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**REDEFINING ORGANISED CRIME:  
COMMENTARY ON A RECENT PAPER BY PHIL DICKIE AND PAUL WILSON**

This paper will consider issues raised in the paper “Defining Organised Crime: An Operational Perspective” by Phil Dickie and Paul Wilson, which appeared in this journal earlier in the year.<sup>1</sup>

Like Dickie and Wilson, we will address a long-standing problem for both criminologists and law enforcement officers — the definition of organised crime. However, unlike Dickie and Wilson we suggest that a sound definition of organised crime ought to be integral to the law enforcement effort against organised crime. The paper proposes an alternative definition which may be useful for both law enforcement and academics working in this area. Our paper will begin with a commentary on that of Dickie and Wilson and then move to a discussion of conceptual modelling of organised crime networks and activity.<sup>2</sup>

**THE NEED FOR A DEFINITION**

The definition of organised crime has been a difficult conceptual problem almost since the phenomenon was first recognised.<sup>3</sup> Although there have been many previous attempts at definition, few of these have had any significant value.

The problem of defining organised crime is one which frequently confronts the National Crime Authority (NCA). As a national agency responsible for attacking organised crime, the NCA needs to have a clear understanding of the types of criminal activity which fall within its jurisdiction, and those which do not. Without such an understanding, it is difficult to decide whether or not to become involved in particular inquiries, nor would we be able to decide upon strategies for organised crime reduction.<sup>4</sup> Academics and criminologists face similar difficulties when approaching the problem at a conceptual level. Unless the boundaries of a particular field of study are clearly articulated, it will be impossible to determine whether conceptual models or theories will have general application within that field. Moreover, the lack of a definition will make it impossible to define the “data set” under consideration. This in itself will make the process of analysis all the more difficult and may hinder the development of sound theories or viable conceptual models.

**THE DISTINCTION BETWEEN DEFINING AND ANALYSING ORGANISED CRIME**

Before discussing earlier efforts at defining organised crime, it is necessary to recognise that the task of defining organised crime is distinct from its analysis or investigation. A

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1 Dickie, P and Wilson, P, “Defining Organised Crime” (1993) 4/3 *Curr Iss Crim Just* 215.

2 Although this paper draws upon previous work of the National Crime Authority (NCA) and has been written by two NCA officers, it should not be regarded as official NCA policy nor should it be assumed to reflect the views of the organisation as a whole.

3 Perhaps surprisingly, Australian law enforcement agencies appear to have been more concerned with this issue than our larger and older counterparts overseas. Moreover, we appear to have progressed somewhat further in our analysis.

4 If we do not know what organised crime is, how could we develop ways to fight it?

definition will not necessarily assist the development of conceptual models, nor will it assist with gathering evidence or launching criminal prosecutions. A definition will provide an understanding of what organised crime is and, more importantly, what it is not. Without such a definition we will be continually presented with fundamental difficulties when attempting to measure the extent of organised crime, when debating its nature, or when developing investigative or prosecution strategies.

Dickie and Wilson correctly stress the importance of researching and understanding the nature and extent of organised crime and of its impact on society.<sup>5</sup> It would be a mistake, however, if we were to demand that our definition of organised crime also encapsulate a comprehensive conceptual model to explain the nature or structure of organised crime, or the forms that it can take. Defining organised crime is one important task — developing conceptual or analytical models of organised crime is another task entirely. A failure to differentiate between those two activities will inevitably result in confusion. We will address each of these issues in turn.

### PREVIOUS DEFINITIONS OF ORGANISED CRIME

Dickie and Wilson refer to previous work by Geason<sup>6</sup> and offer the following characterisation of certain previous definitions of organised crime:

Starting with the definitions generally current in law enforcement or in Commissions of Inquiry into the operation of major criminal syndicates, it appears that, in essence, they derive from some combination of the following propositions:

- Organised crime is crime that is organised;
- Organised crime is crime committed by organisations;
- Organised crime covers certain defined offences.<sup>7</sup>

Such circular definitions are of very limited assistance to any analysis of organised crime.

