Report of the Workshop

# MEASURES TO COMBAT ECONOMIC CRIME, INCLUDING MONEY-LAUNDERING

Eleventh United Nations Congress on Crime Prevention and Criminal Justice
Bangkok, 18-25 April 2005

**United Nations Asia and Far East Institute**
**for the Prevention of Crime and the Treatment of Offenders**
**(UNAFEI)**

**Swedish National Economic Crimes Bureau**

**February 2006**
**TOKYO, JAPAN**

# PREFACE

It is our great pleasure to publish this comprehensive report of the Workshop on Measures to Combat Economic Crime, including Money-Laundering held at the Eleventh United Nations Congress on Crime Prevention and Criminal Justice, Bangkok, Thailand, 18-25 April 2005.

The Workshop, held from 20 to 21 April 2005 as an official component of the Congress, followed the mandates given by the United Nations General Assembly, most specifically by its resolution 56/119 of 23 January 2002, which stated that the panels of experts "shall hold workshops dealing with the topics of the congress", and resolution 58/138 of 4 February 2004 which decided that one of the issues to be considered by workshops within the framework of the Eleventh United Nations Congress on Crime Prevention and Criminal Justice shall be "Measures to combat economic crime, including money-laundering".

The Workshop was organized by the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI), which was invited to assist in the preparation and organization of the Congress Workshop as one of the institutes of the United Nations Crime Prevention and Criminal Justice Programme Network by the General Assembly resolution 56/119, and the Swedish National Economic Crimes Bureau.

The organizers invited eighteen prominent experts from all over the world which comprised a moderator, two sub-moderators, a scientific rapporteur and fourteen panellists. In addition, the Workshop had two keynote speakers to whom we express our sincere gratitude for their contribution. The names and titles of these experts can be found in Annex A.

The Workshop consisted of two keynote speeches and four panel discussions: two panels (Panels 1 and 2) focusing on economic crime and the other two (Panels 3 and 4) on money-laundering. In Panels 2 and 4, discussion was based on the practical issues appearing in the hypothetical case elaborated beforehand and included in the annex of the background document of the Workshop (A/CONF.203/13), which should be read making reference to the PowerPoint presentation contained in Part I, C of the present report.

This publication is a compilation of the transcripts of all the presentations and discussions of the Workshop, and all the papers and PowerPoint presentations made available to the Workshop.

The organizers of the Workshop hosted four preparatory meetings to identify the issues to be covered by the Workshop, as well as how to organize its work. The first meeting was held 13-14 October 2003 in Tokyo, the second in Stockholm 24-25 May 2004, the third again in Tokyo 16-18 September 2004, and finally the Swedish National Economic Crimes Bureau hosted the last meeting on 16 April 2005 in Bangkok, just prior to the Congress. In addition to the moderator, sub-moderator, scientific rapporteur, keynote speakers and panellists of the Workshop, there were many other experts who contributed to the success of the Workshop to whom we would like to express our sincere gratitude. The names of these experts can be found in Annex B. We would especially like to thank Mr. Dimitri Vlassis of the United Nations Office on Drugs and Crime, who provided us with valuable advice both on organizational and substantive matters and Ms. Bronwyn Somerville, of the Secretariat of the Asia/Pacific Group on Money Laundering, who made an essential contribution in preparing the chapter on technical cooperation for the background paper of the Workshop.

We would also like to thank the staff members of UNAFEI and the Swedish National Economic Crimes Bureau for their work in assisting in the preparation of the Workshop, and the present report.

Our special thanks go to Mr. Kunihiko Sakai, the Director of UNAFEI from April 2002 until 1 July 2005, who played an essential role in the organization of this Workshop.

February 2006

Masahiro Tauchi
Director
UNAFEI

Gudrun Antemar
Director-General
Swedish National Economic
Crimes Bureau

## CONTENTS

# I. INTRODUCTION

* This part contains three basic documents that were used in the workshop: the Background Paper prepared by the UN Secretariat; the Programme of the Workshop; and a PowerPoint presentation of the hypothetical case.

## A. Background Paper for the Workshop on Measures to Combat Economic Crime, including Money Laundering (A/CONF.203/13)

United Nations A/CONF.203/13

Eleventh United Nations Congress on Crime Prevention and Criminal Justice

Bangkok, 18-25 April 2005

Distr.: General
16 March 2005

Original: English

Item 6 of the provisional agenda*
**Economic and financial crimes: challenges to sustainable development**

# Workshop 5: Measures to Combat Economic Crime, including Money-Laundering**

## Background paper***

Contents



* A/CONF.203/1.

** The submission of the present background paper was delayed by the need for additional research and consultations.

*** The Secretary-General wishes to express his appreciation to the Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders and the Government of Sweden for assisting in the organization of Workshop 5.

V.05-82371 (E) 300305 310305

# I. Introduction

1. In addition to the transformation of socio-economic structures, the recent rapid developments in communications technology and transportation have promoted globalization, with the growth of transactions and diversification of economic activities, which are becoming increasingly transnational in nature. Together with these changes, which have created new opportunities for growth and development, economic crime has also become a global concern, while the modus operandi of criminal groups has become more sophisticated and the scale of their activities has increased considerably. That trend has been accelerated by the rapid proliferation of computers, the considerable increase in the number of users of Internet services and the expansion of credit-card-based economies. By their very nature, crimes committed by using the Internet as a tool easily transcend national borders and spread all over the world. Criminals fully exploit the Internet and electronic commerce to commit economic crimes transnationally. The transnational nature of those crimes hampers their detection and makes investigation and prosecution more difficult. The tracing and return of proceeds of crime have also become much more complicated. Thus, economic crimes in a globalizing society present a serious problem to the international community and hinder the development of the world economy.

2. The Eleventh United Nations Congress on Crime Prevention and Criminal Justice will offer an opportunity for extensive discussion of the broad issue of economic and financial crime. For the purpose of that discussion, the Secretariat has prepared a working paper (A/CONF.203/7), which raises a number of issues for discussion and describes in considerable detail the problems posed by this form of crime, including the conceptualization of economic and financial crime, and the reasons for which such problems require particular attention by the international community.

3. Workshop 5 offers an additional opportunity for interactive dialogue among government representatives, experts and practitioners with a view to focusing on the extent and impact of economic crime in its multiple manifestations. Such focus will also be necessary in formulating viable and practical policy recommendations and exploring the requirements for national action and international cooperation, including technical assistance.

4. More specifically, Workshop 5 could serve as a point of departure for the consideration of measures to combat economic crime and money-laundering, including discussion of the following issues:

(a) Current trends in economic crime, including money-laundering, with special attention to the typology of such crime;

(b) The extent to which existing international legal instruments, including the United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/25, annex I) and the Protocols thereto and the United Nations Convention against Corruption (resolution 58/4, annex), could be used to counter them;

(c) The formulation of effective prevention strategies;

(d) New investigative techniques;

(e) The establishment of effective financial intelligence units, including better cooperation among them;

(f) International cooperation and technical assistance.

In order to maximize the practical orientation of the Workshop and to encourage interactive dialogue, the present background paper includes a hypothetical case for analysis and discussion (see annex).

## II. Identity theft

5. One of the principles guiding the work of the United Nations Crime Prevention and Criminal Justice Programme is the need to ensure that any increases in the capacity of perpetrators of crime are matched by similar increases in the capacity of law enforcement and criminal justice authorities. Another goal of the programme is to control crime both nationally and internationally. Consideration of domestic and international measures to address identity theft is consistent with both objectives.

6. "Identity theft" can be said to involve two alternative, distinct activities. The first is the preparatory stage of acquiring, collecting and transferring personal information, whether the information is intangible (e.g. virtual information on a computer screen) or tangible (personal information copied down on paper from a computer screen or from an actual document). At this stage, there has been no actual use of the information to try to commit, or actually to commit, a criminal offence, such as fraud, theft or impersonating another individual. The personal information is acquired as an instrument of crime for future use. The second, alternative component of identity theft involves the actual use of the personal information to attempt to commit, or actually to commit, a criminal offence. In this context, the personal information is used either to assume an entirely new identity in all aspects (A poses as B) or to convince a victim that an aspect of a transaction is something it is not (e.g. that the account balance in a bank account is $X rather than $Y because the account belongs to B rather than to culprit A).

7. Identity theft thus involves one or more actions along a continuum of behaviour that eventually leads to the commission of a crime, usually of an economic nature. In most States, if the perpetrator does not commit a criminal offence in order to obtain the personal information, as for example by committing theft, the acquisition and possession of the personal information itself do not constitute an offence. There is increasing evidence, however, that identity theft facilitates the commission of economic crime, both nationally and internationally.

8. In many if not most States, criminal liability often attaches only after the perpetrator actually uses the personal information rather than at the time that the perpetrator acquires the personal information with the intent of using it for future criminal use. For example, the criminal can surreptitiously obtain personal information in order to assume the identity of the victim and thereby commit fraud, evade capture or detection or, in some instances, to commit offences associated with organized crime or terrorism. In many States, unless a conspiracy or organized criminal activity can be established, one or more of the following acts may not be criminalized: collecting, acquiring, storing, possessing, buying, selling, importing

and exporting personal information that is not tangible (e.g. personal information available on a computer or written lists of personal information copied from identification documents).

9. The means by which perpetrators obtain personal information vary in terms of their technical sophistication. Some of these activities are crimes in almost all countries (e.g. theft) and some of them are not. Examples of the more common ways in which personal information is obtained for later criminal use are as follows:

(a) Theft of purses and wallets; theft of documents from the mail; redirection of mail from the victim's home to the perpetrator's home;

(b) Recovering from trash documentation that identifies personal information relating to the victim, for example, a credit card or bank account number ("dumpster diving");

(c) Unauthorized copying of digitized data (e.g. "skimming" devices that record credit card and/or debit card numbers; a hidden camera to record personal identification numbers (PIN) accompanies the skimming of debit cards);

(d) Obtaining personal information in respect of a dead person in order to assume their identity ("tombstoning");

(e) Obtaining personal information from public sources (e.g. "shoulder surfing", which involves looking over someone's shoulder while they are entering their PIN when using a debit card);

(f) Obtaining personal profile information on an individual from the Internet with a view to using that information to impersonate them;

(g) Using the Internet to direct victims to a website that looks like that of a legitimate business. At the website the victim is asked to disclose his or her personal information. The personal information is collected by the criminal for later use to commit fraud or another form of economic crime (this activity is called "phishing");

(h) Compromise of large databases (e.g. hacking into public or private computer databases to obtain personal information in order to make false identification documents);

(i) Using personal information supplied by corrupt government or company employees to make forged documents (e.g. false driver's licences) or obtaining false identification documents from such employees.

10. One of the challenges many States face in addressing identity theft is that personal information generally does not fit the definition of "property". Traditionally, the offence of theft requires that the intangible and/or tangible "thing" taken must be capable of being characterized as "property". Also, for the elements of the offence to be present, the actions in respect of the "thing" must involve actual deprivation to the owner. In many States the mere violation of the confidentiality of personal information, in and of itself, may not be sufficient to satisfy the elements of either theft or fraud. Thus, in many States, if no criminal offence is involved in obtaining the personal information itself, then merely copying it or deceiving others into disclosing that information may also not be an offence. The distribution of personal information that does not meet the definition of "property" is also not a criminal offence in most States. In that context, the personal information becomes

an instrument to commit crime, but its acquisition, possession and transfer to others is not itself a crime.

11. In addition to the limitations in many States concerning legal definitions of "property" or the requirement of deprivation of the "thing" misused, developments in technology have also changed the way that economic crime is committed through the misuse of personal information. For example, prior to the invention of the computer and the Internet, a typical fraud case could have involved an individual stealing the identification of another person and then using that identification to pretend that he or she was someone else in order to secure a loan or borrow money from a bank. The accused was involved in all the aspects, both physical and mental, of the crime. Usually there was also physical contact between the criminal and the victim.

12. The advent of computers and the Internet has facilitated the commission of crimes that involve different actors along a continuum of criminal activity. Their detection has been hampered by the anonymity that computer technology typically provides. This encourages the use of multiple actors who act either in concert with each other or else independently from each other but with the knowledge that the personal information is being gathered and transferred for criminal purposes. The challenge for law enforcement is that no one actor has committed all of the acts along the continuum of behaviour that ultimately results in the commission of a traditional economic crime. Each person is responsible for a particular aspect of the activity that cumulatively produces the crime, such as fraud. This method of committing economic crime has been used by organized criminal groups to insulate individuals from criminal prosecution.

13. An example of the use of multiple actors to commit crime is as follows: A may copy personal information relating to various individuals from a computer. A then sells the personal information to B. This may be done using sophisticated technology such as the Internet or it may be done in a more traditional way, such as actually handing over money in exchange for information. B may act as an intermediary and may sell the information to C, who uses the information to produce false identification. C sells the false identification to customers in different countries. Some of the customers use the false identification to commit frauds against victims in other countries. Other customers sell the false identification to organized criminal groups or to terrorists to facilitate the commission of other crimes, such as drug trafficking, money-laundering or trafficking in contraband. Subject to any laws relating to conspiracies or modes of participation in the commission of an offence, in many States no offence has been committed by A or B, even though their activities are integral to providing the necessary information to C to make the false identification.

14. Most States do not have a crime of "identity theft". It is difficult to determine from a statistical point of view, therefore, whether fraud involving identity theft is subsumed in fraud statistics generally. This complicates efforts to track international trends in the growth of crime involving the misuse of personal information. It is hoped that a better understanding of domestic and transnational trends in fraud and the criminal misuse and falsification of identity may be generated by a study requested by the Economic and Social Council in its resolution 2004/26 of 21 July 2004.

15. Recent statistics from Canada and the United States of America relate to fraud committed by the misuse of personal information and confirm an explosive growth in the nature of such crime. The Phonebusters National Call Centre in Canada reported 8,187 identity theft complaints in 2002, a number that had increased substantially, to 13,359 complaints, by 2003. Losses from complaints of identity theft were reported by Phonebusters to have been 11.8 million Canadian dollars in 2002 and up to Can$ 21.6 million in 2003 (see http://www.phonebusters.com). For the past four years the Federal Trade Commission of the United States has reported that identity theft has topped the list of consumer complaints filed with the Commission. In September 2003, the Commission released a survey indicating that 27.3 million Americans had been the victims of identity theft in the previous five years. The cost to consumers and businesses in 2002 was reported to have been 53 billion United States dollars.[1] Another survey conducted for the Commission in 2003 estimated that the 10 million victims of identity theft that year spent 300 million hours trying to restore their financial losses, credit ratings and reputations.[2] The Canadian Council of Better Businesses estimated that total consumer and commercial losses from identity theft in 2002 was Can$ 2.5 billion.[3]

16. The free flow of information, which is the lifeblood of the Internet and, therefore, also of the trade conducted over the Internet, offers innumerable opportunities for criminals to misappropriate personal information and use it to commit crime. Surreptitious collection and transfer of personal information for subsequent criminal use have the potential to undermine the economic and national security of member countries.

## III. Money-laundering

17. "Money-laundering" is generally understood to mean the processing of criminal proceeds to conceal or disguise their illegal origin. Criminals try to secure and further enjoy or use financial profits from their crimes through money-laundering. Money-laundering is therefore a very important process for most criminals, especially in relation to financial crimes committed mainly with a view to obtaining financial profit. Money-laundering is also exploited by criminals, as it allows them to engage in further criminal activity or finance their criminal organizations.

18. As money-laundering is in most cases committed by misusing or abusing existing financial systems, it presents a serious threat to the integrity of financial systems and financial institutions. Financial institutions corrupted by money-laundering have higher risks of being a target of further financial crimes and are thus caught in a vicious circle. In developing countries, money-laundering hampers or slows down economic development. A large amount of laundered money that has escaped the national financial authorities' supervision and regulation impedes the formulation of precise national monetary policies and taxation systems.

19. The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988[4] was the first milestone in the continuous United Nations efforts against money-laundering. The fight against money-laundering began by targeting the laundering of proceeds of drug-related crimes, but it gradually became clear that money-laundering in relation to other serious crimes

caused similar threats to society and should therefore be addressed similarly. As a result, more recent international instruments call on States parties to punish money-laundering arising from all or most serious offences.

20. The terrorist attacks of 11 September 2001 in the United States brought to the forefront global concerns about terrorism and the international community soon agreed to make intensive efforts to prevent and stop terrorist financing. Given the commonality of detecting and analysing potential money-laundering activities and potential terrorist financing activities, it is more effective for major organizations that have been leading efforts to combat money-laundering also to address the issue of terrorist financing. The Security Council responded quickly to that need by establishing, in its resolution 1373 (2001) of 28 September 2001, the Counter-Terrorism Committee, with the Terrorism Prevention Branch of the United Nations Office on Drugs and Crime (UNODC) playing an integral part in the United Nations collective action against terrorism. It should be noted, however, that a sense of urgency prior to 11 September 2001 had already led to the successful conclusion in 1999 of the International Convention for the Suppression of the Financing of Terrorism (General Assembly resolution 54/109, annex), which came into force in 2002. The Financial Action Task Force on Money Laundering has also expanded its mandate to include terrorist financing.

21. Typologies or techniques of money-laundering develop constantly. It is widely recognized that criminals tend to be one step (or more) ahead of their adversaries, that is, investigative authorities, in finding loopholes in a State's legislation against money-laundering. Being familiar with the latest typologies is therefore a prerequisite for investigative and other relevant authorities to crack down effectively on money-laundering.

22. As cash-based economies allow criminals to transfer money or transform the form of assets without leaving financial transaction records, there are serious difficulties for investigators in tracing and securing evidence about money flow. Even in countries with the most sophisticated financial systems, there is a certain level of cash-based economy to meet certain needs. In many developing countries where formal financial sectors are not fully developed, the cash-based economy is the most common and credible financial system and to regulate it by any means is not an easy task. The common use of jewellery or precious stones as a means of holding assets poses the same problem when they are used as an alternative to cash.

23. Alternative remittance systems that transfer money or other assets using conduits other than formal financial institutions can similarly be an obstacle to combating money-laundering. Many alternative remittance systems have their source of credibility in cultural, ethnic or religious communities and usually require neither customer identification nor the keeping of financial transaction records, as provided for by international standards regulating financial institutions. In some States where money or value transfer services are allowed only to institutions licensed or registered as banks, alternative remittance systems are automatically an illegal and underground form of banking. In many other States, such systems are legitimate financial systems that have existed since long before the development of modern banking services.

24. The involvement and potential misuse of non-financial businesses and professions for money-laundering have attracted international concern recently, as more cases of such involvement have emerged. Those involved have included lawyers, notaries, other independent legal professionals, accountants (known collectively as "gatekeepers" because of their professional role to safeguard the integrity of financial transactions), dealers in precious metals or stones and trust and company service providers. Considering the important role that these businesses and professions play in financial transactions, agreement is emerging that regulations to police money-laundering should encompass them in certain circumstances, without prejudice to privileges related to professional secrecy.

25. Offshore financial centres have long been the centre of attention in addressing money-laundering problems, in view of their potential use as safe havens for money-launderers. However, thanks to concerted international efforts, many offshore financial centres have already improved their practices by revoking the licences of shell banks or strengthening customer identification requirements for corporations. Public campaigns at the national, regional and international levels have had considerable success in raising public awareness about the risks of using offshore financial centres that are not transparent in their structure and operations. The issue of such centres, however, needs continuous review and supervision, in particular because of the increasing ease of doing business with them from any part of the world via the Internet and other advanced technologies.

26. A number of international standards to combat money-laundering are already in place. As mentioned earlier, the United Nations has long been a champion in this area, in the development of a number of important legal instruments. In 1988, the General Assembly adopted a Political Declaration (resolution S-20/2, annex) and action plan against money-laundering (resolution S-20/4 D). The Organized Crime Convention and the United Nations Convention against Corruption call on States parties to strengthen their regimes to combat money-laundering and their implementation. The United Nations has also provided considerable technical assistance in this area through the UNODC Global Programme against Money-Laundering.

27. Another main source of international standards in this area is the Financial Action Task Force on Money Laundering. Its Forty Recommendations, originally issued in 1990 and revised in 2003, provide detailed technical standards. The Task Force also issues a typologies report annually. Though its membership is limited, related regional bodies around the world assist other States in complying with the Recommendations.

28. Other sources of international standards include the Basel Committee on Banking Supervision, the International Organization of Securities Commissions, the International Association of Insurance Supervisors and the Wolfsberg Group, which consists of 12 major international private banks in cooperation with Transparency International.

29. In recent years, the International Monetary Fund and the World Bank have also strengthened their involvement in combating money-laundering and the financing of terrorism and have developed a comprehensive compliance assessment methodology in cooperation with the Financial Action Task Force on Money Laundering.

30. Financial institutions have at their disposal a wealth of useful information emanating from regular business transactions being conducted at any given moment. In that respect, a regular and functioning cooperation mechanism between private financial institutions on the one hand and relevant national authorities on the other is critical to dealing effectively with information that may lead to the investigation and prosecution of money-laundering cases.

31. If a financial institution suspects or has reasonable grounds to suspect that funds are the proceeds of criminal activity, it should be required to report its suspicions promptly to a body specially set up to collect and process such information, such as a financial intelligence unit. A financial intelligence unit is a national centre for receiving (and, as permitted, requesting), analysing and disseminating suspicious transaction reports and other information regarding potential money-laundering. The establishment of a financial intelligence unit is one of the important initial steps in establishing an effective national regime against money-laundering. Financial intelligence units are typically located in the central bank, the ministry of finance or the police, but what is important is not their location, but whether they are fully operational. Suspicious transaction reports are important as a means of ensuring customer due diligence in identifying potential money-laundering activities. The relevant national authorities are expected to provide practical guidance as to what constitutes suspicious transactions for the use of financial institutions.

## A. Criminalization of money-laundering: legal framework

32. An effective legal framework is essential in order to fight money-laundering. Material elements for the offence of money-laundering are included in relevant international legal instruments, especially in the 1988 Convention, the Organized Crime Convention and the United Nations Convention against Corruption. States parties to those conventions are under an obligation to have in their domestic legislation sufficient provisions to criminalize the conduct defined in those instruments. Moreover, parties are also called upon to take into account the provisions of the conventions that stipulate that knowledge, intent or purpose required as an element of the offence may be inferred from objective factual circumstances.

33. Nevertheless, many variations can be observed in how States define and punish money-laundering activities. For example, in defining predicate offences of money-laundering, some States enumerate them in a list attached to a piece of legislation, whereas some States take a so-called threshold approach, defining the predicate offences as crimes punishable in a certain way. In any event, the Organized Crime Convention and United Nations Convention against Corruption call upon States parties to include a broad range of serious crimes as predicate offences.

## B. Investigation of money-laundering offences

34. As noted above, money-laundering techniques develop constantly and investigative techniques tend to lag behind. It is therefore critical for investigators

to obtain the fundamental knowledge and necessary skills about money-laundering investigations, including those of forensic investigation and accounting, and to continuously follow the latest typologies. More importantly, investigators should be provided with adequate technological facilities and support for use in their daily operations, as well as training opportunities to strengthen their professional investigative capacity. In that respect, provision of technical assistance by countries with advanced knowledge and skills in money-laundering investigation to countries suffering from weak institutional capacity is to be further encouraged in order to avoid providing money-laundering havens for criminals.

### C. International cooperation

35. As financial crimes are committed increasingly across national borders, so does money-laundering acquire a transnational character more often than not. It is always a challenge for investigative authorities to trace and prove complex transnational money flows and, for that purpose, international cooperation is extremely important, as in the investigation of any other transnational financial crime. An example of such cooperation is the Egmont Group of Financial Intelligence Units, an international organization set up to facilitate international cooperation among financial intelligence units around the world.

### D. Control of the proceeds of crime

36. Since economic crimes, including money-laundering, are committed for the purpose of obtaining profit, tracing, freezing, seizing and confiscating the proceeds of crime are the most effective measures against those criminal activities. The latest sets of measures that the international community agreed to take can be found in the Organized Crime Convention and, more recently, in the United Nations Convention against Corruption, especially its chapter on asset recovery. There is an urgent need to enhance domestic and international efforts to further develop and utilize those measures to the full.

## IV. Technical assistance

37. The primary aim of the United Nations Crime Prevention and Criminal Justice Programme is to assist the international community in meeting its pressing needs in the field of crime prevention and criminal justice and to provide States with timely and practical assistance in dealing with problems of both national and transnational crime.

38. One of the priorities of the programme is to give consideration to the need for developing countries and countries with economies in transition to have recourse to expertise and other resources necessary for establishing and developing technical cooperation initiatives that are appropriate at the national and local levels.

39. The workshops to be held within the framework of the Eleventh Congress will provide an opportunity to deliver practical assistance in the form of the direct contribution of experts, as well as through the sharing of information and experience. The workshops will also enable consideration of technical cooperation

ideas and projects related to addressing priority needs and enhancing bilateral and multilateral efforts in technical assistance and training.

40. Developing effective technical cooperation programmes requires mechanisms and projects that are flexible and appropriate to the identified needs of the requesting country and that do not duplicate the activities of other entities. In addition, an efficient approach to combating economic crime and money-laundering requires delivery of sequential technical assistance across several sectors, including awareness-raising and policy development; establishment and implementation of the appropriate legal infrastructure; development of measures relevant to the regulatory and financial sectors; and assistance to support law enforcement processes.

41. The assistance provided may include research and information exchange; needs analysis; consultancies and advisory services; study tours; awareness-raising seminars; development of model laws and regulations; drafting assistance for legislation and regulations; local, national or regional training courses; computer-based training modules; mentoring, secondments and attachments; guidance notes and best practice tools; and communication and information technology support and training. The training and assistance may be delivered through country or regional projects and may involve local, bilateral and multilateral cooperation.

42. One of the fundamental challenges in developing timely and practical programmes appropriate to each country is the ability to identify with accuracy the relevant technical assistance and training needs. This information is usually compiled from a wide variety of sources and frameworks—bilateral and multilateral needs assessment studies and missions; compliance assessments and mutual evaluations in relation to relevant global standards; self-assessments; and country statements in the context of regional and international forums.

43. Efficiently designed needs assessments can provide a solid foundation for effectively sequencing and coordinating the delivery of assistance. While a number of countries may complain of "assessment fatigue", both in general and in relation to specific technical assistance and training, others are still calling for such assessments to assist in defining and refining their needs. In the absence of a standard framework, there is an opportunity for enhanced international cooperation in developing and implementing needs assessments to enhance consistency and reduce duplication.

44. Associated with the preparation of needs information is the identification of priorities for assistance. Technical cooperation can only be effective if national and local needs are the primary concern in determining priorities and appropriate modes of delivery, rather than the policy or operational imperatives of bilateral or multilateral donor organizations.

45. In considering the requirements for technical cooperation that respond to the needs of each country without duplicating the activities of other existing mechanisms, the call for effective coordination is inevitable. Determining how such coordination might be organized and implemented has been the subject of significant international debate, in particular in the context of international efforts to combat money-laundering and the financing of terrorism. While the need for coordination is frequently emphasized, it is equally stressed that coordination mechanisms must not act to control or constrain the mandates and activities of the donors and providers, nor act as a "buffer zone" between the State requesting

assistance and the provider. It is clear, therefore, that for the coordination of technical cooperation to be successful, the process needs to be voluntary and flexible and it must add value but not costs, and the individual mandates of donor and provider organizations must be respected.

46. Beyond coordination, the requirement to build sustainable capacity is one of the most significant issues challenging technical cooperation activities. This is especially so given the diversities in location, size, economic and social development, institutional capacity and legal and administrative systems of Member States. The consistent call from recipient countries is for donors and providers to move away from short-term, short-impact assistance towards longer-term in-country training, secondments, study tours, training of trainers and mentor attachments. The assistance provided needs to be supported over a number of years and, where shorter-term in-country or regional training is delivered, this needs to be followed up to consolidate and institutionalize both knowledge and skills. In the field of economic crime and money-laundering there are, however, few suitably qualified and experienced experts available. Accordingly, careful planning and coordination are required by the international community. There is clearly an opportunity for bilateral and multilateral donors to support the development of sustainable capacity by increasing the availability of longer-term training courses, mentors, secondments and technical attachments.

47. In addressing measures to combat economic crime, including money-laundering, it is important to recognize the contribution of the private sector. While private sector organizations are frequently the unwitting vehicles for perpetration of such crimes, those same organizations can also be active partners in compliance and prevention. Given those roles, there is a significant technical cooperation contribution to be made by the private sector at the national, regional and international levels. This raises the challenge of identifying opportunities to engage the private sector in collaborative technical assistance and training activities, involving both public and private-sector organizations.

## V. Conclusion and recommendations

48. Workshop 5 will provide an opportunity for the international community to consider practical ways of addressing more effectively the issues mentioned above, taking into account the proposals made by the regional preparatory meetings for the Eleventh Congress. Questions raised in the discussion guide for the Eleventh Congress (A/CONF.203/PM.1) will also serve to focus the discussion, such as (a) success stories and obstacles encountered in the fight against economic crime and in the prosecution of money-laundering cases, including the confiscation of proceeds of crime completed pursuant to legislation to combat money-laundering; (b) how financial intelligence units can work with their counterparts and other institutions to ensure best practice in national and international cooperation; and (c) how best to implement standards in countering money-laundering in the informal and cash-based economy. Further, Workshop 5 will attempt to promote the ratification and implementation of the Organized Crime Convention and the United Nations Convention against Corruption, in particular as regards their provisions relating to money-laundering.

49. With a view to achieving those objectives, a hypothetical case has been devised to facilitate interactive discussion among participants (see annex).

*Notes*

[1] Adam B. Schiff, in the 23 March 2004 proceedings of the Subcommittee on Crime, Terrorism, and Homeland Security of the Committee on the Judiciary, United States House of Representatives, 108th Congress, 2nd session, Serial No. 74, p. 15.

[2] Synovate, *Identity Theft Survey Report*, prepared for the Federal Trade Commission (September 2003) (http://www.ftc.gov/os/2003/09/synovatereport.pdf.), pp. 4 and 6.

[3] Canadian Bankers Association, "Identity theft: an old problem needing a new approach" (unpublished), May 2003, p. 5.

[4] United Nations, *Treaty Series*, vol. 1582, No. 27627.

