

Criminal Law

Trans-national crime: the great danger

by Sir Ivan Lawrence

It is time we woke up to the very real and frightening danger presented to national economies and societies by trans-national organised crime.

Three years ago, the Home Affairs Select Committee received authoritative evidence that the total annual proceeds from the international drugs trade alone was £500 billion – greater than the combined GDP of Sweden, Denmark, Norway and Finland and approaching the combined GDP of Canada and Australia. There is no reason for thinking that the situation has improved since many countries are doing little about the threat.

NEW TIMES

Thirty years ago, Joe Bananas, a pillar of the American mafia, arrived by plane to assess the possibility of spreading gaming crime to Britain. He was met on the Heathrow tarmac by our own gangland bosses, the Kray twins and sent away, so it is said, with a flea in his ear. Further mafia involvement in this country at that time was ended with the help of determined action by the Metropolitan Police and the government.

We have come a long way since those relatively crime-free days. The illicit drugs trade has spread like an epidemic throughout the entire world. Old-style organised crime has diversified and expanded from armed robbery, bootlegging, protection racketeering, and tax evasion into arms and nuclear material smuggling, massive vehicle theft, illegal immigration, the counterfeiting of goods and money, antique and fine art theft, company fraud, benefit fraud, European Union fraud and money laundering on an incredible scale. To see the potential, one only has to realise that if the £17m from the Brinks-Matt gold bullion robbery had been invested in banks and businesses, it would be worth between £50m and £100m today.

International trade has greatly expanded and with it the removal of barriers to the free movement of goods and persons. International travel has proliferated. The electronic revolution has meant that vast sums of money can now be transferred along the electronic

super-highway in the twinkling of an eye, without any police knowledge, until it is too late for action. The disintegration of the Soviet Union and with it their central controls, has unleashed an estimated 4,000 criminal gangs with 40% of the Russian GDP alone now said to be controlled by organised crime. There has been the consequent emergence of small, newly independent, vulnerable states seeking a fast track to stability, recognition and economic success. It is no surprise that crime syndicates can now buy governments.

INTERNATIONAL CRIME TODAY

Today a crime might be committed in country A, by nationals of country B, who escape to country C and transfer the proceeds to banks and financial institutions in country D. Before anyone knows what has happened, land is bought in country E, factories are built in country F and businesses are set up to process and launder the money which may be invested, unknown to honest shareholders, in legitimate businesses in still more countries. As Professor Barry Rider, Britain's foremost expert in economic crime has pointed out, cross-border activities are now the deliberate policy of trans-national gangs precisely because of the confusion caused to law enforcement agencies by the multiplicity of jurisdictions involved.

Why have we not been made more aware of all this? Why have we been so preoccupied with local burglaries, vandalism, car crimes and drunken affrays, when an epidemic of crime is sweeping the world which is so serious that it has infected and could eventually destroy whole societies? Recently, Jesus College Cambridge hosted the Fifteenth International Symposium on Economic Crime with 900 international lawyers, policemen, administrators and politicians attending from over 90 countries, with no mention in any of our daily newspapers!

International drug trafficking has certainly been well covered by the media but its full significance may have escaped

us. Economic crime is often complicated, incomprehensible and therefore boring. It is usually relegated to the business supplements which few of us bother to read. There may be sheer disbelief at the scale of the problem. Banks may be reluctant to publicise their vulnerability to money launderers and computer hackers; they may argue that in any transaction it may be impossible for them to separate legitimate from illegal money. Governments may ask why they should accept jurisdiction for part of this cycle of trans-national crime when other governments do not seem to bother.

BRITAIN'S CONTRIBUTION

We in Britain have been building up our own defences – though too quietly. We have helped to set up Europol to coordinate the activities of police forces in the EU and we have worked with the Council of Europe to establish conventions which embrace more countries. We have liaised with Interpol and with the G7 countries to establish a financial action task force. We co-operate with UN agencies in introducing drug control programmes. Our bilateral crime-busting links with the US and the Commonwealth have been strengthened by stationing British operatives on foreign soil to gain intelligence and to advise and to help to develop defensive techniques elsewhere.

GLOBAL CO-ORDINATION

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We have reorganised our national police force so that it can deal more effectively with organised crime. We have set up and now given statutory status to the National Criminal Intelligence

Service which co-ordinates financial and other information worldwide. It is obvious that information exchange, tip-offs, joint planning and joint operations go straight to the very heart of the solution to global crime.

We have done more. We created a Serious Fraud Office which has been dealing, with some success, with the most serious frauds. We are reorganising the Securities and Investments Board to monitor more effectively the behaviour of financial institutions. We have improved legal co-operation between ourselves and other countries by, for example, extending extradition agreements to Spain and Argentina. We have improved our laws so that money laundering is not just considered as an arm of fraud, but as a crime in its own right. We require banks and other financial institutions to report all suspicious transactions, to require the proper identification of customers, and to train their staff to recognise money-laundering. We have enabled our courts to order the removal of any money in the possession, not merely of convicted drug traffickers, but of others convicted of serious crime. It is obvious that, without profit, economic crime would die.