Dickie and Wilson are correct in rejecting these propositions as possible definitions, although their argument is somewhat flawed. The first proposition, as Dickie and Wilson point out, is clearly a tautology and therefore “circular”. The second proposition may appear similar to the first, but it is not circular. It indicates that any and all illegal activities committed by an organisation (as opposed to individuals or groups of persons who do not comprise an organisation) would be described as “organised crime”.<sup>8</sup> This is not an acceptable definition, as it excludes matters that may be properly regarded as organised crime — such as multi-tonne cannabis importations undertaken by loose-knit and non-hierarchical groupings of criminals. Similarly, that definition would include matters that would not generally or properly be regarded as organised crime — for example; a decision to breach a tree-preservation order by an excavation company. The

5 The NCA and CJC are both undertaking strategic intelligence work of that kind.

6 Geason, S, “Definitions of Organised Crime and their Implications” (1989) mimeographed paper, Australian Institute of Criminology, Canberra.

7 The *NCA Act* 1984 is cited.

8 That definition would only become circular if we chose to define “organisation” as “the entity that commits organised crime”. Clearly, that is not the conventional meaning of the term.

third proposition is not circular either.<sup>9</sup> As with the second proposition, however, this is not an acceptable definition as not every instance of every specified offence (murder, for example) will always be a manifestation of organised crime.<sup>10</sup>

Dickie and Wilson then describe what they perceive as a different type of definition:

The next level of definition delineates organised crime by one or a number of inherent or common characteristics (typically varieties of criminal activity), the presence of corruption and the role of violence.

Dickie and Wilson criticise this approach for failing to provide an understanding, from a multitude of perspectives, of the environment in which organised crime exists. Such a task is not only impractical, it is also unnecessary. As stated earlier, the task of definition is, and must be, distinct from conceptual analysis of that kind.

Dickie and Wilson also refer to two other definitions of organised crime. The first is provided by Mr Fitzgerald, QC, while the second is provided by Bersten:

A working definition might focus on the destination of the proceeds of crime. If they stay with and are used on 'legitimate' expenses by the people directly engaged in misconduct, then the crime is clearly local. If a 'cut' goes to others, remote from the misconduct, then the crime is clearly 'organised'.<sup>11</sup>

... organised crime be defined as the field of transactions materially connected to markets in illegal goods and services.<sup>12</sup>

Both of those definitions are clearly unacceptable. Fitzgerald's definition could include Fagan's team of pickpockets, or street prostitutes who pay token amounts to local police to avoid being moved from their beats. Bersten's definition would include every instance of illicit drug supply, illegal gambling and unlawful prostitution, regardless of its size, but would exclude all predatory forms of organised crime, such as armed robbery gangs, organised teams of commercial burglars, and extortion of legitimate businesses by gangs.

Many other definitions of organised crime can be found in the vast body of literature that now exists on organised crime. Those definitions suffer from the same problems identified above, in that they are either "non-definitions", over-exclusive, over-inclusive, or have a number of those failings simultaneously. Examples of such definitions appear below.

9 That definition would only be circular if each of those specified offences (such as murder, extortion, etc) was defined as 'one of those things that comprise organised crime'.

10 Dickie & Wilson imply that the *NCA Act* 1984 defines organised crime in such a manner. That is not really the case. The *NCA Act* contains a definition of 'relevant criminal activity' that the NCA is permitted to investigate. That definition not only contains a list of offences, but also includes notions of conspiracy, substantial planning and organisation, sophisticated methods and techniques, and the usual commission of like offences together with the specified offence.

11 Fitzgerald, G E, "Report of an Inquiry Pursuant to Orders in Council" (1989) Brisbane, cited in Dickie & Wilson, above n1. It should be noted, however, that the full paragraph commences "An exhaustive definition of organised crime is both impossible and unnecessary. ..." In expressing that opinion, Fitzgerald is by no means alone. Similar views have been expressed by Grant Wardlaw (1989), Bill Coad — the director of AUSTRAC (1993), and even by the United Nations Economic and Social Council (1993).

