

Summary

Organised crime and law enforcement on St. Maarten

Nature of study: background, research questions and collection of data

Background

Organised crime on the islands of the Netherlands Antilles is a matter of concern for local government and society alike. The bulk of the research carried out to date into crime in the Netherlands Antilles however relates to Curaçao. As a result of this, there was, until recently, no detailed knowledge of the nature, seriousness or the scope of organised crime on St. Maarten, nor of the law enforcement approaches being used to combat it.

As far as the level and quality of law enforcement in the Netherlands Antilles is concerned, the then Minister of Justice of the Netherlands Antilles and the Dutch government gained the impression in 2002 that the law enforcement system in the Netherlands Antilles was suffering the effects of a shortage of personnel and a lack of equipment, amongst other things, and that it therefore was insufficient to combat the rise in criminality, particularly in the field of drugs-related offences. Joint efforts in relation to law enforcement within the Kingdom of the Netherlands were subsequently strengthened. In that regard, agreements were made during the tripartite consultation in September 2002 that a crime analysis would be carried out in relation to St. Maarten. In 2004, the then Minister of Justice of the Netherlands Antilles commissioned a study that aimed to chart the types of organised crime taking place in the Leeward Islands (St. Maarten, Saba and St. Eustatius) and the methods that were being used to combat such crime.

Questions that formed part of the study

The main issue that the study attempted to address was as follows:

What is the nature, seriousness and scope of organised crime on the Leeward Islands that form part of the Netherlands Antilles and on St. Maarten in particular and to what extent are the relevant (law enforcement) bodies equipped to combat this form of crime effectively?

The following research questions were formulated:

- 1 What is the nature, seriousness and scope of organised crime on the Leeward Islands?
 - a Which forms of organised crime were encountered?
 - b Is any information available as to the manner in which these forms of organised crime are prepared and committed?
- 2 To what extent are the relevant law enforcement bodies equipped to combat organised crime effectively?

- a Which bodies are involved in the prevention and combating of organised crime?
- b How well are these bodies equipped to prevent and combat organised crime?
- c Are these resources sufficient?
- d What recommendations for combating organised crime emerge from the study (in terms of prevention, regulation, detection and prosecution)?

Collection of data

The study was undertaken during the period from 2004 to 2007. A total of 89 semi-structured interviews were conducted with representatives of various organisations in the Netherlands Antilles, the Netherlands and the United States/Puerto Rico. A total of 15 criminal investigation files and 53 requests for legal assistance were studied at the Criminal Investigation Task Force (RST) and the Public Prosecutor's office on St. Maarten and Curaçao. Of the 15 criminal cases, four related to human trafficking and 11 related to drugs smuggling. Of the 53 requests for legal assistance, 24 related to the trade in drugs, 22 to financial or economic crimes (four requests related both to drugs trading and to financial economic crime), 2 to murder and 9 to other offences. Use was also made of earlier studies, dossiers and reports during the study. Briefings organised by the US Homeland Security especially for this project were also attended.

Although the study was intended to relate to the Leeward Islands, hardly any information was found regarding organised crime on Saba and St. Eustatius. For this reason, the study was largely devoted to St. Maarten.

The findings of the study

A key characteristic of St. Maarten (and of the other two Leeward Islands) is its *small size*. The economy of St. Maarten is a prime illustration of this, in that it focuses on and is therefore dependent upon a single sector, namely tourism. Not only does the island form an attractive destination for tourists, but workers and other migrants are relocating to St. Maarten. Another important feature of the island is that it is located in a *transit area* between drug-producing and drug-consuming countries. Its small size and its location amidst a multitude of international frontiers has, in many respects, caused the island to have an international character. The island's links to other countries within the Kingdom of the Netherlands also play an important role in this regard. When portraying the circumstances in which this group of islands now finds itself, it is also important to be aware that difficulties currently exist in the areas of government finances and debts. In order to promote economic activity, St. Maarten is a free trade area. In addition, investments are now being

made in the island's infrastructure (its port and airport) and foreign investors are being attracted to invest in the island. The island's location and infrastructure, combined with law enforcement systems that are still limited in scope, form an ideal *opportunity* for the development of criminal activities.

