

Broadhurst, R.G. [Ed.] 2003. *Bridging the GAP – A Global Alliance Perspective on Transnational Organised Crime*, Proceedings, March 21-24, 2002, Hong Kong Police Force: Hong Kong Government Printer [pp 299, xxix: foreword, HK Chief Justice Andrew K. N. Li].

Copyright 2003 (please consult author)

PART I BRIDGING THE GAP

Rapporteur's Report

Dr. Roderic Broadhurst, Senior Fellow, Centre for Criminology, University of Hong Kong

Preamble

The record of these proceedings aspires to create a continuation of the reflection on ideas and inquiries of fact that animated the discussions of the Transnational Organised Crime Conference convened by the Hong Kong Police in March 18–21, 2002. The papers to follow distil many of the issues and problems now encountered in confronting organised crime or ‘serious criminal networks’ in the era of globalisation. The topic of crime, as it is realised at the international level, has become a meeting point for a host of concerns about human security, rapid social change and problems arising from the relentless march of technology. This is reflected in the participation of law enforcement agencies from over forty countries, representing all parts of the world, whose engagement is essential if the toxic and universal effects of organised crime are to be curtailed.

Often the authors, by necessity, pass briefly over the context of their specific endeavours, and this introduction places emphasis on the meaning of the key ingredients of the conference agenda: organised criminality and transnationalism. This introduction addresses these two phenomena by offering a critical overview of their definition and nature. The various dimensions of transnational crime are later pursued in detail by the thirty-five expert contributors to the four topics addressed at this conference: cyber crime, money laundering, changing trends in narcotic crime, and triads (Chinese criminal networks). Given the interrelated nature of these topics, there is an unavoidable degree of overlap in the content within and across sections. The keynote speakers addressed pertinent issues of leadership, international cooperation, harmonisation of law, information management,

‘intelligence-led’ and ‘integrated’ policing models, the rule of law, and the role of law enforcement in the rapidly emerging new regulatory dimension of ‘global governance’. Reference is made *en passant* to these important contributions. Consequently the order of the proceedings reflects this orientation rather than the order of address at the conference.¹

An introduction cannot do justice to the myriad topics (from wound patterns in triad punishments through to logging cycles and archive needs among ISPs) presented, and each substantive section (except Part VI) is summarised by the topic rapporteur. These serve as the introduction and summary of that topic section.

Overview of the Proceedings

Four papers by keynote speakers are collected at the start of the proceedings in Part I. They stand alone as both a reflection of the past and pointers to the future by speakers who, for want of a better description, are ‘steering’ the policing ship in transnational waters. Mr Ronald Noble, Secretary-General of Interpol, outlines the reorganisation and priorities of this vital agency, and its efforts, among others ‘to bridge the digital divide’. Commissioner Mr Khoo Boon-hui of the Singapore Police provides a frank assessment of the problems and challenges in Asia and the important role of technical assistance in building up the policing capacity of developing nations. Royal Canadian Mounted Police Commissioner Mr Giuliano Zaccardelli, in a stimulating address, explains the significance of integrated ‘intelligence-led’ policing and why transnational coordination must evolve into genuine collaboration. Mr I. G. Cross, Director of Public Prosecutions (Hong Kong Special Administrative Region), identifies the numerous strategies needed to combat transnational crime in the context of the rule of law. Due emphasis is given to the ‘streamlining’ of mutual legal assistance. Sir Keith Povey (Her Majesty’s Inspector of Constabulary) reflects on why recent international agreements and transnational policing are now crucial to human security. There was a need to move past ‘outdated views of working together’ towards a workable global solution based on implementation of international agreements, flexibility and professionalism.

Papers on cyber crime in Part II begin with the keynote paper by Mr Ronald Iden of the US Federal Bureau of Investigation, a jurisdiction which is often the first to experience the impact of new technologies and the problems posed by sophisticated encryption of communications. Commissioner Mr Michael Keelty, of the Australian Federal Police, leads the papers on money laundering in Part III and reflects on Australia’s longstanding efforts to harmonise its legislative framework and cross-

¹The conference programme and participating agencies are reported in the appendices. The author draws on both the texts and notes taken during discussion. The views expressed do not necessarily represent or reflect the views or policies of the conference organisers.

border cooperation within a complex federal nation-state. Professor Hamid Ghodse, President of the UN International Narcotics Control Board, and Dr Sandro Calvani, Regional Representative of the UN Drug Control Programme (East Asia and the Pacific), provide both the global and pan-Asian regional overview on narcotic crime. These papers lead Part IV on the challenge of the new trends in illegal drug markets and consumption. Mr Zhang Xin-feng, Director of the Criminal Investigation Department, Ministry of Public Security, People's Republic of China, opens the papers on triads in Part V. He provides a salutary reminder that China's reforms and modernisation are rapidly attracting foreign criminal enterprises to its shores. This in turn strengthens networks of criminality often appeased by overseas ethnic Chinese communities. From the Hong Kong perspective, it is essential to deconstruct the myths around the triads and mobilise the mass media to shame rather than romanticise them.

Part VI concludes the proceedings with the final address by the hosting agency and a paper by Professor Michael Levi (Cardiff University, United Kingdom). Professor Levi returns to some of the broader issues in transnational crime control and the unintended complicity² of all of us in the development of (transnational) criminal enterprises, an observation that resonates with the Chinese idiom: 'if the water is too clean the fish have nothing to eat'. He raises the question of who and what criteria determine what is 'clear and present danger'; without consensual means of assessing harms, the answer will depend on what is harmful to our own interests: interests that may in turn be contested. Narcotics traffickers, for example, may get more attention from policing agencies than unprincipled toxic waste or pharmacological businesses, though both may be linked to serious criminal networks and rely on them to produce profits. He warns that 'organised crime' may have become a politically useful tool for obtaining extra powers and resources. However, unless the rule of law is strengthened and the requisite changes made in the oversight of policing institutions (due to the symbiosis that often arises from the corrupting power of organised crime) special powers may simply entrench the very practices it is desired to eliminate. Despite the understandable demand for clarity by practitioners, Professor Levi reminds us of the conceptual difficulties in grasping the underlying elements of complex networks of enterprise crime, which are sometimes embedded in a political-criminal nexus and sheltered by corporate pragmatism. Although subject to periodic 'moral panics' that frequently exaggerates the reach of organised criminals, their predatory and noxious social practices fuelled by human needs and fear nevertheless elude a potent and enduring countermeasure. In part this resilience, it seems, reflects the absence of countervailing policies based on a sound explanatory theory of complex forms of criminal group behaviour.

² Complicity is also potentially implied, for example, every time we purchase pirated software or digital images, fail to respond to violence, use the services of sex industry workers, indulge in 'recreational' drug use or employ illegal immigrants.

Hong Kong Police Commissioner Mr Tsang Yam-pui completes these proceedings by capturing the spirit of the four days in March 2002 when a few hundred in the front line of transnational crime came together to share in the vision of a global alliance. Aware of the fragility and transient character of the ‘conference moment’, the organisers passed the ball to future gatherings of law enforcement practitioners and partners with the promise of an unfailing commitment to contest transnational crime in every way. Novel gatherings of this kind in Hong Kong have an increasingly important role to play in building the essential relations between nations, transnational bodies, ‘sub-state’ agencies, corporations and individuals who serve justice. Such meetings both activate and constitute the spirit of *comity*—the jurisprudence of reciprocity between nations. Free of diplomatic or overtly political agendas and specific regional groupings, such gatherings open up an intellectual space for ideas and best practices and the ground for nurturing old and new relationships of trust. They also reveal the commonalities and variations of organised crime that enable us to visualise that transnational space where modern entrepreneurial criminals increasingly reside. Thus meetings of practitioners, policy-makers and other partners provide a supportive context for the converging mutual desire to have these predators, like the pirates of old, brought to justice by any competent authority no matter where.

There is no doubt that problems of cross-border crime and its control are urgent. Its control is an essential key to realising human security in this era of accelerated globalisation and transnationalism. As Mr Noble has observed, international organised crime is ultimately someone’s domestic crime and hence the cliché ‘act locally think globally’ is especially apt for law enforcement agencies. The police officer’s mental ‘patch’ is now overwhelmingly the ‘world’, even though his physical beat may be Hong Kong, Vancouver, Shanghai, Bangkok, Sydney, London or Beirut. In joining practice with a broader analysis of the policing mission in the context of transnational organised crime, there must be a curiosity about how traditional ideas and practices are being reshaped. Policing institutions are now ‘chronically prey to technological, organisational and political innovations, some of which threaten to render all but obsolete the traditional terms on which questions of effectiveness, accountability and legitimacy have been discussed.’ These problems are even more complex given the concerns about public safety, victimisation and risk management that ‘refuse to fall into the jurisdiction of any particular criminal justice agency or criminological specialism’³.