12 Bersten, M, "Defining Organised Crime in Australia", paper presented at the 1988 ANZAAS Congress, Sydney University; cited in Dickie & Wilson.

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## NON-DEFINITIONS

Organised crime is a product of a self-perpetuating criminal conspiracy to wring exorbitant profits from our society by any means — fair or foul, legal and illegal.<sup>13</sup>

## OVER-EXCLUSIVE DEFINITIONS

[Organised crime is] illicit activity aimed at obtaining funds with the involvement of more than two persons over a prolonged period, using commercial channels, violence and influence over the media and the political and judicial circles.<sup>14</sup>

[Organised crime is] criminal activity by structured groups of individuals taking commodities or activities beyond national borders.<sup>15</sup>

## OVER-INCLUSIVE DEFINITIONS

Organised crime is any action undertaken by a group of individuals working outside the law for economic gain.<sup>16</sup>

Organised crime means the activities of any group of persons or organisations involved or suspected of being involved in a criminal conspiracy.<sup>17</sup>

Organised crime is any organisation of two or more people whose object is to gain wealth and/or power wholly, or partly, by criminal means.<sup>18</sup>

... organised crime consists of a continuing criminal activity committed by a group of individuals to gain profits, power or influence.<sup>19</sup>

## MULTIPLE FAILINGS

The Federal Bureau of Investigations defines organised crime as any group having some manner of formalized structure and whose primary objective is to obtain money through illegal activities (over-inclusive). Such groups maintain their position through the use of violence or threats of violence, corrupt public officials, graft or extortion (over-exclusive) and generally have a significant impact on the people in their locales or region or the country as a whole.<sup>20</sup>

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- 13 US President's Commission on Crime in the District of Columbia, 1966, cited in *Definitions of Organised Crime*, an unpublished compendium produced by Bill Palmer and Lindsay McGillicuddy in 1991. (Palmer and McGillicuddy are officers of the Australian Bureau of Criminal Intelligence.) This proposition is more a declaration of sentiment than a definition.
  - 14 Current German law enforcement "consensus" definition, quoted by the German representative at an Interpol Working Party meeting in October 1992 held in Lyons, France. Under this definition, there is no organised crime that does not simultaneously employ violence, and corruption of the judicial system and media manipulation.
  - 15 Proposition from French delegate to the same Interpol Working Party meeting. (See n14.) Under this definition, only international crime can be organised crime.
  - 16 Definition proposed by former NSW Premier Neville Wran in February 1979, in Palmer and McGillicuddy, above n13. Wran's definition would include virtually any crime committed by a group, including shoplifting by a gang of preschoolers.
  - 17 ABCI definition, in Palmer and McGillicuddy, above n13.
  - 18 Victoria Police definition from BCI Analyst Course manual, in Palmer and McGillicuddy, above n13.
  - 19 Definition contained in INTERPOL's 1988 Situation Report on Organised Crime, in Palmer and McGillicuddy, above n13.
  - 20 "Wanted by the FBI: The Mob" (sic), undated but probably 1988 or later, US Dept. of Justice, Federal Bureau of Investigations.

Dickie and Wilson correctly note that many definitions indicate that corruption and violence are essential elements of organised crime. While it is certainly true that corruption and violence are frequently associated with organised crime activities, this is by no means always the case. The presence of violence or corruption within broader criminal activity is not sufficient to prove the presence of organised crime — nor is violence or corruption always necessary for organised crime to exist.

### TOWARDS A NEW DEFINITION

A definition is held to be a statement of those attributes of an entity that will be present in every example of that entity and which only such an entity will always possess. Those attributes are necessary, in the sense that they must always be present — and they are sufficient, in the sense that if all such attributes are present, then the entity must be of the kind defined.

Clearly, the task of finding a workable definition poses numerous difficulties. Indeed, although it was intended by the Commonwealth Parliament that the NCA would be the agency primarily responsible for counteracting organised crime in Australia, the *NCA Act* 1984 avoids any use of the term — opting instead for a definition of “relevant criminal activity” which specifies certain offences and certain general characteristics.<sup>21</sup> That approach has proven sufficient both in bringing prosecutions and when managing day-to-day operational activities of the NCA.