# Annex

## Hypothetical case for use at Workshop 5: Measures to Combat Economic Crime, including Money-Laundering

### A. Introduction

1. The following hypothetical case is designed to facilitate discussion among practitioners attending Workshop 5 and to stimulate practically oriented discussion with a view to focusing on truly effective measures to combat economic crime and money-laundering. In the hypothetical case, various issues pertaining to prevention, information-gathering, investigation and prosecution of economic crime and money-laundering are raised, such as:

(a) Preventive measures for economic crime and money-laundering;

(b) Informants (whistle-blowers);

(c) Use of information technology both by criminals and investigators;

(d) Liability of legal persons;

(e) Identity theft;

(f) Shell companies;

(g) Customer due diligence;

(h) Conspiracy or participation;

(i) Investigative techniques for economic crime and money-laundering;

(j) Use of information technology, both by offenders and investigators;

(k) Inter-agency cooperation;

(l) International cooperation, including mutual legal assistance and extradition;

(m) Criminalization of money-laundering;

(n) The role of financial intelligence units, including cooperation among units;

(o) Suspicious transaction reporting;

(p) Typology or modus operandi of money-laundering;

(q) Issues related to the informal and cash-based economy, including alternative remittance systems;

(r) Use of insurance and negotiable instruments;

(s) The role of professionals in activities to combat money-laundering;

(t) Control of the proceeds of crime, including freezing, confiscation, civil forfeiture or asset sharing;

(u) Victim restitution.

Those who wish to participate in Workshop 5 are invited to study the hypothetical case presented below in advance.

2. The case is divided into two parts, the first depicting breach of trust and international fraud, which include various issues commonly found in economic crime and could be regarded as predicate offences of money-laundering. The second part describes unlawful activities relating to concealing and disguising, and further utilization, of the proceeds of crime depicted in the first part.

## B. Hypothetical case

3. In the following description, suggested issues for discussion are presented in italics:

### 1. Breach of trust by a bank manager

1. Mr. Alan was a national of country Xanadu and a manager of Finebills Bank, established in that country.

2. Mr. Banner was also a national of Xanadu and ran a real estate agency, Kondo Inc., also established in that country.

3. The financial situation of Kondo Inc. deteriorated and Mr. Banner asked Mr. Alan to grant the company a loan of $1 million.

4. Since Mr. Alan was an old friend of Mr. Banner, he agreed to grant the loan without any collateral, although he knew that there was a possibility that the loan would not be paid back (Mr. Alan's decision was against the internal regulations of Finebills Bank) (*improving integrity in the public and private sector, corporate governance and other preventive measures*).

5. After three months, it became evident that Kondo Inc. could not repay the debt (*informants or whistle-blowers, assuming that the bad loan contract was reported by a bank employee*).

### 2. Consumer fraud

1. Mr. Alan feared that he would be held responsible for the bad loan and asked Mr. Banner to find a way to pay it back.

2. Mr. Banner consulted his mistress, Ms. Chung, a national and resident of country Youngland, about the matter, and Ms. Chung proposed the following:

   (a) Ms. Chung would set up a shell company, Lownet Inc., in Youngland to conduct a consumer fraud;

   (b) Ms. Chung would place an advertisement via the Internet (*use of information technology*) stating that Lownet Inc. could teach consumers how to purchase foreclosed and distressed real estate properties and promising that it would provide the capital for such purchases;

(c) Lownet Inc. would further promise to pay each customer $2,500 every time they partnered with it in a real estate deal and claimed the company could split the profits after the property was sold. Lownet Inc. would lure each consumer into purchasing an introductory videotape for $60 and advertise a 30-day full money-back guarantee. A portion of the $1 million would be used to produce videotapes;

(d) Lownet Inc. would also sell additional videotapes, which would be much more expensive than the first videotapes sold;

(e) The purpose of the advertisement would be to lure consumers into buying the videotapes and Ms. Chung had no intention of actually helping customers to obtain real estate;

(f) Customers would be requested to transfer the price of the videotapes to the bank account of Lownet Inc.;

(g) When approached by possible customers, Ms. Chung, introducing herself as Ms. Petal, an executive of Lownet Inc., would say that her company had many transactions with Finebills Bank and give them the name of Mr. Alan as a reference;

(h) When contacted by customers enquiring about Lownet Inc., Mr. Alan would assure them that Lownet Inc. was a company in good standing (*liability of legal persons*);[a]

(i) Ms. Chung would pay $2 million to Mr. Alan and Mr. Banner if the scheme succeeded.

3. Mr. Alan and Mr. Banner agreed to Ms. Chung's proposal.

4. Ms. Chung asked a friend of hers who was a bank employee about the disposal of bank records and this employee indicated that all bank trash was simply left outside of the bank in a large bin (*integrity of the system*).[b] Ms. Chung accessed the bank trash and collected personal information from discarded bank records for the purpose of opening bank accounts in another country (*identity theft*).[c]

5. Ms. Chung set up a shell company Lownet Inc. (*shell companies, role of professionals*)[d] in country Youngland, which was considered an offshore centre by the international community, and opened an account at Goldfingers Bank in that country (*conspiracy or participation, customer due diligence*).[e], [f]

---

[a] That is, the possibility of whether Finebills Bank can be held legally responsible for the action of Mr. Alan.

[b] This fact raises the issue of confidentiality of the institution's data and the protection of that data from interference by third parties.

[c] "Identity theft" involves the collection of personal information data for future criminal use. In this instance the specific form of identity theft is called "dumpster diving".

[d] Identity theft could also be discussed. If Ms. Chung set up a shell company with the help of a lawyer, participants may wish to discuss, at the beginning of its discussion in the money-laundering part, the issue of the role of professionals in preventing such activities.

[e] By asking the question "What can be done if law enforcement officials know about the scheme

6. Lured by an Internet advertisement and sometimes with the assurances of Mr. Alan, many customers worldwide purchased the videotapes and the proceeds of this fraudulent scheme amounted to $5 million which was remitted to Lownet Inc.'s account at Goldfingers Bank (*investigative techniques, immunity, inter-agency cooperation*).[g]

**3. Money-laundering and control of the proceeds of crime**

1. Ms. Chung transferred the $5 million proceeds in Goldfingers Bank to 15 bank accounts in country Zeitstaat (*suspicious transaction reporting*).[h]

2. Ms. Chung provided the personal information from the bank trash to Ms. Dee and asked Ms. Dee to use the information to forge false identification documents (*identity theft*).[i] Ms. Dee used the false identification to open 15 bank accounts in Zeitstaat. Ms. Dee was a national of Zeitstaat and worked as an accountant there (*role of professionals as gate-keepers*).[j]

3. Ms. Dee withdrew the funds ($5 million) from the 15 individuals' accounts from numerous automatic teller machines in small denominations in Zeitstaat over a period of time (*suspicious transaction reporting, including the use of information technology for the purpose of its analysis*).

4. At the request of Ms. Chung, Ms. Dee brought $2 million in cash into Xanadu and handed it to Mr. Banner. Ms. Dee did not declare that she was carrying $2 million to the authorities of Xanadu or Zeitstaat (*cash courier and possibly controlled delivery of cash*) and handed it to

---

before any consumers actually become victims?", participants can discuss the application of conspiracy or participation, stipulated in the United Nations Convention against Transnational Organized Crime.

[f] At the beginning of the discussion on money-laundering, participants may wish to discuss what should have been done by Goldfingers Bank to prevent the opening of accounts by a shell company.

[g] The investigative technique could be introduced whereby a law enforcement officer pretends to be a potential customer and approaches Ms. Chung to get information. Also, the issue of granting immunity can be discussed here by asking "What could prosecutors do to obtain enough evidence to prosecute Ms. Chung?" Issues related to mutual legal assistance could also be dealt with. In addition, issues related to inter-agency cooperation could be discussed here by introducing the scenario that claims to the consumer protection agency lead to the law enforcement agencies getting involved.

[h] It could be noted here that the criteria for suspicious transaction reporting vary from one State to another; some set out a certain amount of money as the threshold for reporting, whereas others take a more generic approach, where banks are required to report transactions they think are "suspicious", regardless of the amount. If the transfer was made by electronic methods such as SWIFT, issues related to the use of information technology by money-launderers could also be discussed.

[i] These facts illustrate another form of "identity theft", which involves the actual use of personal information data to make false documents and to use those documents to commit additional crimes (in this case the offence is money-laundering).

[j] Criminalization of money-laundering, including the issue of laundering of self-proceeds as far as Ms. Chung is concerned, could also be discussed here.

Mr. Banner. Mr. Banner deposited $1.2 million into an account of Kondo Inc. at Finebills Bank, using numerous automatic teller machines in small denominations (*suspicious transaction reporting, information sharing among financial intelligence units, role of financial institutions*), which was used to pay back the loan of $1 million and its interest.[k] Mr. Banner kept $400,000 for himself and gave $400,000 to Mr. Alan. Both of them kept the money for their personal use.

5. At the request of Ms. Chung, Ms. Dee purchased a villa in Zeitstaat on her behalf for $2 million. Ms. Dee sent the rest of the money ($1 million) to Ms. Chung in Youngland, through an underground banker, Mr. Ezura, in Zeitstaat, who had his counterpart, Ms. Jabbar, in Youngland (*alternative remittance system*).[l] Ms. Chung paid $10,000 to Ms. Dee as a fee for her services and spent $90,000 for her personal pleasure (gambling, wining and dining, etc.), purchased bearer securities amounting to $500,000 from the security company Midmint Securities and kept $400,000 in cash in her residence. The bearer securities were kept in a safe deposit box at Handyfunds Bank in Youngland.

6. *Issues to be discussed relate to the recovery of the proceeds of the fraud from both countries (i.e. Xanadu and Zeitstaat) and Youngland (domestic measures and international cooperation in the control of the proceeds of crime, including freezing, confiscation, civil forfeiture or asset sharing) for the purpose of restitution to the victims, in addition to the criminal liabilities of all the persons involved.*

---

[k] It could be mentioned here that, in some States, Mr. Alan would not be criminally responsible for the breach of trust since the loan had been repaid.

[l] Other forms of alternative remittance system, such as *hundi* or *hawala*, could be discussed here. In addition, other modi operandi (typologies) of money-laundering could be discussed.

## B. Workshop Programme on Measures to Combat Economic Crime, including Money-Laundering

Chairperson: **Mr. Michel Bouchard** (Associate Deputy Minister, Department of Justice, Canada)
Rapporteur: **Mr. Esmaeil Baghaei** (Advisor, Ministry of Foreign Affairs, Iran)
Moderator: **Mr. Hans Nilsson** (Head of the Division of Judicial Cooperation, the Council of the European Union)
Scientific Rapporteur: **Dr. Toni Makkai** (Director, Australian Institute of Criminology)

**Wednesday, 20 April First Session: Economic Crime**

15:00-15:25
Opening **Chairperson**
Welcoming remarks **Mr. Kunihiko Sakai** (Director, UNAFEI)
Keynote speech **Ms. Gudrun Antemar** (Director-General, the Swedish National Economic Crimes Bureau)

15:25-16:10
**Panel 1: Presentations on Trends of Economic Crime and Countermeasures**
Panellists: **Dr. Abboud Al-Sarraj** (Professor, Faculty of Law, Damascus University, Syria)
The concept of economic crime as perceived across the world - Typology and new trends (fraud, business related crimes and fiscal offences); and the sanctions thereto
**Mr. Charles Goredema** (Senior Research Fellow, Institute for Security Studies, South Africa)
The impact of economic crime on the society and how to measure the impact through inter alia relevant indicators
**Mr. Donald Piragoff** (Senior General Counsel, Department of Justice, Canada)
Criminal misuse and falsification of identity - Identity theft as a precursor to crime

16:10-18:00
**Panel 2: Case-based Discussion on Economic Crime**
Hypothetical case A/CONF.203/13 Annex

Sub-Moderator: **Ms. Mary Lee Warren** (Deputy Assistant Attorney General, U.S. Department of Justice, U.S.A.)
Panellists: **Mr. Felix McKenna** (Chief Bureau Officer, Criminal Assets Bureau, Ireland)
**Justice Anthony Smellie** (Chief Justice, the Supreme Court, Cayman Islands)
**Ms. Nina Radulovic** (Counsellor, Commission for the Prevention of Corruption, Slovenia)
**Mr. Tony Kwok Man-wai** (Former Deputy Commissioner, Independent Commission Against Corruption, the Hong Kong Special Administrative Region of China)

**Thursday, 21 April Second Session: Money Laundering**

10:00-10:20
Opening **Chairperson**
Keynote speech **Pol. Maj. Gen. Peeraphan Prempooti** (Secretary-General, Anti-Money Laundering Office, Thailand)

10:20-11:05
**Panel 3: Presentations on Measures against Money-Laundering**

Panellists: **Mr. Timothy Lemay** (Chief, Rule of Law Section, Human Security Branch, United Nations Office on Drugs and Crime)
International standards and norms to combat money-laundering
**H.E. Sultan Bin Nasser Al Suwaidi** (Governor, the Central Bank of the U.A.E.)
Typology and new trends of money-laundering including the specific features of money-laundering in informal or cash based economies

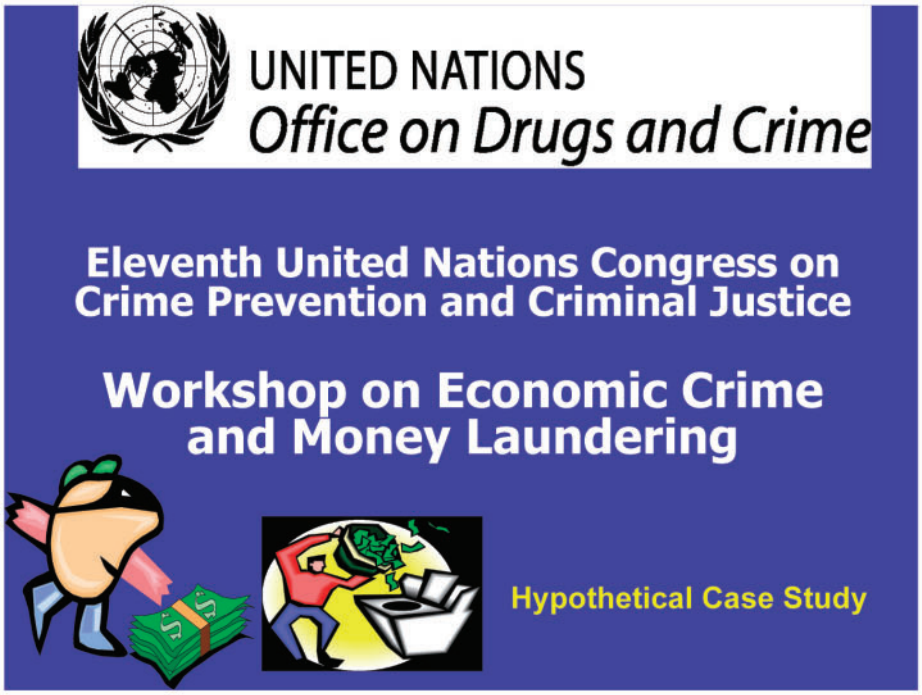
**Dr. Pedro David** (Judge, National Court of Criminal Cassation, Argentina)
Investigation and international cooperation, including mutual legal assistance and law enforcement cooperation, cooperation between FIUs and Egmont Group

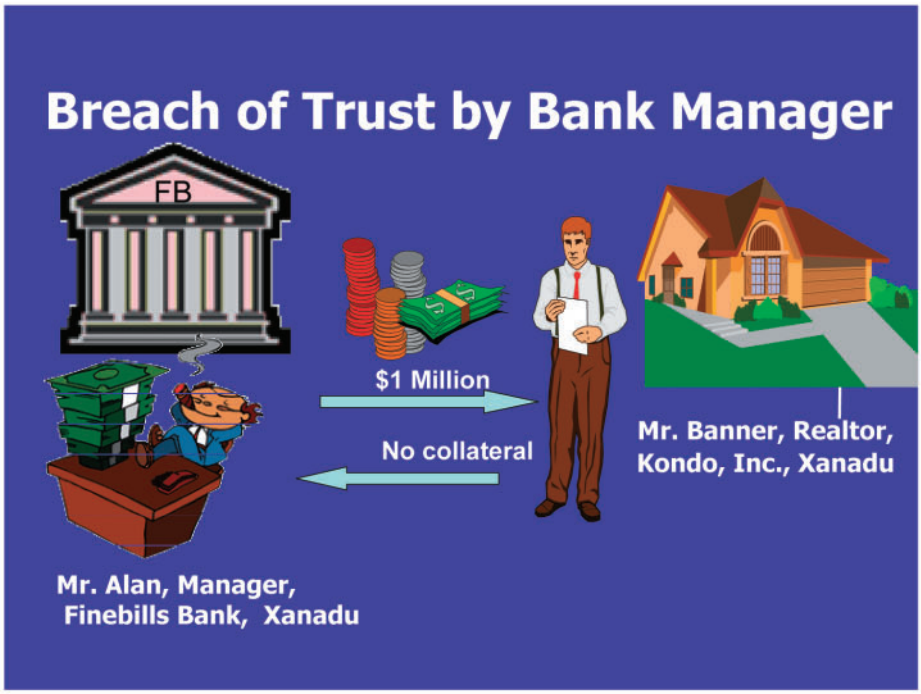
11:05-12:40
**Panel 4: Case-based Discussion on Money-Laundering**
Hypothetical case A/CONF.203/13 Annex

Sub-Moderator: **Mr. Peter Csonka** (Senior Counsel, Legal Department, International Monetary Fund)
Panellists: **Ms. Ishara Bodasing** (Senior Anti-corruption Specialist, Department of Public Service and Administration, South Africa)
**Mr. Henri Pons** (Vice Président chargé de l'instruction, Tribunal de Grande Instance de Paris, France)
**Dr. Robert Wallner** (Prosecutor General, Princely Prosecution Service, Lichtenstein)
**Ms. Linda Samuel** (Deputy Chief, Asset Forfeiture and Money Laundering Section, U.S. Department of Justice, U.S.A.)

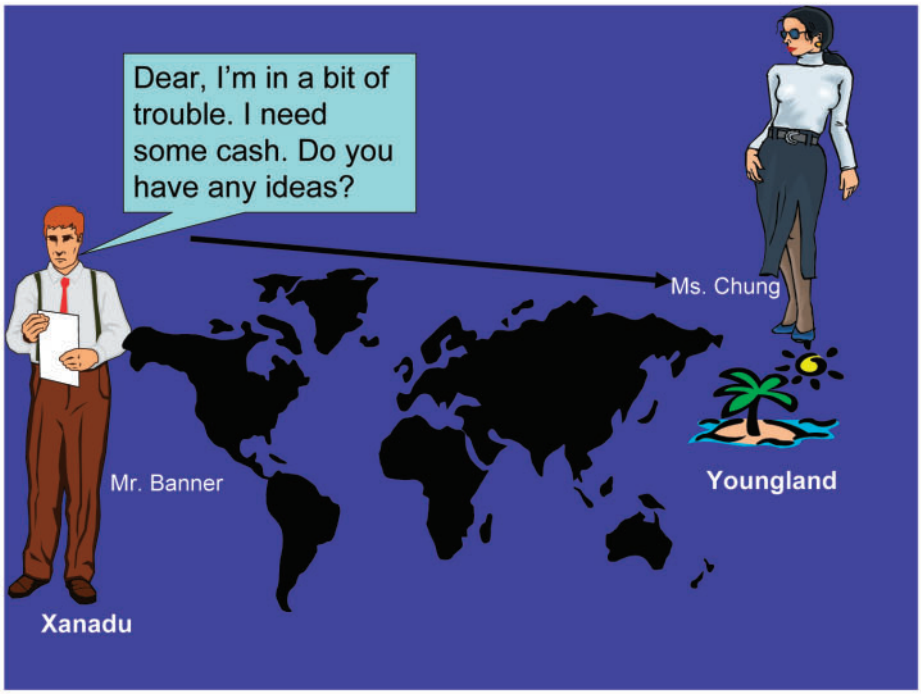
12:40-13:00
Closing

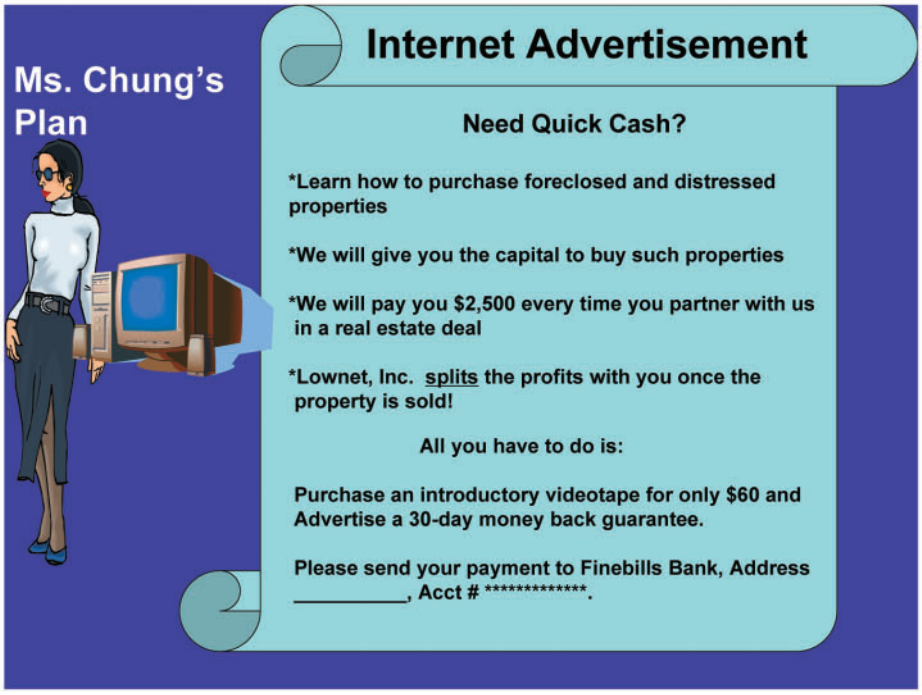
**C. PowerPoint Presentation of the Hypothetical Case**

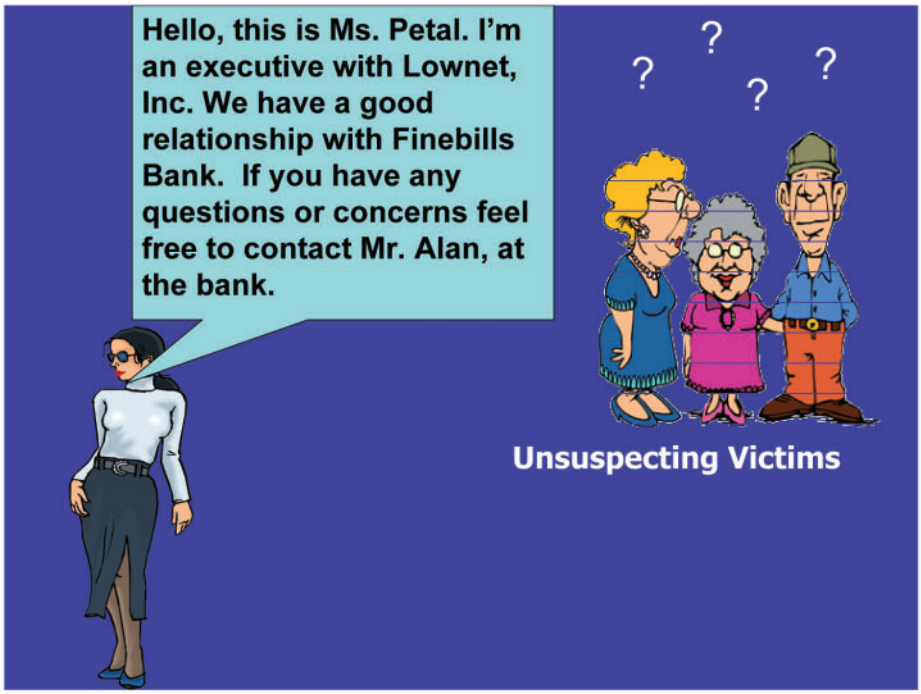




Breach of Trust by Bank Manager
FB
$1 Million
No collateral
Mr. Banner, Realtor,
Kondo, Inc., Xanadu
Mr. Alan, Manager,
Finebills Bank, Xanadu


Consumer Fraud
Where's my money? My job is on the line.
Don't worry. I have a *plan*. I've called a friend to help me get the cash.

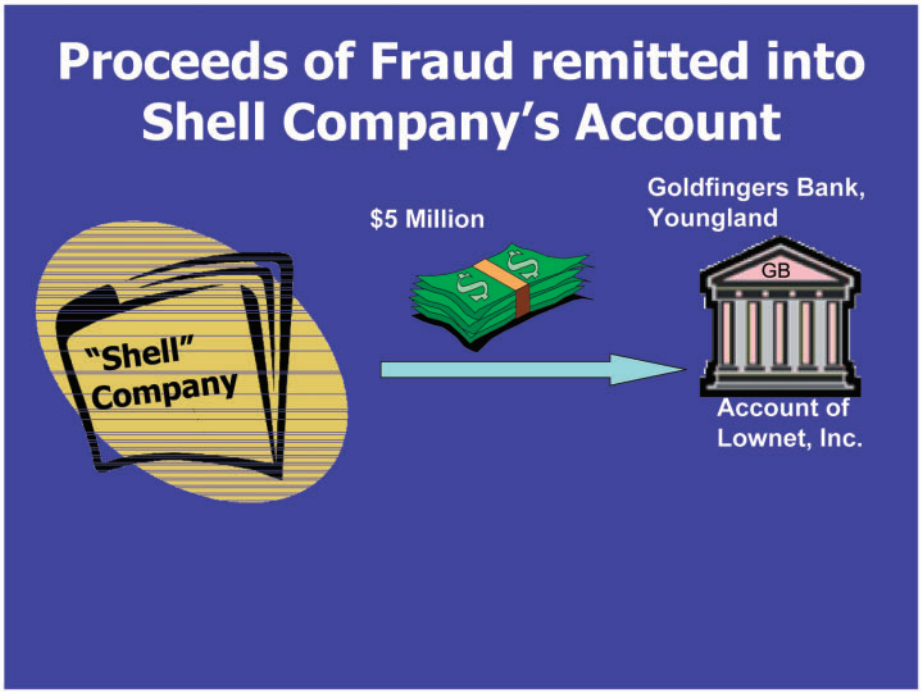

Dear, I'm in a bit of trouble. I need some cash. Do you have any ideas?
Ms. Chung
Mr. Banner
Youngland
Xanadu

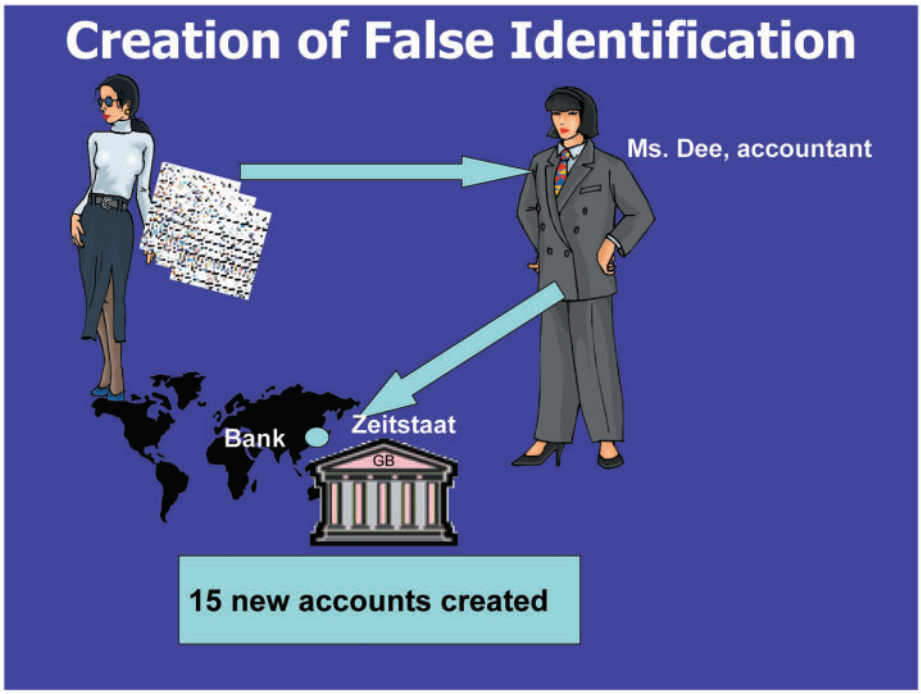

Ms. Chung's Plan
Internet Advertisement
Need Quick Cash?
*Learn how to purchase foreclosed and distressed properties
*We will give you the capital to buy such properties
*We will pay you $2,500 every time you partner with us in a real estate deal
*Lownet, Inc. splits the profits with you once the property is sold!
All you have to do is:
Purchase an introductory videotape for only $60 and Advertise a 30-day money back guarantee.
Please send your payment to Finebills Bank, Address _____, Acct # **********.


