

CHAPTER 5

International arrangements to address serious and organised crime

5.1 The opportunity for Senators and Members of the Australian Federal Parliament to examine international approaches to tackling serious and organised crime first-hand was a valuable exercise.

5.2 The strongest impression that the Delegation formed as a result of its discussions with law enforcement officers in North America, Europe and the United Kingdom is the scale and destructive effects of serious and organised crime. The Delegation was surprised to learn that governments around the world are often not aware of the magnitude of this problem and are not well prepared for its impacts.

5.3 Mr Antonio Maria Costa, Director General of the United Nations Office on Drugs and Crime outlined his concerns regarding the global crime threat:

...in the firmament of our society the stars are now lined up in an adverse constellation that causes anxiety, even fear... globally, I believe we face a crime threat unprecedented in breadth and depth. The warning signs are everywhere:

- drug cartels are spreading violence in Central America, Mexico and the Caribbean. The whole of West Africa is under attack from narco-traffickers, that are buying economic assets as well as political power;
- collusion between insurgents and criminal groups threatens the stability of West Asia, the Andes and parts of Africa, fuelling the trade in smuggled weapons, the plunder of natural resources and piracy;
- kidnapping is rife from the Sahel to the Andes, while modern slavery (human trafficking) has spread throughout the world;
- in so many urban centres, in rich as much as in poor countries, authorities have lost control of the inner cities, to organized gangs and thugs;
- the web has been turned into a weapon of mass destruction, enabling cyber-crime, while terrorism - including cyber-terrorism - threatens vital infrastructure and state security.¹

5.4 While this finding is daunting, the Delegation was tasked with looking at international solutions and approaches to mitigate the effects of serious and organised crime. Despite the fact that each country the Delegation visited had its own unique

1 Mr Antonia Maria Costa, Director General, United Nations Office of Drugs and Crime, *The global crime threat – we must stop it*, 18th Session of the Commission on Crime Prevention and Criminal Justice, Vienna, 16 April 2009, <http://www.unodc.org/unodc/en/about-unodc/speeches/2009-16-04.html>, (accessed 16 June 2009).

political and social history, law enforcement structures and issues, and criminal milieu, the Delegation saw the convergence of a number of legislative and law enforcement approaches across North America, Europe and the UK.

Key findings of the Delegation

5.5 The previous chapters of this report set out in detail the key issues and findings arising from the Delegation's meetings in each country. This chapter brings those findings together to identify consistent themes, and legislative approaches identified as being effective in tackling serious and organised crime.

5.6 There were five key themes arising from the Delegation's discussions:

- The importance of 'following the money trail'.
- The need for information sharing and greater cooperation amongst law enforcement and other agencies, both within governments (e.g. between police and tax offices) and between governments (i.e. through multilateral and bilateral international agreements).
- The benefits of developing measures to prevent organised crime, rather than simply react to it.
- The critical role that political will plays in combating serious and organised crime.
- The need for governments to take a holistic approach to tackling organised crime, through a whole package of legislative and administrative measures.

Following the 'money trail'

5.7 In all of the jurisdictions that the Delegation visited, law enforcement strategies which target the business model and financial and material assets of organised crime were raised as a crucial strategy for disrupting organised criminal activity. The Delegation was told that by depriving individuals of illegally obtained assets, law enforcement is able to remove the major incentive for illegal and criminal activity.

5.8 Mr Raffaele Grassi, from the Italian National Police articulated this approach when he told the Delegation:

[Criminal] members are prepared to spend time in prison, but to take their assets is to really harm these individuals.²

2 Mr Raffaella Grassi, Director of Division I, Operational Service Central Anti-Crime Directorate, Rome, Italy, 20 April 2009.

5.9 In discussions with the Netherlands Police (KLPD), it was noted that there has been a fundamental shift in the way that law enforcement tackles organised crime in the Netherlands, and elsewhere, with the focus on the 'money trail'.

5.10 The Delegation was informed of two principal elements that are involved in an effective law enforcement approach to targeting criminal assets:

- First, it is imperative to develop strong laws to confiscate criminal assets and prevent them from being used to fund further crime.
- Second, law enforcement requires strong structures for financial reporting, so that they may obtain information and intelligence about criminal assets.