The study then goes on to paint a picture of a considerable problem with regard to crime on St. Maarten. Very limited information regarding organised crime on the other two Leeward Islands (Saba and St. Eustatius) is included however and this does not give the reader any grounds with which to refer to a considerable and 'ongoing' problem on those islands.

What forms of organised crime were encountered, how are these forms of (organised) crime committed and how serious are these?

Crime on St. Maarten is characterised to a large extent by its transitory nature. One of the most clear-cut forms of crime on the island is *drug-related crime*. The reason for this is that St. Maarten plays an important and varied role within the (international) drugs trade. St. Maarten also plays an important role in the transportation of various types of drugs, such as cocaine, heroin, marijuana and, to a lesser extent, of synthetic drugs. People of a number of different nationalities or origins on the island are involved in this activity and work together in such contexts and the trading in drugs is carried out in a more or less organised manner. What this means is that the transportation of drugs is arranged and that this can sometimes cover large distances, thereby requiring a significant amount of coordination. This manifests itself both in the form of pre-arranged meetings between boats and the transfer of smuggled goods on the open sea, as well as in the remarkably large group of couriers that was arrested at the Prinses Juliana Airport. Drug smuggling that is planned on a more ad hoc basis, sometimes on a short-term basis, is also being observed. This type of smuggling depends on more practical factors. Confiscations are not centrally recorded, as a result of which it is not possible to gain an overview of the seriousness of the situation. The first reason for this is that confiscations that take place on St. Maarten are not clearly and centrally recorded. The second reason is that there is a significant *dark number* of drug consignments that go undetected. This information has been gleaned from information obtained during investigations. The third reason is that the authorities are not always informed when drugs are confiscated elsewhere that were destined for St. Maarten or that had originated there.

Finally, it can be established that drug smugglers are making use of a multitude of alternative routes and methods. They are also using aircraft and all manner of ocean-going craft in order to transport drugs to an equally large number of different destinations. The sheer diversity of this

situation conjures up an image that the drugs market is freely accessible and a lack of checks carried out upon the flow of goods and individuals only works in favour of such drug smuggling activities.

A problematic situation also applies in relation to *financial and economic* crime. However, the unsatisfactory involvement of investigative and law enforcement agencies has created a situation in which it is difficult to establish precisely the scope of such activities and their links to organised crime. The absence of stringent checks into money and monetary flows means that elaborate constructs are not required in order to transfer and launder the proceeds (of criminal acts). What is known is that part of the proceeds from the various forms of criminal activity described above arrive on St. Maarten by some means or other in the form of investments and payments for (transportation) services. Another part of the proceeds finds its way, via St. Maarten, to those who commissioned the smuggling activities. In some cases, only small amounts of money are involved and these are transferred and laundered in a fairly primitive manner. One example of this is the payments made to couriers, which are paid by means of money transfers. Consignments of cash have also been observed arriving in or departing from St. Maarten by boat or by air in the hands of couriers.

There are also indications that point to the transfer or investment of large amounts of money that are the proceeds of criminal acts. This has been established due to the fact that financial investigations being carried out in other countries that involve large amounts of money being smuggled frequently generate a trail with a branch that leads to St. Maarten. It goes without saying that the frequency with which (criminal) funds are transferred is also an important factor.

Investigations have revealed a number of forms of financial and economic crime. The authorities that were interviewed for the purpose of the study expressed their concerns about this. The overall picture that emerges is that fraudulent investments are being made, certain groups of entrepreneurs (of specific ethnic backgrounds) are under suspicion and that the economic growth and prosperity of St. Maarten does, at the very least, raise a number of questions. At the same time, no-one has managed to gain an overview of the various forms of (organised) financial and economic crime, with the result that it is impossible to verify the picture that seems to be emerging. The financial aspects of crime have not formed a sufficiently major part of criminal investigations to date.

