

CHAPTER 17
COMBATTING ORGANIZED CRIME
IN THE NETHERLANDS

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1. Introduction

Due to its nature, organized crime is not only difficult to combat, it is also a phenomenon that is not easy to assess. In The Netherlands, criminal intelligence units (CIUs) play an important part both in forming a good picture of organized crime and in the approach to it. Before giving you an idea of Dutch organized crime, I will focus for a short while on how CIUs gather and process information about criminal groups. In paragraph 2 the nature and extent of organized crime in The Netherlands is discussed on the basis of two different studies. Next, a series of measures that have been taken in the last ten years will be critically examined. At the end, a new way of analysing organized crime is proposed as the basis of a more effective approach to organized crime.

Organized crime should be dealt with by the police in a way that differs from the traditional forms of serious crime. In the case of types of crime, such as fraud and trafficking in drugs, usually no complaint is made by an actual victim. Forensic traces, such as bloodstains and fingerprints, are seldom found, partly because the crime is not perpetrated solely at one location and at one time. Another characteristic of organized crime is the permanency of association agreements and protection from the outside world. Because of all this, it is very difficult to find clues which provide a sufficient basis for suspicion within the meaning of the Criminal Procedure Act.

During their investigation, police officers are then obliged to have recourse to rumours from the criminal fraternity itself as a source of information. If such rumours reach their ears, they can continue their work in a targeted manner by using informers, tapping telephones and keeping individuals under surveillance. A large quantity of intelligence is collected in this way with varying levels of reliability. This intelligence is called "soft" to distinguish it from "hard" intelligence, which is so reliable that it can be used as evidence at a criminal trial.¹

In the Netherlands, the collection, collation and analysis of soft information is the responsibility of special units within the regional police forces: the criminal intelligence units (CIUs). There are 25 regional CIUs in operation and one National Criminal Intelligence Division (CRI). The task of the criminal intelligence units is to promote the detection of crimes which, considering their serious nature, the frequency with which they are committed, or the organized manner in which they are perpetrated, cause serious violation of the legal order. With their intelligence work, the CIUs help to investigate natural persons and legal entities which could be involved in the perpetration of these crimes. The intelligence work of the CIUs is not directed at furnishing evidence. Collecting evidence is the task of the tactical investigation department. The intelligence work, which is for the most part secret, is not intended to be brought up for discussion at the trial, but has to produce information for steering the investigation process. This steering takes shape in the decision as to whether or not a tactical criminal investigation should be instituted, and the direction which a current tactical investigation should take. The CIU functions as an important source for commencing tactical investigations.

Crime pattern analyses of organized crime can also be carried out on the basis of CIU information. A national inventory of criminal groups has been made periodically in the Netherlands since 1988. Analysis of CIU intelligence has the great advantage over working with "hard" information in that intelligence on active criminal groups is obtained at a much earlier stage. Of course the limited reliability also causes concern about the quality of the results of the analysis. For that reason, I shall deal in the following paragraph not only with the results of an analysis based on CIU information, but also with the outcome of a scientific study of organized crime in the Netherlands.

2. Nature and Extent of Organized Crime in the Netherlands

2.1 The 1995 National Inventory on Criminal Groups

2.1.1 The Research Method

In 1995, a national inventory on criminal groups was carried out for the fourth time. This survey was based on data of regional criminal intelligence units (CIUs). Crime analysts filled in a structured questionnaire on every active criminal group. A criminal group was defined as the cooperation of two or more people who are involved in crimes which, in view of their impact or their frequency or the organized framework within which they are committed, represent a serious violation of the legal order. The questionnaires that were completed were processed at the National Criminal Intelligence division (CRI). In the analysis of the answers, a number of characteristics were used as selection criteria, in order to establish the organizational degree of groups. The following eight criteria were applied:

1. The group has a hierarchic system of leaders and subordinates, with a more or less fixed division of tasks between core members.
2. The group has an internal system of sanctions, such as intimidations, acts of violence and sometimes even liquidations.
3. The group concentrates on acquiring income from different forms of crime, depending on the profit opportunities involved in more than one type of serious crime.
4. The group has criminal contacts with the world of trade and industry and/or with government agencies (corruption).
5. The group launders criminal earnings by investments in legal enterprises, real estate, or in movable property or by foreign exchange.
6. Business enterprises are being used as a front.
7. The core members have been acting jointly for over three years.
8. The group uses intimidation, acts of violence and sometimes even liquidations against competitors within the criminal world.

In the analysis of the data, the degree of organisation of a criminal group is determined simply by counting the characteristics. The more characteristics present, the higher the degree of criminal organization. The designation "organized" is given to groups which complied with six or more of the eight criteria. The "at least six out of eight" formula takes into account both the diversity of organized crime and the fact that the police in the early stages of the investigation process usually do not have complete knowledge of all features of an active criminal group.

2.1.2 Results of the National Inventory

In the 1995 inventory on organized crime in the Netherlands, exactly one hundred criminal groups met at least six out of the eight aforementioned criteria and were, therefore, denoted as organized. Ninety-three of the one hundred organized groups have been committing serious crimes for more than three years. Most of the groups (86) traffic in drugs, especially in hard drugs. Other forms of crime which are frequently perpetrated are illegal trafficking in firearms (by 20 groups), and serious crimes against property (35 groups) such as fraud, robberies, extortions and vehicle theft.

Almost all organised groups are characterized by a structure of leaders and subordinates, and a fixed division of tasks among the core members. Discipline within the groups is usually maintained by violence or threats of violence. Also persons involved do not refrain from violence outside their own circle: almost two-thirds use physical violence against competitors within the criminal milieu. A quarter of the groups are associated with liquidations.

A widely recurrent characteristic of organized groups is the laundering of the proceeds of criminal activities. Eighty-nine of the one hundred organized groups active in the Netherlands launder the proceeds of crime. This is done, *inter alia*, by investing in legitimate businesses or heritable property or by channelling money by using routes abroad. Most groups also make use of cover firms; firms which function as a facade to cover up criminal activities. Three-quarters of the groups maintain contacts with the upperworld in some other fashion. The police, members of the business world and lawyers are mentioned especially in this context.