Proceeds of crime laws

5.11 In many of the jurisdictions visited, non-conviction-based, civil asset forfeiture laws are increasingly viewed as an effective tool for disrupting and dismantling serious and organised crime. In Canada, the merits of Ontario's civil forfeiture regime were highlighted.

5.12 In the US, the *Civil Asset Forfeiture Reform Act of 2000* - a civil non-conviction-based forfeiture regime under which the assets of persons under investigation for, being tried for, or convicted of, a large number of offences may be frozen or confiscated by the government - was also highlighted as an effective mechanism.

5.13 The Delegation heard of the effectiveness of the UK's approach of reversing the onus of proof for civil assets forfeiture proceedings regarding those who have led a 'criminal lifestyle'. The Delegation also discussed the ability of Italian courts to order that those who have transferred criminal assets offshore forfeit an equivalent amount to the state and for third party confiscation.

5.14 Overall, law enforcement approaches in this area that are based on a lower burden of proof to seize and confiscate the assets of criminal organisations, have been very effective.

5.15 The Delegation was told of a number of impediments to countries passing effective criminal assets forfeiture laws, including: the difficulties in civil law jurisdictions with introducing laws with a lower standard of proof; the problems that can be caused by charters of rights which allow judges to overturn legislation; and the problems that can arise when assets are transferred to another jurisdiction with which mutual assistance arrangements are not in place.

5.16 The Delegation heard that some countries with civil law jurisdictions have effectively adapted anti-terrorist legislation to tackle serious organised criminal groups.

Financial reporting

5.17 The Delegation also heard about a number of arrangements whereby law enforcement is able to monitor, and obtain intelligence about, the transfer and use of criminal assets.

5.18 Many of these arrangements included limits on large cash payments, and the collection by banks and financial services providers of personal data, such as the EU's model approach. In Italy, the Delegation heard that strong penalties have been attached to the failure of financial organisations to meet these reporting obligations.

5.19 The Delegation was also told about a number of preventative measures, such as UK organisations which monitor fraud, including CIFAS – a private, not-for-profit, fraud data sharing scheme - the Dedicated Cheque and Plastic Crime Unit and APACS, – the UK fraud prevention service. Additionally, the Delegation learned of ways in which technologies can be used to make financial transactions safer and thereby preventing organised fraud – such as chip and PIN technology.

Information and intelligence sharing

5.20 The Delegation found that information and intelligence sharing presents a significant challenge for enforcement agencies in all the countries visited. Many jurisdictions have large numbers of law enforcement agencies,³ and historically these agencies have not shared information or intelligence as a result of both cultural and legislative barriers.

5.21 The Delegation heard that information and intelligence sharing amongst different agencies is becoming increasingly important as organised crime becomes more sophisticated. Numerous jurisdictions are now using 'multi-agency' approaches, integrating financial investigators and other experts into law enforcement teams – such as SOCA.

5.22 In Canada, 'Integrated Justice Units' were flagged as a significant new approach which integrates the investigation and prosecution of criminal cases by having both police and prosecutors involved in cases from the outset. The Units allow prosecutors to be involved with police to ensure that the case and brief of evidence are collected and prepared in a manner which is compatible with the prosecution process.

5.23 The Delegation also learned of the increasing importance of intelligence sharing at a transnational level.

5.24 A key development internationally has been the establishment of a lead agency within a number of jurisdictions with a focus on serious and organised crime. These agencies, among other things, bring together other law enforcement agencies,

3 Canada has 380 law enforcement agencies; U.S. has approximately 1800 law enforcement agencies; U.K. has 57 different police forces.

share intelligence on serious organised crime, and develop national strategic assessments and approaches to tackling serious organised crime.

5.25 The Delegation also heard of the value and importance of multi-agency teams, international cooperation through organisations such as Europol and Interpol, bilateral treaties and 'Intelligence Fusion Centres'.

5.26 There are a number of impediments to transnational information sharing of which the Delegation became aware. These include: a lack of political will, particularly in weak and corrupt states; and the absence of mutual legal assistance arrangements between jurisdictions.

Measures to prevent organised crime

5.27 In both the UK and Canada the Delegation was told of the link between social exclusion, social disadvantage, and crime. While there has previously been an inclination for law enforcement agencies to focus solely on criminal acts, there is now a growing awareness of the need to balance this with consideration of social and economic issues.

