The Modern Policing Environment

SUE WILKINSON

Introduction

The author Fay Weldon was recently quoted as commenting ‘I find the phrase “organised criminals” comforting. When I hear it I thank God somebody, somewhere knows what they’re doing and has a plan’ (Weldon 2009). She was speaking in jest of course, but if only it were indeed that simple. Organised crime does not necessarily follow a logical process, a plan. If it did, it would be far easier to anticipate, detect, prevent and make effective interventions. As it is, serious and organised crime has changed and adapted with the modern world, exploiting the opportunities it brings. Adaptive, innovative, ahead of the game, organised criminality constantly defies and challenges law enforcement to keep up with it. Investigators find themselves operating within a complex, multilayered, multifaceted environment. It makes for a fascinating area of policing.

In this paper I examine a range of uncertainties that need to be taken into account in the policing of serious and organised crime. I offer descriptions and explanations for the complexity of the challenge, and discuss strategies for managing and addressing the uncertainties—uncertainties that provide not just threats but also opportunities for investigators.

The nature of modern organised crime

Over the past three decades the world has undergone extraordinary change. Globalisation has impacted on every aspect of human life, and has revolutionised the face of organised crime. Communication technologies—telephonic, electronic, digital, satellite—offer both criminals and law enforcement a vast array of options that manifest as opportunities as well as challenges. Such technology has allowed new types of crime to evolve, provided new ways to commit old crime types, facilitated the commission of crime, and challenged traditional methods of detection and apprehension. Further, climate change, as well as economic and political upheavals have resulted in the legal and illegal movement of people across the world, with many countries accommodating a

wide range of communities that still retain strong cultural identities and links with their countries of origin. In addition, national and international travel is cheap and easy, allowing organised crime to become an international business. For the sophisticated end of the criminal fraternity, the changing environment within which organised crime can flourish has arguably changed the odds from high risk with high profit, to lower risk with even greater profits.

Evolving crime types include cyber-crime, human trafficking, sophisticated and large-scale fraud, drug trafficking, gun running, counterfeiting and piracy, identity theft and pornography. Emerging crime types include carbon theft and illegal trading, and water theft. These crimes feed further fraud and money laundering, extortion and blackmail. These types of criminality involve layers of organisation, planning, logistics and coordinated activity to manage the large-scale cross-border nature of much of the activity. For example, trafficking people across continents might require cooperation between local crime groups to assist in transit, experts in the provision of identity documentation, and money launderers to deal with the profits. Rivalries can result in homicide, kidnapping and serial extortion between gangs or networks. These crime types cross borders and continents with ease, and facilitated by the benefits of globalisation, a new type of international 'business' has come into being.

Organised crime, though, remains relatively low profile. The cost of organised crime to Australia was conservatively estimated by the Australian Crime Commission (2008) as in excess of \$10 billion. Governments across the world make similar assessments, and admit that organised crime probably takes an even higher toll, including fundamentally undermining Gross Domestic Product or GDP. But the nature of organised crime remains hard to quantify in terms that are readily grasped and understood in the public consciousness. Even where, as in Australia, organised crime is acknowledged as a key part of the national security statement and strategy (Department of the Prime Minister and Cabinet 2008), the modern scale and nature of it remains elusive. When organised crime is portrayed in the media or the cinema, it tends to follow more scalable and traditional plot lines—spectaculars involving gangland or bank heists. These crime types still represent aspects of organised crime, but being more established in nature, time-honoured investigation techniques remain effective. The real damage being wreaked upon the world economies is to be found in the cross-border and international dimension.

As well as costs and scale being hard to grasp, another reason organised crime remains relatively low profile is its lack of visibility. Large-scale frauds and deceptions are generally reimbursed to the victims by insurance companies, banks and financial institutions, and not widely publicised for business reasons, and for fear of undermining consumer confidence. The kidnappings, extortions and even murders that result from the activities of organised gangs and criminal

networks as they compete for ‘turf’ or profits tend to remain within the criminal environment without impacting on the wider community. Further, they are not always reported and even law enforcement may remain unaware of them. So the result can be little or no public concern and little coverage in the media.

