

# **CRIME AND THE FUTURE**

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## **INTRODUCTION: The Emerging Features Of Modern Transnational Crime**

Remember those old 1950s British crime movies. Well, perhaps some of us still do. Made at Pinewood Studios they usually featured benign cat burglars who wouldn't hurt a fly. Neither crooks nor bobbies carried guns. Cops carried 'the knowledge' - up here, in the head. They knew every local crook. Looked after the kids when dad was away getting the vertical tan. The tools of the crook's trade were mask, gloves (yes, you mustn't leave fingerprints), a sack, a jemmy and above all, an intimate knowledge of every back alley in the neighbourhood. Of course it never *was* like that, but there is at least some truth in allegory.

Haven't we come a long way since those innocent days. In community policing it is still as important as ever to know the neighbourhood and the local drug pushers still work their own corner. But increasingly there is a new jurisdiction for both criminal and police - the international one. And with it, a new set of knowledge, skills and tools.

The problem is, it is not really a jurisdiction, or at least not yet. And this fact confers advantages on the criminal and disadvantages on police.

For international criminals depended on the ability to exploit differences and inefficiencies between jurisdictions. And globalisation has greatly enhanced their prospects of doing so.

The tools and technologies of globalisation shaping today's companies and criminal groups include pervasive and relatively cheap international travel, instant and highly reliable international communications by proliferating modes, the emergence of instant electronic funds transfers, greatly enhanced international cargo flows, and concomitant to the digitalisation of funds transfer, the massive flow of so-called 'fast money' around the world.

This is a world in which decision making processes are now no longer constrained by the speed of communications. A few key people located anywhere in the world can, through a series of strategic alliances, exercise control over substantial financial empires. Groups that hitherto would never have dealt with each other can now come together in a series of fluid alliances of convenience.

With the advent of electronic funds transfers, it is estimated that US \$30 trillion is now circulating the globe at any one time in the form of derivatives for hedging and speculative purposes. (ISDA 1997 year end market survey). These funds are transferred in the form of over 700,000 wire transfers each day.

A similar phenomenon has occurred in international trade. Air cargo into Australia has risen massively in recent years - by 20% alone in 1996. Using air courier services, criminals in Australia and overseas can now provide the equivalent of a 'just in time' service in supplying illicit drugs. Similarly, the last two decades have witnessed a massive growth in seaborne, containerised trade. Over a million loaded containers now pass through Australia's ports each year.

In such a turbocharged environment, the job of locating illicit product or transactions is daunting.

Globalisation has also helped place the international criminal outside the reaches of the jurisdiction in which the crime is committed. In which jurisdiction should an offence be prosecuted when it 'exists' in the ether of the Internet? How does a jurisdiction dismantle the activities of an international criminal group when they bank their profits electronically in a tax haven and reside in a jurisdiction in which law enforcement has been weakened by corruption, often under a false name on a false, or 'purchased' passport?

Furthermore, modes of communication are proliferating at such a rate that it is difficult for law enforcement agencies to stay abreast of them. Privatisation and competition policy have meant that law enforcement now has to deal with many more providers, often working through different modes.

High level encryption at either end of the Internet will soon be a matter of course. Jurisdictions are wrestling with the dilemma of whether to demand that 'keys' be lodged with governments to unlock these codes on warrant, or whether to allow the Internet to operate unbridled. Telecommunication via Internet digital 'bursts' of data is now also a reality. Put these two technologies together, and you can imagine what it might mean for law enforcement.

The exemplar of the 'new' transnational crime is Russian Organised Crime (ROC). ROC is characterised by a number of features that will stand out increasingly as the hallmarks of the true international criminal group. These criminal skills of the Russian groups were honed under the harsh world of communism.

But nearer home, in Australia's Asian region, some of the mainland China groups, such as Big Circle Boys, share a number of these crucial survival skills developed under communism. Networks forged amongst these groups were developed in the vast camps set up during the Cultural Revolution in China. So far, however, Big Circle gangs are more prominent in North America - where they often arrived through illegal immigration - than in Australia.

Here, on the other hand, we have experienced considerable activity on the part of Hong Kong and South East Asia based groups. As with the Big Circle gangs, these groups are superb networkers, but without the residue of violence that appears to dominate the mainland origin gangs.

Although one would not want in any way impugn the vast majority of people of Chinese origin in Australia, who are law abiding, exemplary citizens, Chinese culture itself, with the pervasive notion of connections (*guanxi*) based on mutual indebtedness, also lends itself to some of the needs of the modern transnational criminal. Many of the groups based in places like Hong Kong and throughout South East Asia have been able to utilise networking skills extremely effectively to commit crime.

What we now know about the structures and modus operandi of these groups operating throughout East Asia is instructive for law enforcement. For they have in many ways assumed the features of some of the most advanced, knowledge-based commercial firms - firms which can flourish in the freewheeling world of globalisation.