Almost half (44) of the organized criminal groups have a core formed completely of persons of Dutch extraction. In the case of a fifth of the groups the core is homogeneously foreign as regards origin. Turkey in particular scores very high as a country of origin of core members. One quarter of the groups have a heterogeneously formed core, where in most cases not only foreigners but Dutch nationals as well call the shots. The analysis shows that groups with a completely foreign core are more often associated with violence both against their own members and others in the criminal milieu. Dutch groups apparently maintain relatively more criminal contacts with the upperworld.

Most organized groups are active at international level. Almost three-quarters not only operate in the Netherlands, but in other Western European countries as well. Almost one-third commit crimes in Central and Eastern

Europe. Of the countries outside Europe, Turkey, Morocco and Surinam, Aruba and the Netherlands Antilles are most frequently mentioned as areas of operation.

2.2 The Research Study by the Fijnaut Group

2.2.1 Research Method

The outcome of the national inventory of 1995 can be compared with those of a scientific study of “the nature, gravity and magnitude of organized crime in the Netherlands,” conducted in 1995. The research was carried out by a group at the request of a parliamentary commission investigating police investigative practices. In paragraph 3 the findings on the other parts of this parliamentary enquiry will be dealt with. For the study on organized crime a research group of four Dutch criminologists was formed under the chairmanship of Dr. Cyrille Fijnaut.

The first priority of the Fijnaut research group was to provide an acceptable definition to guide their further research. The definition the research group chose encompasses the following:

“There is talk of organized crime when groups of people who are primarily focused on illegal gains systematically commit crimes which have serious consequences for society and are capable of

successfully protecting their interests, in particular by proving prepared to use corruption or violence to control or neutralize persons.”²

Various elements from this description correspond with the list of distinguishing characteristics used in the national inventory. This applies, for example, to the following aspects: organised crime is perpetrated by groups; the crimes committed are serious crimes, and corruption and/or violence are applied. Similarly, the definition also allows for some variation in the form in which organised crime appears (there is, after all, mention of “corruption and/or violence”) and the defining is always done in general terms; there is only organized crime if several criteria are complied with. There are differences as well. The most important relate to the leaving out in the description of Fijnaut and company of hierarchy, division of tasks, cover firms and money laundering as typical characteristics of organized criminal groups.

Apart from the definition, the research method of the Fijnaut group is not the same as the one used in the inventory either. The group did not only

make use of (confirmed) CIU data, but also acquired its information from the files of completed criminal investigations, interviews with representatives of the police, judiciary, economic sectors and ethnic minorities. In the research report by Fijnaut c.s. few figures are presented. Differently from the national inventory, the investigation by the four professors has a qualitative character. Finally, the research group did not restrict its work to one calendar year. The study roughly covers the period 1990-1995.

The Fijnaut research group makes a distinction between three main types of criminal groups. Groups of the first type consist of native-born Dutch citizens, those of the second type of naturalised Dutch individuals who originally came from countries such as Turkey, Morocco and the former Dutch colony of Surinam, and groups of the third type consisting of criminals of foreign extraction.

2.2.2 Domestic Groups

The domestic groups are between thirty and forty criminal organizations which are engaged predominantly in traditional organized crime, with trafficking in soft drugs as the predominant feature. Apart from the production amphetamines and other synthetic drugs, the Dutch networks do not have the production in their own hands. The Netherlands, with its Europort in Rotterdam and Schiphol International Airport in Amsterdam, occupies an ideal position as the gateway to Europe. The drugs that enter the country are therefore not only destined for the local market, but flow through the country to other European countries.

Besides drugs trafficking, these criminal organizations commit serious property crimes. Only seldom do they have a hierarchical structure. Mostly there are loose networks of individuals, groups and networks which sometimes cooperate and sometimes hinder one another. Dutch networks are sometimes quite large; some are made up of more than 100 persons. In total, the world of the Dutch trade in drugs is more aptly described as an extended network in which thousands of people, often operating in cliques or groups, are connected to each other in either transitory or permanent relationships or, where such relationships can be easily established via a friend of friends if and when the need arises. In these networks, pivotal figures and individuals and groups with more power than others can be discerned. Many of these relationships are not stable. The interests of various groups or sub-groups may be incompatible and the personalities of the leaders can clash. Such conflicts can be resolved by using avoidance tactics

or through violence. As a result, new sub-groups can come into being, either simply on a one-off basis to clear up a particular job (e.g. by jointly financing the project or by supplying materials or personnel) or new coalitions of longer duration can be established.³

According to the Fijnaut research group, Dutch organized crime is a diffuse and constantly changing network of individuals and groups. It has been found that domestic groups increasingly cooperate with criminal groups in countries abroad. In a number of cases, the use of violence by domestic groups is intensive. These criminal organizations may have quite large sums of money. The proceeds of illegal activities are partly channelled in the criminal trade and partly legally invested in the Netherlands and abroad. Little has been found of structural intertwinement of criminal groups and the legal upperworld. Only few make investments in legal sectors such as the catering trade and real estate. The majority of the domestic criminal organizations use the monies earned by criminal activities for their own consumptive needs and for the improvement of the managing of affairs. Nevertheless a real danger comes from the potential corruption of bona fide businesses as a result of money laundering. The available research suggests that forms of very professional fraud and money laundering constructions are relatively unknown to the police and justice system, but that these can do an inordinate amount of financial harm to our society.

2.2.3 Naturalised Groups

There are criminal groups active in the Netherlands whose members, it is true, live in the Netherlands and often as well hold a Dutch passport, but are not ethnically of Dutch origin. These are persons who belong to the three large ethnic communities in the Netherlands: Turks, Moroccans and Surinamese. Parts of these ethnic communities are involved in the smuggling of narcotic drugs to Europe. The reasons for their involvement in the drugs economy relate partly to their easy access to the producers and dealers of the products in their homelands. Furthermore, the socio-economic position of these ethnic minorities in Dutch society is relatively low, and the increase in their income as a result of the trade and distribution of drugs in their neighbourhoods must also influence their decision to become involved and stay involved in the drugs world.

a Turkey

The Balkan route makes Turkey an important country for transitting

illegal goods, especially heroin. Often customs officers are bribed for that purpose. The Turkish mafia is intensively linked to government services and the business community in Turkey. Apart from the traditional mafia activities, part of organized crime is carried out by political-criminal groups. Turkish criminal organizations are slowly changing from rigidly led, hierarchical organizations to more loose-knit networks. The Turkish drug dealers lead unobtrusive lives; many receive a social benefit. In a few cases, Turkish criminal organizations have been found to invest money in Dutch real estate projects. However, most of the criminal earnings are invested in Turkey, particularly in the tourist industry. The Turkish organizations are extremely violent in comparison with other criminal organizations.

b Morocco

Organized crime from Morocco has focused on the trade in cannabis and increasingly on hard drugs. There are indications that the Moroccan authorities and the judiciary assist the cannabis economy. Moroccan organized crime is not only criminal in nature, but also political. The cannabis sector has become essential for the Moroccan economy. Many Moroccan drug dealers invest in Morocco intensively.