Dickie and Wilson suggest that a definition of organised crime is not required:

We suggest an approach to ‘organised crime’ that moves away from formal definitions towards a specific analysis of three critical factors. These factors are the pattern of criminal organisation, the degrees of influence exercised over markets and regulators and the economic significance of illegal activities.<sup>22</sup>

Although we concur with many of the points by Dickie and Wilson, we believe that it would be premature to abandon all attempts to define organised crime. Dickie and Wilson have not established that such a definition is either impossible or unnecessary.<sup>23</sup> Rather, they have identified apparent deficiencies in a number of previous attempts to define organised crime. This does not mean that a definition will never be found. Indeed, we believe that consideration should be given to the definition contained in the NCA’s Corporate Plans for 1991–1994 and for 1992–1995. That definition is as follows:

Organised crime is a systematic and continuing conspiracy to commit serious offences.

Although further debate would be possible on the precise meaning of the words “systematic”, “continuing”, “conspiracy” and “serious” (if not others as well) it was intended that these words would have their conventional meaning in common English usage. The term “systematic” conveys the notion of prior planning and a methodical approach. “Continuing” indicates that the conspiracy endures — it is not piecemeal or

21 See footnote 9 above.

22 Above n1 at 224.

23 As mentioned above (see n11 above) a number of authors have characterised the search for a definition as futile. Those authors have not, however, proven their case beyond mere assertion.

transient. At law, “conspiracy” need only involve two persons, but clearly the common interpretation would involve a group of persons working together for a common purpose. Finally, the word “serious” indicates that the crimes will not be misdemeanours, but matters which have a significant impact on victims or on the community as a whole.

This definition has proven adequate for describing those forms of criminal activity which are targeted by the NCA. It includes examples of criminal behaviour which are commonly considered to be organised crime, while excluding those which are not. More importantly, it avoids the problems of circularity or tautology which Dickie and Wilson identified in some other definitions.<sup>24</sup>

### CONCEPTUAL MODELS OF ORGANISED CRIME

Kelly has conducted an extensive review of the literature in this area and has identified some nine conceptual models (or “theories on the nature of organised crime”).<sup>25</sup> Kelly highlights the different implications of each of these models for the law enforcement efforts directed at counteracting organised crime. The models described by Kelly are:

- *Alien conspiracy theory* — which believes that organised crime did not emerge within our society but was transplanted with the migration of secret criminal societies from foreign lands.
- *Ethnic succession theory* — which holds that a series of repressed minorities (ethnic or otherwise) has each in turn employed organised crime as an expedient means for increasing their status and power within society.
- *Anomie theory* — which believes that society creates organised crime within itself, by extolling certain common success goals while simultaneously preventing a considerable part of the society from achieving those goals by legitimate means.
- *Cultural transmission* — which holds that criminal behaviour is learnt or even taught within a peer group and that organised crime results from the development of communities or neighbourhoods where “gangsters” or “racketeers” are powerful role models for their underprivileged residents.
- *The corporate model* — which regards organised crime as a bureaucracy rationally designed for the purpose of efficiently achieving illegal and profitable goals.<sup>26</sup>
- *The criminal networks model* — which holds that associations of criminals are formed on the basis of mutual trust and/or kinship, thereby facilitating entrepreneurial criminal activity by members of those networks.

24 The NCA’s definition is somewhat similar to a statement made by Fitzgerald, QC, despite his claim that a definition is ‘impossible and unnecessary’. Earlier in his report Fitzgerald stated ‘Organised crime is a term frequently used but rarely defined. It embraces serious crime committed in a systematic way involving a number of people and substantial planning and organisation, sophisticated methods and techniques.’

25 Kelly, R J, “The Nature of Organised Crime and its Operations”, in *Symposium Proceedings; Major Issues in Organised Crime Control*, US Dept of Justice, September 1986.

26 This model recognises the similarities between any legitimate large-scale corporation and organised crime networks in the USA.