Globalisation and the Emergence of Transnational Governance

To the extent that detachment from the demands of the day allows reflection on the social and economic forces that drive the forms of transnational crime, it is appropriate to turn briefly to what is

³ Garland, D. & R. Sparks 2000, ‘Criminology, social theory and the challenge of our times’, *British Journal of*

meant by globalisation. The globalisation process also has negative implications for law enforcement, and the contributors confront these issues. There is no authoritative definition of globalisation. Nevertheless, it is widely understood to mean the general shift of economic forces towards multinational and interdependent markets coupled with a decline in the capabilities of individual states to assert independent jurisdiction over such markets.⁴ The pace of this process, characterised by the expansion and transnational flow of capital coupled with ‘real-time’ communications, undermines the power of states to control (or protect) both markets and populations from external forces. The revolution in information and communication technology, particularly digital technology, has accelerated the impact of transnational capital flows and production such that traditional concepts of time, distance and place have fundamentally changed. The emergence of e-commerce, as well as the social dimension of the Internet and associated ‘cyber crimes’, is a striking example of the challenges to the independent capability of nation-states to regulate social and economic order within their territories. As significant has been the shift in the form of economic management, because by the 1990s most of the largest economies in the world were transnational corporations and not nation-states. Braithwaite takes this trend *per force*, as necessitating a preoccupation with managing risk and governance in the ‘risk society’. He argues that the influence of transnational corporations and the numerous hybrid private/public international regulators (for example, the Basle Commission on Banking Supervision) serve to reduce the dominance of the regulatory role of states.⁵

Radical versions of globalisation go further and suggest that sovereign states are ‘neutered instruments of an outmoded social power’.⁶ In other words, the nation-state system of international relations no longer provides an effective methodology for regulating either domestic or transnational activity, especially international trade. In either version of globalisation, so-called ‘sub-state’ actors, such as law enforcement agencies, play a crucial role in the emergence of what Sheptycki terms a transnational-state-system. In this system new configurations of actors and power emerge and transnational organisations (both licit and illicit) ‘will possess new means of influence because the *rapport de forces* between them and the state is changing’ due to the diminishing sway of the state.⁷ In addition, it has to be recognised that countervailing forces (most notably anti-globalisation movements) are also evident. Attempts to bring global economic processes under social control and to subordinate new economic capacities to globally endorsed social purposes will form the backdrop for

Criminology, 40:189-204, p202

⁴ Sir Keith Povey, however, offers a brief definition from ‘New Labour’ sociologist Professor Anthony Giddens of the London School of Economics.

⁵ Braithwaite, J. 2000, ‘The new regulatory state and the transformation of criminology’, *British Journal of Criminology*, 40:222-238. His solution is to press for the recovery of some of the virtues of the Keynesian State—bringing the state back in, as it were, to do some of the rowing as well as the steering.

⁶ Sheptycki, J.W.E. Ed. 2001, *Issues in Transnational Policing*, Routledge: London, p7.

⁷ Lizée, P.P. 2000, *Peace, Power and Resistance in Cambodia: Global Governance and the Failure of International Conflict Resolution*, Macmillan: Houndsmill, p165.

the development of transnational policing. Thus distinctions between what Sheptycki calls 'high' and 'low' policing in both the public and private spheres are necessary. These distinctions bear on the role of securing both territory and populations and will have a crucial bearing on how the impact of transnationalism will be experienced by the different levels of police.⁸ That is why it is essential, as Commissioner Zaccardelli asserts, that coordination *and* collaboration reinforce integrated policing.

The nascent forms of global and regional governance are such that the containment or elimination of transnational crime has become a litmus test of the capability of nation-states and the international and multilateral forums designed to enhance cooperation in law enforcement. The role of multinational agencies such as Interpol and the United Nations has never been more essential. Yet within our region (and globally) the results fall well short of creating a seamless web of bilateral or multilateral agreements and enforcement that ensures a hostile environment for criminal enterprises operating transnationally. Not surprisingly, given this situation, almost all papers reflect on the need for improved transnational cooperative mechanisms and call for wider networks and partnerships with overseas law enforcement, private industry, universities and non-government organisations.

The compatibility of criminal activity with these global changes is illustrated by the expansion and convergence of the profitable business of smuggling of humans, narcotics or other illicit commodities with the development of communication infrastructure and trade.⁹ The spread of HIV, for example, within the Greater Mekong sub-region (Thailand, Myanmar, Laos, Cambodia, Vietnam and China) appears to have been accelerated by the mobility associated with infrastructure development and associated higher-risk behaviours.¹⁰ The connection between illicit drug-injecting behaviour, the sex industry and criminal networks is widely understood and is raised in these proceedings by Professor Ghodse and Dr Calvani. At this intersection potentially competing models of harm reduction and over-reliance on deterrence-based law enforcement have the potential to undermine each other unless a degree of integration occurs within and across jurisdictions.¹¹

At the broadest level, the effects of modernity may have far-reaching consequences, as the impacts of technology have unintended consequences on social practices. The ready, inexpensive availability of

⁸ Sheptycki, J.W.E. Ed. 2001, 'Introduction', *Issues in Transnational Policing*, Routledge: London, p11-15, especially Table 1. 'High police' correspond to the agents of national security but in the context of transnational organised crime will also involve more conventional police.

⁹ Mass movements of refugees often escaping civil war and/or intolerable economic circumstances also drive the opportunities and profits for local as well as transnational organised crime by fuelling the demand for scarce (illicit) services or commodities.

¹⁰ UNDP 2000, *Early Warning Rapid Response System: HIV Vulnerability Caused by Mobility Related Development*, UNDCP South East Asia HIV and Development Project, Bangkok.

¹¹ A pithy example of the limitations of over-reliance on police can be found in Maher, L. & D. Dixon 1999, 'Policing and Public Health: Law enforcement and Harm Minimization in a Street-level Drug Market', *British Journal of Criminology*, 39: 488-512.

devices that identify a child's sex in vitro, in many developing countries, has rapidly distorted a customary preference for boys (albeit that termination based on sex is usually prohibited) into an astonishing gender imbalance. The 2000 population census in China, for example, found that for every 100 girls 117 boys are born, and in some provinces the ratio has reached 135 boys to 100 girls. The significance for crime and disorder of the eventual surplus of active young males will be evident to the epidemiologists of crime; with no wife and families these unmarried males are at considerably higher risk of crime, especially violent crime. Apart from unsettling historical examples about the consequences of surplus male population, one could predict a radical shift in customary forms of sexual conduct. Consequently, even greater, perhaps irresistible 'pull and push' factors arise within the sex industry and in turn add incentive for the trafficking of woman and children. The trafficking of women is already a major social and law enforcement problem in China and other neighbouring countries. What will be the consequences for HIV infection rates and the real risks that there will be many marginal unattached young men?¹²

The efforts of this conference to grapple with the diverse and chaotic manifestations of transnational crime are predicated on an ambiguous and uncertain sense of what globalisation means, especially in terms of governance. The traditional domestic territorial domain of public policing has been dominant; extra-territorial policing functions have developed only because of all too frequent criminal catastrophes that stimulate the domestic political institutions to 'look over the horizon'. These events have also converged with a greater professional need to share intelligence about crime groups in structures or networks that enhance trust.¹³ In these circumstances the coordination functions of transnational policing institutions, such as Interpol and UNDCP, are well placed to assist because of their established networks, but they have limited authority and resources to act. Mr Ron Noble, Secretary-General of Interpol, outlined the necessary administrative and operational reforms undertaken to ensure that Interpol's traditional 'clearing house' and network strengths are fully used and available twenty-four hours a day, seven days a week. However, the 'sharp' end remains in the hands of the relevant local policing agencies. In this respect, the observations of Commissioner Zaccardelli, about the role of leadership and the limitations of what he termed the 'warlord' perspective of police command, are relevant. This is because the territorial police 'warlord' will have a fragmentary or limited focus and this is a barrier to the assessment of intelligence and potential

¹² Power, J. 2002, 'Gender-culling brings horror of surplus testosterone', SCMP 13/7/02. Power draws on several studies of the long term consequences of extreme gender imbalance. She reports Harvard University scholars Valerie Hudson and Andrea Den Boer's estimate that because of the convergence of modern medical technology and traditional patriarchal belief there are now 'between 62 and 68 million missing females in Asia'.

¹³ For example, the growing importance of staffing consular or police liaison officers who provide vital lubrication to mutual legal assistance: see Didier Bigo 2000, 'Liaison Officers in Europe: new officers in the European security field', in Sheptycki, J.W.E. Ed., *Issues in Transnational Policing*, Routledge: London, p 67-99. The Hong Kong Police for example staff a Beijing Liaison Office and it is now commonplace for Diplomatic Missions between Asian states to include amongst their consular staff experts seconded from national police agencies.

threats. A measure of the value of 'intelligence-led' policing is that interlocking agencies, both domestic and international, can dramatically improve the effectiveness of both 'high' and 'low' functions of police simply by improving the quality and timeliness of the information available. However, very little of this can take place, as Commissioner Khoo reminds us, unless there is a greater willingness to channel security assistance to weaker or less capable agencies and states. If given the appropriate resources, these states wish to help and contribute successfully in containing transnational crime.