Hello, this is Ms. Petal. I'm an executive with Lownet, Inc. We have a good relationship with Finebills Bank. If you have any questions or concerns feel free to contact Mr. Alan, at the bank.
Unsuspecting Victims


Hello. Yes, don't worry about a thing. Lownet, Inc. is a good company in good standing.
FB
Mr. Alan


Identity Theft
FB
Youngland
"Shell" company
WASTE
Taking Discarded Customers' Financial Records

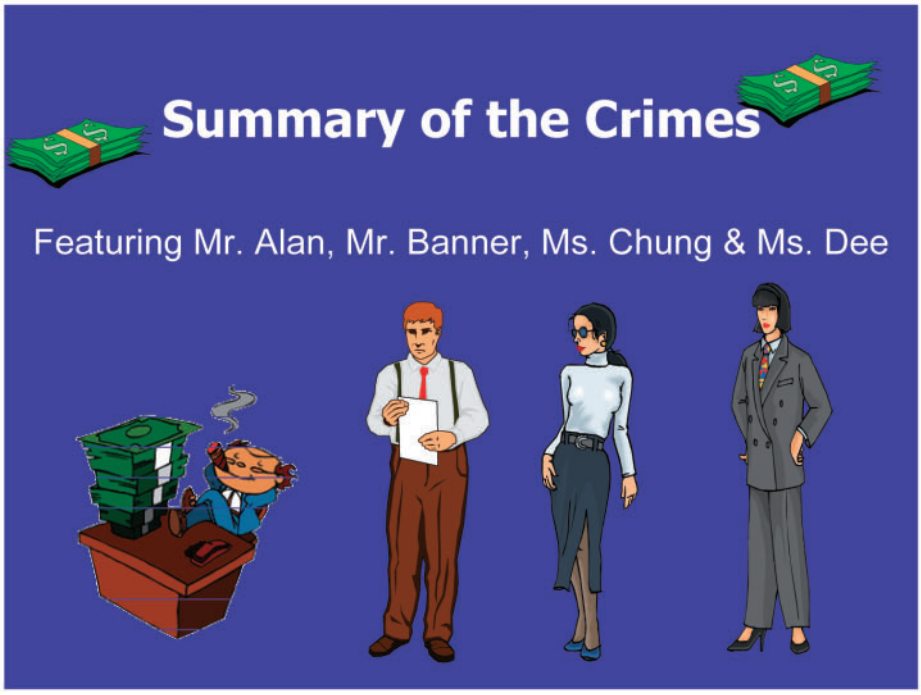

Proceeds of Fraud remitted into Shell Company's Account
$5 Million
Goldfingers Bank, Youngland
GB
"Shell" Company
Account of Lownet, Inc.




## Discussion Topics

- Criminal Liabilities of Mr. Alan, Mr. Banner, Ms. Chung, and Ms. Dee
- Liabilities of legal persons
- Conspiracy
- Use of information technology
- Use of shell companies
- Use of professionals
- International cooperation


UNITED NATIONS
Office on Drugs and Crime
Moderator:
Hans G. Nilsson
Chief of Division, Judicial Cooperation
European Union
Sub-moderator:
Peter Csonka
Senior Counsel
International Monetary Fund
WORKSHOP 5 –PANEL 4
Measures to combat Economic Crime, including Money- Laundering


Summary of the Crimes
Featuring Mr. Alan, Mr. Banner, Ms. Chung & Ms. Dee

## ECONOMIC CRIMES- MONEY LAUNDERING PREDICATES

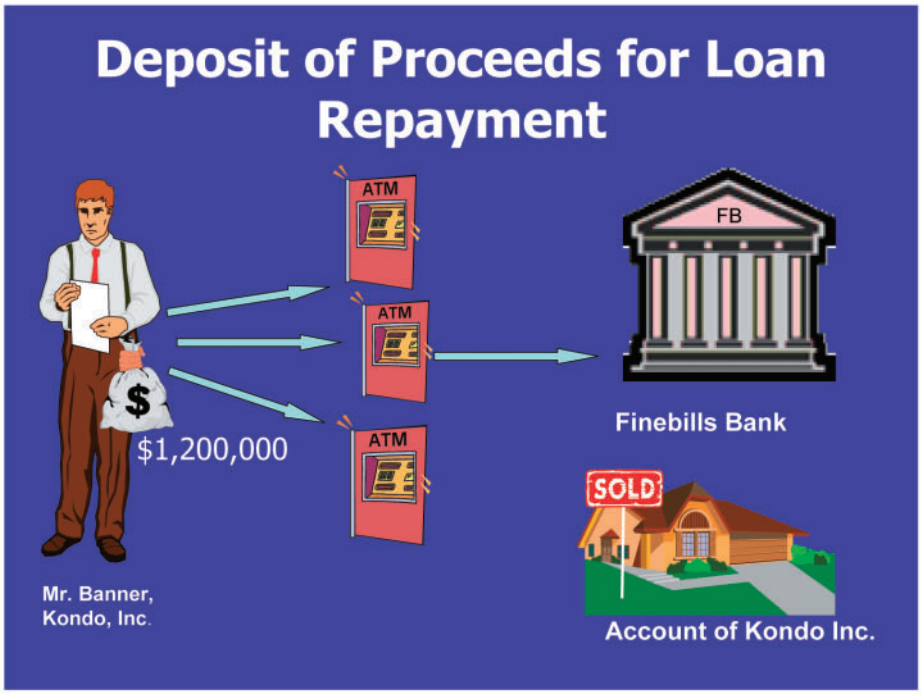
**Breach of Trust:** Mr. Alan lends Mr. Banner money without requiring collateral.

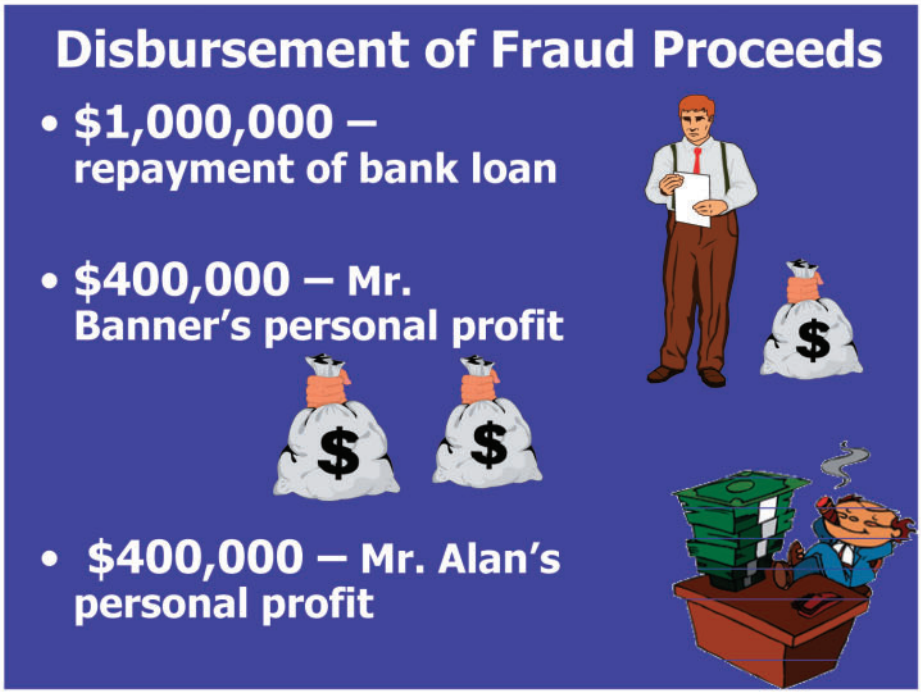
**Consumer Fraud:** Mr. Banner and Ms. Chung dupe unsuspecting victims with the internet advertisement. Mr. Alan falsely maintains that Lownet, Inc. is in good financial standing.

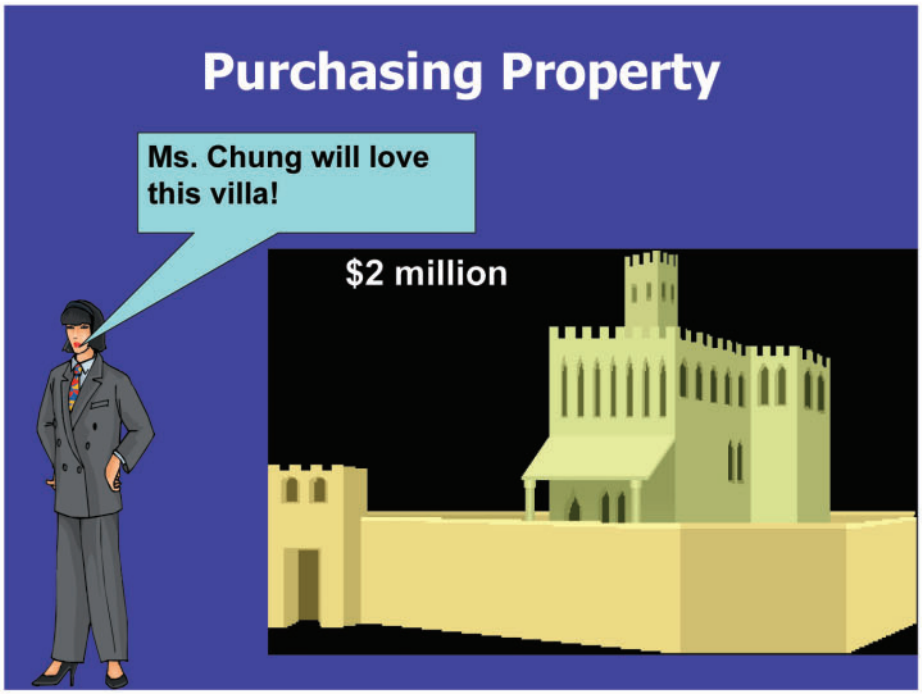
**Identity Theft:** Ms. Chung takes discarded customers' financial records to create false IDs.

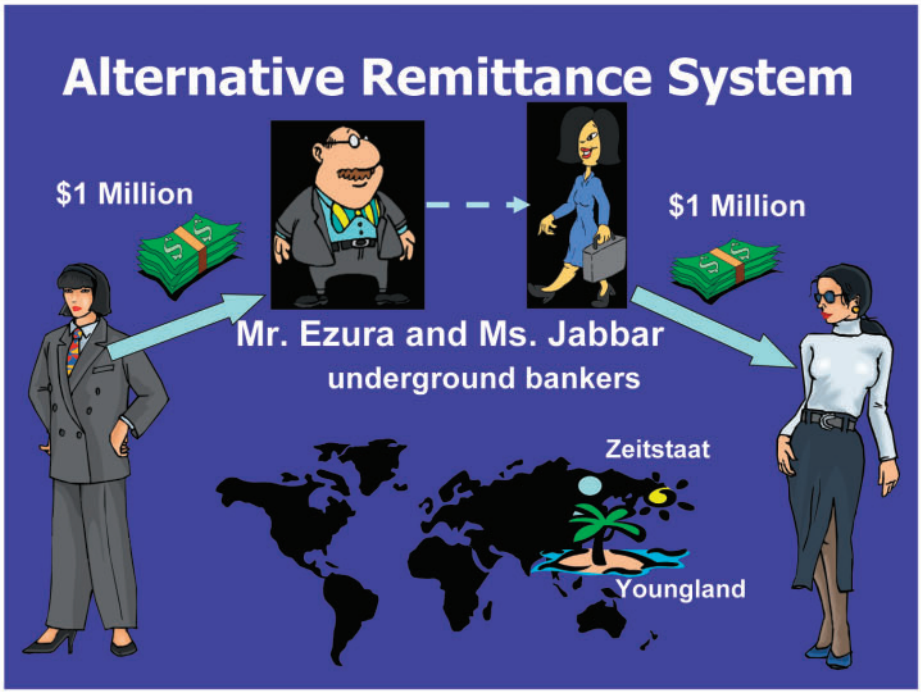
**False Identification:** Ms. Chung asks Ms. Dee to create false identification to open 15 new bank accounts.

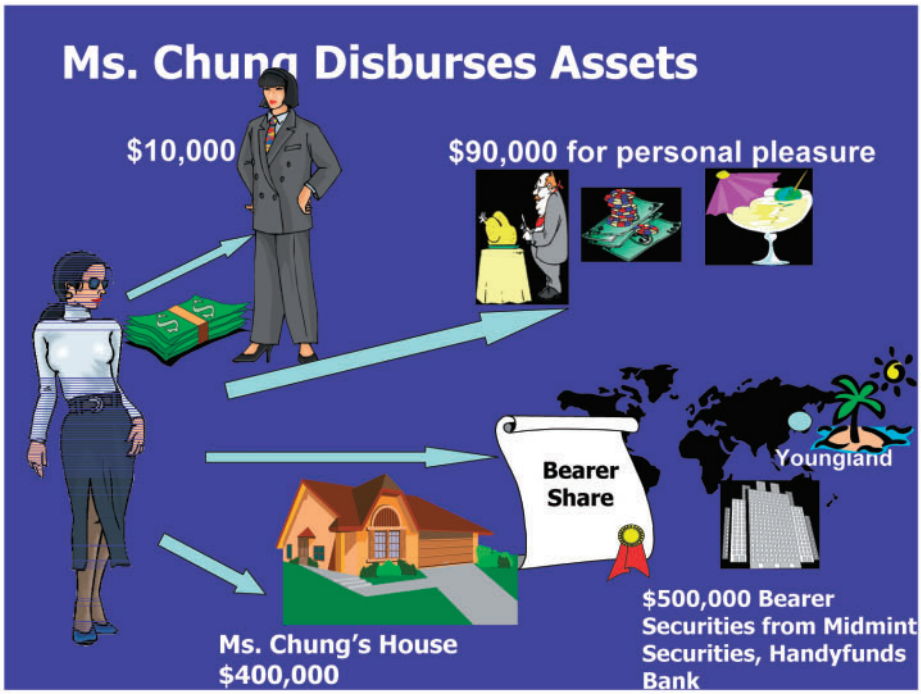
## International Transportation of Funds


Deposit of Proceeds for Loan Repayment
ATM
ATM
ATM
FB
$
$1,200,000
Finebills Bank
SOLD
Mr. Banner,
Kondo, Inc.
Account of Kondo Inc.


Disbursement of Fraud Proceeds
• $1,000,000 – repayment of bank loan
• $400,000 – Mr. Banner's personal profit
• $400,000 – Mr. Alan's personal profit
$
$
$


Purchasing Property
Ms. Chung will love this villa!
$2 million


Alternative Remittance System
$1 Million
$1 Million
Mr. Ezura and Ms. Jabbar
underground bankers
Zeitstaat
Youngland




## Discussion Topics

- Criminal Liabilities of Mr. Alan, Mr. Banner, Ms. Chung, Ms. Dee, Mr. Ezura and Ms. Jabbar
- Money Laundering Offences
- Recovery of Proceeds of Fraud from Xanadu, Zeitstaat and Youngland
- Role of FIUs and the reporting of STRs
- Domestic Measures and International Cooperation in the control of the proceeds of crime
  - Freezing
  - Confiscation
  - Civil Forfeiture
  - Asset Sharing
- Restitution to the Victims

# II. PANEL DISCUSSIONS

## A. Opening (20 April 2005)

**Chair** *(spoke in French)*: Ladies and gentlemen, it's a pleasure for me to welcome you to the fifth meeting of the second committee, and we're going to start with Workshop 5 this afternoon, "Measures to Combat Economic Crime, including Money-Laundering".

Before we start I'd like to make a few general comments on the workshops. The General Assembly, in resolution December 2001, No. 56/119, decided that the workshops, and I quote, "should be held maintaining a free dialogue amongst participants and with avoiding the reading of prepared texts". The General Assembly also underscored in resolution 58/138 dated 22 December 2003, and then reiterated in 59/151, 20 December 2004, that workshops should focus on topics chosen and should yield tangible results leading to ideas and projects and technical cooperation documents focusing on the enhancement of bilateral activities and multilateral activities and on technical assistance in order to prevent crime and to promote criminal justice.

The four preparatory regional meetings examined the topics of the workshops and made recommendations focusing on action, which should be a foundation for debate and for discussion in the various workshops.

I would like once again to appeal to the Committee to develop concrete ideas which can lead to informal inspiration for the Bangkok Declaration. Having made these general remarks I would now like to move on to Workshop 5, "Measures to Combat Economic Crime, including Money-Laundering".

This workshop was organized with the help of the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders and by the Swedish government, and I would like to thank the Swedish government and the Institute for their preparatory work.

We will have two round-tables this afternoon. The first will be called "Trends on economic crime and countermeasures", followed by an empirical debate on economic crime and a debate involving participants. And we will also have two round-tables tomorrow morning which will focus on money-laundering. The first of them is called, "Measures against money-laundering", followed by an empirical debate on money-laundering and a debate involving participants.

The round-tables will be led by Mr. Hans Nilsson, who is head of the Judicial Cooperation Department of the Council of the European Union, and conclusions will be drawn at the end of sessions by the Scientific Rapporteur of the workshop, Ms. Toni Makkai, who is Director of the Australian Institute of Criminology.

And the Committee has the following documents before it. Firstly, an information document on Workshop 5 which is called "Measures to Combat Economic Crime, including Money-Laundering", and this document is called A/CONF.203/13. There is also a discussion guide which has the following number, A/CONF.203/PM.1. And finally, the reports of the regional preparatory meetings for the Congress with the following numbers, CONF.203/RPM.1/1 and RPM.2/1, RPM.3/1 and RPM.4/1.[1]

It is now my pleasure to hand the floor to Mr. Sakai, who is the Director of UNAFEI. You have the floor, Sir.

**Mr. Sakai**: Thank you, Mr. Chairman. Good afternoon, distinguished Delegates, and Ladies and Gentlemen. As the director of UNAFEI, the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders, it is my great honour and privilege to be here as a coordinator of the workshop relating to economic crime, including money-laundering.

First of all, I would like to express my deepest appreciation to the Kingdom of Thailand for their excellent organization of the Congress and hospitality extended to the participants of the Congress. And through the preparation of this workshop, I have learned how little we know about economic crime. We don't even have a clear definition of economic crime, and consequently, its countermeasures are far behind the proliferation and sophistication of national and transnational economic crime.

The objective of this workshop is to enhance our knowledge of economic crime and its countermeasures and to explore effective ways of meeting the challenge of the crime. And this workshop is designed to discuss various

[1] These documents are available at http://www.unodc.org/unodc/crime_congress_11/documents.html.

issues relating to economic crime in a practical and professional way by using, in part, a hypothetical case.

And I would like to take this opportunity to express my sincere gratitude to the eminent Speakers and Panellists for their participation in the workshop and to the Swedish National Economic Crimes Bureau for sharing the challenging work of this coordinating workshop.

And lastly, since we'll discuss many issues and be interacting with the audience, and we have only limited time, so I respectfully ask for your kind cooperation. Thank you very much.

**Chair** (*spoke in French*): Thank you very much, Mr. Sakai. I now have the pleasure of introducing our main speaker, Keynote Speaker, Madam Gudrun Antemar, Director-General of the Swedish National Economic Crimes Bureau. You have the floor, Madam.

***Keynote Speech***

**Ms. Antemar**: Mr. Chairman, Ladies and Gentlemen, it is an honour and a privilege to be allowed to open the substantive part of this important Workshop on Measures to Combat Economic Crime, including Money-Laundering. It has been a pleasure for me, and my colleagues, to elaborate the workshop together with the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI), the United Nations Office on Drugs and Crime (UNODC) and our Thai hosts. I am looking forward to an active discussion with a fruitful exchange of views, knowledge and experience in the following sessions. To give food for thought I will address the issue of economic crime from a general perspective, focusing on issues of concern and possible solutions, with the aim to facilitate our joint struggle against economic crime.

Transnational economic activities are increasing all over the world. The rapid developments in communications technology and transportation have promoted globalisation of the world economy and diversification of activities in the economic field. The quantity of economic transactions has increased tremendously. The concept of economic crimes has been globalized and the modus operandi of such crimes has become more advanced and their scale has increased considerably. This has led to difficulties in their detection, investigation and prosecution.

Economic crimes include a range of illegal activities from conventional types such as fraud, embezzlement, breach of trust and corruption to newly recognized types such as insider trading, money-laundering, financing of terrorism and violation of intellectual property rights. Economic crimes also cover many activities instrumental to the mentioned offences such as forgery of documents and payment cards, identity theft and computer related crimes, especially the misuse of the Internet. Furthermore, economic crimes encompass corporate crimes, tax fraud, tax evasion, consumer fraud and investment fraud.

Though it is important to be able to detect, investigate and prosecute economic crimes, it is perhaps even more important to be able to apply focused and effective preventive measures. The advantages to society are enormous if economic crimes could be prevented. Crime preventive measures must be based on knowledge. Thus it is important to allocate the necessary resources to research and development. The public sector, the business community and the civil society have a shared responsibility. It is important to establish and implement a legal and administrative system of good governance including integrity, transparency, openness, equity and accountability. Targeted awareness raising actions must be carried out. Information on economic crimes and their serious effects on and consequences for the society as a whole must be widely disseminated. The fight against economic crimes can only be successful if it is supported by the public. The establishment of shared values to reject economic crimes is of utmost importance. The crime preventive work must have its base in the local communities. A continuous dialogue with business organisations, trade unions and other bodies is an effective tool in the combat of economic crimes.

The national legislation in general – not only criminal law but also corporate law and taxation law – must be easy to comply with and counteract economic crimes. The legislation itself must prevent violations and facilitate supervision and control of its enforcement. A balance has to be struck between the need of the society to control the implementation and the integrity of the individual. The risk of detection has to be increased, especially in relation to tax crimes.

The United Nations has granted priority to tackling economic crime as well as transnational crime, organized

crime, money-laundering and financing of terrorism. The International Convention for the Suppression of the Financing of Terrorism certainly is a necessary tool for States all over the world to be able to fight terrorism. Also the adoption of the United Nations Convention against Transnational Organized Crime and its protocols on trafficking in firearms, trafficking in persons and smuggling of migrants is a milestone in the fight against transnational organized crime. It is important that the Convention is rapidly and thoroughly implemented in all states. Another important instrument is the United Nations Convention against Corruption. Corruption has a great impact on the economy. It is a catalyst that promotes other types of economic crimes and prevents the detection and investigation of them. The global fight against corruption should continue under the auspices of the United Nations.

To be able to combat economic crimes it is necessary to elaborate a well thought-out and comprehensive multidisciplinary national strategy and action plan against economic crimes. Risk assessment and exchange of information should be integrated parts in this process. The different actions must interact and complement each other with a view to reinforcing their impact. Such a programme should address legislative issues, supervision and control, organisation of public authorities, including continuous and long-term inter-agency cooperation on all levels of the administration, investigation and prosecution as well as international co-operation and crime preventive measures. The Swedish government and parliament have long since recognised the importance of such national strategies and action plans against economic crimes. This is an area in which increased international co-operation can be fruitful. Dissemination of knowledge and exchange of views and experience can be further promoted with the United Nations as an important interlocutor. I hope that this workshop can be the starting point for such a process.

This workshop will try to address new trends and features of economic crimes. As examples of such trends and features the quick proliferation of computers, the rapid increase in the number of customers for Internet services and the expansion of a credit-card society can be mentioned. The criminals fully exploit the Internet and electronic commerce to commit economic crimes transnationally. The transnational nature of economic crimes hampers their detection and makes the investigation more difficult. Also the tracing and return of the proceeds of crime has become more complicated. International co-operation has to be enhanced in order to launch effective countermeasures. Especially the occurrence of shell corporations and offshore financial centres as safe havens for illicit funds must be addressed. The involvement of professionals such as lawyers and accountants acting as advisers and facilitators is also of great concern. Access to transaction records of banks and other financial institutions is also an important issue.

The co-operation and exchange of information amongst law enforcement agencies and other organisations involved in the combat of economic crimes are indispensable tools in the effective investigation of economic crimes. Such co-operation and information exchange should be conducted both at the national and international level. Mutual legal assistance as well as police co-operation must be promoted to facilitate transnational crime investigations. Reciprocity or bilateral agreements should not be conditions for affording mutual legal assistance. Mutual recognition of decisions is another way to improve international cooperation. All countries should strive to provide the widest co-operation in all cases. Apart from an enhanced international co-operation it is also important to consider harmonization of countermeasures in order to avoid lacunas in the legal framework and the enforcement.

Corporate crime is an economic crime committed in a well-organized and complex manner on a large scale causing damage with substantive effect on the economy. Criminals participate in the management of companies and in their capacity as representatives of the companies disguise proceeds of crime under what seem to be legal business activities or commit other crimes within the framework of the company. The prevention, detection and investigation of such crimes is difficult. One way to address the problem is the establishment of a system of a trading prohibition on natural persons. A person who is subject to a trading prohibition should neither be allowed to be a majority owner of a legal person nor exercise any function in a legal person. Another way to address the problem is to develop sanctions - criminal as well as administrative and civil - for legal persons.

It is also vital that proceeds of crime can be eliminated. Economic crimes are committed in order to gain profit. It is most effective and critical to deprive criminals of the proceeds of crime. By doing so the criminals are deprived of their incentive to commit crime. It is in this context appropriate to consider means that would facilitate such elimination. One way is to encourage an enlarged forfeiture with a lower level of proof or a reversed burden of proof in certain situations.

Apart from these basic preconditions an effective working method has to be developed. One way to tackle severe and complicated forms of economic crimes that has proven successful in Sweden is the application of a multidisciplinary approach. My authority, the Swedish National Economic Crimes Bureau, has for many years applied such a working method with a good result. The investigative work is carried out in teams consisting of experts with different knowledge and experience. Prosecutors work together with police officers as well as financial investigators and other experts such as computer technology specialists. It is a daily interactive process where the experience and knowledge of each participant is made use of to the fullest extent. A step on the path to apply a multidisciplinary approach can be to invite experts to participate in specific investigations or special investigative units.

It is important that the procedures for preliminary investigation and court proceedings are carefully considered with the aim to make them as effective as possible. The substantive provisions as well as the procedural rules must be elaborated with this in mind. The procedural rules must in general be simplified and provide flexibility to allow the necessary concentration of the preliminary investigation. Another way to facilitate crime investigations is to consider co-operation with law enforcement agencies as a mitigating circumstance when deciding on the penalty. It should also be stressed that the effective protection of whistle-blowers and witnesses is essential to a successful collection of information and evidence. Economic crimes put special demands on investigative techniques. Therefore, new types of investigative techniques such as interception of communication, electronic surveillance and modern forensic science, as well as traditional techniques must - when possible - be fully used in the fight against economic crimes.

To conclude my presentation I would like to emphasize once more the necessity to combat economic crimes. This criminality affects not only individual natural and legal persons but also the society as a whole with repercussions on the national and global economy. To secure sustainable development and improved welfare for all, the available resources must be used for these purposes and not end up in the hands of criminals. We have a joint responsibility to continue and reinforce the fight against economic crime. In a global context this work should preferably be carried out under the auspices of the United Nations. I look forward to participating in this important workshop, with its many distinguished panelists, and hope for an interactive dialogue with the esteemed participants. I am convinced that we will have a fruitful discussion and that we will stand better prepared to face the challenges in our joint struggle against economic crimes at the conclusion of the workshop.

Thank you for your attention.

**Chair** *(spoke in French)*: Thank you, Madam Antemar, for that presentation which will provide an underpinning for our work for this afternoon.

I will now invite Mr. Hans Nilsson to assist me in moderating the panels, and I would like him to introduce the Panellists. You have the floor, Sir.

***Moderator's Comments on Technical Assistance***

**Moderator**: Thank you very much, Mr. Chairman. I would first like to welcome you, all of us, on my behalf, and I would like in particular to associate myself with Director Sakai's welcoming remarks, and especially the remarks he made to our host country, the Thai government and to the Swedish National Economic Crimes Bureau.

Now I will be brief in my first intervention here because we have already started late. We had 180 minutes and quite a long time has already gone. There will be several occasions for the participants here to intervene, but I would already now like to ask those that want to intervene to, if possible, give me your name and the title of your intervention, or to the Secretariat, so that we can plan the workshop a little bit better.

I should also say that there will be a publication that will come out of this workshop, like five years ago when UNAFEI organized a workshop in Vienna concerning computer crime. So we will, for instance, have the possibility of reading the very interesting keynote speech that we just heard in that publication by UNAFEI.

So we have three Panellists today. They are all well-known experts. I will introduce them to you in a moment. But I would like to address one issue specifically before asking the experts to take the floor, and that is the issue of technical assistance, which I think is not dealt specifically in the interventions during this workshop. And in that context I want to draw the attention to one of the background papers that the President mentioned, namely,

A/CONF.203/13, Chapter IV of that document, on page 10, deals specifically with the issue of technical assistance.[2]

Now I would like to recommend all of you to read this Chapter. It's just a few pages, but I think that we have to congratulate the author of that Chapter because it summarizes in an excellent way how I believe the technical assistance should be looked at both now and in the future. And I would suggest even that this Chapter has an outreaching position in that it can serve as a basis not only for this workshop and in this particular theme, but for many other themes as well. So I would, if I can already now try to draw one conclusion of this workshop, suggest that we should all look at this Chapter and draw the consequences of what has been said concerning technical assistance in the Chapter.

I want to highlight just a few questions which have been dealt with in this background paper on technical assistance. First of all, it's been said that the Congress in itself is an opportunity to deliver practical assistance in the form of direct contributions of experts. We have the opportunity to share information and to share experience. And I think that this goes right into the heart of what we are trying to do here today. We want to contribute to this goal, to share our experience and to give the possibility to look at some of the issues. We want to be practical, we want to contribute to our common knowledge, and we will also want to bring in some new ideas, such as the question of identity theft, that we will hear discussions about. We also want to look at some possible gaps in legislation and in cooperation.

Now there are many forms of technical assistance we can see from the paper. And one form we have actually present here in the Congress. We have the displays that you have on various floors inside the house. I would, for instance, suggest that you could go and look at the booth of UNAFEI. There are a number of manuals and books and papers that have been drafted within the context of many meetings in Tokyo, and they have been extremely useful for developing specific themes.

One other item that I've noticed in preparation for this workshop is that when it comes to money-laundering, we have quite a lot, in fact, concerning technical assistance. We have a lot of manuals and model laws and CD-ROMs and Internet tools and so on, but when it comes to economic crime, it is much less, if at all, we have something existing.

And there I want to draw the second conclusion, if I may, already at this preliminary stage, and that is that we should perhaps think about in the future to develop much more our tools for technical assistance in economic crime. I realize that there is a problem of definition of economic crime, and we will discuss that, but I think that one can look into a functional approach and take it theme by theme.

***Moderator's Comments on the Role of the Private Sector***

Another particular feature with the question of economic crime in general and technical assistance is that I think that it is important that we involve the private sector. They have a crucial role to play in the development of the criminal policy in general. The private sector are victims but they are also partners in law enforcement; they can serve as gatekeepers, for instance. Now this is something which is a very sensitive issue for the private sector.

I remember when I attended a seminar in Montreal in Canada in 1989, and the papers of that seminar had a heading that said that there are some types of money that the Canadian banks don't want, and there was a dollar bill inside a syringe, which I think shows perfectly well that one can reconcile money-laundering and the role of banks and the fight against money-laundering.

The private sector, we need their cooperation and the assistance of them, and therefore we have also to involve the private sector and give feedback to them so that they understand the essence of the law enforcement.

