I. INTRODUCTION

Economic crime including money laundering is a part of the major transnational organized crime. In order to combat economic crime, domestic, regional, and international law enforcement cooperation is required.

Owing to the generally recognized difficulty of giving an exact definition of economic crime, we agreed that we should simply define economic crime as “offences which cause or risk causing substantial loss” for purposes of the discussions in our Group Workshop (See Council of Europe, “Report of the European Committee on Crime Problems on Economic Crime”, 1981, p.16). Money laundering is the processing of criminal proceeds, generated as a result of predicate offences, including economic crime, to disguise their illegal origin, or to “legitimize” ill-gotten gains by disguising the sources or changing the form (See Asian Development Bank, “Manual on Countering Money Laundering and the Financing of Terrorism”, March 2003, p.4. See also the United Nations Convention against Transnational Organized Crime (2000 UN TOC Convention), Article 2 (h)).

It appears that the trend with economic crime of this generation is to launder all the proceeds at the end of the day; therefore, there is a need to investigate economic crime focusing also on the possibility of money laundering.

Banks and other financial institutions can be major target in laundering operations because they provide a variety of services and instruments that can be used to conceal or disguise the source of money.

Money laundering damages the reputation for integrity of financial institutions, and frightens away honest investors. Money launderers are criminals and, if the proceeds of crime are successfully laundered, will cause or risk causing further substantial loss to the financial sector and other large sectors of the economy. It is therefore important for each government to institute a comprehensive domestic regulatory and supervisory regime for bank and non-bank financial institutions, and to do everything possible to prevent and detect economic crime within its system. It is also important for all financial institutions to do their best in strengthening their cooperation with respective governments, especially with law enforcement agencies or prosecutors.

Since virtually all the members of our group are experienced investigators or prosecutors, we decided to compile our report on the basis of concrete economic crime cases in each country, rather than on the basis of the hypothetical case scenario prepared and provided by UNAFEI, although we used it in order to facilitate our discussions.
II. ANALYSIS IN THE TRENDS AND MODUS OPERANDI OF ECONOMIC CRIME INCLUDING MONEY LAUNDERING IN EACH PARTICIPANT’S COUNTRY

Although from the group discussions that we held it appears that economic crime is common in the respective countries, the variance that was observed was the modus operandi of economic crime.

A good example is Pakistan, the type of economic crime that they have experienced includes embezzlement, counterfeiting, kickbacks, tax evasion, banking and investment frauds, telephone fraud and smuggling.

The modus operandi of most economic crimes shows that there is connivance amongst members of legitimate organizations; sometimes including bank officials and government officials and monetary reward is offered to them for illegal services rendered. Sometimes bogus securities are offered to the banks when criminals get loans from the bank. Criminals forge payment orders, cheques and other financial instruments. Criminals also acquire false identity cards for their criminal activities. There are also organized criminal groups who print forged documents to facilitate fraudulent transactions. There are also criminals specializing in forging signatures. It is interesting to note that sometimes not all the criminals know each other within their syndicates while committing crimes.

The prevalent forms of economic crime in Japan are loan sharking, the “It’s me” scam and fictitious bills. In the “it’s me scam”, elderly people who live apart from their children or grandchildren often become victims. Criminals call a victim pretending that they are the child or grandchild of the victim and say that they are in urgent need of money because they are being held responsible for a car accident or they are chased by creditors for repayment of a loan. The victims often pay the money into the designated account believing that the caller is their real child or grandchild.

In fictitious billing, offenders send fictitious bills to many people using postcards and e-mails arguing that the fee for a pay web site is due. Offenders say “Non-payment is on our record and there is no room for argument. Unless you make the payment immediately, we will visit your house or office to collect the money” and make the victims transfer the money to the designated account without giving them enough time to check the legitimacy of the charge.

Lists of prospective victims who are vulnerable to this type of crime, such as the elderly who live alone or Internet users, are distributed among criminals. Based on this list, criminals select victims to commit these crimes against.

Fictitious bank accounts and cell phones are used to contact victims or transfer and receive money in these crimes, including loan sharking. Fictitious accounts are also used to conceal proceeds of crime.