The conference organisers have taken the view that a positive proactive response to the challenges of the globalisation of crime is necessary. Also, the view was that individual actors and agencies may at least influence the future even though they may not be able to predict it. They can certainly influence the form and reach of crime in several ways by strengthening networks of trust, by sharing intelligence, and by learning more of each other's legislative frameworks, social and cultural conditions and operational practices.

Internationalism and Transnational Policing

Given the context just described, what may eventuate is 'governance without governments'¹⁴ in the absence of or given the limitations of formal institutions and nation-states to exercise the rule of law in transnational environments. While there now exist international conventions and treaties expressly designed to inhibit serious criminal networks or offenders operating across borders, their reach is limited by the speed and scale of domestic ratification and consequential enabling laws. Nevertheless, they provide a moral climate hostile to some forms of transnational crime and seek to harmonise laws and evidentiary processes that enable cross-border investigations to take place as well as other cooperative undertakings.¹⁵ The UN Convention Against Transnational Organised Crime [TOC convention] came into effect in November 2000 in Palermo, Italy.¹⁶ Sir Keith Povey rightly reminds us of the courage of that city in confronting the Sicilian mafia, and he further discusses the importance

¹⁴ James N. Rosenau 1992, 'The relocation of authority in a shrinking world', *Comparative Politics*, 24:253-72, cited in Lizee, P.P. 2000, *Peace, Power and Resistance in Cambodia: Global Governance and the Failure of International Conflict Resolution*, Macmillan: Houndsmill, p164.

¹⁵ For a brief discussion of the role of the United Nations and the long road to the TOC Convention see: Williams, P. and E. Savona Eds. 1995, 'The United Nations and Transnational Organised Crime', *Transnational Organised Crime*, 1 (3); and see www.un.org/partners/civil_society/m-crime.htm and www.undcp.org/organized_crime.html.

¹⁶ The TOC convention is not yet in force and although 141 States (and 16 parties) have signed only 16 countries have ratified the treaty. It remains open for signatories until December 12, 2002: see www.undcp.org/crime_cicp_signatures_convention.html. The protocols in respect to trafficking in humans, smuggling in migrants and the illicit manufacture and trafficking in firearms have thus far attracted respectively 105, 101 and 31 state signatories.

of the TOC for transnational policing. (See Section I: Mr Cross expands on the implications of the TOC convention at page 23-32].¹⁷

The TOC convention significantly extends the reach of the 1988 Vienna Convention Against Illicit Traffic in Narcotics and Psychotropic Substances. It obliges signatories to criminalise (Article 3 (1)) serious crime ‘where the offence is transnational in nature and involves an organised criminal group’. The TOC establishes several offence categories: participation in an organised criminal group, money laundering, corruption and obstruction of justice as well as protocols in respect to trafficking in women and children, illicit manufacturing and trafficking in firearms¹⁸, and smuggling of migrants. Serious crime is defined broadly (conduct attracting punishment of four or more years’ imprisonment) and an organised criminal group is defined in Article 2(a) as ‘a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with the convention, in order to obtain, directly or indirectly, a financial or other material benefit.’

A ‘structured group’ refers (Article 2(a)) to one that is not ‘randomly formed for the immediate commission of an offence’, and groups need not have formally defined roles or continuity of membership. The basis of the framework is one that yields the degree of flexibility in both the definitions of organised crime and transnational crime such that it may serve as a generic legislative model across diverse common law and continental systems. In addition, the TOC convention

- criminalises offences of corruption or by corporations;
- speeds and widens extradition;
- attacks bank secrecy;
- outlaws anonymous bank accounts or accounts in false names;
- protects witnesses;
- improves cooperation in arrest and prosecution;
- boosts preventive measures by expanding cooperation with private industry; and
- promotes codes of conduct for the relevant professions in accounting and law.

¹⁷ For full details of the TOC convention see www.odcp.org/palermo and for a discussion of the main features and other relevant international instruments see Bullwinkel, J. 2001, ‘International Cooperation in Combating Cyber-crime in Asia: Existing Mechanisms and New Approaches’, in Broadhurst, R. Ed., *Proceedings of the Asia Cyber Crime Summit*, Centre for Criminology: University of Hong Kong.

¹⁸ The protocol against ‘Illicit Manufacturing and Trafficking in Firearms, Their Parts and Components and Ammunition’ supplementing the TOC convention was adopted by resolution 55/255 on 31 May 2001 at the 55th Session of the UN General Assembly.

Provision for training and materials, especially assistance for developing countries, are also made and place obligations on capable states. The TOC convention expressly refers (Article 29 (2)) to methods for combating the misuse of computers and telecommunications networks.

As well as the innovations provided by the TOC convention the European Council's Cybercrime Convention, came into effect in November 2001, outlaws a variety of computer related offences.¹⁹ The Cybercrime Convention is designed to deal with the special problems of cyber crime and the inevitable transnational character of many of the offences involved.²⁰ Furthermore, the convention criminalises the use of computers to post child pornography on the Internet or to sell or transfer these images (usually encrypted) by digital means. Upon ratification, the convention gives law enforcement agencies the means of investigating and preserving vital evidence in the cross-border dimension so characteristic of the new and old forms of crime that exploit new information and communication technology (ICT). In dealing with ICT crime, law enforcement is at a disadvantage because of the remarkable speed in which cyber crimes unfold against the typically 'low-speed cooperation' offered by traditional forms of mutual legal assistance. Although requests for law enforcement assistance are now routinely undertaken on an officer-to-officer basis via encrypted e-mail, this novelty should be available to judicial officers in the future. It is now conceivable that 'letters rogatory' and associated instruments may in the near future arrive by secure encrypted e-mail, as already do many of the communications between law firms. (As Mr Cross notes, the 'spirit' of comity is not overly bound by formalities so long as favours are reciprocated: see Part III generally).

Regional Coordination and Cooperation

The various measures now operating within the European Union, notably the establishment of EUROPOL and a European Judicial Network, provide examples of greater law harmonisation and fewer opportunities for transnational criminals to exploit jurisdictional and legal loopholes between

¹⁹ *The Cybercrime Convention* is not yet in force. The minimum 3 ratification's by Council of Europe member states have not yet occurred. As at 27th of July 2002, 33 states have signed the Convention (including non-Council member states: Canada, Japan, South Africa and Japan), however, only one State has ratified the Convention. In addition a draft of the 'First Additional Protocol to the Convention on Cybercrime on the criminalisation of acts of a racist or xenophobic nature committed through computer Systems' has also been prepared and awaits Council endorsement: see <http://conventions.coe.int/treaty/EN/projets/cybercrime27.htm>.

²⁰ For details see www.europa.eu.int/scadplus/leg/en/lvb and discussion of the final draft in Csonka, P. 2001, 'The Council of Europe Draft Convention on Cyber-crime: A Response to the Challenge of the New Age', in Broadhurst, R. Ed, *Proceedings of the Asia Cyber Crime Summit*, Centre for Criminology: University of Hong Kong. Relevant papers and discussions may also be found in UNAFEI 2001, *The Global Challenge of High Tech Crime: Workshop on Crimes Related to the Computer Network, Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders 15 April 2000, Vienna, Austria*, Tokyo, Japan. See generally Akdeniz, Y., Walker, C. & D. Wall, Eds. 2000, *The Internet, Law and Society*, Longmans: Harlow; Grabosky, P., Smith, R.G. & G. Dempsey 2001, *Electronic Theft: Unlawful Theft in Cyberspace*, Cambridge University Press: Melbourne.

nations.²¹ European initiatives in international crime provide sound examples of the way forward in regional cooperation, but may not serve as a model for the development of countermeasures in the vastly different socio-cultural and economic circumstances found in Asia. Nonetheless, it is abundantly clear that crime, and not just the traditional concerns about narcotics and piracy are matters of significant concern. Thus 'international law enforcement' has shifted from a peripheral to a central role within otherwise domestically focused law enforcement agencies. In addition, the lines between the policing function and national security appear less distinct and considerable overlap now routinely occurs between the agencies countering threats such as transnational crime, low-intensity warfare and terrorism.²² Thus a number of speakers referred to the equal importance they attached to intra-agency cooperation within jurisdictions and the need to improve and maintain these in order to enhance mutual legal assistance (MLA) at the regional and international level.