Socially speaking, the Moroccan community in the Netherlands finds itself in a backlog situation, which is a breeding ground for crime. There are signals of large-scale theft of cars, trafficking in humans, but especially cannabis trafficking. Ingenious smuggling methods have been developed. A network of cannabis wholesalers and retailers is used for this purpose. Moroccan institutions are deeply affected. Moroccan organized crime is not very violent, which is remarkable.

c Surinam

In Surinam, several criminal groups are engaged in cocaine trafficking. Surinam is a transit country for the supply of drugs to Europe. Some people there have become extremely rich as a result of this drug trafficking. There are indications that the former army leadership was involved in the trafficking and transporting of cocaine. There is some involvement of Surinamese subjects in organized crime in the Netherlands: drugs, trafficking in stolen vehicles, prostitution. Drug trafficking partly consists of smuggling large quantities of hard drugs. Couriers and travellers smuggle small quantities of drugs into the Netherlands, also via part of the large distribution network of the Surinamese business community. A certain part of the

population group is directly involved that way in drugs trafficking.

2.2.4 Foreign Groups

There are several dozen criminal groups of foreign origin active in the Netherlands. The great variety of organizations, authors and crimes is typical of the role of foreign groups in the Netherlands. It is hardly possible to give a general assessment. As with the naturalised groups, it is necessary to differentiate between the countries of origin of the various criminal groups. The most important groups come from China, Colombia, Italy, the former Yugoslavia, the CIS republics and Nigeria.

a China

Chinese organized crime is mostly seen in the light of the triad structure. A small number of Chinese triads are active in the Netherlands. The power relations between them are constantly changing, whereby much violence is used. They are not solely responsible for Chinese organized crime. Investigations in other countries reveal that a sizeable Chinese community is a condition for Chinese organized crime to develop itself. On the one hand, the Chinese community in the Netherlands is well-integrated, while at the same time it is a world on its own in a social and cultural respect. Contrary to some other countries, the Netherlands does not have China towns. It remains unclear to what extent the Chinese community is involved in organized crime. It is clear, however, that the active triads use several Chinese restaurants, gambling houses and videotheques.

b Colombia

In recent years, the Colombian drug cartels have grown very fast. The Colombians have acquired a considerable trading base in Europe. The Netherlands especially has a function in a logistical sense. Our country simply appears to function as a dropping off zone for local as well as European markets, and not as an operational centre. About 75 percent of the cocaine discovered in the Netherlands has come from Colombia. The cartels are organized cell-wise as much as possible. There are several cells active in the Netherlands. They deal almost entirely in drugs. Almost the entire revenues are returned to Colombia.

c Italy

Since the late Eighties, the Italian mafia has been active in the Nether-

lands. The Camorra has been active in cocaine trafficking. The Netherlands is used as a trading place. It particularly concerns the making of logistical arrangements. Besides, other (non-Mafia) Italians are criminally active in the Netherlands. It is not clear how extensive Italian organized crime is in the Netherlands.

d The Former Yugoslavia

In several Dutch cities, Yugoslav gangs are active in trafficking in women, in cars, in burglaries and robberies, and much violence is used by these gangs. They are referred to as the so-called Yugo Mafia. They are separate groups which maintain contact, but are not in the least a unity, due to the ethnic differences. The gangs do not shy from intimidating police and judicial authorities. Their tough stance against the authorities is remarkable.

e CIS Republics

Many opportunities awaited the Russian mob after the fall of the Berlin wall. There is little to say about the number of criminal groups in Russia. The Russian mob is becoming increasingly internationally oriented, due also to the troops stationed until recently in Germany. The Russian community in the Netherlands is only small. There are indications that Russian criminals are active on Dutch territory to a limited degree in trafficking in women, in cars, extortion, arms and drugs trafficking. However, the Russian mafia has not settled in the Netherlands.

f Nigeria

Nigerian organized criminals are especially involved in international drug trafficking, illegal car trade, fraud practices and trafficking in humans. The Nigerian groups which are active in the Netherlands are the extremes of large criminal organizations. In a number of cases it was found that Dutch and Nigerian criminal organizations worked together.

2.3 Evaluation of the Two Studies

Due to its very nature, it is difficult to assess the size of organized crime. According to the Fijnaut research group exact figures can therefore not be given. The group estimates that between thirty and forty domestic groups and a few dozens of naturalized and foreign groups are active in The Netherlands. This quantification is lower than the figure of a hundred orga-

nized crime groups found in the 1995 national inventory. The single most important factor that explains this difference is the use of assumed information in the national inventory, where the Fijnaut research group only uses confirmed information. An analysis of the inventory data in which only answers based on confirmed CIU-information was used led to the result that 44 groups met at least six out of the eight criteria. This leads to the conclusion that when the differences in definitions and research method are taken into account, the difference in the quantitative results of the two studies is quite plausible. The same is true for the finding that Fijnaut describes some foreign groups that were not found in the inventory. This can be attributed to the fact that the Fijnaut research describes a period of about five years (1990-1995), while the inventory concentrates on the criminal groups active at one point in time (i.e. the beginning of 1995)

Although the definition and other elements of the research method applied by the Fijnaut group differ from those used in the national inventory of 1995, the qualitative results of both pieces of research work connect up well. The nature of organized crime in the Netherlands is very diverse. What is noticeable is that drug trafficking is the most common type of crime and that it is perpetrated on an organized basis. It is not surprising, therefore, that most organized criminal groups which are active in the Netherlands also commit crimes in other countries. It can also be seen that most of the naturalised and foreign groups which are active in the Netherlands do not originate from other member states of the European Union. The importance of the drugs trade for these groups should not be underestimated. This can be illustrated with statistics on seized drugs. Between 1985 and 1995, the quantities of drugs seized every year by the Dutch police have increased considerably for most types of drugs. It applies both to cannabis products and cocaine and amphetamine. As regards heroin, it is concluded that no significant rising trend has been discovered (see graphs).