I would also highlight that there is a role of the non-governmental organizations in this area of economic crime. I think that they can make a useful contribution, both as regards certain types of economic crime, and as a useful reminder to governments when perhaps they sometimes want to go too far and that the human rights aspects are not looked into sufficiently carefully.

[2] See Part I, A of this report.

## B. Panel 1

### Presentations on Trends of Economic Crime and Countermeasures

**Moderator**: Now with this introduction, I would like to introduce our speakers. And our first speaker will be Professor Abboud Al-Sarraj from Syria. Now Prof. Al-Sarraj is a former dean of the Faculty of Law of Damascus University. He is a specialist in criminal law, economic and business crime. He has been a government consultant a number of times, and he is the author of more than 100 publications on these topics. So Professor Al-Sarraj, you have the floor.

**Dr. Al-Sarraj** *(spoke in Arabic)*:[3] Thank you, Mr. Chairman. I would also like to thank the Director of the Swedish National Economic Crimes Bureau as well as UNAFEI.

*(Spoke in English)* It is difficult to have one legal definition of the concept of economic and financial crimes all over the world because the criminal policy varies greatly from one country to another.

However, we can identify between all the trends, two principal trends. The first one, it is a broad trend which defines economic and financial crimes as any action or omission that runs counter to the public economic policy. This trend considers that the economic and financial laws are a comprehensively organized economic activity of various description carried on by the government or private sector.

Trend II: It is a narrow trend which considers no necessity for state intervention in all and any economic activity descriptions. It suffices for the economic law to observe the basic principles of the economic public or that and to lay down in the light of these principles the rules related to planning, manufacturing, money, banking, imports, exports, insurance, transport, trade, customs, et cetera. Whatever is the economic policy of the country, there is a unanimous position for the incrimination of the economic crime.

I will give some example of economic crimes covered by both trends. We can mention fraud with another kind of fraud, corruption, identity theft, crimes of money, banking offences, money-laundering, fiscal offences, customs offences, tax evasion, cyber crimes, trade offences, intellectual property offences, embezzlement, theft, cheating the state, manipulation of stock markets, et cetera.

For the countermeasures that we should apply against these crimes, we can say also at the same time, that the countermeasures vary also from one country to another. However, we can divide the different trends into two principal trends.

Trend I prevails the penalties, even the severe penalties, for some crimes, such as imprisonment, confiscation and fines. Trend II prevails non-criminal sanctions like, can I mention, civil, administrative, disciplinary and economic sanctions.

What can we mention about the recommendations that we need for this Congress? We can mention some of these recommendations and divide our recommendations to first, one, the prevention. We can say that the first one, fortify the United Nations Office on Drugs and Crime, where feasible commercial codes and regulations, financial laws and administrative control should be reformed to increase the transparency of operations.

We can mention also familiarizing the public opinion with the importance of economics and legislation. We can mention also meticulous control should be imposed on the economic firms.

The meaning “criminal sanctions” we should apply to economic offences are fining and sentencing, because when we talk about criminal sanctions it is possible that we talk about criminal sanctions and non-criminal sanctions. Non-criminal sanctions, it is advisable to apply non-criminal and economic sanctions to economic offences. I can mention, for example, that from civil sanctions are either indemnification of the damage, ordering that the work be completed, annulment of the work that runs counter to the economic laws and the reinstatement of the status quo to what it was.

There is some example, at the same time, of economic sanctions that we can mention, the prohibition of carrying on economic activity, shut-down of the economic firms, business discontinuation or dissolution of the

[3] A paper and PowerPoint presentation submitted by Dr. Al-Sarraj are contained in Part III, A of this report.

economic firm, replacement of the economic firm, and receivership, withdrawal of export-import permit, withdrawal of the economic firms incorporation act, and exclusion from certain exemptions prescribed in the law.

I can, because you know that our time is very limited, I can pass now to the conclusion. In this era where the world changes to be a small village, where the trends of the economic system get closer, and the concept of crimes and deviation gets almost unified across the world, it is time to consider the following. The relevant Congress may recommend initiation, negotiation, on the draft United Nations Convention against Economic and Financial Crimes to clearly define economic crimes and their sanctions on the basis of a comprehensive study to be conducted by a group of recognized experts. Thank you very much, Mr. Chairman.

**Moderator**: Thank you very much, Professor, for this interesting expose, and thank you in particular for keeping to your allotted time. I will have to be rather strict to the Panellists and also to the floor in this respect, but for the time being we are well on track.

I would like now to introduce Mr. Charles Goredema from South Africa, who is originally from Zimbabwe. He's from Zimbabwe but he's working in South Africa. He's the Senior Research Fellow at the Institute for Security Studies since 2000, and there he is, in particular, specializing in organized crime and corruption. So Mr. Goredema, you have the floor.

**Mr. Goredema**:[4] Thank you, Mr. Chairman. It is particularly difficult to follow an eminent speaker like Professor Al-Sarraj.

I have been asked to talk about the impact of economic crime and whether indicators can be developed to assist the process of achieving that particular activity.

Now when one is talking about something like economic crime, which many experts have pointed out already today and on other occasions still remains undefined, it is always difficult to get to the point of actually itemizing what indicators would be useful without locating the discussion in the context of what economic crime is all about. My remarks will largely be based on the experiences encountered in Southern Africa, that being the region in which I work.

A previous Speaker I think spoke about a multi-disciplinarian approach as being desirable to deal with economic crime. Now that is a view which I would like to support. I gather that a debate is emerging, or has been emerging over the last couple of years, as to whether it is necessary to bring into being a separate and distinct convention, an international convention, dealing with money-laundering. It is not my place to perhaps express an opinion one way or the other, but the subject of my presentation goes some way towards answering or contributing to that debate.

There is a general proposition: all crime has economic consequences, even though not all crime is motivated by the prospect of acquiring tangible assets. The result of crime is potentially measurable in economic terms. Now there is a distinction between crimes that are committed opportunistically on an ad hoc basis and crimes that are market-based and market-influenced. Economic crime in Southern Africa really should be confined to those offences that are market-based and market-driven.

My paper, which will be made available later, really discusses what the common areas of criminal activity, that may be characterized as economic offences in Southern Africa are: now they include armed robbery; they include theft of motor vehicles; they include serious commercial fraud; they include currency counterfeiting; extortion and racketeering; drug trafficking; smuggling of precious resources, predominantly diamonds, gold, timber, and wildlife products; corruption and money-laundering.

Now it is difficult to get to a stage where one can actually measure the impact of economic crime because to do that comprehensively one would also have to develop some sort of picture as to the impact of other activities and other phenomena and factors that also impact on societies in Southern Africa. Now I don't have the time to go into what those factors are, but let me perhaps turn to the indicative factors of economic crime in our region.

[4] A paper submitted by Mr. Goredema is contained in Part III, A of this report.

Proceeds of economic crime and other illegally-acquired income tend to be transferred abroad within a relatively short period of their acquisition. Another general proposition is that such proceeds tend to be consumed rather more quickly than, say, the same proceeds of lawful activity or the profits that are lawfully generated.

Now on the basis of those two propositions, one could, in fact, point that if one was to look for indicators of the impact of economic crime, one would therefore have to look at those sectors within our economies and those sectors within our polities that have some sort of relationship with the transfer of assets across borders and those activities that have something to do with the consumption of money.

In my paper, I refer to the investments of unexplained or undeclared wealth in external markets and foreign jurisdictions as being a key indicator, the investment in residential property as being another, conspicuous consumption in luxury commodities, the abuse of state institutions for the private accumulation of capital.

The coverage of indicators of economic crime cannot be complete if it does not take into account corresponding data in relevant foreign countries. It has been suggested that as a research tool, data collection should occur on a corresponding basis among affected countries in the region.

The process would be one which starts with the identification of the major predicate activities measured, criminal activities, in each of the countries in the region. Using materials such as police and court records, the patterns of transmission should then be mapped out on the basis of information collected from within the criminal justice system, as well as from data sources on routes of trade and other commercial activity. And the result should be a tabulation of the precise routes for the transmission of the proceeds of crime, whether such proceeds are consumed locally within the country or they are transferred to a foreign jurisdiction. I have included a table in my paper for that purpose.

As regards the sources of data from which the process of identifying the indicators of the impact of economic crime are, traditionally we have always tended to rely on the police, the criminal justice system, and to place a lot of reliance and pressure on those agencies as being sources, but increasingly, we have to move on and turn our attention to other sources as well. I have in mind in the Southern African context, anti-corruption commissions, anti-corruption bureaus, but beyond them, one also has in mind customs and excise departments, the central statistics offices and departments that exist in all our various countries.

In conclusion, let me say there is broad and evident consensus that there is a need to respond adequately to serious economic criminal economic activity. What is lacking is clarity on the terrain for which responses should be designed. The reasons are many, but among them is the real absence of empirical research on the nature and scale of economic crime. This applies to the world, including Southern Africa in particular, the gap in the current environment has tended to be fuelled by misconceptions on the nature of organized crime groups and criminal business in general. And what I propose is a method in which we should develop a set of indicative factors that could facilitate a better understanding of this group of criminal business in its most comprehensive form, as well as facilitate the assessment of the threat that criminal business raises to economies from time to time.

I do not have any more time to expand on the points that I have raised. Thank you, Mr. Chairman.

**Moderator**: Thank you very much. Thank you very much, Mr. Goredema, and again, thank you for keeping to your allotted time.

So now we have understood that defining economic crime is very difficult. We don't know really what we are talking about all we know is that we are talking about a very flexible monster which is somewhere there, something which is very difficult to handle. And we have also understood that it is very difficult to lay down indicators for economic crime in general. But we have some ideas that have come from Mr. Goredema which are very interestingly developed in his paper that we will be able to read in the UNAFEI publication that will come out as a result of this workshop.

We have now a third Panellist.

*(Spoke in French)* I will use French to introduce Mr. Don Piragoff from Canada, who is Senior General Counsel from the criminal law policy section of the Department of Justice in Canada. Mr. Piragoff is very well-

known, I think, to all of us, not only here in the United Nations, but also within the Council of Europe and the OECD and OIS and so on.

Five years ago, he was the moderator of the Workshop on computer related crime, which I was supposed to speak on the definition of computer crime, and Mr. Piragoff gave me ten minutes to explain what computer crime was at that time, and I'm going to now take my revenge on him, and I'm going to give you ten minutes, Mr. Piragoff, to explain what identity theft is and dumpster diving and phishing. And if you look in the background paper prepared by the Secretariat, you can see that there are so many new terms that I imagine it will be a challenge to our interpreters to interpret all these terms because this is a relatively new criminal phenomenon and I'm not sure that we've necessarily been able to absorb it all yet. But I'm sure that Mr. Piragoff is going to be able to explain to us what we are talking about. You have the floor.

**Mr. Piragoff**:[5] Thank you, Hans, the Moderator, Ladies and Gentlemen. I gave you ten minutes five years ago, I thought maybe you might only give me five this time.

One of the principles guiding our work in the UN Crime Programme is to ensure that any increase in the capabilities of criminals is matched by similar increases in our criminal justice capabilities. Since the last Congress, one new crime that has come to our attention is that of identity theft or identify fraud, or what the Crime Commission has described as "the criminal misuse and falsification of a person's identity." I will use the term "identity theft" as an abbreviation.

Most countries have not yet defined identity crimes and global statistics are not available, but there is evidence of rapid growth. In Canada, identity theft is now estimated to cost as much as $2.5 billion a year. In Australia, the New South Wales Crime Commission reported that identity theft there costs more than $3.5 billion annually. In 2003, the U.S. Federal Trade Commission found that in the previous 12 months, 10 million people had been victims: businesses had lost nearly $48 billion; individuals had lost nearly $5 billion; and victims had spent about 300 million hours trying to reverse the negative impact of identity theft.

There is also evidence that identify theft is being used by organized criminal groups and terrorist groups to facilitate and fund their activities.

In its most basic form, identity theft, or criminal misuse and falsification of identity, can be described as "the collection, possession, transferring or use of personal identification information for the purpose of committing crime". The identities which are taken or fabricated are then misused to commit crimes and avoid liability. Few countries at present criminalize directly this type of conduct.

Identity theft involves the misuse of personal identification information. Personal identification information is generally information that either alone or with other information identifies a specific person or provides access to that person's assets or other benefits or services. It could include a person's gender, age, name, race, address, telephone number, bank account number, bank account balances, investments, line of credit, credit rating, credit card or personal identification or "PIN number". The information can be tangible such as on paper or a document, or it can be virtual information such as personal data in a computer system.

Personal identification information can be obtained in a variety of ways, some of which involve the use of new technologies, such as the Internet and computers, some which do not.

Examples of identity theft that do not involve advanced technologies are some of the following. Information can be copied by hand from client files by a dishonest employee or official and sold to others who then use the information to make false identification documents to commit further crimes.

Second, the information can be taken from trash bins, which is known as "dumpster diving".

Three, perpetrators may redirect mail from a person's home address to another address. They collect the victim's mail, use identity information contained therein, and then impersonate the victim to commit fraud or other crimes.

[5] A paper submitted by Mr. Piragoff is contained in Part III, A of this report.

Fourth, a process called “tombstoning” involves collecting information about a person who has died. The perpetrator then uses this information to pretend that he or she is the dead person.

Five, the theft of PIN numbers is usually a two-stage process. Actual numbers may be obtained by physically observing a victim entering the number into an automated banking machine, and then combined with other information taken from the debit or the credit card through stealing or “skimming” the information with technological card-readers or skimming devices, the two pieces of information are matched together and the person is able to actually in future withdraw funds from that machine.

Six, other forms of identify theft use more advanced technologies. For example, computer databases may be “hacked” to obtain personal identification information contained therein. Two, software known as spyware may be surreptitiously installed in a computer system allowing the perpetrator to record the keystrokes of victims as they use the computer. Three, in a process called “phishing,” victims are sent e-mails or are directed to false websites which deceive them into voluntarily disclosing their personal identification.

Computers and the Internet have changed the way economic crime is committed. Technologies now support crimes that involve a series of actors along a continuum, that is, a series of interconnected activities in which no single actor commits all of the elements of the crime; each is responsible for a specific activity, cumulatively producing the crime. This is a significant change in the way crimes are committed.

To illustrate my point, consider the following case scenario. First, Mr. Abel, who works in Canada in a bank, copies personal identification information about a number of the bank’s customers from the bank’s computer.

Second, Mr. Abel sells the information to Mr. Bond over the Internet. Mr. Bond lives in Germany.

Three, he, that is Mr. Bond, in turn sells the information to Miss Cantor, who lives in Australia. Up until this point, in most countries the conduct is not criminal.

Four, Miss Cantor uses the information to produce fraudulent identification documents which will allow the identities of the original customers to be used in other crimes.

Five, Miss Cantor sells the documents to Mr. Douglas.

Six, Mr. Douglas distributes the fraudulent identification documents to his friends.

Seven, his friends use the documents to pose as Canadian tourists and commit large-scale frauds on local businesses in Australia.

Eight, they then sell the goods that they obtained on the black market.

Nine, they then share the proceeds with Mr. Douglas.

And tenth, Mr. Douglas then channels these funds back into a money-laundering scheme involving organized crime.

The original customers, in respect of whom their information was copied by Mr. Abel, will only become aware that they are victims when they start receiving demands that they pay for the purchases made in Australia. They are the first group of victims and will face long and arduous processing to reclaim their credit ratings and their reputations. The second group of victims are the businesses and credit companies that suffer losses due to fraud.

Unless criminal conspiracy applies to the facts, most countries do not have offences to cover the activities of Mr. Abel or Mr. Bond, the first three steps on our criminal continuum, that is, those who copied or sold or trafficked in the information.

Personal identification information is not often regarded as property unless it has value. Also, where personal identification information is only copied, the owner is not deprived of it, which is another common requirement for theft and fraud.

Therefore, traditional property offences are often not effective means for addressing identity theft involving the copying, collecting, transferring or selling of information as a precursor to committing other crimes such as fraud. There is a need for countries to address these new activities in domestic laws.

The example also highlights the need for a collaborative response in dealing with the traffic of this information, particularly across international borders. Identity theft can also be used to evade capture or detection, produce fraudulent documents or to move terrorists in or out of countries or to commit other transnational crimes, such as trafficking in persons.

One of the challenges is to ensure that our domestic offences and international measures are not too broad. We do not want to criminalize legitimate uses and transfer of information. However, when a person obtains information of another person without that person's consent with the intent to use it to commit further crimes, it is appropriate to apply the criminal law.

A successful strategy against identity theft would involve cooperation and coordination amongst all countries. In 2004, the Crime Commission, followed up by ECOSOC, adopted a resolution proposed by Canada calling for international cooperation in the prevention, investigation, prosecution and punishment of fraud, criminal misuse and falsification of identity and related crime.

The first meeting of this group was held in Vienna last month. It was an open-ended meeting and was attended by approximately 32 member states. It will report to the Commission at its next meeting this May. To ensure adequate regional representation, the process will be run as an open-ended working group, but the actual gathering and analysis of the data will require a smaller group of experts in the subject area, and the report calls upon interested Member States to consider designating appropriate experts to participate in this work.

Canada was pleased to be able to provide the resources required to hold last month's preliminary meeting in Vienna, and we hope that other delegations will also recognize the importance of this work and provide further resources as the study proceeds.

In closing, I would encourage all of us to work together to better understand new emerging forms of crime, such as identity theft, and to enhance our capacity to address them. I believe that there are steps that can be taken in both the domestic and international context to stem identity theft as a precursor to other forms of economic crime. I thank you for your attention today and I look forward to participating in the discussion to follow. Thank you.

**Moderator**: Thank you very much, Don, for this very interesting presentation. This reminds me of when we discussed in the mid-eighties how we could define computer crime because we actually didn't counterfeit the blips, the economic blips in the computer, they were there even if we had retrieved them. And it was difficult to commit a fraud with things that were still there, and that the criminal law was not really adapted to these new forms of crime.

And I think that one can probably say the same in respect of identity theft, that many of us would probably, in respect of certain of these criminal elements, have problems in relation to the way in which our criminal codes are being drafted currently. So I think that the work which has been going on in Vienna seems to be extremely important so that one can further analyze this new topic.

***Questions and Comments from the Floor***

Now we have had the presentation of the three Panellists and I would like to thank all of them for having kept their time. We will now hand over to you, the Participants, the floor, and we will have a debate for some time. We will see how many would like to intervene, and I have one Delegation that had already asked to intervene on this question and that is the Delegation of Chile.

And we have agreed, I think, that the Delegation would receive five minutes, roughly, of time, but I know that their statement is longer and that we will arrange for the statement to be photocopied and put at the back of the room so that when you leave the room later on today you will be able to find a photocopy here that you can take with you so that you will hear the full statement of the Delegation of Chile.

In addition, of course, this statement, this, I hope, interesting intervention will also be fully reproduced in the UNAFEI publication. So I think also that you had a PowerPoint presentation, if I'm well-informed, and I'm now looking to the Delegation of Chile. You have the floor.

**Chile** *(spoke in Spanish)*:[6] Thank you very much, Mr. Chairman. I have a PowerPoint presentation in order to use the time better to focus our remarks on these five minutes. And then having heard the very interesting presentations of the Panellists, as you've suggested, we don't want to read a structured speech, rather, we'd like to make some headway with regard to what we're hearing.

The first statement that we'd like to make at this time is that crime is deeply related to history, to the history of man. Crime belongs in the historical and cultural framework, and criminal behaviour evolves with lifestyles of human beings. And this is why we should not be surprised to note that the methods and modalities and specific activities which manifest crime at this moment in time are adapted to the economic, financial and social way of being in the world of mankind. And in the technological world, in a world without borders, in a communicated world, crime, of course, takes on those parameters.

Crime is, as one of the distinguished Panellists was indicating, a reality which is quite different from the small town. It has taken on planetary dimensions, and it is also closely linked to other aspects beyond geography, related to the way of being of modern societies. These include institutions, legal mechanisms, financial mechanisms in which crime, regardless of the type of crime, needs to be supported and interrelated with them. So in this way, we'd like to underscore a second idea.

We believe that in breaking down or fragmenting illicit activities in different categories, we lose the possibility of truly being able to prevent crime, of truly being able to investigate illicit activities and provide for law enforcement. Let me give you an example.

Corruption is a phenomenon; it is not a crime. It manifests in a multitude of corrupt activities, from deviation from the standards, breakdown of the structure of an entity, in this case of the social structure, and some of these behaviours are defined as crimes or statutory crimes in the law, but much of it's based on privileged information. What does this mean actually? It means that corruption is an operational condition for criminal patterns or main crimes for which corruption is functional. In other words, it's part of the methodology of committing a crime. It is done in order to control the controller, to manipulate them like a puppet. The privileged information is not used as a crime in and of itself, a crime per se; it's more of a crime as an instrument, a functional crime. It's a stepping stone in order to go beyond control, surveillance, or in order to obtain an advantage, an undue advantage.

Likewise, and this is another of the substantive issues in this meeting, money-laundering. If we take money-laundering and we look at it carefully, it's not a crime in and of itself as an end in itself. That's not the purpose of it; it's not the objective of the criminal; it's not a pure objective. The pure purpose is not to dissimulate the origin or the destination of the money, but rather, it's a stepping stone in financing illicit activities or in order to obtain the proceeds of the illicit activity of crime, or in order to pay those who have participated in the crime, i.e., in the form of corruption or in criminal behaviour.

So we think that fragmentation of the methodology and the various activities which reflect modern man's criminal behaviour are, generally speaking, without borders, and generally speaking, technological in nature, and generally speaking, they are associated intrinsically with our way of being in their being intricately tied as well with our way of doing business and with our laws. And when I say that we are living in different parts, we are living in a fragmentary way, breaking up the pieces, and then what we're having to do is investigate these pieces with great difficulty.

Corruption-related crimes, when we look at them we have to think, what is the purpose? Where is this going? If we can understand the overall picture and where the crime is going, then we can investigate it better. If we look at money-laundering and look at the crime it is related to, then we can investigate it more effectively.

Now this morning we listened a great deal to ideas as to whether or not terrorism is linked to organized

[6] A PowerPoint presentation submitted by the Delegation of Chile is contained in Part IV of this report. The Workshop did not receive a paper from the Delegation.

crime.[7] We have a third statement in this regard. Modern crime is transcendent because it goes beyond individual crimes, which of course continue to exist, such as theft, but the crime which occupies the United Nations and our institutions, these transcendental-type crimes, are crimes which are structured with many subjects and which coexist with the modern market conditions and with advanced technologies. And these crimes must be investigated in diverse manners in a different way.

It needs to be integrated and systemic in its approach, and it would have to take an overall approach. And it involves a different kind of international cooperation, one that we not only note with alarm, or if we look at the rigidity of the various legal systems in different countries, you compare this to the high degree of flexibility of crime, which does not follow any protocol or rules or rather they tend to occupy niches, so if we compare the rigidity of our systems and our legal systems with the flexibility of crime, and we further note the fragmentation in our approach, we basically have an approach which makes no sense.

And we could spend thousands of years investigating many, many different conducts and behaviours and ultimately not see the relationship between them. So we need to have an integrated approach, take advantage of the synergies of the various human activities in society and see how they're impacted, and international cooperation needs to be more flexible with an overall approach, a large-picture approach, in order to prevent crime, modern crime. And remember that this is not new. Economic and financial crimes are nothing new. Rather, it's the very way of being of modern man. As in the past, stones were used or caves. Thank you, Sir.

**Moderator**: Thank you very much, Madam, for that statement which I think was very interesting, and I think there were certain key words that I find from your statement. On the one hand there is the fragmentation, which I think is reflected in the functional approach of the, for instance, the Recommendation 8112 of the Council of Europe which is referred to in the background papers, where there is rather a functional approach to the economic crime. One looks at the economic crime in this I think fragmented way. And against that you put the overall approach. One has to look at the large picture.

And you used the word, certainly at least the interpreters used the word that we need to find the synergies, and I note that the synergies, that is part of the theme of this entire Congress.

I think that your intervention was very interesting and useful for us in the context of the discussion when we actually start to analyze what is economic crime. It was a very interesting statement. Thank you, Madam.

So I now would like to give the floor to somebody else, but I haven't received any requests, but at least one or two interventions. Yes, the Distinguished Representative of Iran. Please, Sir, you have the floor.

**Islamic Republic of Iran**: Thank you, Chairman and thank you all Panellists for a very nice explanation about the matters which are about crimes. I wanted to know some more about the distinctions, exactly, for the financial crimes, that we have some problems in our country for ratification of the new law by the Parliament that it's some contradiction with the innocence principle which is, in our constitutional law, there would be some difficulties, that there is some contradiction between this principle and the changing of the burden of proof by the prosecutor general. It's the first thing that I think the trend in global society is going toward, that to change this principle sometimes to facilitate for the offenders not to so facilitate.

And the other matter is that all crimes, not if, the majority of crimes are committed to earn some money, proceeds of crime are important for criminals. But is it possible to say that all crimes which go and you earn some money about these, they could be punished for committing the crime of money-laundering? If someone, say, they steal something, buy a house, a car, motorcycle for himself, can we punish him, himself or someone who hurts him committing this crime for the crime of money-laundering as well? Where is the border of this thing? Put some distinction between these two for preventing double punishment of people.

We are going so fast these days for combating crimes. That's okay. But such speed shouldn't force us to some ways like double punishment. I want some explanation about this matter, please. Thank you.

**Moderator**: Thank you very much for that interesting question. I think that we could also take another question

[7] The speaker may be referring to a discussion which took place in the plenary of the Congress.

before we let the Panellists answer. I would note that we could perhaps, on the money-laundering issue, revert to that tomorrow when we will deal specifically with the issue of money-laundering and the question of how to avoid double punishment.

I could just now for myself make the comment that the Member States' legislation, I believe, varies in this respect. With some Member States it is not a criminal offence to launder the money that you have earned from your own drugs trafficking. In other Member States it is a separate money-laundering offence that can also be committed by the one who has committed the predicate offence. But I think that I would like the Panel tomorrow, that deals specifically with the issue of money-laundering, to come back to that question and make some comments in that respect.

I believe I see a Gentleman over there. I cannot see from this distance, but you have the floor, Sir.

**Libyan Arab Jamahiriya** *(spoke in Arabic)*: Thank you, Mr. Chairman. I would also like to thank the Panellists for this very interesting and useful information that you've made available to us. I'd further like to thank the Chilean representative for her presentation and remarks.

We would like more detailed information in this regard. We would like to see the presentations made by the Panellists be distributed to participants.

Moreover, I'd like to raise an issue with regard to computer-related crime. Indeed, we have a dual problem here. First, we have the computer itself, which is considered the instrument of the crime, and then we also have computers, the whole network or system related to the crime committed.

I am a professor of criminal law in my country, and with regard to the use of computers in committing crime, we don't have a very extensive problem because our criminal code addresses the fact that there are a number of crimes which are considered crimes independently of the instrument used to commit the crime. The crimes are defined as crimes anyway. There are different uses and we need to guarantee that crimes are perpetrated using a computer or thanks to a computer.

We have a number of crimes that are perpetrated using the computer and they vary. They change, they evolve over time along with the technologies. And we have two possibilities here. We could have flexible laws on the books which would then give us flexibility with regard to the legislation itself, and if we take that approach, then there are issues with regard to crimes perpetrated using computers, or we could take a different approach and that is to very specifically and precisely define statutory crimes and amend the texts, amend the laws on the books in a systematic manner to be in line with that approach.

We follow the almost daily evolution of modern technology, and in following that I am compelled to refer to some of the Panellists in order to obtain views in this regard. How do we proceed? We have a document here on a presentation made. Australia has some experience with legislation as it relates to computer crime. Could Australia provide us with more explanations in this regard? Thank you, Mr. Chairman.

**Moderator**: Thank you very much.

Well, what I would like to do now is, first of all, in relation to the question of the distribution of documents. As I said before, the entire presentations with be published by UNAFEI so they will be available both in written publications and on the Internet, the Internet site of UNAFEI. I will investigate with the Secretariat if it is possible also to at least make some photocopies available already here at the Congress, but I cannot promise anything that is not in my hands.

I would perhaps, you asked your question concerning computer crime to Australia, I believe, but I would first like to invite Don Piragoff to see whether he wants to respond. He is a world renowned expert on computer crime, in fact. So, Don, would you like to make a comment in relation to that last question that we had?

**Mr. Piragoff**: There's a special workshop on computer crime on Friday of this week, and I think maybe the question could be raised again in the context of that workshop rather than address it here maybe.

**Moderator**: Okay, let us try to do that in that context then.

Then on the second question concerning the presumption of innocence and the possible changing of the burden of proof; are we going too far, too quickly? Perhaps Professor Al-Serraj, would you like to make a comment in relation to that?

**Dr. Al-Serraj** *(spoke in Arabic)*: With regard to some of the observations made on the subject of statutory definitions of economic crimes and the problems with these definitions, I would have to say that the preceding trends that we had noted, particularly with regard to the socialist system that we had in place and in the context of the Soviet Union more specifically, if we looked at those two examples, we noted two completely independent examples of trends. The first trend was observed in socialist countries. And we also saw trends in the capitalist systems. And indeed there's a medium or mid-point between the two systems. We have countries which are located on a different place on the spectrum between the two extremes of capitalism and socialism.

In the socialist system we see economic crimes which are related to the nature of the economic system in that country and the nature of socialist structures. So economic crimes were considered the harshest crimes, the worst crimes, and the penalties were also harsher for those crimes.

In the capitalist system, economic crimes were seen as ordinary crimes, which of course might have some danger associated with them, but the main purpose of the law was that the penalty imposed for these crimes not exceed the importance attached simply to reimburse sums lost with regard to the crime committed. Prison was rare. So it was not necessary to have a great deal of text or laws on the books with regard to these crimes. In the capitalist system, it didn't lean so much towards severe penalties for economic crimes.

And then with the disappearance of the socialist systems we saw the trends move towards each other, and now we could say that economic crimes in this day and age are part and parcel of a single trend, and the sanctions for economic crimes are more severe, for example, money-laundering. Another example would be identity theft. We have crimes which are involving the computer, computer-related crimes, and the penalties are much more severe for all of these, especially in capitalist countries, and they are more severe because these crimes are amongst the most dangerous crimes. They provide open doors to more dangerous or significant crimes such as organized crimes or terrorism. And I say this as an expert in the area of economic crime.