While ASEAN²³ has provided a limited pan-Asian approach, it does form a basis for developing a wider regional forum for considering matters of MLA. Its approach, even given the developing nature of the region, mirrors the methodology of the European Union, but as Commissioner Khoo observes, the sheer cultural and economic diversity of Asia makes the process of multilateralism fraught with difficulty. Yet understanding the different capacities and perspectives of how each state could contribute was an essential first step. Less capable states were willing to assist and compromises would need to be made, but there was a real potential to build effective regional and international alliances. The endorsement in October 2000²⁴ of the action plan of the ASEAN and China Cooperative Operations in Response to Dangerous Drugs (ACCORD) in partnership with UNDCP illustrate within our own region the quickening of MLA responses to transnational crime. Such is the need that ASEAN has already conducted three ministerial meetings on problems of transnational crime (Manila 1997, Yangon 1999, Singapore 2001) and a fourth is scheduled for Bangkok in 2003. These meetings oversee the work of the Annual Senior Officials Meeting on Transnational Crime and

²¹ For a cooler assessment of the European Union's efforts against organised crime: see Den Boer, M. 2001, 'The fight against organised crime in Europe: A comparative perspective', *European Journal on Criminal Policy and Research*, 9:259-272. Despite the 1997 *Action Plan to Combat Organised Crime* (OJ 97/C 251/1) adopted by the Ministers for Justice and Home Affairs during the Dutch Presidency differences between the policing institutions remain considerable. However, increased transparency and knowledge about one another's systems and recognition of the problem has led to re-organisation, improved resources and greater centralisation designed to improve cooperation amongst member states.

²² This overlap between national security and policing seems especially the case in cyber crime, see: Thomas, D. & I. Loader, 2000, *Cybercrime: law enforcement, security and surveillance in the information age*, Routledge: London.

²³ ASEAN comprises the following 10 nations: Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Philippines, Singapore, Thailand, Myanmar and Vietnam: its meetings coupled with the overlap amongst the 21 nations of the APEC forum may yet hold out the prospect for the development of a suitable mechanism for law enforcement coordination in the Asia Pacific region despite the primary focus on trade: see also Bullwinkel, op cite, at page 111. In addition Interpol regional meetings are held annually with the most recent, the 17th Asian Regional conference held in Colombo in February 2002, focused upon terrorism.

²⁴ The ACCORD followed the formalisation of the ad hoc meeting of the Special Senior Officials Meeting on Transnational Crime in Yangon (October 2000). Note also the increasing institutionalisation of cross-border cooperation on migration via the ASEAN Plan of Action on Immigration Matters.

consider the deliberations of ASEANAPOL meetings of the ASEAN National Chiefs of Police and their cooperative efforts to combat transnational crime.

These developments are mirrored by the increasing transnational activities of corporate and private security. Indeed, given the role of (self-) regulatory²⁵ approaches by corporations, especially multinational enterprises, the role for transnational private policing is already significant and widespread.²⁶ For example, private security is the major provider in the payment card industry and in airline security. The sheer volume of global financial activity alone, within which objects of investigation such as crime proceeds might be captured, compels police partnerships with banks, telecommunication providers and corporations. Partnerships also raise real issues of shared intelligence in environments of trust. Thus the mobilisation of so-called 'private police' and non-government organisations in partnership with public police are essential if transnational crime is to be addressed.

An effective international rule of law, which operates without usurping the functions of the sovereign state, is now clearly practical. In his opening remarks to this conference, Hong Kong's Chief Justice, Mr Andrew Li, alluded to the fundamental spirit of the rule of law in international form. In the 20th century, international law was essential to well-being and continual legal reforms were required to keep pace with the 'information age' and globalisation. However, the very notion of a responsive international rule of law, capable of addressing threats posed to the world community, depends on capable states *and* actors. Hence the role of individuals and national agencies operating in the transnational arena are vital.

The deliberations of this conference are of the greatest importance...the critically important task of forging a global alliance of policy makers and law enforcement agencies which, through coordinated use of international agreements, both bi-lateral and multi-lateral, and close co-ordination between agencies, aimed to eliminate the threat posed by transnational organized crime

The view now is that no longer can the system of sovereign states, which have evolved over the centuries, alone provide a methodology to address problems with a truly global reach. Crime is one fundamental problem that exploits the 'gaps' in the sovereign state system of international relations.

²⁵ The term 'regulatory' means in this context a contractual basis for rules of conduct and performance in contrast to 'mental intent' criminal laws and the associated higher thresholds of proof and reliance on custodial sanctions.

²⁶ See for example Johnston L. 2000, 'Transnational private policing: the impact of global commercial security', in Sheptycki, J.W.E., Ed. 2001, *Issues in Transnational Policing*, Routledge: London, p21-42.

An effective global alliance based on the rule of law is therefore no easy task. Such an alliance would recognise that in communities of ‘shared fate’, coordinated forms of regulatory endeavour (free, for example, of unduly strict or pedantic definitions of ‘dual criminality’) may be the only means to curtail transnational crime. To fail to recognise that we share a ‘common fate’, that problems belong to others and not ourselves alone, undermines the very basis of mutual legal assistance—reciprocity.

The fundamental ideas underlying our practices, those cultural and customary beliefs about human nature embedded in our social and economic institutions, determine the way we think about problems. As economic relationships (sometimes referred to as ‘political economies’) change under the influence of globalisation, the way we think about social phenomena such as crime and its organised or enterprise-based forms must also change. The way we define, classify and understand the behaviour of criminal groups sometimes undergoes imperceptible shifts. When this happens we may find ourselves, like the Allied generals of 1939, prepared for a system of warfare that had ceased to be relevant. The rise of the new recreational synthetic (ATS) drugs and the rapid need to re-tool organisational responses and thinking may be one such example. Interpol global coordination projects such as ‘Exit’ and ‘Millennium’ offer the basis for early-warning systems where rapid change is likely.

Organised Crime and Criminal Networks

Striking illustrations of the practicality of social network theories²⁷ in understanding the impact of global communications on criminality are the behaviour of computer viruses. The way in which computer viruses (for example the ‘I Love You’ bug and the the ‘Code Red’ worm) may spread, within days, to virtually every computer network and terminal around the world shows how connections facilitate behaviour. Little imagination is required to extend the ideas behind these dramatic phenomena to the actual and potential networks of social relations that enable illicit commodities to move across borders and to be distributed to consumers. Organised crime ‘is a social phenomen[on], a network of relationships based on reciprocal benefits that extends to the heart of society and of institutional and economic life’. Nor is it simply a problem of the criminal law but one of ‘civil law, economic regulation, industrial management, and fiscal policy’.²⁸

²⁷ See generally on the rise of networks as significant social structures: Castells, M. 1996, *The Rise of the Network Society*, Oxford: Blackwell.

²⁸ Jamieson, A. 2001, ‘Transnational Organized Crime: A European Perspective’, *Studies in Conflict and Terrorism*, 24: 377-387, p386. Commissioner Keelty and other speakers on the subject of money laundering recognise the utility of the civil law in addressing ancillary problems related to criminal activity. There is now growing interest in mobilising civil remedies in dealing with problems as diverse as the waste products produced by synthetic drug manufacturing, the licensing of entertainment venues used for gaming and the confiscation of the proceeds of crime.

This begins to explain the hydra-headed nature of serious criminal groups and why, despite investigative successes and the incapacitating virtues of deterrence-based criminal justice, such criminal activities are ceaseless. These illicit activities are relentless because unmitigated demand and a near inexhaustible supply of willing players support them. The multitude of criminal opportunities present in environments of weak social control provides incentive enough, and may aid and stimulate the fewer opportunities provided in environments hostile to criminal enterprise. Crime is primarily a group activity, and the incapacitation of criminal groups, especially those linked by risk-averse networks, have proved difficult and illustrate the resilience of smaller criminal networks. What is necessary is that law enforcement provides sufficient respite from them to enable positive social forces to come into play.

The German philosopher Emmanuel Kant, a rigorous advocate of retribution, observed that ‘there is nothing more practical than a good theory’. So it is that transnational crime is a problem in search of a good theory. As rational choice theories of criminal behaviour have gained increasing credence and the significance of pathological theories (defects of individual personality and socialisation) has declined, the perception has arisen of organised crime as essentially operating like any profit-seeking enterprise. Until the American scholar E. H. Sutherland coined the term ‘white-collar’ crime in 1939, the connections between business, politics and crime groups was a neglected part of criminological theory.²⁹ He drew on the fundamental idea that criminal behaviour is learned through ‘differential association’, that is, primary relationships that justify and support illegal conduct. Despite the poor operational definitions associated with the notion of white-collar crime, its link with criminal groups have been increasingly seen as a pathway for money laundering and interdiction of the proceeds of crime (see Part III). Business crime, elite crime and corporate ‘crime in the suites’ as distinct from the ‘streets’ have become central to understanding criminal behaviour, corruption and the role of illicit economies, and the problems this higher-level crime poses for policing institutions.