Another indication of the growth of organized crime is the use of physical violence against (former) members of criminal groups and against competitors on the criminal markets. Liquidations within the criminal world have clearly increased: from 11 in 1989 to 23 in 1993 and 31 in 1994. Most of these liquidations were related to drugs trafficking.

The overview of available information can only lead to the conclusion that organized crime is a social problem of the first order in the Netherlands. This problem calls for measures to be taken swiftly.

3. Measures

Organized crime is a problem that cannot be responded to with an approach that is “just more of the same”. This was recognized more than ten years ago, in 1985, by the Dutch Minister of Justice. In a governmental policy plan entitled “Samenleving en criminaliteit” (Society and crime) he noted: “Although exact figures about this form of crime are scarce, the police and judiciary have the definite impression that this is a great danger threatening Dutch society, against which action should be taken urgently”⁴ Based upon nothing more than this impression, the Minister of Justice took quite a number of measures. Criminal intelligence units (CIUs) were set up, and the instrument of crime analysis was introduced and further developed within the police. Bureaus for financial investigations have been installed, while legislation has been initiated in various fields, such as bills pertaining to the confiscation of illegally acquired financial assets, the reporting by financial institutions of questionable transactions and the penalization of actions in preparation of a criminal offence. Police forces throughout the country have started the formation of supra-regional teams, comparable with the special task forces that were operational in the United States during the Eighties, for conducting investigations into criminal organizations active on a national or international scale.

The following paragraph will demonstrate how some of the aforementioned measures have worked out in practice. Partly, the selection of measures evaluated is based on the available evaluation data and partly on the consideration that the measures might/could also be applied abroad. Two of the measures pertain to legal provisions in the field of financial investigations. It concerns the obligation for financial institutions to disclose unusual transactions and the increase in legal possibilities of confiscating criminal assets. Other measures treated in the following paragraph pertain particularly to the way in which CIU information is treated. The order in which the various measures are treated more or less follows the order in the investigation process: firstly the collection of CIU information and subsequently the application of crime analysis and the work of the interregional tactical investigation teams. After that, the prosecution process which ideally follows, is given attention, and the paragraph is concluded with an enlargement on the results of a parliamentary inquiry into investigation methods used by the police in their combat against organized crime in the Netherlands.

4. A Critical Appraisal of Measures

4.1 Questionable Financial Transactions

As of February 1st, 1994, financial institutions are required by law to report questionable transactions to the "Office for the Disclosure of Unusual Transactions" (ODUT). This new legislation is referred to as "Reporting Questionable Transactions" (RQT). Transactions are questionable whenever one or more indicators from a list of indicators, that has been established by a Ministerial Order, are applicable. The ODUT assesses which of the questionable transactions received are considered suspect. This is mainly done by matching personal data of the persons involved in the unusual transaction with the national file on CIU-subjects. The information on suspect transactions is then handed over to the Financial Police Unit of the National Criminal Intelligence Service (CRI). When criminal information on the subjects involved is available, it is added to the transaction-information. The CRI then disseminates the results among the regional police forces, where they may be used in, or lead to, criminal investigations. The RQT legislation serves a dual purpose: preventing abuse of the financial system for money-laundering and fighting money-laundering activities themselves. The ODUT is positioned as a buffer between the financial institutions and the justice system.

The new legislation has been subject to a scientific evaluation.⁵ Central issues in the evaluation of the implementation of the RQT law were the workability and effectiveness of the new legislation. Special attention was given to preventive effects and to the extent to which transaction-information was put to use in investigations.

Financial institutes have become more aware of the necessity of public-private collaboration in the fight against money-laundering. In 1995 the ODUT received 16,215 reports concerning questionable transactions. Fourteen percent of these were judged suspect and passed on to the police. The amount of money involved in suspect transactions was 165 million US dollars. Approximately 1000 individuals were involved in these transactions. About 20% of the information on suspect transactions was used in new or current criminal investigations. The remaining 50% were recorded. This transaction-information could become relevant at a later point in time.

Financial institutions have become more wary of giving the police information than they were in the past, as a result of e.g. inadequate protection of customer identity. Police investigators consider this a major prob-

lem. The computer system of the ODUT is deficient. This generates problems in the process of judging the status of transactions. The financial expertise of the ODUT is still insufficient, quantitatively as well as qualitatively. Due to these difficulties, "promising" transaction-information sometimes does not get enough attention. Important information may therefore remain unused. Problems involving computerization, manpower and quality were signaled in the transaction-information processing chain following the ODUT as well. The lack of financial knowledge is especially pressing at the regional level. The infrastructure of the processing chain has not been tailored to the efficient handling and distribution of the transaction-information. Too many organizations are involved, which at their own discretion, add and/or remove data to/from the transaction-information. Valuable information can get lost that way. Sometimes transactions get lost completely. All parties involved agree that the almost total lack of feedback in the process is a serious deficiency. The bank representatives hold the opinion that there is not enough interest in the cross-border aspects of moneylaundering activities and that the international systems of reporting transactions are poorly geared to one another, which hampers the exchange of information.

It can be concluded that the system of indicators and the obligation to report certain transactions have more or less been accepted by the banks and that the regime is workable. If the system of indicators is maintained adequately and, when necessary, improve, it will largely accommodate the needs of the parties involved. The systems of reporting transactions in Europe should be harmonized. The ODUT computer system needs improving. Also, the infrastructure of the transaction-information processing chain should be adapted. The aim should be for a quantitative and qualitative strengthening of the organizations that process and use transaction-information. Fundamental investments are needed in order to enlarge the financial expertise and the knowledge of financial investigation among the police. The structure of communication between the law and financial institutions requires care. Moreover, the feedback of information on the outcome of transactions reported is in urgent need of improvement.