These crimes are professionally conducted by organized groups comprising multiple members. Organized criminal groups called Boryokudan (Yakuza) are often involved. It is believed that they make up a large scale organization with members playing different roles such as acquiring fictitious accounts and cell phones.

Zimbabwe is also experiencing various forms of economic crime including money laundering. The major forms of economic crime are fraud, forgery, theft by conversion (common law crime), violation of the Prevention of the Corruption Act and tax evasion. The modus operandi in the fraud is that suspects connive to purport that some goods have been supplied to a company or government department. A fictitious invoice is made to facilitate payment. When a payment is effected, then the suspects share the crime proceeds. Usually this money is invested with asset management companies to hide their ill-gotten money. The other form of fraud is that suspects alter figures on bank instruments like cheques, demand drafts, payment orders and traveller’s cheques.

The common economic crimes in Nepal are tax evasion, human trafficking and money laundering. In tax evasion cases, real business transactions are not shown to the income tax authorities. To evade VAT (Value Added Tax) excise duty the businessman undervalues their production and is involved in the practice of non-billing. In the import trade the businessman commonly uses under invoicing of goods; their incorrect
declaration of imported goods enables them to evade custom duties. In Nepal, when human trafficking takes place victims are normally informed that they are being taken for employment abroad. Another common method is pseudo-marriage. In this case, a trafficking agent gets married with a victim without fulfilment of legal or customary proceedings, and takes his “wife” out of the country and sells her.

Hundi/Hawala (an illegal underground banking system) is a common method of money laundering in Nepal. The Hundi people have their network almost all over the world. Instead of transferring money through official financial institutions money is transferred by individuals to different countries. The increase of Nepalese people in foreign employment has provided an opportunity to the Hundi people.

In Indonesia there are many forms of economic crime like smuggling, tax evasion, drug trafficking, human trafficking, violation of copyrights, bank frauds, embezzlement, credit card fraud and fraud of certificates of bills of lading. Indonesia has criminalized money laundering but they are facing many difficulties in implementing the laws.

In Myanmar, the following offences relating to economic crimes are occurring like forgery, misappropriation, cheating, misuse of communications technologies, illegal export and import, offences relating to the investment law, offences relating to trade, banking frauds and offences relating to foreign exchange. The modus operandi of forgery is as follows: Criminals imitate letterheads and documents and they use these documents for the company concerned to do business transactions pretending to be real owners. Criminals also forge documents to get import and export licenses. In bank fraud criminals get loans from the banks using bogus securities. Criminals are involved in trading of foreign currency on the black market without permission of the Controller.

In Afghanistan although they are experiencing economic crime including human trafficking, counterfeiting of money and money laundering, enforcing relevant laws is very difficult because of the volatile post war situation and instability in the country.

It is interesting to note that the modus operandi of economic crime is similar in many developing countries.

III. CURRENT LEGAL SYSTEMS, LAWS AND PRACTICES IN EACH PARTICIPANT’S COUNTRY

All countries of our group members are party to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988 UN Vienna Convention). Afghanistan and Myanmar are party to the 2000 UN TOC Convention whilst Pakistan, Zimbabwe, Japan, Indonesia and Nepal are signatories to this Convention. All our group member countries are signatories to the 2003 United Nations Convention against Corruption except, Myanmar.

In Afghanistan, although they have laws which control economic crime including embezzlement, human trafficking, counterfeiting of money and bribery, these laws are not effectively enforced due to the above-mentioned reasons. A Commission of Law has been constituted to amend the laws.

In Indonesia there are laws controlling economic crime relating to banking, copyright, trade and service marks, and there is a provision in Law No. 15 of 2002 which criminalizes money laundering (amended by law No. 25 of 2003).

In Pakistan, there is a legal framework for the prevention of economic crime, which has various penalties under the provisions of the Pakistan penal code, Foreign Exchange Regulation Act, 1947, the Customs Act, 1969, Import and Export (Control) Act, 1950, and the Banking Companies Ordinance, 1962.