The notion of ‘crime as business’ provides a unifying motive for organised criminal behaviour explored, for example, by Diego Gambetta³⁰ (for the Sicilian mafia) and Chu Yiu Kong³¹ (Hong Kong triads). They apply the economic logic of protection, and its slippage to extortion, as an activity to be understood in terms of the market and business practice (see also David Hodson at page XX). This

²⁹ This neglect was notable in the United States, where for decades Edgar Hoover the first director of the FBI, denied the possibility of a pan-American network of Italian organised crime groups that had reaped the benefits from the prohibitions on gambling, sex, and alcohol: see Centry, C. 1991. *J. Edgar Hoover: The Man and the Secrets*, Norton & Co.: New York. For a summary of the relevant US literature, see Shover, N. & J. P. Wright 2000. *Crimes of Privilege*, Oxford: New York. Academic interest in transnational organised crime is illustrated by the development of specialist periodicals in the mid-1990s: see the journals *Transnational Organised Crime* and *Trends in Organized Crime*, Transaction Periodicals Consortium.

³⁰ Gambetta, D. 1995. *The Sicilian Mafia: The business of private protection*, Harvard University Press: Cambridge, Mass..

³¹ Chu, Yiu Kong 1999. *The Triads as Business*, Routledge: London.

approach has gained widespread acceptance as a way of thinking about complex crime groups and their role in servicing the transnational need for scarce commodities of every kind from sex workers and narcotics to exotic animals, antiquities and nuclear materials.³² However, *homo economicus criminalis* is not quite the rational creature these models propose. Cultural/ethnic customs as well individualism shape the form and nature of the instrumental violence used to sell and differentiate criminal groups from their actual or putative competitors; in the transnational as much as in the local sphere, the ‘reputational’ qualities of the criminal group are primary and operate as a form of brand recognition.

That criminal behaviour itself need not depend on social deviance is a fact that makes distinguishing good or bad behaviour from good or bad people one of the natural conundrums of policing. It also ensures that risk profiling, despite actuarial sophistication, is much harder than is often assumed. Thus while underlying motives are important at the individual level, at the macro level diverse criminal motives are in reality governed by opportunities—opportunities that are perceived to present low risk and high profit to the criminal or deviant enterprise.

The situational crime prevention model is the criminological perspective most applicable to understanding crime and the control of opportunity-driven criminal groups or enterprises. Although originally conceived to explain conventional ‘street crime’ and residential burglary, this model centres on the opportunities provided to motivated offenders (including more serious criminal groups) by attractive targets in the absence of capable guardians. The convergence of these three factors in time and place—the motivated offender, a suitable target, and the absence of capable guardians—account for the amount of crime experienced rather than the degree of criminal motivation in the population or locality. Crime prevention strategies based on this idea focuses on strengthening the role of guardians (for example, neighbourhood watch, police telephone hotlines, CCTV etc.) and reducing opportunity by target-hardening high-risk property (installing more effective anti-theft devices) and educating public behaviour. A fourth factor, crucial to the success of a criminal act, is the extent that the motivated offender has access to the resources (both social and technical) that allow the act to take place. It is through a network of relationships that the various resources necessary to complete a criminal transaction are mustered; coupled with the opportunities provided by the absence of capable guardians, the sustenance for criminal groups is maintained. Thus,

opportunities, pressures and incentives, and resources provide a ‘package’ that helps to explain the rise of transnational criminal organizations, especially when combined with some kind of trigger mechanism—that is abrupt developments that bring about a change in the opportunity

³² An early and influential discussion of the ‘business’ character of organised crime can be found in Arlacchi, P. 1986.

structure, the pressure or incentives, or the availability of resources and that result in a shift in the level, status, pattern of activity, or strategy of organized crime.³³

Network Analysis and Criminal Groups

The point is that criminal transactions depend on the offender's network of relationships and the capabilities these relationships are able to deliver in terms of resources (social, technical and economic capital). Hence the importance of social network analysis as a means of interrupting the crucial linkages that makes crime, especially organised crime, possible. It is the various forms of 'network analysis' and the attributes of these networks that constitutes one of the foundations of 'intelligence-led' or proactive policing and is what makes so-called 'controlled operations' ultimately successful or not. However, although the use of sociometrics and network analysis is a commonsense approach of many crime investigators, its (methodological and theoretical) limitations, even if widely experienced in practice, are less well understood. The means of overcoming these limitations reside in simultaneously understanding both the structure and content of a network. By focusing on smaller groups within possibly larger networks and by monitoring the frequency and content of their interactions, the nature of criminal cliques in terms of their core, primary and secondary members may be identified. Yet little is still known about the characteristics of large-scale networks and how interactions between small groups aggregate to form larger patterns³⁴—as may be the 'fit' of a local crime group within a larger network of criminal enterprises.

Nigel Coles³⁵ in a recent article in the *British Journal of Criminology*, fully revives the utility of network analysis for understanding serious criminal networks. He draws on the earlier work of three scholars of social networks. Granovetter's³⁶ counter-intuitive demonstration of the 'strength of weak ties' and the role of acquaintances, coupled with Boissevain's³⁷ analysis of the role of the resources of 'friends of friends' and the functions of 'brokers', provide a model of how networks operate. In conjunction with Milgram's³⁸ study of the 'small-world' problem, which showed that very few intermediaries are actually required to link two persons totally unknown to each other, the ingredients

Mafia Business: The Mafia Ethic and the Spirit of Capitalism, London: Verso.

³³ Williams, P. & R. Godson 2002, 'Anticipating organized and transnational crime', *Crime, Law and Social Change*, 37:311-355, p341.

³⁴ Methodological problems in the 1970s arrested the development of more sophisticated tools for the analysis of large and incomplete social networks but may now be at least partially solved.

³⁵ Coles, N. 2001, 'It's not what you know—It's who you know that counts: Analysing serious crime groups as social networks', *British Journal of Criminology*, 41:580-594.

³⁶ See Granovetter, M.S. 1973, 'The Strength of Weak Ties', *American Journal of Sociology*, 78:1360-80 and, Granovetter, M.S. 1976, 'Network Sampling: Some First Steps', *American Journal of Sociology*, 81:1287-1303

³⁷ Boissevain, J. 1974, *Friends of Friends: Networks, Manipulators and Coalitions*, Oxford: Blackwell.

³⁸ Milgram, S. 1967, 'The Small World Problem', *Psychology Today*, 22: 61-67.

of a comprehensive theory of network behaviour are available. Although Coles underestimates the extent to which techniques designed to investigate 'relational data' have proved useful to analysts of serious crime,³⁹ he points to significant elaboration of methods, especially in the treatment of censored or incomplete relational data. The current view of organised crime as syndicates (confederacies of criminal interests) or short-lived project-driven networks of motivated offenders drawing on financial and other resources relies on the basic ideas of network theory. The loose-knit though sophisticated links of criminal groups or 'firms' between cities and nations are now thought of as networks rather than hierarchical organisational structures of command and distribution. However, Coles argues that new theoretical advances make the role of networks an opportunity 'yet to be seized and deployed in any substantial way, especially in the study of large-scale criminal networks',⁴⁰ such as may prevail in the transnational sphere. Even so, analysing the networks of criminal groups will usually be incomplete because of the premium they place on secret coordination. Relationships as well are naturally fluid and not static, ever changing over time.⁴¹ Although nowadays the computing power of some police agencies may have the capacity to compute these linkages, they must contain sufficiently rich relational data to make such analysis practical.⁴² Often only qualitative or subjective informant data can say much about the content or nature of the links.⁴³ Investigators are therefore constantly facing a 'missing data' problem. Nevertheless, knowing that a criminal network exists and the possible linkages created (for example, the density of ties) provide a method that can be useful for determining which relationships matter or represent brokerage. The real issue, however, is how to marry the research and development potential of the social sciences with law enforcement intelligence in such a way that there is progress in theoretical and applied aspects.⁴⁴

The reputation of a crime group's 'brand' provides some dependability in fragmented and risk-prone illicit economic markets. Thus criminal networks reproduce criminal cultures and seek to monopolise various forms of illicit trade that enable the local criminal 'firm' to prevail despite the uncertainties of

³⁹ For a good example of the application of network theories in police investigation see: UNDCP, 2001, *Model Drug Enforcement Policy and Suggested Training Materials for MOU Countries, IX. Advanced Intelligence Analysis*, Bangkok, UNDCP, Regional Centre for East Asia and the Pacific.

⁴⁰ Two crucial insights are relevant '...any individual actor is engaged in a social system involving many other actors and that they act as key reference points in each other's decisions' and '...that this interaction often has a regularity and patterning which can betray the structure in a social system': Coles, N. 2001, op cite, p581.

⁴¹ An additional burden is that the permutations of potential relationships can be vast if large groups are to be considered '...any method meant to deal with the total population faces insuperable obstacles for groups over a few hundred', Granovetter, M.S. 1976, op.cite, p1287 and cited in Coles.