It is clear that the RQT legislation has rendered placement of criminally-acquired capital into the financial system more difficult. But displacement effects are apparent. The number of unusual transactions in 1995 was about 30% lower than in 1994. The figures for the first half of 1996 show a further decrease of about 15%.⁶ There are indications that criminals no longer

make use of official financial institutions but use an informal, underground banking system instead.⁷ As far as is known in 1995 only a few dozens of times transaction-information lead to the start of an investigation. Totally unknown is the number of times that transaction-information has led to a successful conclusion of an investigation. Therefore it must be concluded that the RQT legislation did not meet expectations, a conclusion which is even shared by the Dutch Minister of Justice.⁸

4.2 The Deprivation of Criminal Assets

In 1993 new legislation came into force in order to increase the statutory powers of the police and the judicial authorities to deprive criminals of their illicit earnings. Both the range of the deprivation order in the Criminal Code, and the scope for seizure were extended considerably. Recently a scientific evaluation of the effects of the new legislation was published.⁹ It appears that the public prosecution service puts in a great effort to set out a policy to stimulate a proceeds-based approach amongst the public prosecutors. The research has made clear that the policymakers strive to extend the scope of the legislation to all profitable crimes. The latter contradicts the tenor of the political debate in which the legislation was seen primarily as an additional instrument to combat organized crime. Judges are inclined to agree with the political viewpoint and reject the line of the public prosecution department. Consequently, judges are rather ambivalent to the legislation as a whole.

Despite the fact that the policymakers within the public prosecution department try hard to encourage the use of the new legal instruments, so far the daily practice has not passed off smoothly. Of course, the required change of mentality towards a proceeds-based approach takes a while. Besides these starting problems the implementation process has been frustrated by the lack of knowledge within the public prosecution department on financial affairs and civil law. Furthermore, the public prosecutors lack sufficient administrative support.

Within the police force the attitude towards the use of the new legislation is rather indifferent. The police management has adopted a strategy concerning "financial policing" and regards the deprivation of criminal assets as an integral part of this broad concept. However, a specific strategy with regard to the confiscation of illegally acquired income has not been developed. Similar to the public prosecution department, the level of knowledge amongst police officers on financial affairs and civil law is low. The

policy makers with the police have not yet determined how know-how in financial matters can be increased. There are different views with regard to whether or not external financial experts should be contracted. An advantage is that the necessary know-how becomes quickly available. Disadvantages are the costs involved and the risk that confidential information is treated without the necessary discretion. As a result, the policy of the police and the public prosecution department is hardly geared to one another. In a number of cases the police has cooperated closely with the Fiscal Information and Investigation Service (FIOD). This way the police could profit from the financial expertise of FIOD staff. But in some cases it resulted in tensions within the investigative team, because the FIOD staff was primarily interested in tracing confiscatable assets and hardly or not at all in finding proof for the involvement of suspects in the illegal activities.

Since the introduction of the new legislation the instrument is increasingly used. From 1994 to 1995 the number of deprivation orders rose with 40% to 969. The majority of cases were related to drugtrafficking and serious property crimes. This sounds positive. But the value of the financial assets that were deprived in 1995 was less than four million US dollars, while the department of Justice had estimated revenues of about 16 million US dollars. One of the reasons for this rather poor result, apart from the mixed reception of the legislation by police, public prosecution and the judicature, is the fact criminals are very creative in hiding their financial assets. One of the most frequently used hiding methods is concluding fake lease contracts for expensive yachts and high performance cars, which in criminal circles are also status symbols by eminence. To the outside world, these objects are still formally the property of lease companies. However, often these goods have been secretly paid for and lease contracts are fraudulently drawn up. Another problem was the calculation of the profits that criminals have made with their illegal activities. In a number of court cases defense lawyers have successfully claimed that expenses of their clients' criminal enterprises were so high, that almost no profits were made. As a result, already seized assets had to be given back. Other reasons for the disappointing results of asset removal legislation have been the specific problems in seizing objects abroad. They are the result of differences in jurisdiction and cultural factors. Still, at international level, too, there are positive results. Last year, for instance, a Dutch investigation team successfully appealed to the Turkish judicial authorities for confiscation of four hotels in Istanbul.

Just as with the Disclosure of Unusual Transactions legislation, it has been found that enforcing a new act easily produces problems in practice. Only an integral approach to the problem, with active participation of all social parties involved, will yield positive results. Furthermore, the experience with the two measures evaluated so far points to the importance of intelligence gathering and analysing, not only regarding criminal activities but regarding financial aspects as well.

4.3 Criminal Intelligence Units

Criminal information has in some way been systematically gathered in the Netherlands since the Seventies. Over the years, establishing and maintaining contacts with informers and gathering criminal information in other ways, e.g. by observation, was increasingly becoming a specialist task. Therefore, separate criminal intelligence units (CIUs) were set up in 1986. There is no standard organization for the CIU in the Netherlands. In any case, there are runners, crime analysts and administrative staff working in each CIU. A runner is the contact person of an informer of the CIU. The number of staff working in a CIU varies from 5 to over 80 persons. These extensive differences are closely connected with whether a surveillance team or a technical support unit comes under the CIU from an organizational point of view.

CIUs play the principal role in the so-called “pro-active phase” of the investigation procedure. In this phase no arrests have yet been made or house searches carried out, and data are collected only about the nature of the criminal activities and the structure of the criminal group. The CIUs gather information by deploying various methods of investigation, such as working with informers, observation, analyzing information from previous investigations, and collecting financial information. CIU investigators consider it their primary task to protect their sources of information. If they leave them unprotected, they run the risk of seeing them dried up soon. Their performance is dominated by finding an answer to the question “how do we make CIU information operational” or, said differently “how do we inform the tactical crime investigation unit without putting at risk the informer”. As a result, the CIU cannot always comply with the need for information that exists with the tactical investigation department. Some information cannot be released for reasons of safety. In practice, CIU give tips as to the direction at which the tactical investigation should be aimed.

The relation between the tactical criminal investigation department and

the CIU is complex and in many cases complicated. Often, the CIU knows more than the tactical investigation department. It is estimated that between 10 and 50 percent of the CIU information is effectively utilized in a tactical investigation.¹⁰ This implies that much information is gathered without being used in an actual investigation. It also occurs that the CIU does not have the information that tactical criminal investigators require. Finally, there is the secrecy which the CIU sometimes maintains towards the tactical investigation department, and which sometimes results in troublesome relations.

The afore-mentioned factors are also active between CIUs themselves. Until recently, many CIUs had reservations with regard to cooperation. This was cause i.a., by the focus of CIUs on local and regional crime, as a result of which they did not feel the need for interregional cooperation. Organized crime, however is not bothered by national borders, and certainly not the borders of police regions. Sometimes, insufficient cooperation results in duplication of running informants and in unavailability of relevant information. Partly, the reservations on the part of CIUs have been based on their desire to keep information for themselves only. The danger of information leakage was considered to be too great.

