcement to do to curtail the rapid growth of organized crime. I will argue that we need to do at least two things: reduce our expectations of law enforcement in terms of its ability to control organized crime and illicit markets; and, design more effective law enforcement strategies, including more effective law international cooperation.

Looking back at the last 20 years or so, it seems to me that we have not always been clear about exactly what we expect law enforcement to do to counter organized crime. Instead, we witnessed the gradual shrinking of law enforcement undertakings in that regard. Law enforcement leaders increasingly express a defeatist attitude and justify their lack of fervor for the battle against organized crime by playing down the role of law enforcement.

In North America, if not elsewhere, we have gone from stating law enforcement objectives in terms of “eliminating and eradicating” organized crime, to “dismantling” criminal organization, to “combating” organized crime, and then to “weakening” criminal organization, and finally to “disrupting criminal networks” or, even more vaguely, “disrupting illicit markets”.

The goal of dismantling criminal organizations has all but been abandoned completely. *Disrupting* organized crime activities is now typically presented as the main goal of law enforcement operations against organized crime. In practice, absent a comprehensive enforcement strategy, these disruption efforts often amount to little more than occasional police crackdowns. Furthermore, there rarely is much thought given to what may be the unintended, counterproductive, or detrimental effects of such disruptions.

Here are a few questions for us all:

- What do we mean exactly by “disrupting criminal networks”?
- How is this understood by law enforcement officials?
- Does this simply amount to punctual, disjointed investigations, occasional crackdowns, and sporadic prosecutions?
- What results can this kind of approach realistically be expected to yield?
- Have we finally accepted that organized crime is inevitable, uncontrollable?

For me, the idea of disrupting organized crime evokes the image of a boy poking a hornets nest with a short stick; nothing too good can come out of that.

Some of the basic law enforcement principles that apply here are well known. We know that, because of the dynamic nature of organized crime, police and prosecution

services must constantly refine and perfect their strategies. They need to take into account how criminal elements are themselves acting strategically so as to defeat detection and prosecution. They must move beyond reactive responses and adopt strategic and proactive approaches. They must also be able to sustain their efforts over time, something which in itself also presents some real difficulties.

Tactically targeting individuals or criminal groups is not enough. What law enforcement agencies need is a capacity to develop a better understanding of the markets (licit and illicit) that fuel organized crime, including financial markets. Organized crime has evolved into complex, flexible, highly adaptive networks, but law enforcement methods are often failing to adjust or are lagging behind. Current approaches are flawed because of a lack of law enforcement agility to match the fluidity and adaptability of criminal networks. In addition, law enforcement understanding and penetration of criminal networks and illicit markets that span across borders are still extremely limited.

We should ask:

- What in their training or experience actually prepares police investigators to understand and investigate illegal trafficking in wood and related products, illegal fishing activities, illegal mining activities, or the illicit trade in pharmaceuticals?
- Who is doing the necessary market monitoring and analyses?
- What is the capacity of law enforcement to conduct successful cross-border investigations and prosecutions in these complex matters?
- How robust are our current law enforcement cooperation mechanisms?

Surely, we cannot leave it entirely to law enforcement agencies to define their role and goals with respect to organized crime, neither can we leave it to them to measure the success of their own efforts. A greater level of scrutiny and accountability is required.

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