SPOT CHECKS

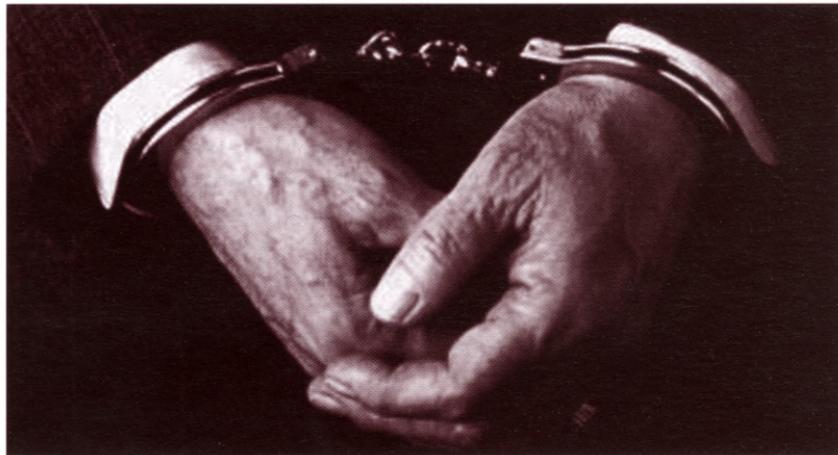
Perhaps it is time for the courts to require anyone found in possession of a large sum of money with no explanation and for which no criminal offence can actually be proved, to forfeit it. If it has been legally obtained, the possessor would surely be able to say so! Customs & Excise have had similar powers in Britain for years without any public outcry and other countries are introducing similar legislation.

THE RECENT HISTORY OF LEGISLATION

Although hotly challenged by some lawyers, the last government legislated to limit the disclosure of sensitive material which might be of use to criminals, to permit the admissibility of documentary evidence when witnesses are too frightened to turn up to court to give oral evidence, and to prevent the subversion of criminal trials by the intimidation of jurors and interference with witnesses. We stood out against our European partners in refusing to dismantle our island system of border controls which would have facilitated the passage of international criminals and their goods. We were also planning the introduction

of identity cards in a limited form which would have played an additional part in fighting international crime. But there is more to be done and, as the psalmist says, 'the matter is urgent'.

We must remove bureaucratic drag and unnecessary delay by making the channels for international legal co-operation more effective. Requests for other state action need to be more



speedily addressed. We must persuade more countries to extend their money-laundering laws from drug offences to all serious crime. We need to persuade all our EU partners to ratify the Europol Convention so that we can operate a EU computer-aided money-laundering information system. Here in Britain, we must see what can be done to increase the money we have so far been able to retrieve with the profits of crime legislation from the pitifully small sums of £5m for drug offences and £13.7m for all crime.

TAKING RADICAL STEPS

We recognise that governments in free societies do have the problem that, with the exception of data protection laws, we have precious little control over information technology or the day-to-day operation of banks and financial institutions. We have, it is true, given extended powers of investigation to combat serious fraud, and we have sharpened the supervisory powers and organisation of the Securities and Investments Board. But unless we extend criminal or civil sanctions to make it far more painful for banks to refuse to disclose computer fraud, it may always be too much in the commercial interests of such institutions to remain silent. Surely the time has come to consider further changes to our system, still so closely attuned to a bygone age?

Should we not now admit the contents of authorised telephone taps and bugging devices in evidence in our courts? There seems to be little justification for not doing so. We should consider extending the powers we gave in 1987 to the Director of the Serious Fraud Office in serious frauds to require explanation and documents to other serious crimes. Perhaps it is time for the courts to

require anyone found in possession of a large sum of money with no explanation and for which no criminal offence can actually be proved, to forfeit it. If it has been legally obtained, the possessor would surely be able to say so! Customs & Excise have had similar powers in Britain for years without any public outcry and other countries are introducing similar legislation.

TIME FOR ACTION

Of course there are serious civil liberty issues to be fully considered, but at the end of the day we will have to decide what is more important for the protection of a free society: limitations to traditional freedoms like the right to silence, or the destruction of all our freedoms by organised crime.

What is beyond any doubt is that as national boundaries have become more and more obsolete, we must do more to secure international co-operation between governments and financial institutions.

If we want to keep our freedoms, then we must adapt our traditional legal concepts. If we are not prepared to make some sacrifices to counter the devastating threat that trans-national organised crime presents, we might one day lose those freedoms completely. 

Sir Ivan Lawrence QC
former Chairman of the Home Affairs Select Committee