Primarily, the CIU focuses on the traditional, criminal world, in which drugs trafficking stands out. The CIUs nowadays have insufficient know-how to be able to tackle other areas of crime. CIU informers mostly have information about drugs crime and serious property crime, e.g. robberies. CIUs hardly have informants in other areas of organized crime, such as fraud and environmental crime. Apparently, the division between upper and underworld also exists with CIUs.

4.4 Crime Analysis

Organized crime mostly pertains to cooperating entities which are difficult to define and which are responsible for a variety of crimes in different locations. There is no unity of time and location as regards criminal activities. Individual positions are not fixed, but change frequently. Criminal working methods are adjusted in accordance with the circumstances. This results in the police normally having information on organized criminal groups which is far from complete and accurate. Already mentioned is the estimation that less than 50% (and perhaps no more than 10%) of the information gathered by CIUs is used in a tactical investigation. In order to make the investigative process as effective and efficient as possible, the police in

the Netherlands make extensive use of crime analysis. In actual fact, crime analysts base their right to exist on working professionally with information which is usually incomplete and partly unreliable.

Crime analysis can be described as “the identification of, and insight into, the mutual relationships that exist between crime data and other possibly relevant data with a view to police and prosecution practices.”¹¹ It is important to distinguish between the various objectives and areas of focus of crime analysis. An understanding of the data on crime is important, both with regard to specific investigations and in determining a certain policy directed towards the prevention and detection of crime. Consequently, there is a distinction between the operational forms of analysis which specifically focus on resolving a crime or series of crimes, and the strategic forms which are focused on policy making.

Strategic analysis aims to provide a helicopter view, to identify trends in crime and alert the appropriate law enforcement agencies. This allows for the initiation of long-term plans of action directed towards the emergence of crime, rather than a mere reaction to single criminal incidents. In this way, operational activities can be directed, and investigation services can determine their targets. The most frequently used strategic form of crime analysis is “crime pattern analysis”. The idea is to form a picture of the nature and scale of the crime in a particular area. According to the need, the area may be a country, a police region or a city. Examples are the national surveys on organized crime in the Netherlands referred to in paragraph 2.

Operational forms of crime analysis can help a police officer gain insight and make information collected in concrete investigations accessible; they can also clarify areas in which information is insufficient or indicate if the various bits of information that have been gathered are conflicting. Operational crime analysis can be a very helpful means during the investigation, particularly in complex cases with a lengthy time span, cases that involve a great many subjects, in which the information is rather chaotic, or which, for whatever other reason, is incomprehensible and not straightforward.

The best known operational form of crime analysis in the Netherlands is “offender group analysis.” The general idea is to present with the use of several kinds of charts as clearly as possible the available information regarding the relationships among the probable members of a criminal organization and their contacts. Often the top of a criminal group stopped its involvement in detectable criminal activities. The top hides behind front

companies and other facades, and uses the most modern communication techniques to give orders without being recognized or tracked. Therefore, long lines of communication and command must be examined and analysed.

It is incorrect to regard crime analysis as a new phenomenon that has only just appeared out of the blue. In some cases, the way in which the crime analyst looks at data on crime is no different from the perspective of the police officer who has been doing the very same since time immemorial without ever dreaming of calling himself a crime analyst. However, in some aspects, their jobs and methods differ. Firstly, the analyst's job is to analyze the available information, not to collect it (as this would mean for him moving into the field of investigation too much). He adopts the position of the objective assessor of information, and he would be hindered if he were to collect the information himself. Secondly, a crime analyst tries to make intelligence out of raw data. He determines the reliability and value of the information which has been collected as accurately as possible. The analyst does not look at the significance of the separate bits of information only, but composes an overall picture that is as comprehensive as possible.

Crime analysis was introduced in the Netherlands ten years ago. Since then, it has proven to be a useful tool for crime control, especially when organized criminal groups are the subject of investigation. It is now normal to conduct an offender group or case analysis before starting a large crime investigation. Strategic crime analysis is used both at regional and national level to determine which criminal groups should be tackled first. Crime analysis has proven to be very successful. Today it is a very significant tool for the police, especially in combatting organized crime.

Still, there is criticism from some on the present crime analysis activities carried out in the Netherlands. Criminologists find that crime analysts are one-sidedly oriented to information that is relevant in the sense of prosecution. According to some heads of investigative teams the charting techniques used by analysts result in beautiful images, which leads one to believe evidence can be picked up everywhere. Also, the relational diagram of an offender group would often unjustly suggest that there is a hierarchical structure. In reality, such a chart has the status of a hypothesis, which, later on in the investigation, may be confirmed or may have to be rejected. In strategic analysis, the findings are strongly affected by the way in which information is gathered and recorded. The quality of analysis, be it operational or strategic, is primarily dependent on the availability and quality of the underlying information. Professionally dealing with available data will

extract all “intelligence” which it contains. However, it will not be a guarantee that the only possible solution of the criminal investigation will be found. Crime analysis does not lead to results that meet scientific standards of reliability and validity. Therefore, more information must be supplied to (potential) users of analysis reports, to acquaint them with the possibilities and the limitations of crime analysis.

4.5 The Penal Approach

With all the measures taken, one would expect that the combat of organized crime in The Netherlands has been successful. Earlier this year, an evaluation was concluded of the repressive approach to organized crime groups¹². The researchers investigated how many of the organized groups that were recorded with CIUs in 1991 have had dealings with the police and the judiciary in the meantime. Only considered were arrests and convictions of the 260 core members of the 58 crime groups concerned. Only half of them were arrested on one or more occasions as crime suspects. Not every police booking will lead to a trial in court. Between 1991 and 1995, 78 persons were convicted by a court, i.e. 30 percent of the total number of core members. Considering the data at group level, it is found that some of the core members of most organized groups have been convicted in court. Of the 58 groups, only five saw all of their core members convicted. Of one third of the organized groups active in the Netherlands in 1991, not a single core member has been convicted in the past five years. This rather poor result appears to contradict the priority which has been given since the mid-Eighties to tackling organized crime.