The trend now, the current trend is towards standardization, unification of trends in the area of the legislation on economic crimes, the significance of these crimes, the nature of the penalties applied to them, measures and counter-measures which can be taken vis-à-vis these crimes, and the results that we can achieve vis-à-vis these crimes.

The feeling I have is that this meeting is very important and is a confirmation of this and of the objectives to be achieved, the recommendations to be issued by these meetings. These recommendations are similar to the economic trends in place. They are because even though we were aware that there are contradictions in the various systems themselves, we also know that globalization today means that ultimately the systems are all coming together, economic systems that is, and becoming more similar to each other and we are going to end up with a single economic system in the world. And yet, having said that, there are slight differences between systems, there are slight differences culturally speaking as well, not just economically. And there are of course differences in criminal justice, and in that area as well we are working towards unification. Thank you, Sir.

**Moderator**: Thank you very much, Professor. Before giving the floor to the Distinguished Representative of Brazil, I would like to make a comment from a European perspective concerning the question on the presumption of innocence and the changing of the burden of proof.

We have discussed this question rather extensively within the European Union in the context of confiscation of the proceeds from crime. And we have several of our Member States that have certain forms of confiscation which we call that they are not changing the burden of proof, but they are extended types of confiscation where one deals in particular with certain types of presumptions.

And there is case law from our European Court of Human Rights that says that in certain circumstances this type of extended confiscation is fully compatible with the European Convention on Human Rights. There are case

laws. I can cite the case concerning Salabiaku[8] and there is another case called Pham Hoang[9] which have been discussed and decided by the European Court, but there are certain limitations. For instance, the presumptions must be laid down in law, and the presumptions must be rebuttable as well. So one cannot simply state that one can confiscate just about anything. That is not at all the case law of the Court. One has to be able to prove the opposite. There must be some kind of rebut if possible.

But after that comment I would like to give the floor to the Distinguished Representative of Brazil. You have the floor, Sir.

**Brazil**: Thank you, Mr. Chairman. We have heard with attention all the Panellists, and Brazil is prepared to join the efforts. Brazil suffers a lot with what we call, at least what I understand, when you mention about economic crimes.

However, I must confess that I am a little bit confused, probably it's my fault. But I would like to hear a more objective definition, if it's possible. I'd like to learn a more objective definition of what exactly is economic crime or what we are trying to work on, which kind of a struggle, a different struggle we are trying to work on.

For instance, most of the issues that have been addressed here, we have already been addressing in the fight of money-laundering. Some other issues are more new, for instance, identity theft. The distinguished Panellist covered this issue and raised some very important points that we would also like to think about more deeply.

But at the end, Mr. Chairman, I still end up a little bit more confused, but I believe it is the purpose of the Seminar to clarify. So if the Panellists could define a little bit more what they understand by "economic crimes" and what is different from the struggle we are working on when dealing with issues like money-laundering, for instance.

Another point that for us is very important is that most of the problems could be addressed by stronger cooperation between the States, which was raised by the Swedish presenter.

So, Mr. Chairman, our question is simple: if you could objectively explain what is economic crime, I would be very delighted. Thank you very much, Mr. Chairman.

**Moderator**: Thank you very much for that very interesting question. What I would like to propose that we do is perhaps that we deal with the question of the definition of economic crime towards the end, at the next round, and I would like to give the Panellists some time to consider this issue.

If you look into the background paper, and I'm thinking in particular of the document A/CONF.203/7[10], on page 2 you see the recommendation, the reference to the recommendation R (81) paragraph 2, where the Council of Europe in 1981 tried to define economic crime, but de facto they did not arrive at a definition at that time, but they arrived rather at what they called a functional approach. They were speaking about cartel offences, fraudulent practices, abuse of economic situations by multinational companies, fraudulent procurement, bogus firms, computer crime, fraud, et cetera. You can read it yourself there.

But I think that the question is rather important also in the context of how shall we take this work forward. And I note in this respect the intervention of Chile, which rather prone to the other approach, the more overall approach. But let us postpone some answer to your question towards the end of this particular part of the workshop, and then if you are confused I am sure that you will then be confused at a higher level in that case. And also we will come back, of course, to the question of the cooperation that will be dealt with in particular in the context of our hypothetical case, which I think we will come to right now.

[8] Judgment of the European Court of Human Rights, 26 September 1988, Case Number 14/1987/137/191.

[9] Judgment of the European Court of Human Rights, 29 August 1992, Case Number 66/1991/318/390.

[10] This document is available at http://www.unodc.org/unodc/crime_congress_11/documents.html.

## C. Panel 2

### Case-based Discussion on Economic Crime

**Moderator**: And that gives me the pleasure of introducing to you the lady on my left, Mary Lee Warren. And I must say that it is a great honour and privilege for me to sit here next to Mary Lee. She is a high-ranking official in the Department of Justice in the Criminal Division of the United States of America. She is the Deputy Assistant Attorney General and has been for the past 12 years. And before that she had a, I think, very difficult but also very interesting job in the United States Attorney's Office in the southern district of New York where she was the Assistant United States Attorney for 11 years. And she has also dealt with both drugs and organized crime. She will now be moderating the question of the hypothetical case. And Mary Lee, it's my pleasure to hand over to you.

**Sub-Moderator**: Good afternoon, and I thank our Moderator for that introduction.

Drawing upon the very useful presentations and interventions so far this afternoon, we'll now proceed through a hypothetical case to further describe the threat of economic crimes, and then draw out possible practical measures and mechanisms to prevent or at least reduce opportunities for such crimes. We'll then offer an array of investigative and enforcement options to target and attack such crimes when they are found to occur.

In the broadest macro perspective, we are reminded that large-scale economic crimes can have a serious, if not devastating, impact upon a country's economy and financial stability. Such large-scale economic malfeasance can be crippling to economies in the developing world.

At the same time we must consider in a more personal context the seemingly momentous harm that can be suffered by individuals due to economic crimes, such as consumer fraud. Our hypothetical case today employs a consumer fraud scenario. Consider the real and devastating suffering that can result from such crimes, an impact suffered often by the most vulnerable of our citizens, the elderly and others on fixed incomes.

With that as the briefest of introductions to our excursion today through the realm of economic crimes, I now have the pleasure of introducing the Panellists for this next section of our workshop, experts each one and drawn from representational regions worldwide.

Our first Panellist I'd like to introduce, sitting directly to my right, is Nina Radulovic, Counsellor from the Republic of Slovenia for the Commission for the Prevention of Corruption. She currently serves as Counsellor Legal Advisor for the Commission for the Prevention of Corruption in Slovenia and has been working for the Slovenian Anti-Corruption Unit from its establishment almost four years ago. She was the head of the Slovenian delegation for the negotiation for the UN Convention against Corruption.

Moving next along our line of Panellists, beyond our Chairman today, we have Justice Anthony Smellie, Chief Justice and Mutual Legal Assistance Authority for the Cayman Islands in the Caribbean. Anthony Smellie has been a Justice for 12 years and Chief Justice in the Caymans for seven years. The Cayman Islands government recently reported to the OECD that this island nation is recognized as one of the leading offshore centres offering, among other advantages, a highly developed and sophisticated legal system and an independent and respected judiciary and judicial administration. Chief Justice Smellie ensures that these responsibilities are fully realized in the Cayman Islands.

Our next new panel member is Felix McKenna. He holds the statutory position of Chief Bureau Officer, Detective Chief Superintendent in the Criminal Assets Bureau in Ireland. He has over 30 years' service in the National Police Force, principally in the Detective Branch and he has wide experience in investigating crime in Ireland. Since 1996, he has worked in the Criminal Assets Bureau in the identification and tracing of the proceeds of criminal activity. All high court applications under Ireland's Proceeds of Crime Act of 1996 are taken in his name.

And finally, our final Panellist, our next to last individual on the stage today, is Kwok Man-wai, Tony, Former Deputy-Commissioner and Head of Operations, Independent Commission Against Corruption in Hong Kong. Mr. Kwok has 36 years' law enforcement experience including nine years in the Hong Kong Customs and 27 years with the Hong Kong Independent Commission Against Corruption. Mr. Kwok joined the Independent Commission as an Investigator shortly after its inception in 1975, and by 1996 had been appointed as the Deputy-Commissioner and Head of Operations. He retired in October 2002. Since his retirement he has been providing

anti-corruption consultancy services to many countries in Asia and Africa.

With that introduction of our new Panellists, let me continue and introduce the hypothetical case. We'll be doing this through a simplified PowerPoint presentation,[11] and through this pictorial and sometimes if not cartoon-like account, I believe we'll be able to state the case and set the stage for our issue discussion that will follow.

As to the hypothetical case, once upon a time, in a country called Xanadu, there lived a Mr. Alan who was a manager of a bank, Finebills Bank in Xanadu. Also in Xanadu, we find Mr. Banner who sold real estate for Kondo Incorporated, a Xanadu business. Kondo Incorporated was not doing well financially and Mr. Banner contacted his old friend, Mr. Alan, to request a $1 million loan from Finebills Banks. Mr. Alan granted the loan without any collateral from Kondo Inc., a violation of the bank's own regulations, and with Mr. Alan's knowing that there was a possibility Kondo Inc. would not be able to repay the loan.

Three months after granting the loan, it was clear that Kondo Inc. could not repay. Mr. Alan was looking for his money. Mr. Banner said, "Do not worry, I have a plan to get the cash".

Mr. Banner, a bit desperate, contacted a close personal friend, Miss Chung, a resident of tropical Youngland, yet another country. Mr. Banner explained his cash flow problem and asked if Miss Chung had any helpful ideas to solve this problem.

She had a quick and positive response. She would set up a "shell" company, or a fictitious company, in Youngland, where she lived, would call this company Lownet Inc., and use this as a vehicle in a consumer fraud scheme. The scheme involved placing an ad over the Internet. The ad promised quick cash, enormous profits; it sounded too good to be true because it was too good to be true.

In the end, the ad said, all you have to do is to purchase an introductory videotape for $60, and indeed the payment to Finebills Bank for those videotapes was the source of the funds in the fraud as it was planned. Miss Chung's plan was agreed to by Mr. Banner and also Mr. Alan from the bank.

The plan included a scheme to allay any concerns of unsuspecting consumer victims. Miss Chung would pretend to be a Miss Petal in response to any telephone inquiries generated by the Internet ad, and she offered a means for the consumer victims-to-be to confirm the financial soundness of Lownet, the shell company in the scheme.

And to that end, re-enter Xanadu bank manager, Mr. Alan, who would then play his role in the plan giving assurances about Lownet's financial soundness on behalf of Finebills Bank, convince the unsuspecting victims who sent in a total of $5 million to Lownet for the worthless videotapes.

But there was more to the plan. In order to move and conceal the money sent in, and to this end Miss Chung learned how Finebills Bank in Xanadu disposed of its records. They disposed of the bank records by simply throwing the records in their trash bin behind the bank. She sorted through some of this trash and recovered financial records listing personal identification information of Finebills' banking customers.

In the meantime, she opened a bank account in Youngland for the shell company, Lownet, as part of the larger scheme.

Unsuspecting customers responding to the Internet ads sent in their money to the Lownet account at Finebills in Xanadu. Five million dollars of that money was then transferred to the new account for Lownet in Youngland at a different bank, Goldfingers Bank. Again, it was a total of $5 million sent to this account in tropical Youngland.

Typical of schemes of this sort, Miss Chung's plan was to keep the money moving and to disguise it using the stolen bank customer identification information. She had her accountant, Miss Dee, assist in opening 15 new accounts in a bank in yet a third country; we'll call it Zeitstaat. Miss Dee, a professional, was living and working in that third country, Zeitstaat.

[11] See Part I of this report. For the complete text of the hypothetical case, see Annex B of the document A/CONF.203/13, also contained in Part I of this report.

We'll stop the progress of the economic crime there and leave the next chapter to tomorrow's workshop on money-laundering. In a series of discussion topics on criminal liabilities of the players here, possible liabilities of legal persons, conspiracy, use of shell corporations and the like, we'll review these various topics through a discussion of issues presented by our new Panellists.

Our first issue now for the discussion relates to the new economic crimes. We have new crimes and we have some new tools as we focus on economic crimes in the information age. Criminal justice authorities around the world have learned and are learning the challenges of economic crime today in a time of globalization and international connectivity. They are greatly more sophisticated crimes; their scope is much larger, and the victim pool is greatly expanded.

At the same time, we're asking the question, can the vulnerabilities of the information age also be summoned as strengths in uncovering and attacking such crimes? And to begin our discussion I'm going to call on Felix McKenna from Ireland to give us some insights into the overview of this kind of crime and its attack.

**Mr. McKenna**:[12] Good afternoon. Thank you, Ms. Moderator and Chairman. It's my pleasure to give you a few thoughts in respect of how organized crime, and particularly the individuals who are involved in economic crime, have used and corrupted the information technology systems that we have throughout the world to benefit their own cause.

Many, many times ago, the new crimes and the new tools, the new crimes are committed against computers and the IT networks which present new opportunities to criminals and the new challenges that law enforcement agencies have like hacking and viruses, denial of the services, and attacks on the websites. It is not an unknown feature if your Internet is switched on to be contacted and approached on the system in respect of your private banking details. Again, it's by bogus institutions trying to elicit your own identifications. Old crimes and the new tools, traditional crimes supported by the use of the Internet and new technology, such as fraud, blackmail and extortion, paedophilia, identity theft, cyber stalking, and other crimes that organized individuals participate in, and they take full advantage of the IT world.

High-tech crime has become phenomenal and it's growing over the last number of years. Computers, and particularly the Internet, provide great benefits to each and every one of us, however, there's a real threat that criminals will exploit these mediums and turn the tool designed to benefit everybody throughout the world into a tool to help themselves commit crime.

Now, a crime that's renowned to everybody throughout the universe is 419 frauds. Sometimes they are referred to as West African or Nigerian fraud letters. This is a type of economic crime that involves the fraudsters focusing in on the victims through the Internet. They will approach them, send them many, many letters, give them a hard luck story about monies that they have inherited and they are unable to invest in legitimate sources, and they encourage the victims that they approach to give away their, shall we say, sacred information like banking details that allows them to deposit monies into bank accounts in a variety of locations. So therefore, that is one particular criminal enterprise that values an IT technology to their great advantage.

In perspective, my own country, and in Ireland, the analysis of where IT fits in, we have in Ireland a computer crime unit that's based in the fraud squad in Dublin. And the activities that they have been involved in for the last number of years clearly shows that the use of technology to facilitate criminal activity has increased. This is reflected by the number of computers that we seize and search and ask the computer crime unit to examine.

I would say that a number of years ago, the only time computer crime units were called in to assist major investigations were in investigations related to terrorism or child pornography. But now that facility is a requirement in nearly all major investigations, particularly if you have money-laundering, computer misuse, terrorism, deception, drugs, blackmail, copyright, trademark and forgery and major frauds in themselves.

And let me just for one second develop on something on how important it is for flexibility and cooperation in investigating an economic crime like what we have in the case study.

[12] Talking points submitted by Mr. McKenna are contained in Part III, B of this report.

Recently, I assisted a number of other jurisdictions to look at assets that were secreted in Ireland by a number of bank accounts which had been obtained from victims throughout the world from a variety of countries. And the big issue at the end of the investigation was the return and repatriation of the funds to the victims and the identification of the victims themselves. There's an enormous amount of our economic major investment frauds the victim will have lost monies, but they will be very reluctant to come forward and identify that he has been the victim of crime. Thank you.

**Sub-Moderator**: Have you in Ireland ever been able to identify or calculate the possible number of victims involved in any of these frauds?

**Mr. McKenna**: In a recent case that I assisted in, the victims amounted to over 500 people and they were spread all over the world between Australia, back into America, England, Ireland and a variety of places around Europe. The monies that were generated amounted to in excess, in America, of $20 million. In Ireland, we froze in that case 8 million Euros, and in Guernsey there was approximately 6 million secreted away there in a bank account, and a number of other bank accounts in England were also being used. In that particular case itself it involved a huge amount of victims. We identified, I think, about 100 victims out of the 500. They came forward voluntarily because they had large amounts of money invested; the persons with modest amounts of money did not come forward.

**Sub-Moderator**: And so that was one crime investigated in your bureau. I'm sure you investigate many, and there are bureaus throughout the world doing the same. So the total number of victims must be incalculable.

**Mr. McKenna**: I'll agree with that.

**Sub-Moderator**: If we could just quickly turn to Tony Kwok from Hong Kong, and in particular, to round out this overview, if you could talk about the relationship between corruption and these types of crimes.

**Mr. Kwok**:[13] Thank you, Ms. Warren.

Firstly, I have a confession to make! While Felix is an expert on economic crime, I am not! I do know a little bit about tackling corruption, having had 36 years' law enforcement experience and I spent 28 years at the Hong Kong Independent Commission Against Corruption (ICAC), in investigating corruption. When I was the Head of Operations there, I actually had 900 investigators assisting me in investigations, and our case load was usually over 1,000 at any one time. And of that over 1,000 case load, invariably there are many which are corruption-related economic crimes, and this was how I learned about economic crime.

So my professional instinct, when looking at this case study, is to look for the corrupt involvement. I just wonder how many of you would appreciate the potential area of corruption involvement in this hypothetical case. How many instances of corruption involvement can you identify? One? Two? Three? For me, I identified five possible areas of corruption involvement.

If you look at the first area, when you have a banker, Mr. Alan, giving a US$1 million loan to a Mr. Banner without any collateral. Do you really think that he did it for a friendship purpose? Most unlikely. So he was most likely to have received some personal advantage by abusing his position. That personal advantage may be in terms of cash, may be in terms of a gift. We have instances in Hong Kong where a bank manager received a Rolls Royce as a Christmas gift from a businessman. So do you say this is a Christmas gift or do you say this is a bribe? So this is the first instance.

When you go through the case, Miss Chung needs to set up a shell company on this little island. Very often when you set up a shell company you need the professional assistance of a law firm or an accounting firm, and the staff would be delegated to assist him. The staff may well know that this shell company is set up for an illegal purpose, and in order to keep him sweet, Miss Chung would most likely give him some advantage in return for assistance in offering his service for setting up a shell company. So this is the second area of possible corrupt involvement.

[13] Talking points submitted by Mr. Kwok are contained in Part III, B of this report.

In the third area, where the identity theft was obtained through stealing or getting the information from the rubbish bin of the bank. I think this is one possibility, but more likely than not, in my experience in Hong Kong, is that you usually can obtain this kind of information from the bank staff who steals such information and sells it to these criminals. And unlike the scenario mentioned by Don in Canada, in Hong Kong this is clearly a corruption offence committed by the bank staff if he sells this confidential or personal information in return for advantages.

And the same applies, in fact, when you talk about the credit card. If you have a restaurant waiter getting your credit card who then copies the credit card information with a skimmer. By the end of the day, his skimmer will have skimmed about 100 pieces of information of the customers and he can sell it to the credit card criminal gang for a lot of money, just for the card information. But we prosecute them for corruption.

And then when we go further, you have Miss Chung opening a bank account using this kind of stolen information with the Goldfingers Bank. And more likely than not you have the bank staff who failed to exercise due diligence, helped her to open this account, probably knowing this is for an illegal purpose or for a money-laundering purpose, and in return obtains an advantage from Miss Chung. Again, the bank staff committed a corruption offence if it was in Hong Kong.

And then you go even further where Mr. Alan is abusing his official position and giving a false guarantee to those who make the telephone inquiry, and in return he got the advantage, he also commits a criminal corruption offence if it is in Hong Kong.

So the first message I'd like to share with you is when you investigate or when you deal with economic crime, you must not forget that there is possible corrupt involvement. But the prerequisite is that you must ensure that in your country private sector corruption is a criminal offence. Thank you.

**Sub-Moderator**: Thank you for the overview and for the special insight that one must always be alert to the connection with corruption.

Now let's move swiftly to issue two, preventive measures. Clearly, if we can prevent these crimes we're in a much better situation than if we have to later investigate and enforce them. If we can prevent them before the victims suffer any harm, we have done a greater good.

First, I'd like us to focus on individual entities in the private sector and in government entities. What are the internal controls that can be applied to those individual entities? And then let's focus, as a second part, outside that on government controls or regulations that can give us additional preventive protection.

To begin on the individual entities, I would like to ask Nina Radulovic from Slovenia to help us.

**Ms. Radulovic**:[14] Thank you for giving me the words.

I would like to start with a question. Why do you keep your doors locked? This is just pure and simple prevention and such kind of prevention is also possible within the private and also the public sector.

We can improve integrity-based management that relies on incentives and encourages good behaviour. As we have seen, Mr. Alan, from our case, he just by self-dealing breached the duty of care, the duty of loyalty to his employer and also a business judgement rule. If we focus on the public sector, it deals with resources entrusted to it not owned by it. And if we focus on private sector entities they have obligations to the investors.

So prevention is possible in a very simple way. This is to revise systematically and in an organized manner internal organization, the decision-making process. Of course the starting point would be creating a very good working environment that encourages discussion and also fosters open communication. And then it might be very wise to employ the know-your-employee principle. This would mean that you should check references, that you should check the personal integrity of the person you are going to employ. In our case, Mr. Banner might not pass this test.

[14] Talking points submitted by Ms. Radulovic are contained in Part III, B of this report.

After defining the rules, internal rules, just their existence is not enough. Your employees must know the content of the rules, and what is the most important is to use them in practice. But as we have seen, our Mr. Alan also fails to do.

A clear division of tasks would be very important and the four eyes principle should be fully applied. That means that you divide between decision-making and supervision. According to economic crime surveys, up to 86 per cent of all economic crime detection came from audits and whistleblowers.

And now I would like to introduce this *terminos tecnicos*. Whistle-blowers are informants basically. That means that they disclose wrongdoing or misconduct. Creating safeguards for whistle-blowers, protection of them after they disclose such misconduct on a national level is very important, but anyhow, the Finebills Bank in our case itself should protect its employees that might disclose wrongdoing.

Besides a good working environment, as I already mentioned, not all disclosures should be protected but almost all those that are made in good faith and with reasonable belief. Disclosures might be made to a legal advisor or a supervisor or so on, but I believe that Mr. Kwok is going to explain whistle-blower protection in detail.

I would like to finish with maybe not a warning but exchanging of best practices and experiences, including problems among private sector entities themselves and among the private and public sector, is very important. And in our case it might be that consumer fraud would not happen.

And as a last consequence, this also might bring us to a greater harmonization of legal assistance. I would like to finish maybe with this. Thank you.

**Sub-Moderator**: Thank you. Ms. Radulovic has given us the best possible segue talking about the importance of cooperation between the private sector and the public sector, for Tony Kwok now to explain a little more about what are model governmental strategies in integrity-building.

**Mr. Kwok**: Thank you. Again, from my experience in fighting corruption, one very important conclusion is that there is no single solution in fighting corruption. If you want to successfully fight corruption you need a coordinated and comprehensive strategy. My recommended comprehensive strategy is what I would like to say is a four-pronged strategy. It means you fight corruption through deterrence, you fight corruption through prevention, you fight corruption through education, and fourthly, very importantly, is through partnership.

So I have met people from other countries who told me, “I am very concerned about economic crime”. So you set up an economic crime bureau. This is good but this is not good enough if the economic crime bureau is solely interested in the investigation and you do not take up the important role of prevention and education and partnership.

So just to share a few points. Deterrence. Deterrence is not merely that you lay down in the legislation that there’s a severe penalty for committing the crime. This is not good enough. The criminals don’t really look at the book and see what would be the sentence they might receive. They calculate their risk. They look at what is the chance of them being caught. So the importance is that you must have an effective law enforcement capability so that economic crime and corruption is a high risk crime. So the criminal knows that if he is trying to commit this crime there is a good chance he will get caught. Never mind about if he gets caught, he gets a life sentence. This is not that important as a deterrent effect.

Secondly, prevention. If you sum up prevention, it’s really two things: one is system, the other is the people. The system I’m sure you know them all. How do you enhance the system? How do you enhance the procedure? How to make sure there is a proper supervision system. How to make sure there is a check and accountability on the discretion and power of the office holder. How to make sure everything is transparent. So that’s the system.

The people are probably more important, how to build up staff integrity, and Hong Kong has 30 years of experience in trying to build up a culture of integrity in the public as well as the private sector. For example in the bank, in the banking sector, we learn it from hard experience. In the years of the eighties, we had five banks actually collapse one after the other. And then one of the banks happened to be the third-largest bank in Hong Kong. And why did it collapse? It’s because it had all these bad loans of over 400 million US dollars. All these bad

loans are just like this case where the bank managers and directors could not care less in giving out the loans in return for bribes. So we learned it in a very hard way.

In the banking sector we now have a good partnership with the institute of the bank, with the banking association, with the banking regulatory body. For example, we produced a practical guide book for the bank managers telling them exactly what they should do, what should be the code of ethics, and then we run seminars for the bank managers to make sure they know, they are aware of the evil of corruption or illegal practice, the need for honesty and what they should do and should not do, when they should report if they find anything suspicious, et cetera, et cetera, all in the book. So this is a very good typical example of an excellent partnership between the government and the business sector.

And another good example is that we, together with the business community, all these chambers of commerce, we set up an Ethics Development Centre which gives out the resource material, which assists the companies in setting up their own code of ethics for the staff. So in Hong Kong, over 70 per cent of our companies have a code of ethics for their staff. And the code of ethics should be very comprehensive. So it covers not only what they should do or not do, for example, particularly in the area of gifts, when they can receive a gift and when they cannot receive gifts. On the area of entertainment: entertainment always is the starting point to corruption; there's no free lunch! And then the most important aspect is the conflict of interest: when they have a conflict of interest they must report; everything must be transparent. So these are the things that should be laid down clearly in the code of ethics. So this is the sort of thing, again, a very good example of the government working together with the business sector in order to build up integrity in the business sector.

And of course you never forget the general public. And so we have ethics education starting from kindergarten all the way up to university. We created a cartoon figure which is the symbol of honesty.

And we make great use of the media, using the media not only as a means for publicity, but also we have a lot of media commercials. We have television dramas all in a soft way to educate the public about the importance of honesty, integrity, and to get their support to fight corruption and economic crime.

So for all you senior government officials, I think the important thing is that when you look at economic crime, you look at the more strategic level and try to come up with a national strategy to deal with economic crime, probably as I suggest, through this four-pronged approach. Thank you.

**Sub-Moderator**: Thank you, Mr. Kwok. If I could just ask Justice Smellie to comment briefly on enforcement at this point as it was mentioned before, but enforcement in a very particular sense, the liability of the bank itself, the liability of legal persons. Could you give us just a moment's comment on that?

**Justice Smellie**: Thank you, Madam Moderator. I think the comment can briefly be made by reflecting on the position of the bank itself in the scenario. Finebills provided the manager who was sufficiently highly placed so that his knowledge, his state of mind can be attributed to the bank itself. One might well consider therefore whether criminal sanctions ought not to be imposed in respect of the bank itself. And whilst it is important to prosecute individuals who are knowingly involved in the sort of activities we are considering, it is an important preventive measure to seek to adopt also to enforce against corporations themselves.

**Sub-Moderator**: Thank you for that help and we'll continue with you, Justice Smellie, on issue three, "International cooperation and offshore financial centres." In this case, Mr. Banner's close friend, Miss Chung, had a plan to solve his cash flow problem, and she lived in Youngland, an offshore centre, and her plan included the establishment of a shell company there to receive fraud proceeds. Would you discuss for us the difference between a regulated and unregulated offshore centre?

**Justice Smellie**:[15] Thank you. I recognize the imperatives of time. I've just been reminded that I have even less time than had been thought before. The first observation I feel obliged to make is that it is not to be assumed that in selecting the topic of international cooperation and offshore financial centres, can we regard offshore centres as a special category of jurisdiction or as a group apart. Quite the contrary must be the case. Indeed, the only acceptable position must be that offshore financial centres, as participants in today's global economy, must

[15] Talking points submitted by Justice Smellie are contained in Part III, B of this report.

accept precisely the same obligations for due diligence, law enforcement and international cooperation as other financial centres.

Acceptance of that principle avoids the need in this forum to arrive at a definition or meaning of just what is an offshore financial centre. Acceptance of the principle also avoids the need in this forum to examine just what are the purposes or functions of offshore financial centres. Suffice it I think to observe that concern as a generic group, offshore centres have been recognized by the Financial Stability Forum of the IMF as posing no threat to global financial stability, but instead as performing an important role in managing and facilitating the flow of international capital. So, too, the conclusion reached by the United Nations Offshore Forum held in the Cayman Islands in March of 2000.

That said, it must also be recognized that not all financial centres, be they offshore or onshore, are equally well-regulated, and where a jurisdiction is in the business of offering ready access to the international financial market without regard for the established standards of regulation, it creates vulnerabilities not just for itself, but also for every other jurisdiction that is connected with it, whether directly or indirectly, through the international financial system. In our global quest to deny organized criminals access to the financial systems, our chain of response is going to be as strong as its weakest link.

There simply therefore is no place any longer in the international financial system for poorly-regulated jurisdictions, and responsibility for proper regulation must be accepted simply as part of the cost of doing business. It is against that backdrop of the reasonable standards and expectations that the hypothetical case scenario, Madam Moderator, arises for consideration.

Indeed, the scenario is not entirely hypothetical. Many of the circumstances described fit very closely with an actual case which engaged the United States and Cayman Islands authorities over a number of years, and I have attempted to give a fuller description of that case in a paper which is available. As the scenario describes, infomercials promising to teach people by use of videotaped courses how to become rich overnight from selling real estate, found a ready market among many unwary members of the public. Tens of thousands of these taped courses were sold for millions and millions of dollars. The courses could not produce the advertised results but were simply a fraud. The real life perpetrators of the fraud, a husband and wife team named the McCorkles needed to launder the proceeds of their fraud to disguise the source of the funds, and so they set about opening bank accounts in the Cayman Islands. They set up companies whose only purpose was to own and operate these bank accounts.