In addition to drugs and financial and economic crimes, *people smuggling* and trafficking in human beings were also examined during the course of this study. However, even less information about these activities has been forthcoming from criminal investigations. St. Maarten forms an attractive destination for migrants, but opportunities to migrate have

now been reduced as the result of a tightening of migration policy. Some illegal migration still takes place, however. The flows of illegal migrants are currently a major factor on St. Maarten. People smugglers take advantage of this and make money by facilitating illegal migration. People are transported or provided with false documents. Smuggling from St. Maarten by boat predominantly takes place to the US Virgin Islands or Puerto Rico. St. Maarten is particularly involved in the smuggling of migrants from Haiti and the Dominican Republic, but is also involved in the smuggling of Chinese migrants. The routes are selected in such a way that they pass through places in which checks by law enforcement agencies are *least likely* to be carried out. As far as *human trafficking* is concerned, only one investigation had been carried out at the time our study was underway. Signs have been observed that point to a number of irregularities (in relation to exploitation) in specific sectors, including the prostitution and domestic service sectors. Despite such indications, enforcement and checking of compliance with prostitution policy is still minimal.

No investigations were carried out during 2006 into the *trade in weapons*. Nevertheless, a number of concerns exist with regard to the availability of weapons and the increasing prevalence of crimes involving firearms that are being committed on the island. With regard to terrorism, the data gathered for the purposes of this study do not seem to indicate an acute threat of terrorist attack. There are indications however that money flows are passing through the island to organisations in the Middle East that may be linked to activities associated with terrorism.

Not only did our study attempt to chart the *overall picture and the significance* of organised crime on St. Maarten, but it also explicitly examined the issue as to whether current efforts in the field of investigation and enforcement are actually sufficient. This particular issue was analysed on the basis of four criteria.

It can be stated that as far as *legislation and regulation and law enforcement policy* are concerned, progress has been made. As the Penal Code of the Netherlands Antilles and associated national ordinances and decrees had become severely outdated, work began in 2003 on a revision of the Penal Code. In early December 2006, the new draft version of the Code was submitted to the Minister of Justice. During the past few years, a number of *policy proposals* have been compiled with the intention of calling a halt to (organised) crime. Whilst our study was underway, however, the impact of these measures was hardly apparent on St. Maarten. The necessary steps still need to be taken with regard to making policy choices, such as those relating to the question whether investment should primarily be focused upon controls or upon more

active investigative activities and regarding the setting of priorities (for example areas of organised crime deserving particular attention).

The following observations were made with regard to the *individual authorities and the collaboration between authorities* for the purpose of the prevention and combating of organised crime. A total of twenty five authorities were active on a local level, within the Netherlands Antilles and on an international level. Collaboration between these authorities takes place whenever they take part in joint investigations, exchange information or whenever one authority avails itself of the expertise of another authority. Organising effective collaboration of this type appears to be a simple matter, due to the small size of St. Maarten. A number of authorities did actually state that they found that the short lines were in fact conducive to effective collaboration. Collaborations do however prove problematic when different organisations are active in the same field and when each one is working from its own angle. Such situations can give rise to problems with regard to the sharing of information. A reticence with regard to the sharing of information may also exist as the result of a fear of such information being leaked. A lack of trust, or an active mistrust, also has a part to play in this. Such fears have a negative effect on the various forms of collaboration. The less than ideal situation that exists between the RST (Criminal Investigation Task Force) and the KPSSS (the local police) is reflected in the limited collaboration that takes place between these two organisations. The different tasks each organisation is required to fulfil are also partly to blame for this. Whilst the RST mainly focuses upon organised crime, the KPSSS is primarily involved in local crime. However, this does not alter the fact that collaboration and a sharing of information remain important factors. In the field of financial and economic crime, less collaboration takes place with authorities that do not have a local office on St. Maarten. International collaboration is generally effective, however the island lacks a satisfactory treaty that enables collaboration between the police forces on the French side of the island with those on the Dutch side. To summarise, we can say that intentions are now in place to work effectively together, but that this is not always the case in practice. This is partly due to the organisational and practical circumstances and partly due to cultural (mistrust) and 'inside bureaucracy' factors. Another contributory factor lies in the fact that objectives that must be achieved as a result of a joint effort are generally not formalised, thereby providing scope for an individual approach to be adopted. With regard to law enforcement on an island that is as small and densely networked as St. Maarten, objectives and collaboration policy should be set out in a manner that is clear to all those involved. This would then reduce the likelihood that aspects of policy implementation are fulfilled in an idiosyncratic manner, as is the case with the granting of permits.

