

Towards an assessment of organised crime networks as parallel sovereignties

Erin Torkelson

Recommendations

1 Policymakers and analysts should move beyond the false dichotomy between state and non-state actors and adopt a new analytical framework that avoids this dichotomy.

2 They need to take account of the fact that criminal networks include individuals who have commoditised non-traditional objects such as 'political connectivity' and influence.

3 They should accept that the existence of spaces that are neglected or abandoned by formal institutions facilitates the development of networks of alternative sovereignties exercising authority.

4 They should regularly assess the extent to which criminal sovereignties are entangled with governance at various levels.

Summary

This policy brief uses a relatively new analytical framework to understand organised crime by arguing that organised criminal networks should be understood as *alternative* or *parallel sovereignties*. The concept of sovereignty is no longer limited to the state, and multiple sovereignties may exist. Using a globalisation theory rooted in the centralisation of the market over the state, the policy brief argues that sovereignty is now de-territorialised and increasingly borderless. As influence and connectivity have become marketable, the linkages among crime, politics and economics have been strengthened and criminal networks have become increasingly important actors in governance.

THIS POLICY BRIEF IS the first of a series designed to assist policymakers, analysts, strategists and all who are concerned about contemporary organised crime to better understand the structure of the networks involved in such crime in African cities. The series profiles the dynamic context in which crime networks exist, and the strategic relationships that contribute to their resilience and to some extent determine the impact of their activities on governance.

The conceptualisation of 'organised crime' has been a source of contention for policymakers, practitioners and

scholars for a long time. Research has continually found novel meanings for the term. This policy brief uses a relatively new analytical framework to understand organised crime by arguing that the criminal networks that commit it should be understood as *alternative* or *parallel sovereignties*. It further argues that the concept of sovereignty is no longer limited to the state and that multiple sovereignties may exist. Using a globalisation theory rooted in the centralisation of the market over the state, the policy brief argues that sovereignty is now de-territorialised and increasingly borderless.

Alternative or parallel sovereigns can move beyond traditional market-based organised criminal activities to incorporate corporate crime and bribery that commoditise and objectify things; e.g. previously non-commoditised items such as influence and political connections are now commoditised. As influence and connectivity have become marketable, so the linkages among crime, politics and economics have been strengthened. One of the outcomes is that criminal networks have become increasingly important actors in governance.

According to this logic, organised crime is generally at odds with the state, so policing can conceivably neutralise the threat by ‘following the money’ or incarcerating a few top leaders. However, in many parts of the world evidence gives lie to this notion of organised crime and to simplistic methods of eradicating it. In Colombia, narco-traffickers gained legislative power or supported sympathetic candidates to gain legislative power, with the result that by 2001, over 50 per cent of the national legislature operated in support of the cocaine industry.² In the Balkans, the civil

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All organised criminal networks contest sovereignty and are therefore pretenders to sovereignty, because traditional sovereignty claims in particular are an incomplete ideal. Therefore, alternative – often criminal – actors can claim sovereignty and establish informal networks. These networks often thrive in spaces abandoned or neglected by formal institutions – whether public or private. Their presence in these abandoned spaces can take the form of governance and provide services. Communities coexisting with crime networks enter symbiotic relationships with them, making it that much harder for formal institutions to re-engage.

wars of the 1990s served as a platform for political elites, paramilitary units and security forces to establish large-scale European hubs of illicit commodity trafficking.³ And in Zimbabwe, the elite in the ruling ZANU-PF party exploited control of the Marange diamond fields to consolidate political power through patronage.⁴ In these cases, organised crime has become indistinguishable from the power of the state and the global market.

This raises a conceptual problem for research into organised crime. *Theoretically*, such crime still tends to be understood as separate from the political sphere, but in *reality* this is a false dichotomy. Although this is a widely recognised problem, the nomenclature of ‘state’ versus ‘non-state’ actors is still deployed in academic writing on organised crime, corruption and armed violence in Africa (although with many caveats).⁵

This rhetoric is consistently undermined by case studies of political parties accepting money from organised criminals (paramilitaries in Colombia),⁶ candidates giving money to local strong

At the Experts’ Workshop on Organised Crime held at the Institute for Security Studies (ISS) in April 2012 participants agreed on the need for a new analytical framework to grapple with the types of crime we are observing in Africa.¹ The traditional conceptualisation of organised economic crime is of three or more associated actors setting up or seizing control of commodity markets that are defined as illegal by the state in order to profit from them.