The researchers name a number of possible causes of the apparent insufficiency of the penal approach of organized crime. Firstly, they refer to the fact that the study is based on CIU registers, which mainly contain soft information. Investigations may reveal that registered persons have actually played no role or a less prominent role in criminal activities than had been indicated at the time by the CIU source. Secondly, it may occur that an investigation fails to make good progress, for instance in the case of a foreign criminal group. Thirdly, some investigations are unsuccessful in finding legal evidence of someone’s involvement in punishable activities. In the fourth place, the judicial handling of a case may take a very long time. Evaluations have established that this is the case where the matter concerns a charge of membership of an outlawed organization and in drug offences. So, there is always the chance of a number of core members being con-

victed later. And, last but not least, it is possible that police forces chose other criminal groups to combat instead of the ones registered in the national survey. It is important to point out that the study dealt with the groups mentioned in the 1991 inventory, and that in the Netherlands national priorities have been set only since 1993. It is unknown which factor is the principal barrier to an effective approach to organized crime. Presumably, it is a combination of the said conditions.

4.6 Core Teams

After the “discovery” of organized crime in the Netherlands in the mid-Eighties, the idea has spread that this form of crime should not be tackled at regional level only. Therefore, five supraregional investigative teams, so-called core teams, have been set up in 1992. Meanwhile, a sixth team and a national investigative team have been formed. The required complement of the teams is predominantly provided by the regional police forces, the CRI and the Tax Information and Investigation Service. The police regions contribution is the largest: in principle one percent of their complement. The core teams consist of a staff of between 60 and one hundred. There is a clear relation between the core teams and the regional forces involved, which is clear if the management is considered. A core team is placed under a regional force as far as the management is concerned, whereas the authority is vested in a Chief Public Prosecutor. In some cases, the organizational relation between the team and the managing force is so intensive that the team can hardly be distinguished from a regular investigation unit.

The teams utilize the latest views and methods in order to tackle organized crime. In 1994, two years after formal realization of most of the core teams, a first attempt at evaluating them was made; however, it was a failure since many of the teams were still engaged in their first inquiries. Becoming operational had brought with it bureaucratic growing pains. Apparently the setting up of multi-agency teams tends to lead to problems in the field of responsibilities, competence and legal position. Moreover, experiences teaches that investigations into international organized criminal groups often take more than two years. Some of them have been going on for as many as three years.

Another problem is the manner in which a selection is made of which criminal group will be dealt with. In 1993 a special national council was established for this: the Coordinating Policy Council (CBO), which is presided by a prosecutor-general and is mainly composed of chief public pros-

ecutors which are responsible for the penal policy of core teams. The decision as to which criminal grouping are, is based on the results of the national inventories on organized crime in the Netherlands. The regional police forces oppose the central role by the CBO, as they consider this an interfering with matters which are of regional importance. The competence of the CBO, however, is outweighed by the monopoly the regional police forces have as regards information. Their influence lies in the data they supply to the benefit of the national inventories. Some of the regional forces are reluctant to supply information as they do not want the results of the inventories to be used for priorities-setting since they are not in a position to exercise much influence on the outcome of the analyses. But also the core teams do not seem to be happy with the role of the CBO. In many cases they do not fulfill the obligation to draw up action plans and inform the Coordinating Policy Council on progress made during an investigation. Sometimes an investigation almost automatically passes into another investigation, because the borders of a criminal network can hardly be defined and the investigators simply continue their work by following leads to other suspects. These are the reasons why core teams select investigations rather at random, and their choice is especially determined by previous investigations and by regional preferences. National considerations and the wish for an adequate approach to internationally operating criminal groups play a minor role in the setting of priorities.

In a number of cases, the core teams have been successful. They have found ways to get a hold of the leaders of criminal organizations, although great efforts were necessary to achieve results. However, these leaders sometimes continue giving direction to criminal activities from the prison or penitentiary institute they are in. Lower ranking criminals are often not or hardly prosecuted and are detained for a short while only or not at all. So, the infrastructure, the knowledge and experience of a group are utilized shortly after an organization has been dismantled, by the same organization, by second and third-rate criminals starting for themselves and by other criminal organizations. The know-how and experience of the dismantled group is used.

Although it is still too early for a final conclusion, it seems that the repressive approach by big, multi-disciplinary teams has not worked very well, i.a. due to the dynamics, the network characteristics and the shielding off of criminal organizations. Another disadvantage for the coreteams is the inadequate organization in the field of investigation. Priorities are not well-

considered, cooperation between the different disciplines represented in the teams is not always smooth, and the duration of investigations results in fatigue and demotivation.

4.7 The Parliamentary Inquiry into Investigation Methods

Partly because of the almost complete shielding off of the CIUs in comparison with other parts of the police organization, some very serious incidents have occurred in recent times, i.a. the conscious release of drugs onto the criminal market with a view to having an undercover agent rise in the hierarchy of a criminal organization. There were other reasons to let drugs pass. It occurred that a criminal organization wanted to test a smuggling route before sending off a large consignment. The small quantity used for the test would then be allowed to go on. Also, larger consignments have sometimes been allowed through in order to get a better insight into the role of the various members of a criminal organization. In recent years, tons of cannabis products and hundreds of kilograms of cocaine have been taken to the market with the knowledge of the police and the judiciary. In some cases, these methods have achieved the effect desired, and the criminal organizations concerned could be dismantled. But it also happened that the free passage of drugs has not led to the arrest of the top of an organization.

The unsuccessful end to some cases and the disagreement within police and justice circles about the admissibility of this investigation method resulted in the disbandment at the end of 1993 of an interregional investigation team. After investigations into the matter had been held by a specially appointed committee as well as a parliamentary working group, the Dutch parliament requested a special inquiry into police investigative practices. In June 1994, the Minister of Justice instigated such an inquiry to be carried out by a committee consisting of seven members of parliament, under chairmanship of MP Maarten van Traa. On 1 February 1996 the Van Traa committee presented its findings. The general conclusion was that the investigation into organized crime in the Netherlands suffers from a threefold crisis. In the first place standards are lacking. The legislator, but also the judiciary, have given too much leeway to the police and the judicial authorities. In the second place there is inadequate coordination of the investigation. Investigation agencies often do not work together - they rather tend to work against one another. And the registration of investigation activities often plays too small a role. In the opinion of the committee, the crisis within the organization manifests itself mainly in unclear decisions regarding who

is responsible for what. The areas of authority and the responsibilities of many of those involved are vague. In the third place the public prosecutions department does not exercise sufficient control over the police. Although the public prosecutions department's authority over the police in the Netherlands is explicitly provided for by law, in practice this does not always appear to be taken as a matter of course.