⁴² Jackson, L.L., Herbrinck, J.C. & R. Jansen 1996, 'Examining Criminal Organisations: Possible Methodologies', *Transnational Organised Crime*, 2: 83-105.

⁴³ McAndrew, D. 1999, 'The Structural Analysis of Criminal Networks, in D. Canter & L. Alison, Eds., *Social Psychology of Crime: Groups, Teams and Networks*, Aldershot: Ashgate.

⁴⁴ A potentially useful application would be the incorporation of sociological work on Chinese networks captured by the notion of *guanxi*. Gary Hamilton and Wang Zheng's English translation of Professor Fei Xiaotong's work on Chinese society provides a basis for a comparative appreciation of differences in the nature of reciprocal social relationships with implications for understanding criminal networks in Chinese and other Asian societies: see Fei Xiaotong, 1992, *From the Soil: The Foundations of Chinese Society*, University of California Press: Berkeley.

the global illicit marketplace. The lure of richer prizes in the cross-border arena necessitates wider networks but need not constitute novel crime structures or innovations.

Permutations of old established brands, first generation felons, legitimate businesses in the process of criminal mutation, and a multitude of venture capitalists, their peers and subordinates in confederations at various stages of formation and disintegration, abound. Further, it is this multiplicity of interlocking entrepreneurial networks of firms and individuals that, when imposed upon multi-national terrain, constitutes the rich and alluring zone that is called 'transnational organized crime'.⁴⁵

Criminal Syndicates in China

The implications of cross-border criminal networks for developing economies are addressed by Mr Zheng Xin-feng (Ministry of Public Security: see Section IV at page XX). China's 'opening up' policy and its rapid development as a market economy has allowed foreign criminal groups to establish relationships with local groups and to invest directly or indirectly in licit or illicit business. This infiltration of foreign syndicates has helped to develop, through leadership and effective communications, the size and reach that serious criminal groups have in many cities and towns across China. Local criminals have shifted activities, once typically based on 'black markets' and commodity theft, into lucrative trafficking, vice and gaming. The most insidious aspects have been the criminal investment in factories (both licit and illicit) including state-owned enterprises through the corruption of public servants and party officials at fairly high levels. Combined with the traditional activities of loose-knit rural gangs who bully village heads, openly resist local police and make money from 'entertainment', extortion and protection at village, district and county market fairs, the scale of crime group activities is considerable.⁴⁶ These pose a serious challenge to individuals and public order, disrupt socialist market development, and require greater diversion of resources to overcome.

Although it is judged that the current situation shows huge increases in the spread and capacities of criminal groups and signs of full-fledged syndicates, these have not yet gained overwhelming

⁴⁵ Hobbs, D. 2001, 'The Firm: Organisational Logic and Criminal Culture on a Shifting Terrain', *British Journal of Criminology*, 41:549-560, p557.

⁴⁶ For further details of the nature and scope of organised and economic in China the reader is referred to the forthcoming proceedings of the 3rd Annual Symposium on 'Crime and It's Control in Greater China', June 21-22, 2002. The symposium is co-hosted by the Chinese People's Public Security University and the Centre for Criminology, the University of Hong Kong: see www.hku.hk/crime. For a more general account see also: Liu, J., Zhang, L. & S.F. Messner 2001, *Crime and*

financial strength or territorial cohesiveness. Crime prevention efforts as well as legal reforms⁴⁷ are consequently undergoing transformations yet to be perfected, and Chinese police now actively seek the cooperation and assistance of overseas colleagues and support arrangements for shared intelligence and capacity-building. New amendments to the criminal law passed by the National People's Congress enable law enforcement to respond with greater vigour. They target criminal leaders, foreign syndicates and state officials who harbour or connive in criminal syndicates and related offences.⁴⁸ These laws are undeniably tough. A significant amendment to Article 294 of the *Criminal Law of the People's Republic of China* states: 'mere participation in criminal syndicates constitutes the crime of criminal syndicate and deserves imprisonment below three years, labour in detention, surveillance or deprivation of political rights'. Article 26 already provides that a 'ring-leader' 'who organizes or leads a criminal group shall be punished on the basis of all the crimes that the criminal group has committed'.

In summary, contemporary criminal networks exploit cross-borders, blur distinctions between licit and illicit business, corrupt and sometimes capture elements of the state (or create safe havens and even 'rogue' states), and work the opportunities created by advanced capitalism. Although there is little novelty in the criminality involved, it is their scale and scope that make contemporary organised crime of a different kind from those of the past.

Models of Organised and Transnational Crime

Professors Phil Williams and Roy Godson of the Centre for International Security Studies, University of Pittsburgh, provide a useful contemporary overview of the varieties of organised and transnational crime.⁴⁹ Their macro-models of organised crime are reproduced here for their descriptive interest but also because they illustrate the general environmental conditions that are conducive to the development of different forms of organised and transnational crime. Careful use of models and extrapolations from past experience enable them to contend that if certain conditions are present the

Social Control in Changing China, Greenwood Press: Westport Connecticut.

⁴⁷ Zhang, Qi, 2002, 'The Dynamics from the Ideal to the Reality: The Rule of Law in China', *Social Sciences in China*, Vol. 23. No. 2.

⁴⁸ The criminal organisation laws of the People's Republic differ from that of other jurisdictions. Article 294 of the Criminal Law of the People's Republic of China states in part: 'Whoever organizes, leads, or actively participates in an organization with characteristics of a criminal syndicate, which carries out lawless and criminal activities in an organized manner through violence, threat, or other means, with the aim of playing the tyrant in a locality, committing all sorts of crimes, bullying and harming the masses, and doing what has seriously undermined economic and social order is to be sentenced to not less than three years but not more than ten years of fixed-term imprisonment. Other participants are to be sentenced to not more than three years of fixed-term imprisonment, criminal detention, control, or deprivation of political rights'.

⁴⁹ Williams, P. & R. Godson 2002, 'Anticipating organized and transnational crime', *Crime, Law and Social Change*, 37:311-355.

evolving nature of organised crime may be anticipated. In this way, they provide a strategic picture of the overall context: the probable landscapes on which the battle against transnational organised crime will be fought in all its complexity.

Briefly, they posit five general models of organised crime: the political, economic, social (cultural, ethnic and network forms), the strategic or risk, and the composite (hybrid or mixed) models. Many aspects of these different models have already been discussed and are alluded to in many of the following papers. Each of these models has sub-types and they are summarised in Table 1 along with the implications, likely patterns of activity, and influence. As with all abstract typologies, these models and sub-types capture reality incompletely but they do provide a helpful way of distinguishing the sorts of problems encountered in different nation-states under varying conditions and triggering events. For example, they illustrate the strategic value of their ‘anticipatory’ models by examining the underlying conditions in several at-risk countries such as Brazil, China, Cuba and some African states. In Brazil an economic crisis coupled with the weak policing radius of the state and existing extensive trade patterns may invite the emergence of indigenous crime groups as major players in narcotics trafficking. Brazil under these circumstances may become important as a transshipment state. In the case of China, a transforming economy and a reforming state removes and eases some forms of social control, enabling established as well as newly emerging criminal groups to exploit local connections with overseas ethnic Chinese networks. In African states, with weak governments, large informal economies and the absence of a ‘rule of law’, culture democratisation processes may trigger opportunities for the diffusion of corruption and illegal funding of election contests. This in turn facilitates the entry of transnational organised criminals, enabling both indigenous and foreign crime groups to become entrenched. Another safe haven soon emerges.⁵⁰

Williams and Godson emphasise the importance of research and data collection and the extensive use of non-traditional intelligence sources. They argue that knowledge fusion, not ‘data fusion’, is required if the chronic problem of information/intelligence overload, especially in advanced policing institutions, is to be mastered. Various multi-disciplinary approaches are recommended and these resonate with calls, at this conference, by many speakers for proactive integrated policing and wider engagement with law enforcement partners. A proactive strategy, however, means shifting the attitudes of law enforcement towards a holistic view of the political, social and economic vulnerabilities that crime networks seek to exploit. Commissioners Khoo, Zaccardelli, Tsang, and Keelty have acknowledged the need for such a shift and continue to push for a broader and more realistic role for the highly capable agencies they lead. ‘Just as law enforcement agencies cannot deal exclusively with organised crime through its traditional focus on cases, governments cannot deal with

⁵⁰ Williams, P. & R. Godson 2002, *ibid*, pp 347-349.

organised crime through an exclusive focus on law enforcement.’⁵¹ Next, the significance of this interdependence is illustrated by the topical but controversial example of the reforms implemented in the New York Police Department (NYPD).