- at their core, they are small and flexible, but through superb networking skills and use of communications they are able to form strategic alliances quickly to accomplish specific goals;
- unlike the Mafia of Godfather fame, they do not maintain large off-shore assets. Rather, they go to the jurisdiction in which they intend to commit the crime on a temporary basis. As international players they are relatively comfortable in other cultures and capable of finding their way around in them sufficiently well to do the job. In this way, they leave themselves far less vulnerable to law enforcement interdiction;
- like the Russians, they are excellent at changing and obscuring identity - which facilitates their international travel as criminals. The fact that many practice as people smugglers, or have people smugglers as associates, also assists them to slip across borders unobserved.
- they are not bound to one licit or illicit commodity, but move between commodities searching out profit wherever it may be found. Playing in different markets, they are usually able to mask their illicit activities with licit ones;
- their commercial and criminal intelligence is excellent;
- like all good business people they are risk takers, but seek to reduce risk wherever possible. This they do by suborning officialdom, counterintelligence, compartmentalisation of activity, securing communications, shifting jurisdiction to where they can remain untouchable and, *in extremis*, knowing and using Western legal systems to their advantage.

Of course, they also have weaknesses. They are often excessive gamblers and as criminals they can be disloyal and greedy. In the final analysis, they owe allegiance to nobody but themselves.

### **The law enforcement response**

So how should law enforcement respond to these developments and what is the scorecard in terms of that response?

The response should seek to mirror the challenge, but only to an extent.

For law enforcement, some of the technologies associated with globalisation confer advantage, while others clearly do not. The law is not concerned with hiding financial transactions or moving illicit product, or at least hopefully not in Australia. In most other cases, however, new technologies and conditions associated with globalisation can confer advantage on the law, if properly used.

For example, the law can:

- use new technologies to combine and merge agency and inter-agency data bases to produce virtually 'real time' tactical intelligence;

- use technology to search and mine vast volumes of data, for example financial transactions, as happens with Austrac, or company data as happens with Tax;
- use technology to counter the technical gains made by criminals in secret communication; and
- use new forensic techniques such as DNA testing.

To be able to utilise these technologies effectively, however, the very *nature* of law enforcement organisations must change. Williams has argued in a perceptive article in *Current History* that just as criminals have emulated commercial enterprise and adapted their structures to the new conditions, so too must law enforcement learn from the new order. (*Current History*, April 1998, pp 154-159). Indeed, the organisation that does *not* change will find its performance deteriorating because the performance of its criminal opposition will not stand still.

What would an organisation that has managed to adapt look like, and how should it position itself?

Firstly, it will be a 'linked' organisation. It will be linked internally by new communications systems and access to common data bases by those who need to know and linked externally to key national and international partners.

The linked organisation will have the capacity for its operations personnel at any time and any place to link into a secure, well maintained central data base, and not only to use it, but to contribute directly to its compilation. This data base will also be leveraged by being linked to other data bases of other agencies. In such an organisation, all involved personnel will both contribute to and use intelligence.

However, there are intrinsic problems for law enforcement in developing such linkages through use of new communications technology.

To use the new technology successfully, the organisations themselves must change from a classic disciplined service structure to a non-hierarchical, knowledge-based organisation - as clichéd as those terms might now sound.

In the classic knowledge-based organisation it is the role of management to set broad direction, while the individual uses his or her skill and knowledge to achieve specific, self-determined goals that contribute to that direction. Alliances and partnerships can be formed on a fluid basis to achieve specific goals, just as they are in cutting edge businesses - and, as we have seen, in some criminal groups

Although classic disciplined services increasingly need to operate like knowledge-based organisations in order to compete, they have not yet really found the means to do so. On the one hand, they have to carry the burden of the long, hierarchical genesis of classic disciplined services; while on the other, they need to find checks and balances to ensure that integrity is maintained and the privacy of individuals is protected. This can cause difficulties in the freewheeling world of the knowledge-based organisation.

One ploy - for instance adopted by the Australian Federal Police (AFP) - has been to use the team model. The team is the element of the overall structure within which the individual can

bring his or her knowledge and skill to bear in a non-hierarchical framework. Meanwhile, management can deploy the team to accomplish specific organisational goals. Or that is the theory. Unfortunately, like armies, police services are still essentially large, people-rich organisations. This is because they require a presence on the streets and in crowd control, as well as a requirement to investigate crime. As such, they find it difficult to pay their junior people at rates comparable to other knowledge-based organisations. As pyramidal structures with very small apexes, they will have great difficulty in retaining the skills they now need at the base unless they radically adjust their systems of promotion and remuneration.

I would suggest that the hallmark of the new organisation - at least in the Commonwealth arena - will be one in which those with police powers will be comparatively less in number, more highly trained and better educated. They will be supported by a flexible work force of civilians capable of linking the law enforcement service into best practice in the public and private sectors. But the core of members will need to be there to provide for continuity through that change. Those members will, however, need to interact with civilians far more sensitively than they do under the present culture in order to avoid the kind of 'them and us' mentality that cuts directly across corporate goals.