In Pakistan they are in the process of enacting Anti-Money Laundering Law, however, the Government of Pakistan is taking various legal measures to curb the menace of economic crime including money laundering. For example, fund raising and its laundering for terrorism is an offence under the Anti-Terrorist Act, 1997. The control of Narcotic Substances Act, 1997 also provides for forfeiture of assets derived from trafficking in narcotic substances. Under the National Accountability Bureau Ordinance 2000, all banks and financial
institutions are required to report all unusual transactions that could relate to illegal activities to the National Accountability Bureau forthwith. Thus, Pakistan is combating economic crimes, including money laundering, using the above mentioned laws.

In Japan, there is a legal framework for the prevention of economic crime, which has various penalties under the provisions of the Penal Code, Commercial Code, Anti-Monopoly Law, Securities and Exchange Law, Patent Law, Trademark Law, Copyright Law, Unfair Competition Law, Income Tax Law, Corporation Tax Law, Money lending Business Law, etc.

The Anti-Drug Special Law 1992 criminalized money laundering and established the suspicious transaction reporting system for drug crime. The Anti-Organized Crime Law 2000 expands the scope of predicate offences to other serious crimes. The Japan Financial Intelligence Office (JAFIO) was established in February 2000, which collects and analyzes suspicious transaction reports and disseminates the information to law enforcement agencies. The Law on Customer Identification and Retention of Records on Transactions by Financial Institutions came into effect in 2003. This law obligates financial institutions to perform customer identification procedures and keep records of their transactions.

In Zimbabwe they have the legal systems and laws for combating economic crime, including money laundering. For economic crime they have the Exchange Control Act, Prevention of Corruption Act, Serious Offences Act, Insurance Act, Banking Act, Reserve Bank Act, Criminal Procedure and Evidence Act, Postal and Telecommunications Services Act, Sales Tax Act, Audit and Exchange Act, Companies Act, Public Accountants and Auditors Act and Building Societies Act. In addition, there is the Bank Use Promotion and Suppression of Money Laundering Act for combating money laundering. They also use the Serious Offences Act for combating money laundering. The criminal system is separate from the civil system; however, criminal cases and civil cases can take place at the same time.

The Nepalese law has addressed economic crime from its early period by criminalizing such crimes. There is the Trafficking of Human Beings Control Act 1980, Prevention of Corruption Act 2002, Narcotic Drug Control Act 1996 and Foreign Exchange Regulation Act 1962. In Nepal important tax statutes including the Income Tax Act 2002, the Excise Duties Act 2002 and Value Added Tax Act 1993 have stringent provisions for tax evasion. In corruption cases one main change has been recently brought to the existing system by a new act, which introduced the crime of corruption on the basis of accumulation of property or high expenses not in consonance with the known source of income of a public officer.

Money laundering in Nepal is carried out through bank services. Money launderers receive a letter of credit (L/C) by the bank to import goods. The importer is required to submit a copy of the bill of entry within a specific period from the date of issuance of the L/C. But a forged bill of entry is presented to the bank to transfer the foreign currency against a non-existent import. The L/C scandal is one of the examples of money laundering. In cases detected by the L/C commission 92 firms transferred US $35 million to third countries. The investigation revealed that in many cases no import had taken place, the parties of the L/C also could not be traced. The money deposited in the bank at the time of the issuance of the L/C was in cash. The bank secrecy law is not applicable to the investigation of corruption and money laundering cases.

Myanmar has a legal system and laws for combating economic crime, which are the Control of Imports and Exports Act, Foreign Exchange Regulation Act, Suppression of Corruption Act, Revenue Law, Central Bank Law, Monetary Enterprises Law, Insurance Law, Overseas Employment Act and Investment Law. The Control of Money Laundering Law and rules on suppression of money laundering and the Law on Mutual Assistance in Criminal Matters were enacted, and Myanmar has recently become a party to the 2000 UN TOC Convention.

Most of the countries of our group have laws to curb economic crime; however, we found that some countries have not yet criminalized money laundering, although they have some laws to control criminal activities relating to money laundering.
IV. PROBLEMS OR CHALLENGES FACED BY THE PARTICIPANT’S COUNTRIES AND THE INTERNATIONAL COMMUNITY

We realized that, in most developing countries, our problems and challenges are more or less the same. However, we also realized that the use of bank accounts opened using fictitious or fraudulent identification by criminals occurs in most of our countries, including Japan.