5.28 The UNODC also highlighted significant global consequences for the growth and migration of criminal activity out of West African nations which are debilitated by acute poverty, corruption and weak governance and civil order.

5.29 Both the UK and Canada are using local government regulations to control street-gang membership, with the focus on removing lower level members from gang influence and mandating that these individuals attend diversionary programs.

5.30 Internationally, the Delegation found that civil society is recasting the debate as to how it will deal with those individuals who wish to operate in contravention of its rules. Countries such as the UK now consider harm reduction as a KPI of law enforcement. This approach casts law enforcement as a pro-active force and legitimises strategies to pro-actively prevent harm to individuals or society more generally. Individuals who have been convicted of a criminal offence under this new paradigm, have lost the right to 'uncontested space' in society.

5.31 The Delegation travelled to the UK specifically to examine the offender management approach developed for serious organised criminals, and in particular the effectiveness of Serious Crime Prevention Orders (SCPOs). SCPOs can be made when a person has been convicted of a serious offence and there are reasonable grounds to believe that the order would protect the public.

5.32 Similarly, the Delegation heard that Italian law enforcement agencies have available to them 'special surveillance measures' to restrict the movement and communications of mafia members. In Canada, Peace Bonds are being used successfully to restrict the movement and communications of offenders.

The importance of political will

5.33 The issue of political will was raised in a number of discussions as being critical to driving both domestic and international responses to organised crime.

5.34 In Italy, the Delegation was particularly impressed with the level of political commitment to combating serious and organised crime. The murder of Judge Giovanni Falcone and Judge Paola Borsellino in 1992, by the mafia, was the catalyst for change. In essence, these murders galvanized public opinion which in turn produced the political will and action needed to address both systemic corruption and organized crime.

5.35 The United Nations Interregional Crime and Justice Research Institute (UNICRI) and the United Nations Office on Drugs and Crime (UNODC) both discussed the lack of political will as being a significant impediment to the success of international collaboration on organised crime.

The need for holistic approaches to tackling organised crime

5.36 The Delegation was told by every agency with which it met about the magnitude of organised crime, and the numerous facets of government and every-day life that organised crime groups infiltrate. It became apparent to the Delegation that in order to deal with the problem of organised crime effectively, it is necessary to not only have strong criminal and proceeds of crime laws, but also effective means of dealing with numerous other issues related to, and caused by, organised crime groups.

5.37 Countries need to take a holistic view to the problem, and develop extensive legislative and administrative packages to prevent and punish all aspects of organised criminal involvement in society. This includes: effective measures to prevent corruption; strong witness protection programs; appropriate investigative powers for law enforcement that keep up to date with developing technologies; and ensuring that other aspects of the legal system are not causing unnecessary impediments to the ability of law enforcement to combat organised crime.

Corruption

5.38 All jurisdictions highlighted the growing potential for, and risk to, civil society of corruption, and the significance of corruption in serious and organised crime. The Delegation's meeting with the UNODC highlighted the importance of police and public sector integrity and noted that in many failing or corrupt states this is an area which is neglected.

5.39 In the US, the Delegation heard that organised crime protects its business through violence, corruption or both. It was suggested that in the US, established criminal groups are politically well-connected and that as the criminal enterprise becomes more sophisticated it will target individuals in high public office.

5.40 Similarly, the effects of mafia corruption are so great that Italians refer to it as the 'third power' in the Italian State.

5.41 The Delegation heard from the UNODC of the importance of developing mechanisms to prevent and deal with corruption in government, politics, public office, and law enforcement, in fighting organised crime.

Witness protection

5.42 In a number of jurisdictions the Delegation learnt of the importance of strong witness protection programs. The Delegation heard that while witness protection appears not to be universally popular with law enforcement officers, it is a critical tool, necessary to fight organised crime.

5.43 In Italy, the Delegation heard that witness protection programs were, and continue to be, critical in the fight against the mafia.

5.44 The Delegation heard from UNICRI of the importance of these programs for individuals, particularly women and children, who are the victims of the global people trafficking trade.