In short, the Van Traa committee came to the general conclusion that the crisis within the Dutch investigation agencies runs deep and even touches upon the legitimacy of law enforcement. Those responsible in the police, the public prosecutions department and the Ministries of Internal Affairs and Justice have exercised insufficient authority. But the parliamentary committee was not just pointing the finger elsewhere; there was a political shortfall in the provision of legislation and in the setting of standards.

The parliamentary inquiry led to the forced dismissal of one of the five prosecutors-general, of the secretary general of the Ministry of Justice and the head of a regional CIU. Furthermore, a number of public prosecutors and chiefs of police were given positions elsewhere. The parliamentary committee justly commented that the crisis in the investigation and prosecution cannot be solved by some drastic short term measures. It is necessary that a revision take place of the functioning with regard to investigation, so that solutions for the long term can be sought.

5. Proposed Measure

A vision about a future approach to organized crime must on the one hand be based on an assessment of nature, size and development of organized crime, and on the other on a recognition of the possibilities and restrictions of measures taken in the past. Only in this broad perspective will an idea be created of what must happen to arrive at a more effective approach.

Especially in recent years has the approach to organized crime rapidly developed. It is widely recognized that the approach should be supraregional, interdisciplinary and integral. Still, the police and judiciary do not succeed in gaining terrain on organized crime. At the most, it can be said that the last few years have seen a stabilization, after the strong rise in the preceding decade.

Dismantling groups of offenders does not automatically lead to a reduction of organized crime. In fact, any vacancy in a dynamic market will soon be filled. Elimination of a drugs gang may lead to a temporary short-

age of drugs on the market. This will result in a price rise and other sellers making more profits with the same effort. Moreover, it will be more attractive for criminal groups that have not been engaged in drugs trafficking to manifest themselves on the market as sellers. Legislation, too, only has limited effect on organized crime. Foreign criminal groups no longer launder their profits through Dutch banking institutions, but take cash money abroad. They use all sorts of property schemes to prevent their criminal assets from being confiscated.

It is therefore high time that the traditional penal approach be renewed and enhanced. Traditional penal law is based on trying separate criminal incidents by individual suspects and is therefore not fitted for tackling organized criminal groups. In modern constitutional states, the criminal prosecution process is highly sophisticated and demanding, and the creation of new legislation is a time-consuming affair. Organized crime is characterized by its flexibility and dynamic nature. Prosecution and procedural possibilities therefore always lag behind the latest trends in organized crime. More energy should be spent in the preventative aspect of countering crime. Until recently, the possibilities to take preventive measures in this area have been given unjustifiably little attention.

A condition for effective prevention measures is insight into the way in which organized crime arises and the conditions that stimulate or slow down its growth. The analysis of the structural opportunities open to organized crime is called "phenomenon research". This type of research is focused on identifying and tackling so-called criminogenic factors: structural characteristics of an economic branch, a geographical area, a criminal market or another segment of society, which contribute to the arising or growth of organized crime.

An example of a successful "phenomenon research" project was undertaken in Amsterdam some years ago. Police investigations had revealed that exchange offices in the city centre were involved in criminal activities. There were approx. 100 such offices in the centre and analysis established that the exchange transactions by tourists could not make these offices cost-effective. It was further found that there were a number of clusters of offices, owned by a small number of families. One family was subjected to further investigations. In seven months they had a turnover of 100 million US dollar, while the exchange transactions with tourists only accounted for ten percent of this amount. The phenomenon research project ensued in a law, which provides that a licence was needed to run an exchange office

and that exchange officers are under the supervision of the Dutch Central Bank. Since the act came into effect, the number of exchange offices in Amsterdam has diminished considerably.

Typical of “phenomenon research” is the use of information from open sources, such as public press and criminological literature, and from half-open sources, such as the databases of the Chambers of Commerce and the Land Registry Office. Data from police investigations can also contribute to getting a good picture of the area under study. If, during the first scanning, there are indications that something is possibly wrong in the area, a draft risk model can be drawn up, by means of which a special inventory can be made of possibly wrongdoing enterprises and groups.

A draft risk model describes what the impact is of sector characteristics and social process on the vulnerability of a certain sector to penetration by organized crime groups. An example is the waste processing industry in the Netherlands. With the strict environment protection regulations drawn up by the central government in recent years, legally processing all sorts of waste has become much more expensive. As a consequence it has become much more lucrative to process waste, observing the rules in theory, but in reality having waste disappear in all sorts of illegal ways. It stands to reason that the more sorts of waste are processed by a company, the easier will it become to mix waste flows. With this, a risk factor has been identified which possibly furthers illegal practices and which therefore gives direction to the investigation.

Another form of risk modelling is that of the manner in which an illegal product or service is produced and distributed. This type of “logistics” modelling was developed by the German Federal Criminal Police Office (BKA) a few years ago.¹³ It is based upon the idea that organized crime shows many businesslike structures as well as economically oriented planning. If it is true that legal and illegal business activities are similar, the logistic processes of organized crime can be analysed from the point of view of legal business practices. From an endproduct it can be deducted which activities must be carried out. The following phases can be distinguished in the amphetamine production and trafficking process: acquiring the necessary chemicals, equipment and knowledge (precursor phase), processing (production phase), smuggling (transport phase), wholesale (distribution phase) and peddling (sales phase). Critical analysis of the criminal business process for weak spots may give new insight into what actions can be taken. In the case of synthetic drugs the focus of the inquiry could be

whether the availability to criminals of certain chemicals required in the processing can be affected. On the basis of a phenomenon study that was recently concluded, the researchers recommended not only the introduction of a licensing system but also argued that agreements with the chemical industry should be made about the reporting to the police of unusual transactions with certain chemicals.

The added value of “phenomenon research” is giving an insight into the relation between upperworld and underworld and with that society’s vulnerability. On the basis of that insight, a structural approach can be taken, both preventive and repressive, because increased insight into the vulnerability of (parts of) society will make politicians, authorities, professional groups and industrial sectors more aware of the risk, and as a consequence, more able to defend themselves.

6. Conclusion

Organized crime knows so many ways to manifest itself, that it is impossible to develop a blueprint for the strategy to combat it. An integral approach characterized by smoothly and dynamically adjusting to the various and constantly changing manifestations of organized crime is the most obvious solution. Knowledge about the nature and development of organized crime is a requirement. It is therefore crucial that empirical findings and theoretical insights on the nature of organized crime are constantly exchanged among all who are involved in the combat. This takes a lot of time and effort, but it does eventually lead to results.

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