In Japan, organized criminal groups called Boryokudan (Yakuza), with members exceeding 44,000, are suspected of being involved in various forms of economic crime including the “it’s me” scam, fictitious bill scam and loan sharking. In these criminal acts, cell phones and the Internet are used to contact fellow criminals or victims, in which case, electronic surveillance and undercover operations may be effective. These special investigative techniques, however, are very limited in Japan due to various constraints such as the protection of human rights of suspects. Wiretapping has been used only a few times since the Communication Interception Law came into force in 2000, and undercover operations have been used in very limited occasions, namely investigations into drugs or firearms trafficking.

Nepal and Pakistan do not have specific anti-money laundering laws, although steps are being taken by both governments to enact the laws, and they are using other economic crime laws to combat money laundering.

In Nepal, authorities are combating money laundering by enforcing other economic crime laws such as the Drug Control Act, Anti-Corruption Act, Foreign Currency Act and Tax Evasion Act.

Some developing countries are facing the problems of extradition of suspects from other countries. A good example is that of Zimbabwe where suspects externalized (exported) foreign currency and defrauded investors of large volumes of money and fled to the United Kingdom. Zimbabwe is not receiving cooperation from the United Kingdom to extradite these suspects because the United Kingdom government takes the word of the suspects that they are political refugees.

Member countries found that, in some instances, there is little or no mutual legal assistance rendered because some countries do not cooperate with foreign investigations.

Members of this Group agreed that the public were not being sufficiently informed about economic crime including money laundering.

The sentences for economic crimes including money laundering are not proportionate to the gravity of these crimes; therefore, they do not sufficiently serve as a deterrent for these crimes. For example, in Japan and Zimbabwe, although some criminals are involved in defrauding huge sums of money they get away with light sentences.

There is no global uniformity in combating economic crime including money laundering, since in developing countries they lack the resources like computers and camcorders for surveillance, they also lack training in learning effective methods for combating economic crime including money laundering. Thus, the developing countries need technological assistance to upgrade their systems.

V. A SUITABLE AND EFFECTIVE LEGAL SYSTEM, LAWS AND PRACTICES TO COMBAT ECONOMIC CRIME INCLUDING MONEY LAUNDERING AT THE NATIONAL AND INTERNATIONAL LEVEL

A. International Standards

Since most serious forms of economic crime often involves transnational organized criminal groups and international transactions, international standards prescribed in the 2000 UN TOC Convention should be the fundamental basis on which we explore effective measures to combat economic crime including money laundering. All countries should be strongly encouraged to ratify or accede to this Convention as soon as possible. In order to do so, they should enact or amend their domestic laws and regulations in accordance with the articles of the TOC Convention. State parties to the TOC Convention should properly and effectively implement their obligations under the Convention. We also would like to emphasize that the 40 Recommendations adopted by the FATF in June 2003 should be respected by all governments, although we
did not have enough time to compile our report on the basis of extensive discussions on the Recommendations. In this context, it should be noted that the FATF 40 Recommendations have been endorsed by FATF Style Regional Bodies including the Asia/Pacific Group on Money Laundering (APG), of which Indonesia, Japan, Myanmar, Nepal and Pakistan are members or an observer, and the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), of which Zimbabwe is a member.

B. Criminalization of the Laundering of Proceeds of Crime

Countries must have anti-money laundering laws in place. In criminalizing money laundering, countries should seek to apply such laws to the widest range of predicate offences and should include as predicate offences all serious crimes as in conformity with the TOC Convention Article 6 and Article 2(b).

C. Regulatory and Supervisory Regime

Each state should enact laws to institute a comprehensive domestic regulatory and supervisory regime for financial institutions, including banks, in accordance with Article 7 of the TOC Convention. Financial regulatory authorities in each country should play a pivotal role in the supervision of banks and non-bank financial institutions. A regulatory and supervisory regime should ensure that these institutions are complying with customer identification procedures, record-keeping, reporting of suspicious transactions and making efforts to prevent criminal’s use of their channels for the purpose of money laundering and other unlawful transactions. Financial regulatory authorities should be encouraged to have their own administrative regulations in line with the government laws. These regulations must be able to safeguard loopholes against economic crime including money laundering.