Proactive Intelligence-led Policing

A topic discussed around the conference and pertinent to the question of the significance of proactive intelligence-led policing is the controversy over what caused New York’s celebrated declining crime rate. Under the leadership of Mr William Bratton,⁵² Commissioner of the NYPD, and Mayor Rudolph Giuliani, major crime fell 50 per cent and homicide by 67 per cent in six years (1993–98). How did this happen and what were the best practices that led to the impressive result? Three elements have been identified as relevant once underlying factors such as economic growth, changing demographics, incarceration rates, or changes in drug consumption are taken into account.⁵³

The first was a sweeping departmental reorganisation and a complete overhaul of the top level rapidly implemented by a determined leader producing greater unit and individual accountability. Second, the vigorous use of the civil law and the expansion of the role of the Civil Enforcement Unit (CEI) was an effective means of attacking civic disorder and crime. Along with other policies, this practice was to become popularly known as ‘zero tolerance’. For example, it used noise abatement, zoning and hygiene regulations to close brothels, ‘crack’ dens and other ‘hotspots’. Third, the widely known ‘Compstat’ computer file⁵⁴ compiled the vital output and input statistics of the NYPD system and through the intelligence provided innovative tactics arising from better information, planning and evaluation.

⁵¹ Williams, P. & R. Godson 2002, *ibid*, p352.

⁵² See Bratton, W. & Knobler P. 1998, *Turnaround. How America’s Top Cop Reversed the Crime Epidemic*, New York: Random House.

⁵³ See for further discussion, Silverman, E. B. 1999, *NYPD Battles Crime*, Boston: Northeastern University Press.

⁵⁴ The RCMP’s SLEIPNER system appears to operate on similar basic principles but as Commissioner Zarcadelli observes intelligence-led policing also requires change in organisational behaviour, and greater discipline.

Table 1.1: Models of Organised Crime⁵⁵

Political conditions	Implications	Expected result
Weak state	Opportunities for organised crime to develop with little interference; role of organised crime a substitute for protective & regulatory functions of the state	Organised crime can flourish & use the state as a home base
Strong state becoming weak	Initial incubation then expansion of power of organised crime as state loses power	States in transition are particularly vulnerable to organised crime, which inhibits democracy, the rule of law, & the free market.
States characterised by ethnic conflict, insurgency or terrorism	Rival factions use criminal activities to fund their political struggle; use trade & other embargoes as opportunity for trafficking and profiteering	Increase in organised crime, including violence, within the state & region: conflict cessation leads to transformation of terrorist organisations into primarily criminal organisations
Strong democratic states with high levels of legitimacy, transparency, & rule of law	Constant struggle between organised crime & law enforcement	Organised crime provides illicit goods & seeks vulnerable economic sectors but is largely on the defensive

Economic model	Implications	Expected result
Market dynamics	Organised crime responds to market dynamics & exploits demand for its goods & services, especially in prohibited markets	Criminal organisations become major participants in a variety of criminal markets, but will not have a monopoly over these markets.
Enterprise model	Criminal organisations act like licit enterprises & seek out new business opportunities, structures, & strategies to maximise profits.	Criminal enterprises seek to diversify markets and products, to protect profits (e.g. by using offshore financial centres), cooperate with other criminal organisations, & collude with individuals, institutions & agencies in the licit world
Risk management model	Implications	Expected result
Risk management model: based on the idea that criminal organisations are in adversarial relationships in which strategy is critical	Criminal organisations develop a comprehensive range of measures aimed at the prevention, control & mitigation of the risks faced from law enforcement & rivals	Organised crime seeks safe havens to operate from & neutralise governments & law enforcement agencies through corruption, counter-intelligence & security practices using the latest technology

[Ed. Risk management model a separate box]

⁵⁵ Source: Williams, P. & R. Godson 2002, *ibid*, pp 323, 328, 335, 339, and 347.

Social models	Implications	Expected result
Cultural & sub-cultural model based on patron–client relations, ties of kinship or patterns of corruption	Loyalty is not to state but to kin or ethnic group; personal exchange relationships are more important than the rule of law	Criminal organisations flourish & penetrate government, creating crime-corruption networks that are difficult to eradicate
Ethnic network model based on ethnic ties in immigrant communities	Transnational ethnic networks & marginalised immigrant communities provide cover & recruitment for criminal organisations and are difficult for law enforcement to penetrate	Diaspora may be followed by the growth of organised criminality & host societies experience diversification of organised crime
Social network model based on the notion that networks are not ‘disorganised’ but sophisticated organisational forms	Organised crime can be understood in terms of networks characterised by high levels of flexibility, redundancy, resilience & capacity to cross boundaries	Crime networks extend into the licit political & economic spheres & across national borders: highly resistant to traditional law enforcement

Composite models	Implications	Expected result
Transnational organised crime model	Transnational criminal organisations operate from a safe home base characterised by weak government, economic dislocation, social upheaval & integration into the global economy	Transnational criminal organisations take control of much of the domestic economy of vulnerable states & operate in a variety of host states with lucrative markets & ethnic networks
Transshipment model	Organised crime will identify & exploit states where there is ease of transit to the final destination for the transshipment of illicit drugs & goods	Coastal states with large export markets subject to corruption or instability become major targets for transshipment for illicit goods

However, as Professor James Jacobs and colleagues⁵⁶ note, these policing reforms also took place in the context of widespread reforms of the state and city government, especially by increasing accountability and transparency around the business of licensing and contracting. These higher standards of probity, openness and public scrutiny were sufficient to deny the established New York mafia ‘mobs’ the turf and power they had acquired through corruption and the calculated use of violence. Nevertheless, the role of ‘committed generals and of reliable intelligence’⁵⁷ seem firmly relevant, although the cynics can point to other cities where different reforms or even no specific reforms of policing organisations have also been associated with sharp declines in crime. The conclusion drawn is that reforming police organisations is tough enough in the domestic sphere and that wider reform processes will be needed.⁵⁸ In the transnational realm, success will certainly be

⁵⁶ Jacobs, J.B, Friel, C. & R. Radick 1999, *Gotham Unbound: How New York was liberated from the grip of organized crime*, New York: New York State University Press.

⁵⁷ Brodeur, Jean-Paul 2001, ‘NYPD Battles Crime, by E.B. Silverman’, *British Journal of Criminology*, 41:746-748, p748.

⁵⁸ It is also make sense for reforming Commissioners to build in evaluation processes and to leave the evaluation of success to evidence based research.

determined by reliable intelligence garnered by well-structured collaborative networks and statesman ‘generals’.

Developing Transnational Policing

At a gathering such as this conference, it is hardly surprising that although the topic is the common enemy organised crime, a great deal of analysis, speculation and prediction about the policing organisation *and* policing has taken place. At the beginning of the 21st century this near-venerable but much-maligned and romanticised institution of police indeed faces monumental challenges and changes that all speakers have readily acknowledged. As rapporteur I have been privileged with a front seat and listened to extraordinary speeches—from the heart and head—by men and women on the front line. Rather rarely for events of this kind, given the imperatives of public relations, they have also shared their failures as well as their best practices, innovations and successes. Everywhere individuals and agencies are struggling to overcome all sorts of barriers, some self-imposed, to the realisation of human security and to bring the law and, they hope, justice to the communities they have sworn to serve.

It is something of a truism that we learn more from our failures than we do from our successes and, to risk cliché fatigue ‘a problem shared is a problem solved’, especially if we ‘think globally and act locally’. Undoubtedly there will be failures in the often deadly but ceaseless struggle against the unscrupulous predatory opportunists whose resourceful networks prey upon humanity and serve capitalism *au savage*. However, understanding these (often multiple) failures of policy, command, logistics, intelligence, technology, collaboration and coordination is vitally necessary. Forums such as the one these proceedings report provide much-needed avenues for collective reappraisal. Thus, the conference hosts hope that something useful has been taken away. That the elusive fountain of the human spirit, *esprit de corps* has been renewed to create more effective law enforcement networks seeking better ways to integrate efforts against transnational criminals.

Criminological history tells us that the field of criminal justice is replete with failures and that effective durable change often comes from inside the system: from the elite of the justice community. This suggests that law enforcement leaders must continue to openly enter the policy arena as credible tellers of the unvarnished truth if the perilous challenges of the modern world so eloquently presented are to be met. These issues must not be gilded by the inevitable pragmatism of the politics of presentation or the egos of unrepentant ‘warlords’. If transnational policing is to have the decisive

impact that is needed, it must realise effective partnerships and must integrate the role and functions of policing agencies along with others in the service of human security. It also, among the myriad demands for police action, must reserve enough resources to deal effectively with the truly wicked and invest in prevention.