50%

THE PROPORTION OF THE COLOMBIAN NATIONAL LEGISLATURE THAT OPERATED IN SUPPORT OF THE COCAINE INDUSTRY BY 2001

men to mobilise their constituencies (Mungiki in Kenya),⁷ paramilitary groups using illicit commodities to fund civil conflict (precious minerals in Sierra Leone),⁸ and state actors becoming key players in criminal networks that facilitate licit and illicit commodity trading (bribing human smugglers in Zambia;⁹ issuing fraudulent documents in Nigeria;¹⁰ greasing the wheels of corporate tender processes¹¹ across the continent). Additionally, with many of these criminal networks operating in multiple theatres of influence – in sub-national, national *and* international contexts – the continued use of the state as the referent of authority is clearly questionable.

Given contemporary experiences, it is time to develop a new language around organised crime in Africa. This policy brief argues that transnational criminal networks should be understood as *alternative or parallel sovereigns*. Following arguments made by Davis,¹² Hansen and Stepputat, the sovereignty of the state should be understood as ‘an *aspiration* that seeks to create itself in the face of internally fragmented, unevenly distributed and unpredictable configurations of political authority that exercise more or less legitimate violence in a territory’.¹³

When sovereignty is understood in this way – as an aspiration, not as the bedrock of the state – many groups can be seen as exercising alternative forms of authority alongside, within and apart from the state. Organised crime networks, protection rackets, mobs, vigilantes, millenarian movements, corrupt officials, transnational corporations and other power holders represent a diverse range of entities that can and do exercise forms of sovereignty in a competitive market framework. As such, this policy brief will first show why sovereignty should be delinked from ideals of state power and territory; it will then demonstrate how the global market has replaced the state as

the meta-sovereign; and it will conclude with an explanation of how criminal networks capitalise on this new market-based sovereignty to become pretenders to sovereignty themselves.

This analysis is only a preliminary step in a larger, multi-country study initiated by the ISS to understand the complexities and contextual variations of market-dependent organised crime.¹⁴

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Seeing sovereignty in a new way

The notion of ‘sovereignty’ is changing in the contemporary world and is attracting the attention of scholars from diverse disciplines.¹⁵ However, much of this work, while problematising sovereignty in the light of increased economic and political globalisation, tends to maintain the link between sovereignty and the state. The most common way of understanding sovereignty, in reference to the external recognition of a state by other sovereign states, is both relatively new and already out of date.

State-centred sovereignty is a time-bound social construct, initiated through the 1648 Treaty of Westphalia and reified by the foundation of the UN system after the Second World War. Ironically, the organisations established after the war to diminish the belligerency of nations simultaneously depended on and undermined state-centred sovereignty – they instituted ways of recognising states as politically and territorially sovereign so that they could legitimately engage across political and territorial boundaries, thereby eroding state sovereignty. Before the state became the primary referent of sovereignty, the concept evolved by referring to God, the

‘mortal God’ (or monarch), traditional leaders and community strong men. The equation of ‘sovereignty’ with the state has had a relatively brief history and is commonly seen as being undermined by alternative claims.

Sovereignty, then, is not limited to the post-Westphalian context of state-centred governance. While a state is – at least partly – a concrete legal

reality constituted of a set of institutions with control over a set territory and population, the exercise of sovereignty is a dynamic and constructed practice, a claimed status, based on the performance of certain powers. Crucially, sovereignty has never been complete and has always been an ideal that was partially achieved through the exercise of changing functions. This notion is reflected in the 16th-century political philosophy of Jean Bodin, for whom sovereignty was both a cause and effect of ten ‘true marks’ (the ability to pass laws, make war, appoint officials, adjudicate disputes, coin money, impose taxes, confiscate assets, set the official language, use the royal seal and reserve the exclusive title of ‘majesty’). A sovereign reserved the power to accomplish these actions and effected sovereignty as a result of these accomplishments.¹⁶

Although these ‘true marks’ have changed over time (largely due to changing notions of legitimacy, from Weber’s¹⁷ ‘monopoly of violence’ to Tilly’s¹⁸ taxation to Dahl’s¹⁹ inclusiveness), sovereignty has always been an ambition built on the dialectic between idea and practice. Sovereignty can be usefully understood as the capacity to exercise

one's (the nation state's, the monarch's, a power holder's) will over a given territory (physical, social, geographical, economic) over time. Given this definition, it is clear that sovereignty should not be understood in the singular, but that multiple, overlapping sovereignties can emerge in various sub-national, national and transnational contexts to exercise power in the contemporary world.

Sovereignty and the market

In Africa and the world at large, the global market has been replacing the state as the referent of sovereignty. While significant changes in the global financial system began as early as the 1950s, the Reagan-Thatcher economic restructuring of the US and Britain ushered in a host of pro-market reforms. Instead of maintaining the economically regulatory government with strong social and labour protections that had ruled since the 1930s New Deal, the Reagan-Thatcher era scaled back the state, deregulated markets, attacked unionised labour, weakened environmental regulation, cut public services and restructured financial policy to serve the interests of corporate capital.