The products of organised crime are also not very apparent to the average person, despite their presence in local communities. A box of pirated DVDs in a street market often marks the end result of a multimillion dollar international pirating operation. When people purchase these cheap DVDs one or two at a time they are essentially undermining the legitimate operation of the local DVD store and so undermining the local economy. At the same time, national economies are undermined through the wider impact on big business, in turn impacting on GDP and the tax system. Similarly, many see no substantial harm in purchasing cheap cigarettes, liquor or perfume. Dancers in clubs, and prostitutes in local brothels, may be there as a result of international human trafficking or a modern day ‘slave trade’ as it is often described, and represent the human cost of organised crime. Along with an illegal and underpaid rural or city workforce, they have little visibility in the wider community. Drugs, recreational and pharmaceutical, bought in small but multiple quantities over the internet or on the street, may be the last stage of a pernicious cross-border, international business. A phishing or botnet attack on a home computer may be a small part of a larger crime which has often emanated from half way across the globe. Criminals themselves live in communities, with unexplained and visible signs of wealth and prosperity for all to see, but often with no questions asked. Casinos and gambling venues are vulnerable to exploitation as unwitting money launderers.

To put it crudely, modern day organised crime is rarely manifested as ‘blood on the walls’ in the same way as homicide or gun crime, so fails to raise the fears and concerns of the wider public or engender a media profile. Even where film and TV dramas and thrillers are developed based on ‘real-life’, such as *Underbelly* in Australia, they tend to glamorise rather than raise public concern. Without articulated public concern, organised crime is unlikely to become a high profile priority of any government. Here in Australia it (arguably) took a particularly brutal murder committed in broad daylight at the domestic terminal at Sydney airport in March 2009 (when members of a motorcycle gang attacked rivals) to provoke enough fear and concern to stimulate a round of political activity that is starting to address how serious and organised crime is tackled across the states and territories.

The role of the media is worth specific mention. The ‘CSI (Crime Scene Investigation) factor’ has gained traction—TV dramas tell a story of neat and swift conclusions to crime investigations, and there are concerns within law enforcement that the expectations of the public, and of juries, are raised to

unrealistic levels. The media can play a positive role in raising the profile of organised crime and can play its part in supporting investigations. Conversely, if not properly managed, the media can engender fear and distort the facts and betray confidences. The power and influence of the media should not be underestimated, and a media strategy is an important component of any investigation plan.

Key uncertainties

Uncertainties to be taken into account in policing organised crime are many and various, but can be broadly divided into the following areas: political and economic, international and other jurisdictional, legal, organised criminal networks and communities, and cyberspace. I deal with each in turn.

Political and economic

A major uncertainty for law enforcement to deal with is politics—see also the chapter by Carmen Lawrence (2010). Local and national governments everywhere tend to be more interested in the short term, and their electoral prospects. Local, visible crime and disorder issues tend to take precedence. It is notoriously difficult to achieve longer term investment in any crime strategies because of inconsistency in political priorities. Governments change, as do political priorities, and investment priorities with them. Fighting organised crime is resource intensive, time consuming and expensive. Without the sort of high profile events that have driven, for example, terrorist and security funding over the recent past, the capacity of law enforcement agencies to respond to organised crime has been impacted by a lack of funding. Other funding streams tend to follow local priority setting in the direction of frontline delivery, dealing with local issues. An aspect of organised crime (e.g. human trafficking) can be a high profile issue for a while—with specialist squads set up to tackle it as occurred recently in the UK—only for the squad to be disbanded after a short period of time when funding is withdrawn in favour of other priorities, or cannot be sustained due to economic conditions. Because of their complexity, organised crime investigations can be lengthy and so get caught up in changing circumstances such as these.