D. Investigation, Prosecution, Adjudication and Sanctions

We need to explore ways to improve laws and practices in investigation, prosecution, adjudication and sanctions in order to combat economic crime including money laundering more effectively. Each state should take, or at least should consider taking, the necessary measures to allow for the appropriate use of special investigative techniques such as electronic surveillance and undercover operations by its competent authorities for the purpose of effectively combating economic crime committed or suspected of being committed by an organized criminal group in accordance with Article 20 of the TOC Convention.

Records of all known economic criminals should be kept; this will assist in sentencing them once they are arrested for repeatedly committing these economic crimes. Each individual country should be able to maintain data on statistics for and trends in economic crime, in line with Article 28 of the TOC Convention in order to assist in designing and implementing policing strategies. Investigative agencies and prosecutors must make every effort so that the courts impose stiffer sentences on criminals who have committed serious economic crime including money laundering, taking into account the gravity of such offence (see the TOC Convention Article 11).

E. International Cooperation

Paragraph 14 of Article 16 of the TOC Convention provides the safeguard against the extradition of a person for the purpose of prosecuting or punishing the person on account of his/her “political opinions”. However, such safeguard should be applicable only when the requested State has “substantial grounds” for believing that that is the case, and should not be misappropriated, taking into account the gravity of economic crime which causes or risks causing substantial loss.

Each country should afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to economic crime including money laundering in accordance with Paragraph 1 of Article 18 of the TOC Convention. Each state should also consider the possibility of concluding bilateral or multilateral agreements or arrangements as provided in Paragraph 30 of this Article. In case where a country does not have such agreements or arrangements, the law enforcement authorities of that country should endeavour to explore all possible measures, including using diplomatic channels, to request and obtain assistance from a foreign country. As investigators or prosecutors, we have to make every effort to explore better ways to ensure that effective and rapid assistance may be extended to one another. We should note that we have to make every effort to assist foreign authorities when properly requested, since mutual legal assistance is provided on a reciprocal basis.

In accordance with Article 27 of the TOC Convention, each country should cooperate closely with one
another to enhance the effectiveness of law enforcement action to combat economic crime including money laundering and should, in particular, adopt effective measures to enhance and establish channels of communication between law enforcement authorities in order to facilitate the secure and rapid exchange of information concerning all aspects of economic crime including money laundering. Novel modus operandi or trends in economic crime would be worth sharing internationally.

F. Other Measures

As provided in Article 29 of the TOC Convention, each country should initiate, develop or improve specific training programmes for its law enforcement personnel in order to keep them updated on the rapid evolution of economic crime including money laundering.

In accordance with Article 40 of the TOC Convention, all countries should make concrete efforts in coordination with each other and with international and regional organizations to enhance their cooperation with developing countries, with a view to strengthening their capacity to prevent and combat economic crime. Enhancing financial, material and technical assistance to support the efforts of developing countries to implement the TOC Convention is also essential.

With regard to measures against corruption, in line with Article 7 of the United Nations Convention against Corruption, each country should endeavour to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants that promote adequate remuneration and pay scales, in order to feasibly ensure that they are not corrupted.

It is important to educate employees of financial institutions in order to strengthen their cooperation with law enforcement agencies (See Paragraph 2 of Article 31 of the TOC Convention). To promote public awareness on the modus operandi of economic crime is also essential in order to warn people who are vulnerable to economic crime.

VI. CONCLUSION

It is clear that economic crime including money laundering is an international menace - that being the case, all countries should put their heads together and establish laws that conform to the 2000 UN TOC Convention and respect FATF 40 recommendations. The few countries that have not yet criminalized money laundering must ensure that they have criminalized this monster because all the proceeds of economic crime are laundered at the end of the day. Developed countries must support developing countries in their training programmes and allocation of resources because without expertise and without resources, these developing countries will not be able to tackle modern forms of sophisticated economic crime including money laundering.