While such domestic policy interventions offered the template, the Bretton Woods institutions provided the way to 'sell' this policy template to the developing world.²¹ The oil crisis of the 1970s led to a change in the diplomatic function of money, and lending abroad in order to coercively set policy became commonplace. Conditional International Monetary Fund loans forced many post-colonies to accept economic austerity measures, the removal of trade barriers, the privatisation of national enterprise and the downsizing of government expenditure on social welfare. For the sake of business-driven growth, the state was to be minimised, whatever the cost; however, a minimal state is not ideally placed to make strong claims to

sovereignty. In Sassen's words, the move toward a neoliberal economic model 'de-territorialises' a state and fragments its sovereignty.²²

Taking Sassen's argument further, Hardt and Negri demonstrate how the neoliberal market itself is now the primary global sovereign. No longer bordered by the state, 'sovereignty has taken a new form, composed of national and supranational organisms united under a single logic of rule'.²⁴ The sovereign market has become a 'de-centered' and 'de-territorialised' network of command that 'progressively incorporates the entire global system within its open, expanding frontiers'.²⁵

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In contrast to earlier notions of sovereignty, Hardt and Negri characterise 'empire' (or the sovereign market) as a regime that will effectively encompass the totality of the 'civilized world' (i.e. all countries operating in the neoliberal economy) without spatial or geographical boundaries.²⁶ While the global market may be increasingly sovereign, it is never total, or monolithic, but interacts with other powerholders at local levels. Whoever or whatever group can corner a part of the market, can garner partial sovereignty.²⁷ This perspective allows analysts to understand organised criminal networks who effectively monopolise licit and illicit commodity markets in Africa as 'alternative', 'parallel' or 'criminal sovereigns'.

This extends beyond traditional market-based organised criminal activities like commodity smuggling to include corporate crime, corruption, fraud and bribery. The market-as-sovereign commoditises all things, at once objectifying them and, most importantly, making them mutually interchangeable. This allows things that previously

were non-commoditised to become commodities, including previously unquantifiable social capital such as influence and political connections. This extension and intensification of commoditisation is what Jameson calls, 'the commodification of everything', or 'hyper-commodification'.²⁸

In the South African context this is most clearly seen in the term 'political connectivity', which was coined by Themba Sono in reference to Shabir Shaik's business dealings around the multi-billion rand South African arms deal. Shaik's Nkobi Group had no assets other than 'political connectivity', which was accorded a monetary

value by international corporates, allowing Nkobi to profit from the arms deal.²⁹ Domination by commercial and market forces sees power (in any form) becoming currency with the potential to purchase sovereignty.

Crime, politics and economics all flow readily into one another through the logic of commodity exchange. This means that resources of any kind can be deployed to acquire market share and thereby acquire sovereignty. Criminal sovereigns have effectively realised the Machiavellian implications of empire to build shadowy realms of power that dovetail seamlessly with the orthodox world of values through the market.

Why is this relevant to organised crime?

All organised criminal networks contest sovereignty and are, therefore, pretenders to sovereignty. The groups referred to as 'organised criminals' operating in a globalised market-as-empire both reveal and increase the limitations to state sovereignty. If sovereignty claims in particular are an

incomplete ideal, then alternative, often-criminal, actors can claim sovereignty and establish extra-legal networks in the interstices of state-based governance. 'Power', in line with Hardt and Negri's assertion, 'fears and despises' such 'vacuums', and competing actors are always capable of seizing this space.³⁰

What is built into these voids are new types of 'communities' set apart from the state, but because they are established in territories formally claimed by the state, they enter into complex, often cooperative, relationships with it. In the Nigerian context, Oluwole, a neighbourhood in the central business district of Lagos, is notorious for counterfeiting government documents. In close proximity to the formal apparatus of the state, entrepreneurs in Oluwole 'commodify statehood through the marketing of official paraphernalia'.³¹ By reproducing what the state is meant to produce, these criminal counterfeiters reveal the flimsiness of state sovereignty and obtain sovereignty for themselves. The existence of alternative sovereigns staking a claim to at least partially legitimated authority from below proves that within that same social terrain chasms exist that cannot be suppressed by the state.

In conclusion, there is growing recognition that a variety of criminal organisations with informal sovereign power acquired through criminal markets are becoming increasingly crucial actors in the field of governance. Criminal sovereigns have shown that they can replicate the locus of power in fractal form so that it ultimately becomes decentred or dislocated from the ideal of transcendent state rule.

This is why sovereignty is a useful way of looking at organised crime, because it could mitigate growing limitations in existing thinking about the relationships between state and non-state, legal and illegal, and local and global.

Understanding criminal actors in this way has serious implications for our current state-based modes of policing and should allow for transnational interventions to be pursued.

Notes

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