International and other jurisdictional

In some parts of the world, the challenge is truly severe—there are places where governments actively sponsor organised crime, or where corrupt governments turn a blind eye to it. There are some countries with a strong tradition of

international organised crime where the rule of law is not established. Law enforcement agencies in 'western' countries have to take into account the regimes and priorities of others. Law enforcement agencies can find themselves in a position where international cooperation cannot be safely secured and so investigations are fatally impeded or compromised.

The international nature of organised crime introduces other complexities and uncertainties that need to be taken into account. Foreign language issues have to be managed. Understanding local culture and politics is critical, and these need to be managed by the investigators to maintain progress and integrity in investigations, for example, in countries where corruption is endemic and an accepted way of life. Many jurisdictions now operate a system of international liaison officers who live in countries of interest to assist with bringing local knowledge, networks and contacts to crime investigations.

The exchange of intelligence and information, if not carefully risk assessed and governed by protocols or international MOUs (memoranda of understanding; or in the case of the European Union, international legislation) can bring real risk. For example, the fact that criminality has been identified in some countries can be regarded as bringing shame, or as harmful to national reputations, and enquiries can be blocked by their governments. Where suspects are identified there is a danger that action or retribution can be taken out on their families or acquaintances. The investigation may provoke a related investigation or trial in another country which may not have compatible or appropriate human rights safeguards in place, or may have a system of capital punishment. Human sources or protected witnesses may be placed at risk. Extradition agreements may not be in place. Investigators may need to conduct a thorough risk assessment and adjust the direction and conduct of their investigation accordingly. On occasion, the risks may be assessed as so great that they will outweigh the necessity or benefits of pursuing the investigation further and the investigation may be discontinued.

As the international nature of organised crime grows, the role of diplomats and politicians has increased in assisting law enforcement to address and overcome some of these issues. It is possible to negotiate case-specific agreements to override otherwise incompatible systems, for example, to safeguard the well-being of deportees or foreign prisoners to their countries of origin where otherwise their lives may be at risk, or to facilitate extradition. Similarly, to negotiate safeguards in the exchange of intelligence, politicians and diplomats can have a critical role to play in facilitating the continuation of international investigations.

Within Australia, to some extent the international challenges outlined here are also reflected within the federal system. Essentially, the states and territories

are separate jurisdictions, each with its own police force, criminal code and legislation governing investigations and the management of intelligence and information between agencies and across jurisdictions. Interoperability is affected to varying degrees by differences in standards and local priority setting.

Legal

Around the world, across police jurisdictions, and between agencies, there are issues of incompatibility in training, skills and standards, legislation, police powers and procedures, different criminal codes and criminal justice systems. How technology can be used and how evidence and disclosure are handled have to be recognised, respected and negotiated as necessary to allow the continuance of investigations across borders. Communication is a major issue, with interpreters cleared to the appropriate security levels in short supply or unavailable for some languages and dialects.

The conduct of covert investigations can be problematic and has to be managed well to minimise risk. Skills, standards, respect for human rights and the concept and assessment of risk vary across the world. Disclosure issues for use in evidence, and the use of interception product varies, even between very similar allied countries and jurisdictions.

The implications of incompatible privacy legislation and judicial review processes across jurisdictions or countries can result in unintended disclosure that places people at risk and compromises investigations. Agreed protocols and MOUs from the outset of investigations are invaluable to navigate complexity and uncertainty in the pursuit of a crime investigation.

Organised criminal networks and communities

Much attention is being paid to the growth of organised criminal networks. They are, again, often international in nature, with multilayered structures and shifting alliances that serve to protect the 'masterminds' very effectively. However, they are also often identified with particular countries of origin.