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- *The patron-client relationships (“partitio”) model* — which highlights the flexible and mutually beneficial relationships between criminals within organised criminal groups.
  - *Social systems analysis* — which highlights similarities between organised crime groups and closed political systems such as the (former) Soviet Union.
  - *The enterprise theory* — which sees organised crime as the extension of legitimate business practices into illicit areas. This model holds that organised crime is merely a form of business activity on a broad and changing spectrum of the legal and illegal.<sup>27</sup>

While most Australian law enforcement agencies have not formally considered such models, it is interesting to note that the US Federal Bureau of Investigations has recently tended to adopt the corporate model to the exclusion of all others.<sup>28</sup> Such a categorical approach may be symptomatic of the history and structure of that organisation.

Like Kelly, the authors of this paper can see merit in a number of these conceptual models. Several appear to match closely with one aspect or another of a range of organised criminal groups which have been encountered by the NCA. For example:

- consideration of the standover tactics of Triad-affiliated gangs in Chinatowns tends to lend support to the alien-conspiracy theory (notwithstanding the inherent racism of that theory).
- both anomie theory and cultural transmission can find some support in a consideration of waterfront-based organised crime which has evolved within Sydney’s inner western suburbs.
- the partitio model seems to best model the current relationships within that same milieu of organised crime figures.
- both the criminal networks approach and the enterprise model appear to apply to different aspects of certain multi-tonne cannabis importation networks that have operated in Australia in previous years, and they also seem to apply to different elements of the so-called “Sydney underworld”.
- the criminal networks model also seems to approximate certain cannabis cultivation and distribution syndicates based in rural New South Wales (ethnic background being of secondary if any importance).
- the corporate model appears to approximate the operation of certain cocaine-importation networks recently uncovered by other law enforcement Australian agencies.
- investigations of certain major organised fraud offences have provided definitive support for the enterprise model.

It is possible to find some merit in most of the conceptual models outlined above. However, it should be recognised that organised crime, like other forms of crime, is not

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27 The NCA has debated a number of other possible conceptions of organised crime, but in essence they are reducible to one or another of the nine articulated by Kelly.

28 However, the situation is somewhat confused by the fact that FBI Director William S Sessions has described the current FBI approach to attacking La Cosa Nostra as ‘the new Enterprise Theory of Investigations’ (sic).

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static, but is constantly changing in order to adapt to the environment in which it operates. Different types of organised crime will suit alterations in law enforcement strategies and changing socio-economic conditions in different ways. At various times, one or several of the above conceptual models may apply to a particular type of organised criminal activity or to a particular organised crime group.

The one-dimensional approach to organised crime advocated by the individual models outlined by Kelly, and by other writers who have attempted to posit a theory of organised crime, does not allow for the range of often contradictory and conflicting elements within known examples of organised crime. The NCA's experience has suggested that a number of different models can assist in an understanding of particular facets of any one organised crime group, while any one model can apply to similar aspects within a number of different organised crime groups. Thus, there would appear to be little reason to imagine that only one model will be able to explain all or even most organised crime. Under such circumstances, seeking a universal theory of organised crime may prove as unproductive as the quest for similar theories of human behaviour in social sciences such as psychology and sociology.

## **CONCLUSION**

While the authors of this paper have adopted a different approach to that of Dickie and Wilson, similar conclusions have nevertheless been reached. We believe that the investigation and prosecution of organised crime is not enough. We advocate the study of organised criminal groups in order to understand their environment, development, internal structure and power relationships, lines of communication and impact on the broader community. This kind of intelligence-driven approach will enable decisions about future targets and strategies to be made on the basis of insight, rather than intuition. It may enable the discipline of criminology to have a greater understanding of the information gathered by law enforcement agencies, or may even lead to innovative solutions to organised crime problems. A sound understanding of the definition of organised crime and of the various conceptual models will be integral to any such analysis of the phenomenon of organised crime.

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\* Although both authors are NCA officers, the views expressed in this article are their own and not those of the organisation with which they are affiliated.