Technology and telecommunications access

5.45 In a number of the Delegation's discussions the need for law enforcement to be able to intercept telecommunications in order to conduct electronic surveillance was raised, as were the challenges that the development of technology presents to law enforcement.

5.46 In Canada, the Delegation was told that developments in telecommunications often occur without the provision of 'backdoor access' for law enforcement, so that law enforcement is unable to intercept some of the newer telecommunications technologies. Companies developing these technologies in Canada are no longer under a legal obligation to create an ability for law enforcement to intercept new telecommunications.

5.47 However, this was not the case in the US where officers from the Department of Justice told the Delegation that before any telecommunications provider can roll-out services they must provide 'backdoor access' for law enforcement.

5.48 The *Communications Assistance for Law Enforcement Act 1994* (CALEA) is the US statute which provides for this. CALEA is intended to preserve the ability of law enforcement officials to conduct electronic surveillance effectively and efficiently, despite the deployment of new digital technologies and wireless services that have altered the character of electronic surveillance. CALEA requires telecommunications carriers to modify their equipment, facilities, and services,

wherever reasonably achievable, to ensure that they are able to comply with authorized electronic surveillance actions.⁴

5.49 The Delegation was told that Italy also has very strong laws to tackle organised crime regarding telecommunications interception. In Italy, law enforcement has the ability to obtain 'administrative interception' orders when they suspect an individual is involved in the mafia. The orders enable authorities to intercept telecommunications and monitor the suspect, without a judicial order. However, the information obtained cannot be used in court. In order to obtain evidence for use in court proceedings, Italian police must obtain another 'judicial interception' order – which can be based on the evidence obtained from the administrative order.

Charters of Rights

5.50 The Delegation heard from a number of different agencies about the unintended consequences for law enforcement of a charter of rights. The Delegation was told that Canada's *Charter of Rights and Freedoms* has become a mechanism used by those facing criminal trial to stall the judicial process. In the UK, the Delegation was told that as a result of *European Convention on Human Rights Act 1998*, law enforcement has become increasingly bureaucratic.

5.51 Similarly, officers from the Organised Crime Group Unit at Europol noted that the freedom of association protections in the Netherlands have had the effect of stalling the judicial process in that country.

5.52 While law enforcement agencies acknowledge the need for appropriate civil protections, some country's arrangements for protecting human rights are seen to impede the ability of law enforcement to undertake their role in an efficient and effective manner.

5.53 These issues gave the Delegation an appreciation of the wide range of legislation that impacts on the fight against serious and organised crime.

Concluding remarks

5.54 This Delegation report has sought to document the key findings of the many meetings held with experts and law enforcement practitioners from North America, Europe, and the United Kingdom. The key findings, outlined above, all have relevance for Australia's consideration of legislative and administrative arrangements to combat serious and organised crime.

5.55 This report does not make specific recommendations to any of its findings. Rather these findings will inform and form part of the larger report of the

4 Patricia Moloney Figliola, Congressional Research Service, *Digital Surveillance: The Communication Assistance for Law Enforcement Act*, <http://www.fas.org/sgp/crs/intel/RL30677.pdf> (accessed 2 June 2009).

Parliamentary Joint Committee on the Australian Crime Commission for its inquiry into the legislative arrangements to outlaw serious and organised crime groups.

5.56 While the Delegation formed many lasting impressions of the problems and solutions, Mr Costa, Director General of UNODC best articulated a way forward:

In my view, efforts to fight organized crime must become more operational. While drug controlled deliveries are common practice, governments have found it more difficult to work together against mafia cartels - and even more difficult to investigate and prosecute jointly terrorists. I urge you to engage in mutual legal assistance on the basis of all UN anti-crime instruments, to extradite, prosecute and convict criminals.

...The political will of states is mightier than the greed and fire power of criminal groups. Working together does not mean surrendering sovereignty, it means defending it. So let us enforce the rule of law where uncivil society prevails.⁵

5 Mr Antonia Maria Costa, Director General, United Nations Office of Drugs and Crime, *The global crime threat – we must stop it*, 18th Session of the Commission on Crime Prevention and Criminal Justice, Vienna, 16 April 2009, <http://www.unodc.org/unodc/en/about-unodc/speeches/2009-16-04.html>, (accessed 16 June 2009).