With the demography of countries and cities across the world becoming far more multicultural, new and immigrant communities are often isolated. They may not speak the language of their adopted country, may feel culturally estranged and maintain more meaningful contact with communities and family in their countries of origin than they do in their new homes. It can be very challenging for authorities, including the police, to engage and build relationships with these communities who may feel distrustful of authority, and historically and culturally lack faith in police. Communities can become vulnerable to crime and

feel unable to seek help. At the same time, criminal elements within communities may evolve but operate in partnership with criminals in their country of origin. There has been a trend in Europe and Asia for organised criminal networks of different nationalities to specialise in particular types of crime, but to work together when it suits them.

Working within new, or existing, culturally and linguistically diverse communities can be hugely challenging for police and wider law enforcement professionals, who need to understand crime and criminality as it affects any one community in order to be able to operate more effectively. Meanwhile, the flow of intelligence and progress of investigations can be stalled while much effort goes into building the trust and longer term relationships needed to support organised crime investigations.

Organised criminal networks are difficult to track, often operating across many borders, with no fixed membership or even crime type. They are therefore challenging for law enforcement agencies to infiltrate or monitor. Their use of technology can be very sophisticated, whether to commit crime, facilitate crime, or to confuse investigators. However, across the world police forces and law enforcement agencies are increasingly working together to disrupt and dismantle identified international criminal networks. It is acknowledged that many networks, whether they are dealing in any combination of fraud, money laundering, drugs, people trafficking, gun running, piracy, cyber-crime or pornography, are effectively opportunistic high profit businesses. Some are organised and sophisticated enough to set themselves up as part of legitimate companies. Others set up apparently legitimate businesses as a cover. Others again are chaotic and unpredictable. All of them tend to be highly profitable, but their international nature makes them challenging to identify and disrupt. It is often said that criminals take advantage of borders and jurisdictional barriers, but police are hampered by them.

Cyberspace

Many see cyber-crime as the biggest crime threat facing the world. It is worth detailing the particular challenge of cyber-crime and its contribution to the uncertainties that investigators must grapple with. There are no borders in cyberspace. Cyber-crime in the new millennium is a mix of 'old crimes' using new technology, such as pornography, paedophilia and identity theft, and emerging crime types such as critical infrastructure attack, cyber-terrorism and online money laundering services.

The use of technology is helping criminals hide their tracks, facilitates their communication, and makes surveillance and monitoring by law enforcement agencies more difficult. Cyberspace affords criminals a relatively safe environment

and an opportunity to make a lot of money quickly and then a way to dispose of the money electronically. The growth of phishing and the use of botnets can compromise many thousands of computers at a time across any number of countries and allow criminals access to countless pieces of personal information leading to large-scale fraud, theft, identity theft and denial of service attacks. The nature of the internet makes detection and disruption very challenging but, in turn, makes it possible for law enforcement to become far more effective.

Law enforcement can take advantage of the same technology. Collaborative partnerships with telecommunication companies, the computer industry and internet service providers are critical in assisting police to remain responsive to the challenge. Encryption available 'off the shelf' and as a standard part of new computers has to be taken into account, and the future nature of telephone services will require detection and monitoring methods to be adapted.

Dealing with uncertainty

To sum up, modern organised crime tends to be international, multilayered, multicultural, highly developed, ambitious, profitable and technologically sophisticated. It presents tremendous challenges to investigators who need to be capable of building partnerships across law enforcement agencies, across sectors and across borders. Investigators need to manage languages, cultures, international politics and legislation. The crime they pursue is multifaceted and unpredictable, high profit and often unseen. So how do investigators deal with these challenges and balance the uncertainties in order to make informed decisions about the risks they manage and where they focus their resources and energy?

The safety and security of communities is the top priority of most law enforcement agencies. A clear vision such as this helps when balancing demands and managing risk. The scale of organised crime is such that in any case, law enforcement must make informed decisions as to where the best likelihood of success lies compared to the risk and expense involved in any investigation. A test of reasonableness can be applied. It would not, for example, be reasonable to make a decision not to deploy police to prevent loss of life, but it could be seen as reasonable not to spend money on an enquiry that did not have a reasonable chance of resulting in a successful prosecution. On the other hand, the likelihood of a successful outcome often cannot be accurately assessed before undertaking an investigation. Indeed, the rationale for decisions can run to many pages in a decision log.