Quite inappropriately, the service providers in the Cayman Islands, who included a company formation agent, our Miss Dee in this scenario, and the banks, simply relied upon the rather quaint notion that because the McCorkles' business was widely advertised on United States television, it must be true and above-board.

Millions of dollars were accepted into their accounts by way of wire transfers from the McCorkles' United States banks accounts. Had proper due diligence been carried out, the banks in both the United States and the Cayman Islands would have been compelled to ask themselves the question whether there was any genuine business activity in the manner in which the McCorkles were soliciting funds from the public. Had they done so, they might well have discovered that the McCorkles held no real estate portfolios of any sort or a loan of the size which could justify the promises which they were making to the people who bought into their programme.

A request came for international legal assistance from the United States to the Cayman Islands pursuant to our mutual legal assistance treaty. But because of a mere technical mismatch between the laws of the two countries, the request almost failed. Under the Cayman Islands law, as it stood at the time, while a restraint order was obtained over the bank accounts, there was a requirement that criminal proceedings had to be instituted against the McCorkles in the United States within seven days of obtaining the restraint order in the Cayman Islands.

As the case was still only at the investigatory stages, the United States authorities were unable to meet that seven-day deadline. The McCorkles challenged it and a restraint order had to be discharged by a Cayman Islands court. Fortunately, however, the bank, having been by then put on notice that it held the proceeds of fraud, and being aware that it might have civil liability to the victims of the fraud, did not allow the funds to be transferred out and they were still available to be re-restrained when the criminal proceedings were instituted

against the McCorkles in the United States. In addition, all relevant documents and all evidential material were obtained from the banks and company agents and provided to the United States authorities in keeping with the treaty.

Now given the constraints of time, I think I will summarize to get to the point of concern here. How do we distinguish between well-regulated and not-well-regulated centres and what are the paradigms? It cannot be overemphasized that there needs to be harmonization of legislation across the borders. As Secretary-General Kofi Annan so succinctly put it, “if crime crosses the borders, so must law enforcement”. It follows therefore that differences, mismatches of the legal systems may not be allowed to be impediments to law enforcement. And while there will never be complete harmonization, there is an obligation on all financial centres, whether they be offshore or onshore, to ensure that there are laws that allow for international cooperation.

**Sub-Moderator**: Mr. Justice Smellie, I believe we’ll have to leave it there on the important point of harmonization so that we can have true international cooperation. I’d like to move swiftly to issue four, “Investigative techniques and methods in identity theft and following the money”. What tools and capabilities are needed? I’ll ask Mr. Tony Kwok to outline these very swiftly and then for Mr. McKenna to follow swiftly as well.

**Mr. Kwok**: Thank you. Due to the time limit, I will speak as briefly as possible. I think there are a few things I’d like to share with you. When you investigate an economic crime, you should not just look at “this is fraud”. You should look at a multiplicity of offences. So, for example, in this case you look at fraud, you look at deception, you look at possible false accounting, possible forged documents, you look at conspiracy, you look at attempt, et cetera, et cetera.

The second point is that — I think if you are an investigator you know exactly what I’m talking about — there are two ways of investigating a crime. Either you wait until the crime has been completed and then, like in this case, the money has already been passed to the bank account or even laundered, then somebody makes a complaint and you start the investigation. You can still do it but it’s very, very difficult. The ideal from the investigator’s point of view is the taking of a proactive investigation method. It means that you had the ability to know when the crime was being committed or about to be committed. Then you can use the facilities like telephone intercept, like physical surveillance, like undercover operations, like entrapment, and then by these methods you should be able to get all the culprits rounded up, all in one net.

Of course, in order to be able to use the proactive method, the prerequisite is that you must have an effective complaint system. In this hypothetical case, I just wonder if any one, if he suspects anything, knows the way to report. So the question is really how your country considers how it should set up an effective complaint system, is user-friendly and confidential, so people know where to report and to report confidentially.

So back to this proactive investigation skill. Actually, you can talk on this subject for a long, long time. For example, I think one important aspect is adequate legislation. I have been to many countries advising on corruption, and quite strangely, when you have the most corrupt countries they have the highest standard of human rights! Which means that they will not allow their investigators to use any intrusive methods like surveillance, like telephone intercept, undercover, entrapment, not even, in some countries, allow them to look at anyone’s bank account! So there’s a need to balance human rights with effective law enforcement.

But even, for example, even if we are going to use a telephone intercept, there are a lot of difficulties. Do you have the technical capability to do it? Can you get the cooperation of the manufacturer of the Internet server, get the telephone operator’s assistance? What about the mobile phones? Every criminal is now doing this. They use unidentified prepaid SIM cards, so how to overcome this problem? So these are all the things that one really needs to give it some thought if you really want to be effective in tackling economic crime as well as corruption.

The other method which we use, particularly dealing with conspiracy, when we talk about a large number of people committing offences. By using the conventional methods, usually you are able to get one or two criminals. You will never be able to get to the top. So the way is, if you can get somebody who can implicate the top, you must always try to turn them. We use a technical term, “turn them.” It means that they will become your witness, so they should still have to plead guilty through a kind of plea bargaining, and then they will be able to give you evidence, or at least, give you intelligence about all the previously committed offences and all the possible future offences and all the identities of the bosses of the organized crime gangs. So this kind of a turning method, giving

conditional immunity to criminals in return for them giving evidence is a very, very useful method which has been tried successfully in Hong Kong. But again, there is a prerequisite, proper witness protection.

**Sub-Moderator**: Could we just ask that we leave it there in terms of the importance of collecting information? I'll ask Mr. McKenna to follow briefly on the importance of collecting information, and then if you would just continue into our final issue of stopping the funds, freezing and confiscation, in just the briefest two moments.

**Mr. McKenna**: Thank you very much. Let me share my thoughts in respect of sharing information. If you want to, you've got to ask yourselves the question, what do you need the information for or what stage the investigation is at. From my own experience, the way to actually key in and share information is by way of case conferences if you're dealing with economic crime that involves a number of jurisdictions, and crime is identified as a result of information filtered in from the suspicious transaction reports system in the financial institutions. No victim has made any report. However, law enforcement are aware that this is a major economic crime going down in a number of jurisdictions.

Police officers and practitioners should assemble when they get an initial insight into what is happening, decide who takes ownership of inquiries in each jurisdiction, and also, very importantly, who takes ownership of who is going to call when we take down the complete case, what we say, carry out the knock and do a number of searches and arrest of individuals.

Following on that and based on how we have shared the information up until that stage and the use of it, it's very, very important that we all then have an agreed strategy in respect of when individuals are arrested. As in this case, there is money involved, there is economy involved, there are victims. It's very, very important to have a plan in place whereby we then can go into our courts and automatically freeze all of those accounts. And by way of some of these accounts, perhaps in the middle of the investigation are getting close to the centre point of it, we have the facility within whereby investigators can go to institutions, mainly banks, and alert them to the criminal investigation ongoing and also warn them that if they do any dealings or transfers of monies in those particular accounts they will then be aiding and abetting in money-laundering and may leave themselves open to prosecution.

Now let me go quickly to the main topic of what I'm an expert at and that's seizing of assets. There are a number of things that are required if a jurisdiction wants to bring in a regime to seize assets. Yes, there's the criminal mode whereby this facility is therefore tracing identification in pursuant of assets where individuals are charged with criminal offences and subsequently convicted, and post-conviction a judge will then carry out an inquiry and issue and grant a confiscation order on the assets that are generated by that criminal.

Let me dwell on an alternative strategy that we have developed in Europe, and particularly in Ireland, in respect of what we call "civil confiscation". That is legislation that was introduced called the Proceeds of Crime Act and a second bar of the legislation package was the Exchange of Information for Taxation Purposes Act, and thirdly legislation was introduced to create a task force type unit called the Criminal Assets Bureau. That is staffed by inter-agency individuals, police officers, tax men, social welfare people and support staff. Its objectives are laid down by statute, trace the proceeds of crime, and take whatever appropriate action you can to deny the criminals those proceeds of crime.

Secondly, we also use our revenue acts and were mandated under the act to enforce the revenue acts very, very rigidly against the individuals that we target. Not everybody is a suitable candidate for target by the Criminal Assets Bureau because it's usually the godfathers of crime who have prevented prosecution by mainstream policing of themselves or have continuously stayed outside the revenue acts.

In respect of satisfaction, in respect of public reception to what we do, each country, if it had an agency like what we do, like what I head, criminals themselves, particularly the godfathers, have an art through fear, through that fear factor, of intimidation whereby they would only be known within their own world, that is the under-world, and everybody in the general populace will know second-hand information that these people are involved in crime. What we do in the civil process, we attack their assets. If they have a dwelling house, if they have expensive cars, if they have race horses, we make applications to the high court on the civil standard of proof saying all of these assets are proceeds of crime. The cases are then debated openly in public, the public see what is going on, these people are identified, and I have to say, the label is then stuck to them. All their

neighbours know that the Criminal Assets Bureau are after seizing their house.

And more importantly, for public consumption as well, we sell the dwelling houses at public auction. And everything is done openly and in respect of accountability, the decisions that we make under proceeds of crime, it's not a policeman's final decision. It's a collective process that we have within the bureau. We have lawyers and we have a lot of other experts. But the final arbitrator is the judge in the high court who then gives the decision. And by way of figures, we have collected in, using this methodology of confiscating assets, in excess of 100 million over the past five years. Thank you.

**Sub-Moderator**: Mr. McKenna, can we thank you for that and turn it back over to our Moderator.

**Moderator**: Thank you very much. I think that we have the time until about 6:15, and I would like to give Toni Makkai the possibility to answer the question concerning the definition. And I think that we have had quite some discussion on the cooperation part as well, but we will see after Toni has been able to explain to us whether we are still confused or not.

But I would also like to give the possibility to the floor to ask one or two questions if there is someone who feels at this time of the day something that you wanted to know about economic crime but were too afraid to ask. But here is your chance to do so. Are there any interventions? Yes, the distinguished gentleman from the Philippines. You have the floor, Sir.

***Questions and Comments from the Floor***

**Philippines**: Thank you, Mr. Chairman. I have a very short question. It maybe answered by any of our Panellists and even the Moderator. We have forgotten one person who is the most vulnerable and whose role is the most crucial in this discussion, the consumer or customer. We only look at the other side of the coin, and that is law enforcement, the role of government. Now my question is, is the consumer or customer entitled to government protection from his own greed or avarice? Thank you.

**Sub-Moderator**: Certainly. In terms of that Internet ad that was too good to be true, should those people have known not to apply? It's easier sometimes to say it than to convince them of that. The government does have a responsibility, in my view, of educating as much as possible about such ads. If they suggest they can provide greater than clearly they can, there should be information campaigns that could set out red flags to look for that might help consumer groups, particularly in this case the elderly through various senior citizens' programmes. Of course if it's not that kind of fraud, investment fraud, if it's, for example, a kind of drug that's going to produce greater results than it clearly could produce, then most countries have an agency that would not permit that kind of advertising beyond what a drug could produce.

If it's just a get-rich-quick scheme, education seems to be the best way about it, combined with the enforcement effort to show that this kind of advertisement to a vulnerable group, particularly, will not be tolerated by the society.

### D. Summing-up of the Discussions of Panels 1 and 2 by the Scientific Rapporteur

**Moderator**: Thank you very much for that, Mary Lee. I would like the Rapporteur to take the floor now for not more than, shall we say, nine or ten minutes, and after that I would like to give the floor to the Distinguished Representative of Brazil, first to see whether he has been satisfied by what Toni Makkai can give us in terms of the definition of economic crime, and then also perhaps to ask an additional question if you so wish. But I would like Toni now to give you the floor for roughly ten minutes but not more. Thank you.

**Scientific Rapporteur**:[16] Thank you very much. Could I have the PowerPoint up, please? I have ten minutes to sum up everything that has been said in the last couple of hours, so I will run through this very quickly. The Member from Brazil asked the same question that I asked, as I am not an expert on economic crime, in terms of what does it cover, and it is quite clear from the discussions here this afternoon that the definition is extraordinarily broad and it depends on where you're coming from and what it is that you're interested in - in trying to define what is economic crime.

What we do know from the discussions is that there is a sense that whatever this thing is that it is growing. And that the form of economic crime is changing in that it appears to be crossing national boundaries, involving multiple actors, and that often victims and offenders are, in fact, in different jurisdictions. It is also apparent from the discussions and also from the case study that the method for committing such crimes is also changing so that there's greater complexity in the commission of the crime, that there is the issue of professionals as key gatekeepers, and that there also is strong links to corruption.

It is also clear from the discussion that the governments and criminal justice systems vary in different jurisdictions in terms of how they respond to economic crime, and no doubt that is because there is not a clear definition of what this is. There is, in the UN Convention on TOC, a broad provision for comprehensive financial sector regulatory regimes for the detection of cross-border currency and confiscation of assets, but it is very broad.

In terms of the case study, we tried to highlight here, I think, that there are a range of things that can actually be done, practical measures, and I think the key message that I was getting from the case study is that prevention is better than cure and that there is no one solution.

In terms of prevention, there are a range of issues that both government and non-government and the private sector can implement in terms of what we might call governance issues, and those governance issues include the development of policies and procedures for staff, for internal and external audits, for reporting to shareholders, and also providing whistle-blowing legislation and protection.

Another important aspect is also what we might call lesson-drawing from the control failures so that we in fact take, though we have a breakdown, we actually draw lessons from that and therefore modify our procedures.

There was also raised the need for education and training of employers and employees in terms of codes of ethics and integrity, and how we need to be in partnership between government and the private sector; government cannot do everything.

One very interesting point I thought that was made was that education needs to start young. In other words, we need to be into early intervention in terms of building ethical societies.

In terms of law enforcement, some practical measures are that people need to develop the exchange of information across institutions, but also ensuring the exchange of information across borders as well.

And finally, I thought a very good, important point made from this case study was the need for an integrated approach, that you cannot just have one solution, that you need to have a range of solutions that target deterrence, prevention and education.

What was clear, however, is that there is a lot that we don't know. In terms of our data sources, they appear to be very limited and no doubt this is due from this rather poor conceptualization of what economic crime is, and

[16] A PowerPoint presentation by the Scientific Rapporteur is attached at the end of this section.

that therefore affects all of the data that we have available to us in terms of its accuracy, its comprehensiveness, its comparability.

There is, of course, a key issue and that is it is often very difficult to obtain data because of confidentiality provisions, and that also undermines our ability to be able to scope out the size of the problem that we are dealing with so that we know that we have significant under-reporting and we have no idea of what the scale is of economic crime, and particularly cross-border crime. And a complicating factor is that there is no comprehensive source book of data or information across regions or across the globe.

In terms of when I was listening to the discussions, I thought that there was a real lack of information on who are the victims and who are the offenders, and that we didn't seem to really have any clear understanding of how networks actually operated in terms of whether the way in which they are organized, their transnational character and the various links in the chain from the beginning to the end, and we clearly need to have more research done on this.

And a key issue was what works? There was, I think, a weakness here in terms of what is the cost effectiveness of criminal justice interventions, that we need to be better informed in order to be able to assess this.

There was a very clear explanation as to this emerging issue of identity crime, and I have put up here the key issues that I think in terms of what were raised in the presentation, that we have some empirical data, that this is growing, that it is a precursor to other crime. An important aspect of identity crime seems to be the actual trafficking in identity information, which actually forms part of a chain, and that there are many criminals and many victims involved.

The other issue that came through is that legislation is lagging behind this kind of crime, and that it has the potential to undermine trust in both government and the private sector.

So, again, we get back to this key issue, what constitutes economic crime? This is what was raised here from the floor, that in fact that economic crime is a reflection of our current environment, the global, the technological and the cultural environment in which we live, but certain behaviour, for example, corruption and money-laundering is the method to facilitate crime, that different forms of crime are flexibly linked but that we appear to have a less flexible approach in terms of being able to deal with this crime, and there was the issue raised about the principle of the burden of proof and are we moving too quickly.

And two further issues that were raised in the discussion were that there is constant change in computer crime, so how do we respond to this? Again, to the former point that I made about flexibility, do we have flexible laws or do we in fact make specific changes to the law? And of course the need for greater cooperation.

There are various ways we can move forward. We need to certainly improve our research and intelligence. We need to implement prevention and deterrence measures. Technical assistance, we need to utilize the existing technical assistance that is available, and we need to be focused on efficiency and effectiveness in terms of ensuring that the interventions that we use are informed by evidence, and that we are able to identify best practice and promulgate that in terms of combating economic crime.

The priorities? The priorities of course will vary across different countries in terms of the issues that have been raised, but some of the priorities that I would see is that building the long-term evidence base, we need to do that in order to ensure that our interventions succeed, that we enhance cooperative mechanisms for long-term intelligence-sharing across countries, that it is important to invest in preventative measures, especially with the private sector, to implement effective control systems, that of course we need to respond and develop appropriate legislation to provide all sectors of the criminal justice system with the tools to respond to economic crime. We have to have the ability to respond quickly when new crimes and new forms of crime emerge, such as identity theft. And finally, we need to support capacity-building through technical assistance. Thank you.

***Questions and Comments from the Floor***

**Moderator**: Thank you very much for that very comprehensive and extremely interesting summary. We are soon losing the interpretation so I would like now to ask the Distinguished Representative of Brazil to take the floor

briefly, followed by the Distinguished Representative of Argentina. Brazil, Sir, you have the floor.

**Brazil**: Sorry, Mr. Chairman, to ask for the floor again but it will be very quick. Just a question very quickly to Justice Smellie. He has called for harmonization of legislation across borders, and quoting, if I understood correctly, Secretary-General Kofi Annan, he said that mismatches of legal systems must not be a barrier to law enforcement.

So I would like to know if Justice Smellie, according to his opinion, if countries are prepared to provide cooperation without asking for double incrimination. If you could see that in the near future, counsel would be prepared to provide cooperation without asking for double incrimination.

And finally, Mr. Chairman, you would probably invite countries to think and consider the possibility of placing in the final declaration of this Congress something like the expression of Secretary-General Kofi Annan of that mismatches of legal system must not be a barrier to law enforcement. Thank you, Mr. Chairman.

**Moderator**: Could I first ask Argentina, okay, later then. So, Justice Smellie.

**Justice Smellie**: Thank you, Mr. Chairman. As I understand the question, it is whether one would care to express a view on the need for reciprocity in international legal assistance. Not reciprocity?

**Brazil**: I'm sorry, just to clarify. Double incrimination.

**Justice Smellie**: Oh, dual criminality. I see. As a basic test. Yes. That principle still all depends on a number of mutual legal assistance treaties, and my own view is that so long as the conduct which is alleged involves activity which would be regarded as sanctionable in the requested country, it should not matter whether the requested country has a similar offence as that described by the requesting country in its own laws. That is just my own view. As I said before, my understanding is that there is still the continuing need expressed in many mutual legal assistance treaties for this test of dual criminality.

**Moderator**: Thank you very much. I could invite you perhaps to come tomorrow afternoon to the workshop concerning extradition where I believe that this question also will be discussed. The Distinguished Representative of Argentina, you have the floor, Sir.

**Argentina**: Thank you. I will make an observation on your last questions. We would have no problems with dual criminality with extradition, but as my friend from Brazil said, it's different from mutual legal assistance. Perhaps we will press for the idea of having the possibility to the greatest extent for countries to cooperate even in the absence of dual criminality for mutual legal assistance.

**Moderator**: Thank you.

Well I think that we have now finished the discussion for today, with the exception that the Chairman will make the final statement. Sir, you have the floor.

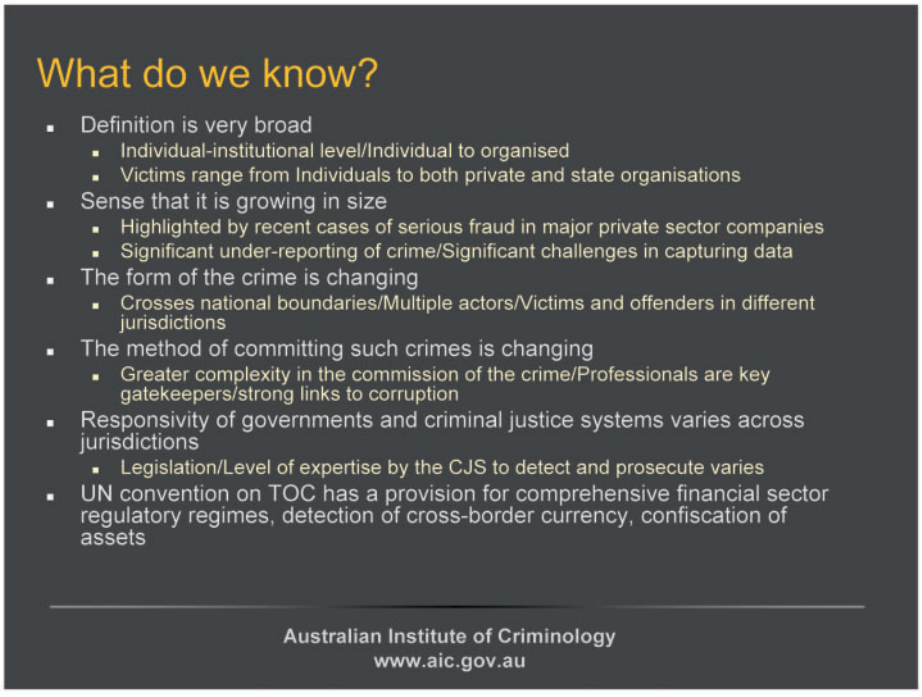
**Chairman**: Thank you, Mr. Nilsson. I thank you and all the participants and speakers.

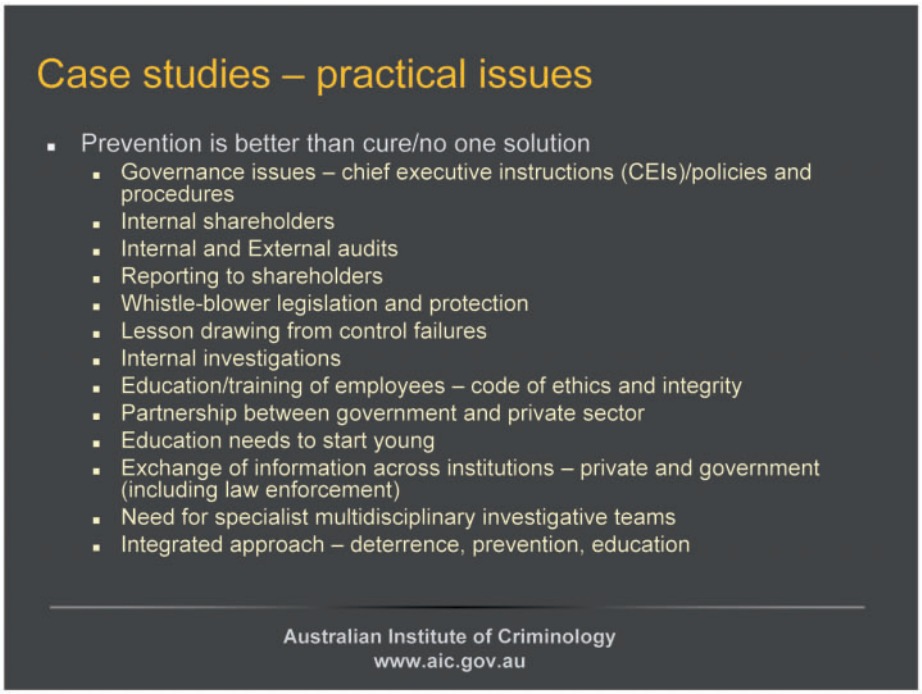
Before I adjourn this workshop till tomorrow morning, 10:00, I will give the floor to the Secretariat, who has a few announcements to make. Thank you.

[SECRETARIAT]

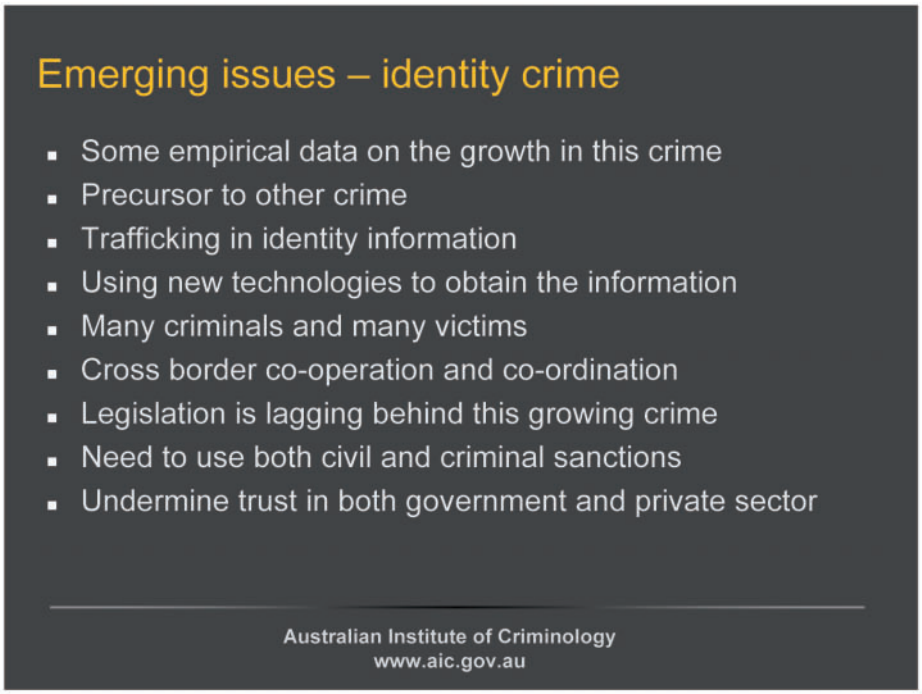
I adjourn the meeting until tomorrow morning, thank you.

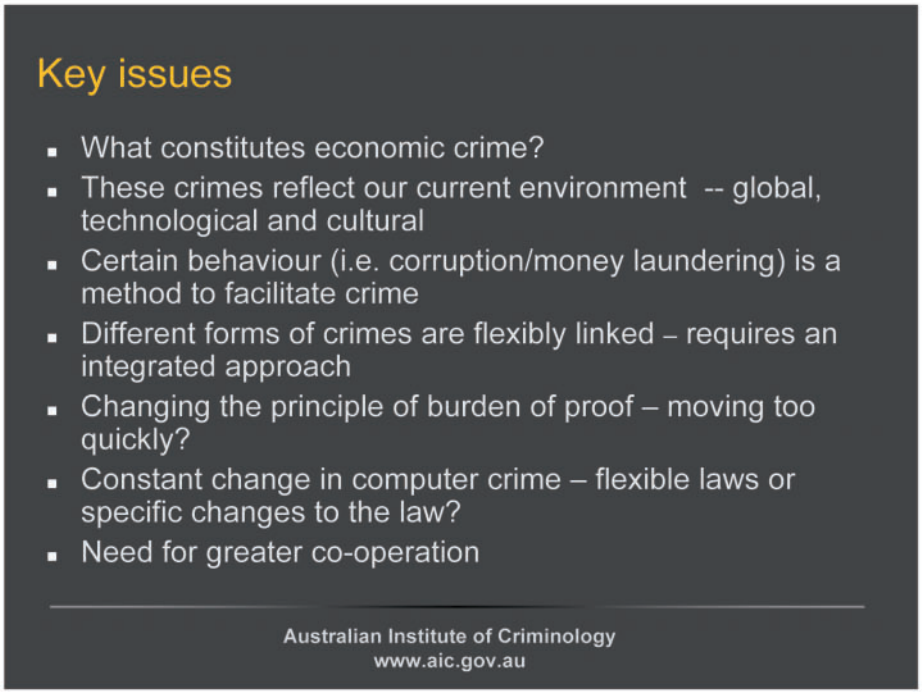

Australian Government
Australian Institute of Criminology
www.aic.gov.au
Scientific rapporteur's technical overview of Workshop on Economic Crime and Money Laundering
Session 1: Economic crime
Toni Makkai
Director


What do we know?
Definition is very broad
Individual-institutional level/Individual to organised
Victims range from Individuals to both private and state organisations
Sense that it is growing in size
Highlighted by recent cases of serious fraud in major private sector companies
Significant under-reporting of crime/Significant challenges in capturing data
The form of the crime is changing
Crosses national boundaries/Multiple actors/Victims and offenders in different jurisdictions
The method of committing such crimes is changing
Greater complexity in the commission of the crime/Professionals are key gatekeepers/strong links to corruption
Responsivity of governments and criminal justice systems varies across jurisdictions
Legislation/Level of expertise by the CJS to detect and prosecute varies
UN convention on TOC has a provision for comprehensive financial sector regulatory regimes, detection of cross-border currency, confiscation of assets
Australian Institute of Criminology
www.aic.gov.au

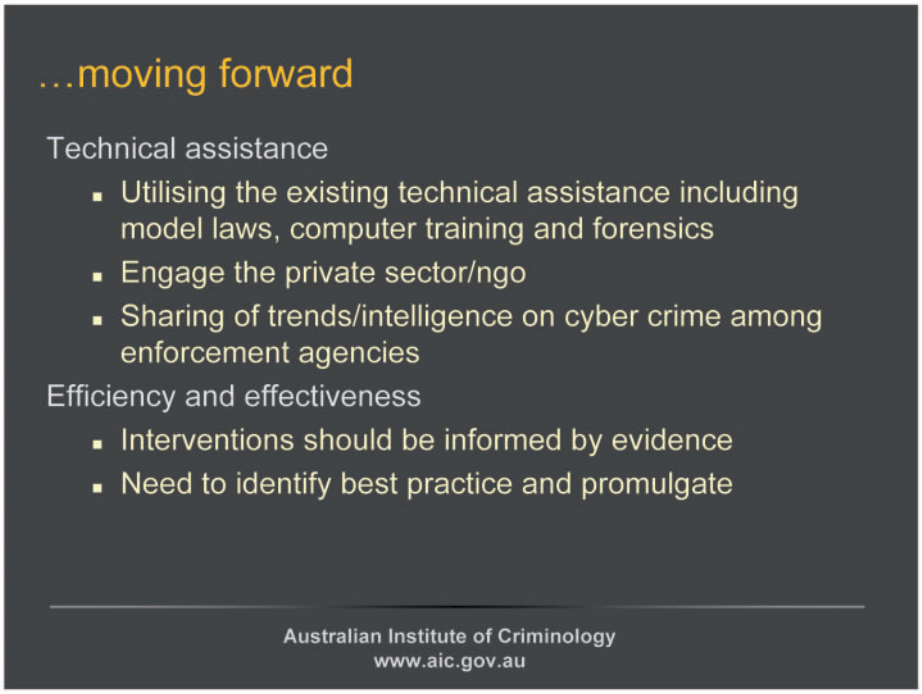

Case studies – practical issues
Prevention is better than cure/no one solution
Governance issues – chief executive instructions (CEIs)/policies and procedures
Internal shareholders
Internal and External audits
Reporting to shareholders
Whistle-blower legislation and protection
Lesson drawing from control failures
Internal investigations
Education/training of employees – code of ethics and integrity
Partnership between government and private sector
Education needs to start young
Exchange of information across institutions – private and government (including law enforcement)
Need for specialist multidisciplinary investigative teams
Integrated approach – deterrence, prevention, education
Australian Institute of Criminology
www.aic.gov.au