If a satisfactory level of law enforcement is to be achieved, an effective *level of knowledge and expertise* will be required and it will be necessary to share the available knowledge expertise, so as to fill any gaps in the knowledge and expertise of those authorities that are currently operating in their own specific manner. On a general level, it is true to say that in a number of areas, there exists a discrepancy between the knowledge that is currently available and the knowledge that is required in order to combat organised crime. The area with the greatest level of knowledge is that of drugs and in that regard, the level of knowledge, which is partly the result of international contacts, is generally deemed to be sufficient. A lack of knowledge in relation to the extent to which people smuggling and trafficking is taking place in an organised manner is related to the priorities that are established during the investigation stage (priority is predominantly given to drugs). Other factors are that these crimes are difficult to investigate and that the responsibility (tasks) with regard to the investigation of these is also less than well-defined. As far as financial and economic crime is concerned, there is a lack of sufficiently specialised staff to gain an insight into money laundering schemes, financial flows and dubious investments. As a result of a general lack of structural mechanisms for the control of flows of persons, money and goods, only limited information and knowledge are available that enable criminal activities that form part of such flows to be detected.

In addition to knowledge and expertise, what is needed are sufficient *personnel and the necessary tools*, in other words, a suitable operational infrastructure to ensure effective enforcement of the law. The multiplicity of circumstances, arising from the logistical (harbour and airport) and the economic infrastructure (banking system) that are available on St. Maarten and which provide opportunities for drug smuggling, people smuggling and illegal financial transactions are being addressed using controls and powers that do not reflect, or hardly reflect, the scope of the problems. During the period in which the study was carried out the competent authorities in the field of customs, coastguard or Aliens Police, nor the bodies charged with the supervision of (illegal) financial transactions were well-matched in terms of personnel, structure or computerisation to the flows of goods, services and persons that passed through St. Maarten. Several authorities, such as the Public Prosecutor's Office, Customs, the Aliens Police, the Central Intelligence Service (CID), the RST, the Coastguard and authorities involved in financial tracking marked a shortage of personnel and a lack of personnel with the requisite skills. The result of this was that checks and investigations could not be carried out effectively. It was also the case that very few registration or information systems were in use, which meant that knowledge could not easily be accessed and that difficulties then ensued with regard to exchanging information between authorities. The policy of

employing staff on temporary secondment would require that measures be implemented to embed knowledge, so as to prevent both knowledge and expertise from being lost. In addition, *online* links between different authorities that enable them to consult details of particular investigations are not yet operational.

Whenever any reference is made to a lack of personnel, the question then arises as to the areas which must receive priority in the face of a shortage. Up to the present time, the highest priority has been allocated to drugs, with the result that knowledge of other types of organised crime has remained limited. This situation is something of a vicious cycle. The lack of focus on investigation means that the 'information position' is and remains poor and this, in turn, gives rise to a situation in which the input of information into investigations then begins to dry up. This situation is already occurring in areas such as people smuggling and human trafficking, as well in the area of financial and economic crime. At this point, it should be pointed out that there is an intention to remedy this situation.

Criticisms have been expressed as to a lack of *checks and balances*, which has resulted in a system in which neglecting to act in accordance with procedures has become firmly embedded at all levels. This has acted in favour of certain economic interests and, intentionally or unintentionally, has facilitated certain forms of (organised) crime. In this instance also, the lack of investigation is continuing to feed such suspicions, in a similar way to the stories that are circulating amongst the population of St. Maarten. This too is yet another reason why greater clarity and transparency in these areas would benefit both the government and the population itself.

If someone were to pose the question: "Does organised crime occur on St. Maarten?", then the answer would quite simply be: "Yes!". The important role played by St. Maarten in the smuggling of drugs is evident to all and investigations and confiscations of drugs both at home and abroad bear witness to this. The link with organised crime is then a logical step, given the need to launder the proceeds of drugs transactions, which, of course, falls within the realm of financial or economic crime. A number of investigations have provided convincing evidence of this.

Other forms of crime also exist, however, which depending on the context in which the crimes are committed, may also come under the heading of organised crime. Hardly any concrete investigations have been carried out, into these types of crime, however, despite the fact that suspicions that such crimes are being committed already exist or have existed for some time. The types of crime being referred to here include people smuggling and human trafficking and certain forms of financial or economic offences. As a result of this study, a number of recommendations have been made and these are listed in the final paragraph of this report.