Investigators employ a range of tools in making these assessments. The issue of proportionality is always a primary consideration—is the level of resources,

money, and time needed to investigate, along with the likelihood of a successful outcome, balanced by the amount of risk and harm posed by the criminal activity in question?

The issue of 'risk' and 'harm' is often hard to assess. An obvious risk to life is simple, as is risk to reputation, but how important are they in the overall scheme of things? Risk to the economy is not so easy to estimate, nor is assessing risk to the community. The harm caused by organised crime is often insidious and hard to quantify. Organised crime can cause underlying fear in a targeted community. It can cause insecurity. For example, a recent survey in the UK found that 13% of people were more afraid of being a victim of cyber-crime than they were of burglary (Dorset Police Authority 2008). Organised crime can undermine quality of life and community confidence, but in a way that is hard to make explicit. Whether or not a crime investigation is in the 'public interest' is often cited as part of a rationale for continuing or discontinuing.

Risk assessments are a useful decision-making tool. Political, economic, sociological, technological, ethical, legal and organisational factors can be taken into account and balanced against each other. Making decisions about whether to investigate complex crime has become a critical exercise for the modern day law enforcement officer. Freedom of information and disclosure provisions have required investigators to record their decisions in order to be able to withstand scrutiny from any number of interested parties, including the media, politicians, the courts, the victim(s), and human rights or civil liberties organisations. In many countries, the right of sworn law enforcement officers to exercise discretion is absolute, although not immune from legal challenge. Standard models and processes are routinely used to support decision-making that is deemed fair, ethical and reasonable.

Given the character, scale and complexity of modern day organised crime, much energy is being invested internationally in prevention. 'Target hardening'—such as ensuring financial institutions are more robust, regulatory practices are in place, industries such as the security sector are less vulnerable, the public more informed—is cost-effective and in the public interest. Agencies around the world are finding ways of working together to tackle crime 'at source'—such as proactively targeting suspected organised criminal networks through intelligence-led policing; working with banks and internet service providers to prevent exploitation of their services; working in partnership with customs and immigration authorities; deploying undercover tactics, including online, to target predators and sex offenders using the internet; engaging in proactive law enforcement activity such as targeting unexplained wealth and tracking suspicious money movements. Perhaps most important, is educating the public to take responsibility—to protect themselves, for example, in avoiding identity theft and protecting their computers.

Joint training and international courses for law enforcement officers are becoming the norm. Strategic assessments are important in predicting how organised crime continues to evolve and to assist with identifying the strategies that will be needed to counter it. Agencies are seeking to recruit from diverse communities, investing in language courses, and setting up formal partnerships and secondments that bring experts, for example in banking or information technology, to work alongside investigators. Flexibility and innovation will be needed on an ongoing basis to meet the challenge.

It is widely accepted that the fight against organised crime is not one for law enforcement alone, but can only be conducted in partnership across all sectors, and at an international level. Organisations such as the United Nations and Interpol have key roles to play at the most strategic level and are increasingly engaged in enhancing international understanding and supporting the cooperation and collaboration needed to tackle organised crime effectively. Building on existing work in coordinating nations, agencies, organisations, businesses and communities to identify and reduce the impact of organised crime remains a major global challenge.

In conclusion, organised crime poses ever evolving and complex challenges to law enforcement, and managing and dealing with uncertainty is a key component of any investigator's role. Constant review and evaluation of likely risk and harm is needed to inform the key tests of reasonableness and proportionality. The application of transparent logical risk assessment to such an unpredictable and challenging environment brings reassurance and confidence to the public and practitioner alike.

This paper is not intended as an academic study of organised crime. It represents my personal views and is based upon my own experience in policing serious and organised crime. It does not represent the views or official policy position of any agency or organisation in Australia or overseas.

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