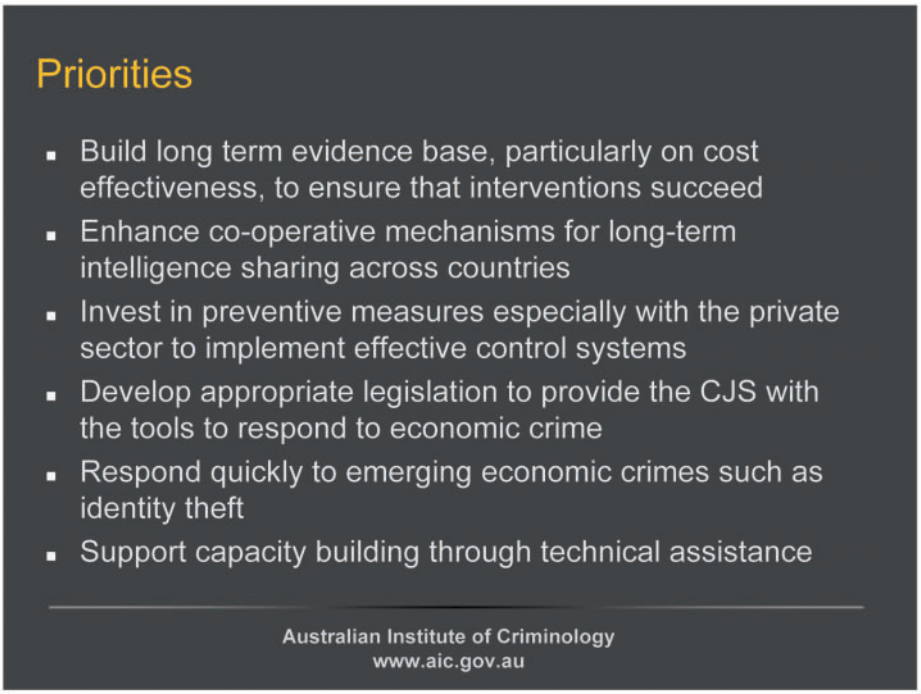

What don't we know
Data sources are limited
Terminology
Availability/Accuracy/Comprehensiveness
Comparability
Confidentiality
The size of the problem?
Definitional variations/Legislation varies
Significant under-reporting
What is the scale of cross border crime
No comprehensive source book of data/information
Who are the victims and offenders?
Profiling
Understanding networks?
Organised/Transnational/Links in the chain
What works?
Cost effectiveness of criminal justice interventions
Australian Institute of Criminology
www.aic.gov.au


Emerging issues – identity crime
Some empirical data on the growth in this crime
Precursor to other crime
Trafficking in identity information
Using new technologies to obtain the information
Many criminals and many victims
Cross border co-operation and co-ordination
Legislation is lagging behind this growing crime
Need to use both civil and criminal sanctions
Undermine trust in both government and private sector
Australian Institute of Criminology
www.aic.gov.au


Key issues
What constitutes economic crime?
These crimes reflect our current environment -- global, technological and cultural
Certain behaviour (i.e. corruption/money laundering) is a method to facilitate crime
Different forms of crimes are flexibly linked – requires an integrated approach
Changing the principle of burden of proof – moving too quickly?
Constant change in computer crime – flexible laws or specific changes to the law?
Need for greater co-operation
Australian Institute of Criminology
www.aic.gov.au


How can we move forward?
Research/intelligence issues
Research community needs to conceptualise what is economic crime?
Develop methodologies to address the significant issue of under-reporting, especially where it involves the private sector
Develop norms and standards and build regional databases
Need to share information
Prevention and deterrence
Education and media campaigns -- ethics
Legislative changes including reversal of burden of proof, requirements ISP, international forfeiture cooperation
Cooperation of co-conspirators/provide witness protection
Proactive investigative measures – interceptions, undercover policing
Effective sanctions – civil and criminal
Think laterally use domestic legislation such as tax powers and international conventions such as TOC, freezing assets
Australian Institute of Criminology
www.aic.gov.au


…moving forward
Technical assistance
Utilising the existing technical assistance including model laws, computer training and forensics
Engage the private sector/ngo
Sharing of trends/intelligence on cyber crime among enforcement agencies
Efficiency and effectiveness
Interventions should be informed by evidence
Need to identify best practice and promulgate
Australian Institute of Criminology
www.aic.gov.au


Priorities
Build long term evidence base, particularly on cost effectiveness, to ensure that interventions succeed
Enhance co-operative mechanisms for long-term intelligence sharing across countries
Invest in preventive measures especially with the private sector to implement effective control systems
Develop appropriate legislation to provide the CJS with the tools to respond to economic crime
Respond quickly to emerging economic crimes such as identity theft
Support capacity building through technical assistance
Australian Institute of Criminology
www.aic.gov.au

## E. Opening for the Second Session (21 April 2005)

**Chair** *(spoke in French)*: Ladies and Gentlemen, it's my pleasure to welcome you to this meeting of Committee 2. Yesterday our workshop made a lot of progress and addressed many complex questions having to do with economic crime, with the aid of our distinguished Panellists. I am confident that today we are going to continue being successful in our efforts, and I would now like to call upon you to join the workshop and to look into the workshop's questions on money-laundering.

Having heard yesterday's discussions, I am very confident that Mr. Hans Nilsson, our Moderator, will continue to lead an active discussion during the workshop so as to make concrete and substantial conclusions to fight economic crime, including money-laundering.

But before I call upon Mr. Nilsson to join me in moderating the round-tables, it's my very great honour and pleasure to introduce to you Mr. Peeraphan Prempooti, the Keynote Speaker for this morning. He is the Secretary-General of the Anti-Money Laundering Board of our host country. You have the floor, Sir.

### *Keynote Speech for the Second Session*

**Pol. Maj. Gen. Peeraphan Prempooti**: Good Morning Distinguished Ladies and Gentlemen, it is a great pleasure for me to have an opportunity to deliver a keynote speech at this important 11th United Nations Congress Workshop to my esteemed colleagues and distinguished delegates from all over the world. First of all, I would like to welcome all of you to the Kingdom of Thailand - the land of a thousand smiles, and I hope you enjoy your stay in Thailand. I also wish to express my sincere thanks to all of the staff of the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) who have been working to organize and make this Workshop possible.

My keynote speech today will provide an introduction to issues related to anti-money laundering -or AML in short. The focus is on a legal framework, the importance of international cooperation and the enhanced role of the financial intelligence units or FIUs. I will also touch on capacity building and technical assistance required by new AML entities.

"Money-Laundering" has a long history dating back to 1931 when the United States Court convicted a Mafia group headed by Al Capone, on charges of tax evasion. The Mafia group obtained dirty money from underground business undertakings that yielded them huge profits which they claimed came from a Laundromat that was, in fact, just a front business. In 1973, with the incidence of the Watergate scandal, the term "money-laundering" was officially used to explain the process of how "dirty money" moved into the campaign of a US political party.

We all recognize that transnational organized crime, money-laundering, and economic crime are often linked and organized crime groups will use their ill-gotten gained profit to infiltrate or acquire control of legitimate businesses. The consequence of money-laundering will put all legal establishments out of business with the practice of bribing individuals, and even governments, with the dirty money.

Money-laundering is one of the growing and ongoing problems facing the international economy, whilst the fundamentals of this crime remain largely the same, technology has offered, and will continue to offer, a more sophisticated and circuitous means to convert ill-gotten proceeds into legal tender and assets.

We are all aware that money-laundering consists of 3 stages: (1) *Placement*; remove dirty cash to avoid detection from law enforcement (2) *Layering*; attempt to conceal and disguise by moving money in and out offshore bank accounts of front companies (3) *Integration*; the final stage in the process where money is integrated into the legitimate financial system.

The reasons why criminals launder their dirty money are to: (1) avoid tax (2) make it appear legal (3) avoid prosecution (4) increase profits, and (5) avoid the seizure of their illegal wealth.

Money-laundering is related to unlawful undertakings that can only yield dirty money. Because the ill-gotten gains are not safe to keep and could cause suspicion about the source, criminals must find ways to clean or launder the money to make it appear legal in order to use such disguised proceeds of crime. And because money is an effective tool for all serious organized crimes, the whole justice systems are urged to run around the clock to cut off the criminals' chance to use their ill-gotten gains.

Some laundering techniques can be very simple such as using the money to buy luxury cars or transferring the money to someone else. More complicated means may include using commercial loopholes to conceal the actual source of the funds or assets.

In the Asia-Pacific region, the most common methods are the purchase of valuable commodities such as gems and jewellery; use of casinos; structuring of transactions; informal money transfer using underground banking and alternative remittance services; use of false identities; investment in business; use of nominees, trusts, family members or third parties; and use of foreign bank accounts.

In a couple of years, it is likely that this region will be faced with even more complex methods, such as investment in capital markets; use of shell companies/corporations; and the use of offshore banks and corporations.

These more complex ways make scrutinizing very difficult. So the methods of scrutiny need to be supported by an efficient legal backbone.

The legal backbone can be stretched by a promulgation of anti-money laundering law. We have seen many countries that have established and improved their anti-money laundering framework from time to time by making money-laundering a crime under their domestic law. Certainly the criminalization of money-laundering should be conducted in accordance with global standards, such as those laid down in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention 1988) and the United Nations Convention against Transnational Organized Crime 2000 (Palermo Convention) which lay a foundation for the criminalization of money-laundering.

The Vienna Convention is perhaps the most important drug control instrument. But the limitation is that predicate offences for money-laundering relate only to drug trafficking offences.

So, later the world community adopted the Palermo Convention that imposes an obligation on all member states to apply its money-laundering offences to “the widest range of predicate offences”.

I am pleased to say that the Thai Government has shown a strong commitment to combat money-laundering by promulgating the Anti-Money Laundering Act of 1999 (AMLA 1999). The Anti-Money Laundering Office – AMLO, a new law enforcement agency, was established under the AMLA 1999 and is the national focal point of Thailand’s Financial Intelligence Unit or FIU.

Perhaps the best player in the field at the moment is the Financial Action Task Force (FATF). In April 1990, it issued a set of international standards on anti-money laundering known as the “Forty Recommendations”. These recommendations were first revised in 1996 and again in June 2003.

The Forty Recommendations were complemented by Eight Special Recommendations on combating the financing of terrorism, which were adopted following the 9/11 events. In September 2004, the FATF issued an additional recommendation, the Ninth Special Recommendation, regarding cash couriers.

The FATF encourages countries to specify in their money-laundering law beyond its minimum recommendation of predicate offences to be included in their money-laundering law.

So the revised FATF Forty plus Nine Recommendations apply not only to money-laundering but also to terrorist financing. This will have a great impact on most countries that take the time to implement the changes.

Countries now have to be sure that they have the anti-money laundering and combating the financing of terrorism (we know it as AML/CFT in short) system in place, if they do not wish to be listed as non-cooperative countries and territories. This of course calls for cooperation from all sectors - the legislature has to amend laws; and banking as well as non-banking businesses are required to know their customers and act on Customer Due Diligence.

The money-laundering message is already heard across the world. Many regions have formed so-called “FATF-style Regional Bodies” (FSRBs) aiming to strengthen member countries’ capability to comply with the

FATF standards.

In the Asia/Pacific region, most States are members or observers of the Asia-Pacific Group on Money Laundering (APG). The APG adopted the FATF Recommendations at its annual meeting in 2003 in Macao. So far the members have been assisting each other in capacity building efforts and organizing mutual evaluation exercises.

As the world's technology advances, money-laundering techniques become faster, easier, and more complicated. This poses a big obstacle for officials to investigate and arrest the perpetrators.

No doubt, fighting against cross-border money-laundering will be more effective with the help of colleagues overseas. The support may be rendered for the analysis and investigation of suspicious transactions, or for investigation of money-laundering crimes, confiscation of assets, or extradition.

A gateway to cooperation is through mutual legal assistance. It is assistance provided by one country to another. Countries could make assistance available, for instance, in requesting information, enforcing overseas freezing and confiscation orders, and sharing of assets. But, please note that what assistance can be given and what assistance can be requested will vary from country to country.

Member states in the Asia-Pacific region exchange information and have enhanced the implementation of money-laundering and terrorist financing counter-measures through the Asia/Pacific Group on Money Laundering (APG) as I mentioned earlier. Thailand became an APG member in April 2001.

Another gateway to external cooperation is through the Financial Intelligence Unit. Since the 1990's, many countries have been keen to justify their national strategies in order to combat money-laundering that has become a serious crime that goes beyond boundary lines. A group of officers are tasked to work as a national focal point called a "Financial Intelligence Unit", normally referred to as FIUs. This special unit will be responsible for receiving and analyzing financial information and then disseminating it to relevant law enforcement agencies to take proper action in order to combat the new crime of the century - "money-laundering".

The FIUs work and share information among themselves, usually on the basis of a memorandum of understanding. As an example, AMLO Thailand has entered into arrangements with 15 states for the exchange of financial intelligence. If there is no such agreement, the exchange of information can be undertaken on a reciprocal basis.

A number of FIUs have formed an international body known as the Egmont Group, following the Seven Industrial Countries (G7) meeting in 1995 at the Egmont-Arenberg Palace in Brussels. The Group provides a forum for member states to discuss issues common to FIUs and to foster cooperation as well as to advise FIUs under development. As of June 2004, there are 95 FIU members of the Egmont Group from all over the world and this will continue to grow. Thailand officially joined the Egmont Group in October 2001 and is one of the eight countries from Asia.

Therefore I would like to recommend that each country should afford another country, on the basis of a treaty, arrangement or other mechanism for mutual legal assistance as well as information exchange. Assistance in criminal matters and, if possible, civil matters should help every country to achieve the mutual goal of combating money-laundering on a global scale.

In improving the capability of the AML/CFT regime, technical assistance has a real role to play.

Technical assistance and capacity building in national anti-money laundering operations and systems can be extended to countries in the following main areas:

- Develop a regional training programme for law enforcement officials and related entities, namely prosecutors, judges, asset freezing and forfeiture officers;

- Assistance and resource mobilization to develop AML/CFT legislation, financial sector and FIU legislation, and updating of AML legislation to reflect the FATF 40 plus 9 Recommendations;

- Establishment of an FIU in countries where there is no FIU in place yet;

- Boost information exchange and intelligence network. Now the range of reporting entities is widened to include the non-banking sector, such as casinos, company service providers, and legal and accounting professionals. This makes the nature of reports received more varied and brings up issues of methods of analysis and training of staff.

In the past years a wide variety of assistance is being provided across the whole continuum of AML/CFT systems ranging from legislative drafting to awareness raising.

Many organizations and governments have lent their hands to raise the AML/CFT capability of the less advanced countries. Among these are the World Bank, the IMF and the Asian Development Bank – to name but a few.

Some of the programmes come in the form of regional projects, such as the ASEM Anti-Money Laundering Project which aims to develop sustainable institutional capacity in Asian ASEM countries to address money-laundering at a national, regional and international level. AMLO Thailand is proud to be part of this important project by hosting the project office in our building.

Technical cooperation programmes can also be arranged on a bilateral basis like AMLO and AUSTRAC of Australia, namely an exchange of experts and work attachment. We are more than willing to have foreign FIU staff attached with us for the purpose of knowledge exchange.

To conclude my remarks here, I would like to say that no matter what the money-laundering trends will be, it is important for law enforcement regimes worldwide to keep our capability “One Step Ahead” of the criminals. Briefly speaking, money-laundering is the ‘Crime of the Century’ that is not a duty of one nation but rather of all nations to reduce the threat to world security.

Lastly, may I say again that the Royal Thai Government is proud to co-host this important UN Congress. If we can be of any help at all to make your stay more pleasurable, please do not hesitate to let us know.

Thank you for your attention.

**Chair** *(spoke in French)*: Thank you, Sir. I shall now call upon Mr. Hans Nilsson to help me in moderating the round-table and to introduce the invited experts. You have the floor, Sir.

## F. Panel 3

### Presentations on Measures against Money-Laundering

**Moderator**: Thank you very much, Mr. Chairman. Good morning to everyone. We will today continue our workshop. I think we had very interesting and lively discussions yesterday. There were a number of interventions from the floor, and I hope that we will continue with that also today.

But we will also follow the same procedure as we had yesterday, namely, with interventions from the table up here and also with the continuation of the case study that will be moderated by my colleague, Peter Csonka, sitting next to me.

I would not like to repeat what I said yesterday since this is the continuation of the workshop, but I want to repeat some things which I think are important because perhaps not everybody had the possibility of attending our discussions yesterday.

The first thing I want to do is to reiterate my personal pleasure in being here in Thailand and to meet our good friends from Thailand again, and in particular Mr. Peeraphan. It is a real pleasure to see you here again now, and after having prepared this workshop for such a long time with you, now finally to be here on this spot so to say. Thank you very much to our Thai hosts.

And I also want to express once again our thanks to the Swedish Economic Crimes Bureau and to UNAFEI for all the efforts that they have put into this workshop.

We have now less than three hours ahead of us, so we will have to be brief and to the point, but I want to inform you that the full statements of the interventions will be published by UNAFEI after the Congress, so they will be available both in paper form and on the website of UNAFEI.

I also want to draw attention to what I said yesterday on the background paper of the workshop A/CONF.203/13. On page 10 this paper deals with technical assistance. I would encourage all of you to read these two or three pages on technical assistance, which I believe is an excellent paper, and it has implications I believe not only for this workshop but for technical assistance in general in many fields. And I think also that in this paper there is one specific point which is mentioned which is of particular relevance to the topic of money-laundering combat, namely, the importance that we involve the private sector in the development of the criminal policy and in the actual carrying out of the law enforcement.

The private sector is involved as victims, as partners and as gatekeepers, and we need the cooperation and assistance and input of the private sector. So this is the only remark I want to make today concerning the technical assistance and the involvement of the private sector before we resume our work with the panels.

And I have the pleasure of introducing you to a very distinguished panel consisting of three speakers. The first speaker is Timothy Lemay, also known as Tim Lemay, I believe. He's the Chief of the Rule of Law Section in the Human Security Branch in the UNODC. This means that Tim has the Programme on Anti-Money Laundering and Anti-Corruption under his responsibility, and he has also been the Chief of the UNODC's Global Programme against Money-Laundering, and he joined the UNODC in 1995. And before that, he was a lawyer in private practice and he has also been a lawyer in Canada's Department of Justice. I have known Tim for a long, long time, I think more than 15 years probably, and it is a real pleasure for me to give you the floor. Please, you have the floor.

**Mr. Lemay**:[17] Thank you very much, Mr. Chairman. Let me just join with you in thanking our Thai hosts for the wonderful reception that they have given us here. And I would also like to thank our Keynote Speaker for touching upon some of the instruments that I'm going to try to describe to you in the next ten minutes because it may relieve me of some of the duty of going so fast over such a broad subject.

As I said, this certainly is a large subject to cover in this short space of time, so what I would simply like to do is outline some of the main developments in anti-money laundering measures over the years and have a look at some of the key international instruments which set out the standards and norms, and also to go over what I think

[17] A PowerPoint presentation submitted by Mr. Lemay is contained in Part III, A of this report.

are some basic principles that guide the fight against money-laundering.

As you can see from this timeline, there are a vast number of instruments that have come up over the past roughly 15 years. If you're unable to read this, don't worry, I understand the presentation is being handed out to participants afterwards. There is certainly no time to review them all in detail, but what I'll do is start with the initial instrument, which is the first universal one, and that's the 1988 United Nations Drugs Convention, which our previous speaker referred to. This is the instrument which essentially first put money-laundering on the international agenda, and I'll say a few words about that in a moment.

In the 1990s there was a lot of activity; the Council of Europe came forward with its Convention on Laundering, Search and Seizure and Confiscation of Proceeds of Crime. That Convention has recently been updated to include all current anti-money laundering elements and also financing of terrorism, and I believe the new version of that Convention, the negotiations will be finishing up in the near future.

Very importantly, as well in the 1990s, beginning in 1990 was the advent of the Financial Action Task Force, best known for its Forty Recommendations on Money-Laundering. These were revised and updated, as we heard, in 1996 and again in 2003, and I'll try to touch on some of the more key recommendations there as I go along.

I'll just mention with regard to the FATF that a key component of its work, and this is a fairly recent development, is the recognition by the IMF and the World Bank in 2002 of the Forty Recommendations on Money-Laundering and the then Eight, now Nine Recommendations on Terrorist Financing as world standards. And that included an agreement between the Fund and the Bank and the FATF to have a common methodology document which encompasses all anti-money laundering standards and an agreement to conduct assessments of States, compliance with anti-money laundering standards, based on that common methodology. These assessments also involve another important component of the FATF which is the network of FATF style regional bodies throughout the world.

In terms of universal instruments, after that I think the three most important, certainly from the United Nations point of view, are the Convention on the Financing of Terrorism, which came into force in 2002, the Convention on Transnational Organized Crime, which came into force in 2003, and the Convention against Corruption, which was opened for signature in 2004 and hopefully will come into force in the next several months.

Let me just start by referring to what I think will show you the underlying rationale for anti-money laundering measures, which still forms the basis of them today. And this is a quote from the preamble of the 1988 Convention. As you can see, the purpose is taking the profit out of crime, and what States agreed to do was that they were "...determined to deprive persons engaged in illicit traffic of the proceeds of their criminal activities and thereby eliminate their main incentive for so doing". I think that core idea still drives anti-money laundering work today.

So going straight to the 1988 Convention, I think it's important to review the basic requirements set out in that Convention because those are still the basis upon which anti-money laundering measures largely have been built since then.

States are required to criminalize money-laundering. A definition of money-laundering is given in the '88 Convention. That definition is still largely relied upon today, and of course the Convention was a drugs convention so the only predicate offences at that time were drugs trafficking.

Measures to identify, trace, freeze, seize and confiscate proceeds of crime. States must have these measures in place that enable them to take this kind of action. Tracing and freezing and seizing are measures which are often taken before a charge is laid or certainly before the trial of the accused.

States must be able to have for their authorities access to banking and financial records. These records must be kept and they must be kept in proper form and they must be accessible for use in investigations and prosecutions.

All of this activity has to be taken on the understanding that it overrides bank secrecy. Banking and financial

secrecy may not serve as a barrier to money-laundering investigations and prosecutions.

And finally, States are required to give each other the widest measure of mutual legal assistance, not only in investigating and prosecuting these crimes but also in assisting each other to trace and freeze and confiscate the proceeds of crime.

There are two other items in the Convention which I'll just mention briefly. These are not mandatory but States are asked to consider sharing confiscated assets. Obviously, this would only take place where there is no victim to which the assets are returned, and sharing is usually on the basis of the contribution to a joint effort by States to seize and confiscate the assets.

Secondly, reversing the onus of proof. We heard about this briefly yesterday. Parties are asked to consider reversing the onus not by requiring persons to prove their innocence of an offence, that's often a misunderstanding that creeps in here, but by requiring, once prima facie proof is shown that assets do come from an illegitimate source, to prove that in fact the assets are from a legitimate source, and that proof in this situation would lie upon the accused or the person who is holding the assets.

I mentioned the FATF. Let me go straight to the recommendations. I can't review all of them, but in the broad categories you have, first of all, in the area of legal systems, states must have a criminal offence of money-laundering. It largely tracks the wording of the offence contained in the Convention, which I spoke of earlier. And in fact the recommendations require States to ratify and implement the UN conventions which speak of money-laundering.

States must have provisional measures and the ability to confiscate. And provisional measures are the ones I mentioned, to be able to seize and freeze the proceeds of crime.

A very important contribution that the FATF recommendations made to this area is in the area of preventive measures because they brought in the whole regime of financial institutions and non-financial businesses and professions having to adhere to certain standards. Governments have to require them to have customer due diligence. You must know your customer, know his business, and must know who are the beneficial owners of the assets that you are dealing with. You must also keep records and have those records available for investigations.

There is also now the requirement to report suspicious transactions. This is mandatory reporting, and also to have in place programmes for compliance in financial institutions with anti-money laundering requirements.

Also, there are measures in the recommendations whereby the FATF and its members can take some action in a situation of countries which are not complying with the recommendations.

And finally, in terms of regulation and supervision, States must properly regulate and supervise all their reporting entities, their financial institutions, to ensure that they are complying with these standards.

A quick word on competent authorities. States are required to have competent authorities. The two most important of these are the financial intelligence units, which I think you may be familiar with, and secondly, dedicated financial investigation bodies. Not only must they exist, but they must have adequate powers and resources to do their job. And also, the recommendations require transparency of legal persons. In other words, you must know who are the beneficial owners of a corporate body or another legal person, and also who are the beneficial owners of assets which may lie in trusts and other legal arrangements.

Just very quickly, I mentioned the UN Convention against Transnational Organized Crime. I think there are a number of points there, but two of the key ones for me are that this Convention widens the basis of predicate offences beyond drugs offences to include all serious crimes, and all serious crimes are defined as those, at least in the Convention, as those which have a maximum penalty of not less than four years.

And also there is the extension of the ambit of the offence. States can now prosecute for offences on the basis of conduct not only committed within the State, but conduct which is committed outside of the State's territory.

In terms of the UN Convention against Corruption, which is not yet in force, very importantly the Convention sets up a number of offences, corruption-related offences, and criminalizes money-laundering derived from those acts of corruption. The second important thing it does is set up an entire regime, on a priority basis, for what is called asset recovery. And this is the entire regime to prevent and detect the transfer of proceeds of these kinds of crimes, and it sets in place measures and rules for the recovery of those assets.

I'll just, because I know I'm out of time, I'll go straight to the end and talk about model legislation. The reason I mention this is because for States wanting to make improvements to their legislative regime or keep up to date with the current developments in money-laundering, it's very useful, we find for them, to be able to refer to model legislation. Many organizations have this, I mention ours, obviously the UN ones. But we have had for civil law and common law systems now, for several years, model legislative provisions. These have recently been updated. In the case of the civil law provisions, we have worked with the IMF and the World Bank to produce a joint model law on money-laundering and financing of terrorism for civil law countries. Those same three parties are now working together, with the Commonwealth Secretariat, to develop a model law of the same breadth and scope for common law system countries.

And finally, I guess no one closes a presentation without showing you their web address. This is ours www.imolin.org. This is a website with a great deal of information on anti-money laundering measures, which we operate on behalf of the UN and other organizations active in the money-laundering field. One useful feature of it is a database which contains full text legislation of, I believe now, over 120 countries and that is a searchable database of legislation.

Chairman, I apologize for running long but I'll leave my remarks there and I'm very happy to answer any questions and I look forward to the discussion. Thank you.

**Moderator**: Thank you very much, Tim. Yes, it's true that you were running a bit late and I was just going to show you the yellow card that has been provided to the Chair in case the speakers are too long, and I even have a red card, but I hope that I should not have to use these cards today.

It's clear that there are a number of international standards, legal frameworks, conventions and norms to combat money-laundering, and there are also, as I said yesterday, in this particular field a number of model laws, legislations that have been produced, and I must congratulate the UN Office together with the Commonwealth Secretariat for providing these extremely useful instruments.

It is now a great honour for me to introduce to you His Eminence Sultan Bin Nasser Al Suwaidi from the United Arab Emirates. His Eminence is the Governor of the Central Bank. He has more than 25 years of experience as a banker, investment banker, so I think that nobody could explain better than him the typology and the new trends of money-laundering, including the specific features of money-laundering in informal or cash-based economies. Please, Sir, you have the floor.

**H.E. Al Suwaidi**:[18] Thank you very much.

*(Spoke in Arabic)* It's a great honour for me to deal with financial crimes and how to combat money-laundering and how to combat financing of terrorism. The United Arab Emirates has enacted a law in 2002 and the law of anti-terrorism in 2004. The United Arab Emirates has established several systems to counter money-laundering, and many of these systems and regimes have been applied by regulatory authorities. And please allow me now to move into my speech which is in English.

*(Spoke in English)* I'll start my presentation now, which will be in English. First, I would like to thank the government and the people of Thailand and the organizers for the excellent arrangements. This is, as you see, the flag of the UAE and the logo, the Government of the UAE and the Central Bank. Let's go to the second.

My presentation will concentrate on these points, the new trends in GCC countries, the UAE financial system, and the Hawala system and regulations in the UAE, which I will explain later.

[18] A PowerPoint presentation submitted by H.E. Al Suwaidi is contained in Part III, A of this report.

Let me start now by giving you a little bit of information about the challenges we face in the UAE and in the GCC countries. Of course, due to strict monitoring and implementation of the Forty Recommendations at financial institutions. Number two, vigilance at border points. We have a problem of smuggling of cash - that is through land borders. And also, a possibility of using over-invoicing or under-invoicing in cross-border transactions. Now, of course, these two challenges face all systems all over the world.

The second, of course, we expect it to be used by camouflage business entities and not the normal business entities. The normal business entities who are doing normal and genuine business will never be involved in over-invoicing or under-invoicing. So please, let's not waste our time and go through each and every transaction; let's concentrate on the entities undertaking two transactions, pushing and receiving.

Actions taken or to be taken by the GCC countries over the region at large would be exchange of information. Exchange of information is happening at this point in time among GCC countries, but of course we need streamlining, we need to be systematic, using a systematic approach.