Let us take one policy area, illicit drugs, as an example. This is now almost impossibly politicised, but it is inextricably linked to the rise of powerful organised crime networks. Field intelligence and evidence-based research shows that the drug problem can only be managed effectively when demand and harm reduction is a primary focus, and when law enforcement agencies reduce supply and provide support and safety. In many quarters, however, the control of drugs is considered a ‘war’ to be singularly won by the militarization of deterrence-based enforcement of prohibition policies. How are policing institutions to reconcile these incompatible approaches and reach the consensus necessary to reduce both demand and the harms associated with illicit use and prohibition? The answer perhaps lies in ensuring that open exchanges between all the relevant agencies occur and that appropriate compromises are reached with the diverse communities who share these common problems. In doing, so we ensure that significant sections of those communities are not lost to disaffection with counterproductive policies and strategies.

Mr Khoo and other speakers have stressed the vital role the community plays in law enforcement and have advocated community policing, but as they realise, this is not a matter of mere co-option or enlistment but of dialogue and partnership. The framework for the practice of community policing must now reach beyond the confines of a policing district and include what the sociologists call ‘communities of shared fate’. Unless the farmers of Afghanistan have food for their children, as Dr Calvani notes, the production of opium and cannabis is unlikely to cease. A community policing approach would understand this and set about to fix the problem by mobilising other community resources to help the desperate farmer have genuine choices. Demand reduction at source requires a basic understanding that unless we share a wider sense of community, the unhealthy consumption behaviour of the ‘first world’ may be the only way some in the ‘third world’ get to place food on the table. Simply putting more resources into law enforcement without concurrent efforts to sustain food security in source countries or reduce demand in receiving countries simply serves to raise the risks and profits of criminal networks (see generally Section III). In the view of many at this meeting there is no clearer example of the interdependence of our separate but linked global villages such that actions in one place inextricably affect the actions of others. Although not all roads to the organised crime problem lead to and from drugs, unfortunately many do, and thus the drug problem emerges as the single most important one to address. The above account of the drug–crime–politics nexus is of course greatly simplified, but it does reveal that it is not enough to agree to outlaw an undesirable

activity: we must also agree on how to make best use of the law enforcement ‘card’ in circumstances where true consensus is unlikely.

As many speakers noted, it is necessary to clarify the mission of transnational policing and to distinguish the threats and risks that really matter in the ‘global village’. Work long begun has been accelerated by the end of the Cold War, so international consensus (though frequently short of universality and domestic enactment) on many matters is in principle achieved. The examples of narcotic trafficking, piracy, slavery and more recently, terrorism, torture, genocide and transnational organised crime stand out as matters universally abhorred and provide some framework for an international criminal law.⁵⁹ In conjunction with the UN Security Council, other UN agencies, the new Interpol, emerging regional security entities and the role of ‘other channels’, the basis for a dynamic and much-needed cross-national common threat assessment is feasible.

It appears that the ideal of international law enforcement now has the basic legal tools and moral mandate to address transnational crime through the actions of capable states, agencies and actors in the law enforcement community. We are now capable of returning plunder to distressed states and recovering the criminal proceeds of pension fund fraudsters by activating transnational anti-money-laundering investigations. Through collaborative effort we can also curtail those who traffic and exploit refugees and migrants, traffic children and women often for the sex business, release computer viruses or use computers in the furtherance of serious crime, traffic in drugs or exotic animals. For too long all of these have operated with the impunity provided by myopic laws or jurisdictional borders.

With properly funded international law enforcement agencies, established mechanisms for common threat assessments and joint intelligence broader forms of mutual legal assistance, beyond the cases of the day, might be effectively activated. Many speakers expressed concern about the failure to address the ‘weakest links’ in the supposedly seamless security chain necessary to prevent and reduce serious criminal groups. The many forms of ‘safe haven’ (or in FATF⁶⁰ jargon ‘non-cooperative countries and

⁵⁹ Indeed despite the anxieties of the United States of America an International Court of Criminal Justice, has on July 1 2002, become a reality with 139 signatories (71 ascensions). The Rome Statute was adopted on 17 July 1998 by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court: see generally www.un.org/law/icc/ for an update of the treaty ratification and declarations refer to: untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterXVIII/treaty10.asp

⁶⁰ The Financial Action Task Force (FATF) was created in 1989 under OECD auspices. It established 40 recommendations for implementing and coordinating money laundering laws for the world’s major financial centres: see Section III for further discussion. The recommendations are consistent with the Vienna and TOC conventions and formed the basis for the anti-money laundering regime established by the Caribbean Financial Action Task Force and the Organization of American States. Recent attention has focused on combating terrorist financing or so called ‘reverse’ money laundering. The twenty nine member countries of the FATF are: Argentina; Australia; Austria; Belgium; Brazil; Canada; Denmark; Finland; France; Germany; Greece; Hong Kong, China; Iceland; Ireland; Italy; Japan; Luxembourg; Mexico; the Kingdom of the Netherlands; New Zealand; Norway; Portugal; Singapore; Spain; Sweden; Switzerland; Turkey; United Kingdom and the United States. Two international organisations are also members of the FATF: the European Commission and the Gulf Cooperation Council.

territories' [NCCTs]) stand out as glaring examples of 'weak links', but in the view of many, more than 'naming and shaming' is required.⁶¹ Short and long-term policing assistance, sensitively deployed via regional security coordination, can give enormous help to vulnerable developing countries, countries in transition and those traumatised by conflict.⁶² To help train, specialise and equip the law enforcers of these at-risk states will benefit them, their communities and all of us. The remarkable effects on morale that goes with sound leadership, adequate equipment, best practices and practical training should not be underestimated. Some law enforcement agencies in the Asian region are critically short of specialised personnel in the forensic sciences, ICT, law, accounting and investigations, crime prevention and intelligence analysis. In addition, basic training is often rudimentary and leadership (command and control) training limited or military in nature. Endless lists of shortages in materiel are evident, from the most basic items such as radios and vehicles, mortuaries and armouries to the more advanced such as comparison microscopes or advanced electronics and decryption.

As Commissioner Tsang and others stressed, there is real need to put 'words to deeds'. A number of policy and programme initiatives were suggested by many speakers, from increasing regional-level coordination and cross-jurisdictional exchanges in personnel, intelligence and training to the creation of joint task forces and other operational collaborations. Many of these are already taking place and need to be expanded as rapidly as possible while continuing to evolve common methods among stronger and wider law enforcement networks. The technically advanced, highly capable policing agencies must provide more direct and strategically relevant assistance to hard-pressed neighbours; they must be triggered not by particular cases but by the mutual benefits of long-term collaboration. They must focus this 'police aid' on the priorities of the evolving regional and international security entities and by undertaking the essential preparatory work systematically in the field environment. The call has been made for agencies like the Hong Kong Police to become both an active interlocutor and

⁶¹ FATF has adopted the 'naming and shaming' approach in relation to banking reform in tardy jurisdictions. Shaming helps in states where the impact of 'black listing' on investment confidence would be crippling but not in territories whose principal source of public revenue are the provision of tax havens and 'flags of convenience'. The FATF's 13th Annual Report (June 2002) presented under the Presidency of Hong Kong reports Hungary, Israel, Lebanon, and St. Kitts and Nevis were removed from the list of NCCTs but the following countries remain on the 'black list': Cook Islands; Dominica; Egypt; Grenada; Guatemala; Indonesia; Marshall Islands; Myanmar; Nauru; Nigeria; Niue; Philippines; Russia; St. Vincent and the Grenadines; and Ukraine. For updated information on 'safe havens' see: www.oecd.org/EN/document/0,,EN-document-notheme-3-no-4-43930,00.htm or generally www.fatf-gafi.org/ and www.cfatf.org/eng/.

⁶² There is an important role for professional associations and business corporations to play in fostering business ethics and contributing financial and other resources to public police, notably in the field of training. Many examples of effective partnerships between public police and private security occur; however, the form of assistance is often limited by commercial self-interest. The payment card industry's crucial contribution to Interpol's Universal Classification System for Counterfeit Payment Cards and their routine support in operational, training and computer support for public agencies is a good example.

an international and regional partner in transnational law enforcement and crime prevention. An emphatic response has been given by the positive offer to further extend training and other assistance.

Despite the muscular image of police, much of modern policing revolves around the intelligent management of information. Police are now 'knowledge' rather than 'craft' workers and this is increasingly so as the full impact of the 'information age' is realised. High-order research and analytical skills and communication skills are increasingly needed along with traditional skills and discipline. Shortages in specialities such as forensics expertise in computing, law and accounting, as well as statistical evaluations and communications, are now widely encountered. The traditional sources of this expertise are the public universities and institutes of higher education. Many of these educational institutions, including those in the advanced economies of Asia, need closer links with policing institutions. Policing, criminalistics and criminological studies (and related research) are typically the poor cousin to the public education of the nursing, legal and other professions. Training and retaining trained agents will be a major challenge, and reliance on in-house or short-term training will no longer serve the need for professionalism and continuous learning. There are an estimated five million police officers in Asia; around 5% of these are graduates but many are barely literate. If we are to address the myriad problems faced by modern policing and invest in prevention and intelligence, then due recognition must be given to investment in knowledge and the research that feeds it.