Such an organisation would be as much focused on problem solving as it would on case solving - that is, it would use its corporate strategic capacity to address issues through a variety of means other than attempting to arrest all offenders. Such an approach would be client focused and whole-of-government based. A range of legislative solutions would thus be available and the organisation would be involved in providing advice and helping establish government policy as well as in making arrests.

This would necessitate that senior police in future would be far more engaged in the broad policy debates, just as other government departments are engaged in the upper end of policy making today. It will not be adequate in future for police services to sit back and allow policy to be made in Attorney-Generals Departments or Premiers Departments. And on their parts, other policy departments will need to recognise fully the legitimate role of police in policy making.

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**In the International sphere**, one of the most profound changes is the increasing tendency for jurisdictions to become interlinked in response to the trans-nationalisation of crime. Eventually, something like an international jurisdiction may even emerge. This will be necessary to deal successfully with the growing salience of transnational crime.

Change is likely to take place on at least four fronts, including:

- the erosion of individual jurisdictional roles by increasing use of international conventions, which will in turn be reflected in domestic law;
- increased salience of regional and international policing organisations such as Interpol, Eurapol and Aseanapol;
- the forging of key bilateral and multilateral strategic alliances in affected jurisdictions; and
- the increasing use of aid and assistance to developing countries as an extension of government policy.

In terms of the development of an international jurisdiction, a significant number of international conventions and agreements now oblige participating countries to pass complementary legislation, often requiring extra-territoriality in the application of domestic law. Take, for example, Australia, where the following developments bear witness to the increasing impact of international concerns:

- The Crimes (Child Sex Tourism) Amendment Act 1994 - makes it an offence in Australia for an Australian to have sexual relations overseas with a child under sixteen and reflects international agreements on children entered into by the Australian government;
- Mutual Assistance in Criminal Matters Act 1987 (money laundering regulations) - requires signatories to the Money Laundering Convention to assist in recovering proceeds of crime where there has been a predicate offence overseas;
- proposed 'sex slavery' legislation - would make it an offence in Australia for an Australian to be involved in an act of recruitment overseas for 'sex slavery' purposes;
- the anti-corruption legislation currently before the Parliament. This Bill criminalises corrupt acts by Australians against officials overseas and meets Australia's obligations as a member of the OECD;
- possible legislation against illegal purchase of body parts overseas by Australians;
- the UN Convention Against Transnational Organised Crime, which could, *inter alia*, require Australia to extradite persons declared to be involved in organised crime overseas; and
- the various UN anti-illicit drug conventions, which, *inter alia*, control the international transfer of illicit drugs and precursors and which require a range of concomitant domestic legislation.

Of these agreements, the most potentially far-reaching is the UN Convention Against Transnational Organised Crime. Currently scheduled to be ready for signature in 2000, the Convention could result in a significant broadening of the obligation on countries to extradite people - including their own nationals - allegedly involved in a range of transnational organised crimes. Such transnational crimes include trafficking in illegal drugs, trafficking in people, especially women and children, money laundering, arms trafficking and corruption. Where extradition is not possible (for instance when the death penalty may be invoked), it may be required of countries to prosecute the alleged offender for the crime allegedly committed in the requesting country.

The Convention is also likely to be associated with a substantial law enforcement aid program to ensure that developing countries are assisted in meeting their policing obligations and needs. Some are even holding out the prospect that an International Criminal Court could be associated with the Convention.

The point hardly needs making that in all of these circumstances, in its own lumbering way the international system is trying to catch up with the recognition by criminals of the benefits conferred by the process of globalisation.

These developments should send a strong message to law enforcement agencies and governments alike. It will no longer be adequate to regard law enforcement as a purely domestic issue. It will be as much at the centre of foreign policy making as are diplomatic and defence issues

today. This will in turn demand a far closer policy interface between police and government departments, such as those covering aid, foreign affairs, defence and international legal issues.

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So to conclude, like death and taxes, crime and the future will always be with us.

Our 1950s cops and robbers were simple creatures bound by locality. Their world was a narrow, insular, essentially innocent place.

In many respects, policing is still structured to meet those domestic jurisdictional needs. Yet with globalisation, the borders of crime have expanded substantially.

We have probably done reasonably well in meeting some of the domestic challenges in policing, but we still have a long way to go in meeting the international ones. Above all, we require a comprehensive, whole-of-government response to the challenge.

On their part, police are being required to change rapidly to take on the capabilities demanded by operating in a complex, multi-jurisdictional world. But, in order to do so successfully, the very structures of police services will need to change to cater for the more rapid decision making processes associated with the new, knowledge-based organisation.

Yet because of the duality of the policing role between problem solving in crime and maintenance of public presence and order, it will prove difficult for police services to find an appropriate structural balance between the needs of a modern, flexible, knowledge-based organisation and those of a traditional disciplined service. As public services they may also find it difficult to pay for the skills they are going to need. And they will have to find innovative ways to ensure that the integrity demanded so strongly of their profession is maintained in the free-wheeling world of the new, knowledge-based organisation.

This need to strike a balance between accountability and flexibility constitutes one of the great challenges confronting policing in the early years of the twenty-first century.