Coordination of supervision. Our banking regulatory authorities in the GCC countries, they meet three times a year, but of course we need common standards. We do meet, we do discuss trends, we do discuss issues, including anti-money laundering issues and including combating of terrorism financing issues, but we need common standards, and common standards would also benefit from transparency of regulations. So we have to have transparent regulations well-known to at least banking regulatory authorities, and this is going to be very helpful.

Mutual legal cooperation. At this time, there is a mutual legal cooperation agreement among GCC countries, however, the speed at which responses occur and therefore we need quicker action.

Financial system and regulations in the UAE. Like anywhere else, we have banks, investment and finance companies, we have insurance companies, financial markets, money changers or exchange houses and other financial institutions. And also Hawala, or informal funds transfer systems, in the UAE.

If we move to regulations, you will see that banks, investment and finance companies are licensed, supervised and examined by the Central Bank of the UAE. Insurance companies are licensed and supervised by the Ministry of Economy and Planning. Financial markets are licensed and supervised by Emirates Securities and Commodities Authority, and money changers, exchange houses and other financial institutions, that includes brokers, intermediaries in money markets, are licensed and supervised and examined by the Central Bank of the UAE.

Hawala, informal funds transfer systems, were unregulated before 2003, and if you see the next slide you will see that Hawala, or informal fund transfer systems, are registered and certificates are issued by the Central Bank of the UAE and they are reporting at this point in time.

I'll give you a brief about the Hawala system regulations, which we implemented in the UAE. The system is based on the Abu Dhabi Declaration which, of course, the Abu Dhabi Declaration says that regulations should not be restrictive. It says that regulations should stem from the Forty Recommendations of the Financial Action Task Force on Money-Laundering and the additional Nine Special Recommendations on Terrorist Financing, which also means they have to abide by the revised new ones.

The objective is to prevent Hawala system misuse by criminals and others. This is the objective, this is the main objective. Therefore, we started with a press announcement which invites the Hawala brokers, or Hawaladars as they are known in our area, saying to them that the Hawala system is important to us because it handles transfers of low-paid workers who are mostly illiterate, people who receive little money and who are illiterate, so they cannot fill out forms.

The system is also important because it reaches remote places that are not normally serviced by normal banking networks. And we told them also that we will adopt a simple system of registration and reporting free of charge, an important message. The Central Bank assured Hawala brokers that their names would be safe at the Central Bank. Of course, we told them that we will not protect criminals and we will expose criminals who use the system.

The press announcement. It is just a detailed description. This is how it looked in the press. Of course it said, "Announcement by the Central Bank of the UAE to Hawala Brokers", or Hawaladars. And these are the main points.

Again, it emphasized that there is no charge, that Hawaladars will have to report on simple forms. And these simple forms will also include a report on suspicious transfers. And a very important message, that the certificate will be necessary to deal with banks and money changers to avoid any money-laundering suspicion.

Now the Central Bank issues these certificates to all Hawaladars, and as I said before, the certificate is necessary to do transactions through banks and the money changers or exchange houses.

This is the application form. As you see, the required information is very simple. And next is the registration form or certificate. So this will be issued with the name in the space, and then it will say that subject to the following, that the Hawala broker or the Hawaladar will comply with regulations and provide forms A and B and now forms A and B will be shown next.

We move now to reports to be submitted by Hawala brokers, and they are simple, Table A, Table B. Table A will report on remittances, and you will see the beneficiary tells the purpose of the transaction or transferring funds. There are a few fields here. I think this presentation will be available to you. The next one is the report on involved remittances, and the same thing, from the name of the beneficiary, we start the opposite way, to the purpose of transferring the funds to the UAE. And then the third form, suspicious transaction reporting, which will require simple information. This will be reported by the Hawala broker immediately to the FIU as soon as it happens. Now these forms, forms A and B, will be reported every three months, will be sent to the Central Bank, to the FIU, for safe custody and review at the Central Bank.

We have now over 150 Hawala brokers registered. Certificates have been issued to them, and we have around five in the process, and ten, their certificates will be issued very soon. We have something around 180 in number.

With this, I come to the conclusion of my presentation. Thank you very much.

**Moderator**: Thank you very much, Your Eminence. It was very interesting. I remember when we started to discuss the Hawala banking in the FATF in the beginning of the 1990s, this was something which was completely unknown to us at that the time, and I note now that we have made enormous progress in tackling this phenomenon.

And I think it's important to remember, and the Former Commissioner of the European Commission, Antonio Vitorino, always used to stress that the Hawala banking in itself is not something which is an evil. On the contrary, it has a very important social function. Very often it is used by low-paid workers, as you said, that are often illiterate, but they need to transfer money for one or the other reasons. And this is one of the reasons I believe why the European Commission in Brussels has had some hesitation in trying to regulate this problem because of the possible social impact that might be on the Hawala brokers and over their clients in particular. It is a very sensitive issue, but I think you've explained it to us very well how one can move forward in this area.

Now we have the pleasure of welcoming someone that I believe almost all of us know already, Dr. Pedro David from Argentina, who is a Judge at the Supreme Court of Argentina. And he is also Chairman of UNICRI, the United Nations Crime Research Institute, in Torino. He has been, among other things within the United Nations family, an Inter-Regional Advisor on Crime Prevention and Criminal Justice in Vienna for 13 years from 1980 to 1993. And I think that, if I'm well-informed, one could also say that Dr. David was one of the masters behind the Transnational Organized Crime Convention and the fact that this Convention was put on the table.

Judge, or Dr., I don't know which is the most important or the most appropriate, you have the floor.

**Dr. David** *(spoke in Spanish)*:[19] Thank you very much, Mr. Chairman. I would like to thank the Government of Sweden and also the United Nations Asia and Far East Institute, UNAFEI, for the possibility that's been given to me to be able to participate in this very important event, which is making it possible to look into an extremely

[19] A paper submitted by Dr. David is contained in Part III, A of this report.

important point in international cooperation, that is the problem of the prevention and repression of money-laundering.

As far as I'm concerned, I'm simply going to take up one very specific point which has to do with Mercosur, which is the Common Market of the Southern Cone. I'm also going to talk about international cooperation in this area regarding the problem we are looking at.

Section 1 of the Asuncion Treaty set up the Common Market of the Southern Cone, Mercosur, including Brazil, Paraguay and Uruguay under this Treaty. We have covered the will of the Member States to harmonize their laws appropriately, to strengthen the integration process of those countries. Still on the subject of this harmonization process concerning basic criminal law and procedure, the Ministers of Justice had occasion to meet as of 1991. All the countries participated and the idea was to establish a fundamental basis to comply with the requirements of Article 1 of the Asuncion Treaty.

I haven't got much time to talk, so I can't give you all of the details I would have liked on these various processes and the way in which they were undertaken, but actually today what I really want to do is talk about one particular regulation concerning the integration of policies with the establishment of GAFISUD,[20] which was established on 8 December, 2000, in accordance with the terms of reference of the Summit of Presidents of South America held in Brasilia on 1 September of that year. And I'd particularly like to talk about the objectives, as well as the political declaration which was made by the member countries.

First of all, the countries who established GAFISUD recognized that an integral and coordinated response was necessary in the area of prevention, control and repression of money-laundering.

Secondly, they recognized that international cooperation is crucial in combating this scourge and they restate the many agreements, political declarations and regulations which were adopted internationally with *inter alia* measures taken by FATF, the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) and CICAD as well, the organization of American states on money-laundering in connection with drug trafficking and other serious offences.

In this same Declaration, the governments recognized the importance of consolidating these groups of financial information, taking up a question which was of particular importance for this combat. It was necessary to set up training procedures for government authorities, train economic agents, and this must be the central tool for the prevention and repression of money-laundering.

Over and above this political Declaration, the governments signed a Memorandum of Understanding against Money-Laundering, and in this Memorandum they provided for three main objectives: establishing and ensuring the functioning of a financial action group against money-laundering in South America, also to establish FATF recommendations concerning money-laundering, and measures to be adopted to combat it. Also, measures to ensure prevention and suppression of financing of terrorism recognizing the eight FATF recommendations. Well, I don't want to go into detail about the structure of GAFISUD because I wouldn't have enough time.

I just want to tell you that we have various bodies. We have the Plenary Assembly of Representatives, a Secretariat, a President and an Executive Secretary.

And also a very important point, which is training provided for self-assessment and mutual assessment, activities conducted by Mercosur vary a great deal. I don't want to go into detail. I'll simply say that there was a Seminar for Coordinating Strategies sponsored by the IMF, the World Bank and the First Fund, with GAFISUD, which was held in Uruguay in September 2002. And then there was a meeting in Santa Cruz de la Sierra from 16 to 19 September 2001 with the Spanish International Cooperation Agency for the training of experts for mutual assessment programmes covering three main areas: the legal area throughout the magistrates here, the whole of the judicial body concerned with money-laundering and international cooperation, the financial area with members of the Ministry of the Economy or members of financial information services, and the police area with the judicial police, the investigative services looking into money-laundering cases and so on.

But in this brief statement, above all, what I want to do is talk to you about legal and criminal measures which

[20] South American Group on Financial Action against Money Laundering and the Financing of Terrorism.

were taken. Indeed, I do think that we must adapt criminal legislation to prevention and repression of money-laundering. This is something vital, first of all, because as we've already said during this seminar, we have witnessed a very clear evolution since the initial concern, which was to work from the criminal point of view, but purely personally, in connection with the offence of money-laundering, to go to an aspect which is certainly extremely important in this combat which is the restoration of assets with the harmonization of legislation provisionally so that the assets do not disappear, like anything which makes it possible to administer and manage any assets which have been seized.

This is a process which started in GAFISUD, but it is going to be necessary to do a lot of work representing joint work inspired by the parameters of other international experience in this area. The fundamental options for this criminal legislation have already been examined in the Federation of Financial Units, and we can say that these options all turn around the point of whether the system of restoration of assets is based solely on the system of economic property or value or both. Are we simply trying to cover problems of trafficking or are we looking at all serious offences? Is there any need for preliminary accusations to be able to go further?

And there's also the big problem of evidence. Are we going to confine ourselves to the traditionally-required evidence to pass judgement or are we going to lower the threshold of the evidence. Can the evidence be reversed so that the accused is charged? Do we have to show that the assets were obtained illegally, illegitimately, and I think that here we really have a central problem from the constitutional point of view. There are already antecedents with European legislation, resolutions of the European court, I'm not going to go into that, but it's all on the same very sensitive subject.

Another problem, is confiscation only carried out concerning the gains from a given offence or is this also going to affect the fruits of other more or less connected activities? And then you have the problem of legal persons, the problem of third parties, good faith in principle, which completely changes the whole subject of the criminal code we've had up to now. It represents an in-depth change to the criminal code. We have to recognize that developments have taken place in each and every one of the countries at different levels, but the problem is that international cooperation, even in regional and sub-regional legal areas, if they are going to be fast and effective need to be harmonized in the legislation.

I'm being told that I'm exceeding my time limit, but I must say that it is important to ensure international cooperation which enables us to move away from extradition or other traditional methods which require validation from one country to another so that we can have a system which is unified, which is based on respect for the legal system of each member of Mercosur, each one has its own system, but without there being any need for this validation which we find in other legal areas.

Unfortunately, I haven't got the time to talk about these legislations in the various countries, nor about progress which was made in each one of the them and the problems raised at the constitutional level. Thank you, Mr. Chairman.

**Moderator**: Thank you very much, Judge David. I must apologize to you for having to remind you on the time limits, but it is of course the longer you talk the less we can let the participants here also have their say. But you raised some very important issues in your statement concerning the criminal legislation, for instance, which is of crucial importance, of course, in the fight against money-laundering. If we do not have the legal basis to fight money-laundering, how can we then be efficient?

And in that context I want to make a personal remark from my now soon 20 years of experience when it comes to money-laundering questions, and I have been able to see the development in the world. And in my opinion, the countries can learn very much from each other and we can learn in particular from our mistakes. And a mistake that I very often have seen is that the Member States, they begin very cautiously by criminalizing only the money-laundering from the proceeds of drugs trafficking, whereas I believe that an all-crimes approach is the way forward. You can take the United Kingdom, all indictable offences are criminalized, for instance.

I've seen so many times Member States that are cautious and they start with one type of offence. For instance, in Italy the first money-laundering predicate offence was kidnapping, and then Italy had to legislate I think another three times before they actually arrived at the all-crimes approach.

So I think that this is one mistake we can learn from each other not to do, do the all-crimes approach instead because legislative time is very scarce.

***Questions and Comments from the Floor***

Now I would like to open up the floor to comments from the participants. But I have one duty first, which relates to a question that was raised yesterday by the Distinguished Delegate of Libya, and I would like to ask Australia to answer the question relating to computer crime and the experiences of Australia. And then I see that the distinguished representative of Libya also is asking for the floor. But I would like to give the floor first to Australia. Sir, you have the floor.

**Australia**: Thank you. Yes, the question was whether we could provide some examples from Australia of efforts to fight computer crime. In Australia these efforts are based on partnerships with industry, the community and overseas agencies which are proving very effective. The finance sector meets regularly with government representatives to discuss and address fraud within the industry, especially credit and debit card skimming. The Australian High Tech Crime Centre targets Internet banking fraud and other computer-related crime. The major objective of the centre is to create a coordinated national approach to combat high tech crime utilizing a flexible strike team approach.

For example, a banking and finance investigation team in the Crime Centre comprises police investigators, intelligence analysts and personnel seconded from each of the five largest Australian banks. The High Tech Crime Centre and the Australian Computer Emergency Response Team (AusCERT) work closely with banks as well as international partners to identify unauthorized Internet banking and shut down phoney websites using phishing scams.

In undertaking investigations into computer crime, the High Tech Crime Centre has identified a number of offshore offenders. The Australian Federal Police operate a Transnational Crime Coordination Centre which provides national and international law enforcement agencies with a 24-hour focal point of contact for all forms of transnational crime, including terrorism, high tech crime and proceeds of crime and money-laundering financial investigations.

AUSTRAC, the Australian Transaction Reports & Analysis Centre, is Australia's anti-money laundering regulator. It has agreements in place to share intelligence and information with financial intelligence units in 35 overseas jurisdictions. Australia is also an active member of the Asia-Pacific Group on Money Laundering and has provided significant support to facilitate its growth and effectiveness as a regional forum.

The Australian Crime Commission is looking closely at identity crime and card skimming. They have developed intelligence databases in partnership with the credit card companies and banks together and analyze information about these crimes. Databases such as the National Card Skimming Database and Identity Protection Registry have helped to identify the methods and crime gangs that are committing offences in this area.

The Australian government has also introduced a range of legislative measures to assist in combating computer-related crime. In March 2004 the Standing Committee of Attorneys-General released a discussion paper from the Model Criminal Code Officers Committee on credit card skimming offences. The discussion paper contained a model offence which makes it an offence to dishonestly obtain or deal in personal financial information without the consent of the persons to whom the information relates. These offences target credit and debit card skimming and Internet banking fraud, including phishing. The penalty of up to five years imprisonment will apply. The new offences are technologically neutral so they will not be overtaken by later developments in equipment or techniques being used to commit these crimes.

In 2003, the Australian government introduced the Spam Act, 2003 which covers electronic messages of a commercial nature, e-mails, mobile phones, short message service (SMS), multimedia messaging and instant messaging. The Act makes it illegal to send unsolicited commercial electronic messages. Spam, or electronic junk mail, has increased so sharply in recent years that it now threatens the viability of e-mail. Not only does it clog the Internet, but it often contains viruses or is used for fraudulent reasons. The 2004 Australian Computer Crime and Security Survey conducted by AusCERT and the High Tech Crime Centre found that computer infection by a virus, worm or trojan was the number one cyber crime affecting the 240 organizations who participated.

I'd just like to make one other brief note on a different aspect, which is identity crime as it relates to money-laundering and economic crimes, which is to note that a week ago, on 14 April, the Australian government announced that a National Identity Security Strategy will be developed as a matter of priority. The development of this strategy will require work in five key areas: documents presented as proof of identity, security features on proof of identity documents, document verification, improving the accuracy of personal information held on government databases, and authentication of individuals accessing services.

I just wanted to be able to highlight some of those as examples of things that Australia is doing which impact on our ability to fight economic crime and money-laundering. Thank you.

**Moderator**: Thank you very much. I have now a number of speakers on my list, but I first would like to give the floor to the Distinguished Representative of Libya who had asked this question yesterday. Please, Sir, you have the floor.

**Libyan Arab Jamahiriya** *(spoke in Arabic)*:[21] Thank you, Mr. Chairman. I would like to thank you for recalling the question that we put yesterday. You did show some interest in it and we're grateful for that. We're also thankful to the representative of Australia. The explanation given is an excellent one and we feel certain that the Australian experience in criminalization of cyber crime offences will be useful for international society, and in developing countries in particular.

I apologize for going back to the questions on the agenda and the question of money-laundering. It was a great pleasure for me to chair the Libyan Commission dealing with this matter, and it was possible to draw up new legislation that went into force last January. The new legislation was drawn up and with our experience we encountered rather particular problems.

This matter is one which is related to the predicate offence, and we had to wonder whether all the different offences had to be listed or whether this should be related to any form of criminal activity whatsoever. And we debated the whole question and opted for our legislation being as extensive as possible to cover all possibilities.

There is a further problem that we encountered, questions related to banking activity, with money-laundering as well, and that was a question that I had to focus on, and I discussed it with the Banking Control Office in our country. And we did manage to pinpoint a number of questionable operations, suspect or fraudulent operations, thanks to the Central Bank Governor's assistance.

In Libya, we have noted that it's essential to have strong laws because of the situation we have and with the capital investment required. We have benefited from experience in neighbouring countries and we adopted rapid provisions to make sure that our market would be protected and to avoid becoming a tax haven.

As I said earlier, we elaborated the legislation. It did go into force at the beginning of this year. It has procedural provisions as well as practical matters covered. And thanks to it, the different banking institutes have been able to operate in full legality. We have created a banking control body. I already addressed this question. It monitors central bank operations, as well as customs and tax, and that for all government departments. And on the commission, on the board we have representatives of all departments concerned including the Ministry of Foreign Affairs.

The presentations we've seen since yesterday have referred several times to the matter of the burden of proof. I don't think that we have to look at legislation on its own. We also need to make sure that any laws passed are enforced, so the simple fact that we draw them up isn't enough. Even if declared unconstitutional, these can remain a dead letter. We have seen various cases, so with international conventions, what we gain is –

**Moderator**: You've had the floor for quite some time and there are quite a number of people who are on the list. Thank you. And I apologize for interrupting.

**Libyan Arab Jamahiriya** *(spoke in Arabic)*: I have come to the point where I would like to put my question. What is the likelihood of reconciling the question of the burden of proof with democratic constitutional principles prevailing in the different countries around the world? Since everyone is innocent until proven guilty, how can

[21] A paper submitted by the Delegation of Libyan Arab Jamahiriya is contained in Part IV of this report.

these matters be reconciled? Thank you.

**Moderator**: Thank you very much for that question. And once again, I apologize to you for having to interrupt you, but we have unfortunately limited time on a very interesting topic.

Could I now give the floor to the Distinguished Representative of Italy.

**Italy**: Thank you, Mr. Chairman. Firstly, I agree with you about mistakes of our legislation but I think now we repair. And so I want to move from the analysis of the hypothetical case yesterday just because it will permit us important considerations about the strategy and the best practices to combat money-laundering.

The right way to be followed, in our opinion could be first to intensify the preventive action provided by the rules, such as we know limiting cash flow, monitoring cash flow between border countries and asking for obliging active cooperation.

Also, it is necessary to improve information exchange. This is very important from the operational point of view because, just as the hypothetical case shows, those who commit this kind of fraud tend to exploit bureaucratic and complicated procedures.

And so our suggestion is to encourage drawing up a specific Memorandum of Understanding with the main law enforcement and fiscal authorities of foreign countries just according to the suggestion of the Thai government and in order to give and get quickly information about economic and financial crimes.

We also think it is important to provide the possibility to confiscate the proceeds of crime even if these goods are not in the same country where the illegal activity has been perpetrated. Just according to what happens in case of corruption according to the UN Convention of Merida and Article 31.

Also, we think it is important to organize frequent and high level qualified training for professional operators because the struggle against economic crime requires a very high degree of specialization. In Italy, we have a specialized police squad, that is the Guardia di Finanza, that is placed under the authority of the Economy and Finance Minister and has the capability to use both investigative techniques, connected to its role of criminal judicial police, and administrative power to examine balances and bookkeeping, connected to its role of revenue police-type related with fiscal authority.

Domestic training has to be an answer with the twinning programmes with other countries, according to EU projects, in order to allow an interchange of knowledge and operational experience. Just this month we have in progress a twinning with Turkey and we were very impressed with the professionalism of the Turkish MASAK. It is a good occasion to exchange experience.

Finally, I want to suggest to you other considerations. One, that identity theft is an increasing phenomenon, and the first thing that each country can do to face this new kind of threat is to introduce in its penal code a specific type of crime. Punished with severe penalties. We don't have it in our legislation but we hope to have it soon. And the second consideration is the necessity of the new formulation of the crime of money-laundering in order to permit the author of the predicate crime to be prosecuted in the same way as a money-launderer. Thank you for your patience.

**Moderator** *(spoke in French)*: I thank Italy. At the beginning of the meeting I did announce that you could give your statements in writing if you wish so that they can be included in the publication that UNAFEI will produce, so I'd like to encourage you to do so if you wish. Perhaps the Distinguished Representative of Libya could cover the experience mentioned in writing so that that can be included in the publication.[22]

I'd like to give the floor now to the Distinguished Representative of Benin. You have the floor.

**Benin** *(spoke in French)*:[23] Thank you, Mr. Chairman. I am from Benin. I have been Advisor to the President of the Republic for nine years dealing with matters of corruption and I am an expert on French-speaking affairs.

[22] See footnote 21.

[23] A paper (in French) submitted by the Delegation of Benin is contained in Part IV of this report.

There have been communications and presentations that are very rich that we have seen, but there's one question that stands out.

The prevention measures that have been adopted, do they take into account youth? What can be done about that? Now we see poverty and unemployment in developing countries. Young people are getting messages pressing them to get involved in economic crimes, financial crimes. What can be done for prevention measures?

Since yesterday, I haven't really seen how they actually reach out to young people. People committing such crimes, it would be easy to channel through youth what can be done to prevent this. That's my concern. Thank you.

**Moderator** *(spoke in French)*: I thank you, madam. We'll try to reply to your question soon, but I'd like to give the floor now to the Distinguished Representative of Brazil.

**Brazil**: Thank you, Mr. Chairman, for giving me the floor again. I'll be very brief. I'm aware that the subject of this workshop is measures to combat economic crime, including money-laundering, however, I'd like to bring an issue, the international legal cooperation, international cooperation. I know that this subject is being held also in the other workshop, however, as the Head of Department within the Ministry of Justice in Brazil, in charge both of the policy on money-laundering and of international legal assistance, I have seen that one of the main obstacles to combat money-laundering is international legal assistance, mutual legal assistance.

We are able to obtain informational intelligence. We are able sometimes even to freeze money, but when we need evidence or when we need to repatriate money, we encounter several important problems, obstacles with legal assistance.

One of those obstacles is the concept that I mentioned yesterday of dual criminality, the other one is the principle of specialty. Those obstacles, on a day-by-day basis, they create enormous problems to combat money-laundering, results in difficulty in combating money-launderers. And I would like to hear from the experts at the table if they share this opinion. And if they share it, we should move towards a more comprehensive mutual legal assistance which would necessarily need to overcome the idea of dual criminality and the principle of specialty. And it could also use other concepts such as public order to control and to respect the reference of legislation.

I heard with interest, also Dr. Pedro David has mentioned, that he said that we need harmonization of legislations in order to have good mutual legal assistance. Probably we could have differences of legislation, however, and still have good mutual legal assistance if it could work with that sense of dual criminality on this level. Thank you, Mr. Chairman.

**Moderator**: Thank you very much. Also an important question that we will touch upon and try to talk about just in a second. But first I would like to give the floor to the Distinguished Representative of Syria. You have the floor, Sir.

**Syrian Arab Republic** *(spoke in Arabic)*: Thank you, Mr. Chairman. There's the fundamental question of money-laundering related to the aspect of banking secrecy. There are contradictions at times between human rights, individual rights of a person with an account in a bank. At a certain point, banking secrecy could be called into question.

In cases of criminal acts, you can't say that this right has actually been violated, that is the right to banking secrecy. But not all cases that are brought before the courts are actual cases of crime, and I would like to ask that that question be taken into account.

The following question might be asked. What solution can be found to achieve a dual aim and that is preserve fundamental rights, human rights, on the matter of banking secrecy, while at the same time ensuring the human rights in the case of people who may commit criminal acts, including money-laundering? Money-laundering doesn't always occur in just one country. At times, this could involve sales of goods or transfers of funds from one continent to another, Africa to America or Europe, for example. And there's a need for cooperation in order to seek an adequate solution to these problems. Thank you.

**Moderator**: Thank you very much the Distinguished Representative of Syria.

Now, I would like to proceed in the following manner. I would like Judge David to briefly give his viewpoint concerning the question that was raised by the Distinguished Representative of Libya concerning the question of reconciling the burden of proof on the one hand with the democratic constitutions. The question is extremely important, as I said already yesterday, and it is very sensitive. We have case law from the European Court of Human Rights saying that it is possible to do it under certain circumstances. But could I give you the floor to answer that specific question from your point of view, but briefly, please, because we have some time management problems. Thank you.

**Dr. David**: The question of the Distinguished Delegate of Libya is really a very complex one and it has been worked out through different legislation with solutions that are not uniform. Just for instance, in relation to the legislation of Italy, the constitutional court in relation to Article 12 (50s) replaced later by Article 12 (60s), has been a case in point.

The constitutional court has declared in Italy that the norm by which the reversal of the onus of proof has to be counteracted by the burden of the offender to prove the legitimate origin has been replaced later on by a new legislation saying that what they should prove is the origin. But critics to this have argued that's just a change in words, to prove the origin or to prove the legitimate origin is quite the same.

In other cases related to confiscation, we could bring two cases of the European Court of Human Rights, in the Salabiaku[24] case and also the Pham Hoang[25] case in which the European Court of Human Rights has decided that culprits should be given all the guarantees for having an opportunity to make a discharge and even if it's not an automatic procedure of confiscation.

The same question has to do with the Argentine law in relation to the reversal of proof in the cases of illicit enrichment. And this has been argued extensively saying that what is important is that the construction of the reversal of proof has to do with two different standards. It's very impossible to construe the reversal of proof in relation to the guilt of the person because it's protected by the right against self-incrimination, the constitutional international rights against self-incrimination, and also by the fact of the presumption of innocence. But other things have been argued that for the recovery of assets we could construct the diminished standard of proof.

To give just a summary of the situation, I can tell you that the recent jurisprudence of Argentina has decided later on that there is not an automatic reversal of proof in relation to guilt, that at least the prosecutor should extensively prove the illicit origin of the asset. There is original legislation in Article 23 of the Penal Code in which the recovery of assets has been given an extensive coverage, but still I will say that there is always need to see the constitutional dimensions.

For instance, the inclusion in Colombia of the accion de extincion del dominio. In the Constitution of Colombia is one of the actions established by its provisions and has saved Colombia so far from the unconstitutionality of the reversal of proof, but this has affected also the way in which the constitution was drafted. So they had to change in the Constitution the norm allowing for the reversal of proof, that is not related anymore as a personal action, an action in personam, but an in rem action. It does not imply the guilt but it's a parallel procedure. It is very much similar to the financial recovery investigations that are very much common in European countries. I don't want to extend more but I think that we are entering into a very difficult question that requires great sensitivity and care.

**Moderator**: Thank you very much, Judge. Who better than a supreme court justice to answer that question?

Could I ask Tim perhaps now to deal with the question from the Distinguished Representative of Brazil, namely, concerning mutual legal assistance, double criminality, specialty, et cetera. But briefly, please.

**Mr. Lemay**: Thank you, Chairman. I think perhaps I'm not best placed to answer this question. It's not an area of my expertise. Perhaps one of my colleagues who is more specialized in this area of extradition could respond to it. I'm thinking perhaps of –

**Moderator**: Okay, then. We will do the following, we will ask Mr. Pons to look at this issue of double criminality

[24] See footnote 8.

[25] See footnote 9.

and specialty in his intervention because he is an expert and a real prosecutor, so I think that he has considerations to give that.

Now we had also questions relating to banking secrecy from the Distinguished Representative of Syria, but there I believe that we will be touching upon that issue in the context of the case study that we will look at.

We have also a question concerning the protection of young people from the Distinguished Representative of Benin. There, I must say, I have some problems in answering this because in the context of money-laundering I cannot myself see exactly if there is any specific feature concerning youth which is of interest. I mean, we are all, all people are victims, not only youth but also elderly, so I wonder if that issue could best be dealt with in the context of another workshop or we could perhaps bilaterally try to answer your question.

But now I have also other speakers, other participants who want to intervene, but I would like now to go into the case study, and I will then let the other participants who want to speak come in after we have seen the case study, if you can accept that because we are running a little bit late.

## G. Panel 4

### Case-based Discussion on Money-Laundering

So I want to now introduce to you the distinguished gentleman on my left, Mr. Peter Csonka. He is Senior Counsel in the Legal Department of the International Monetary Fund, and he is there responsible, among other things, for the coordination of the Anti-Money Laundering/Combating Financing of Terrorism related technical assistance for the Legal Department since 2002. Before that, Peter was working in the Directorate of Legal Affairs in the Council of Europe in Strasbourg, and this was in fact where I met him when he joined the Council of Europe because at that time I was working in the Council of Europe as well. So you can understand that this is a very old friend of mine and that gives me then particular pleasure to hand him the floor, Peter.

**Sub-Moderator**: Thank you, Mr. Moderator, Ladies and Gentlemen. Good afternoon. I would like to start by thanking the Swedish Economic Crimes Bureau and UNAFEI for having invited me to join this distinguished panel of experts on economic crime and money-laundering. This is a real privilege for me to be here today. I'd also like to pay tribute to my former colleague and long-time friend, Hans Nilsson, who is our Moderator today for his guidance throughout the preparatory meetings and his leadership in this very workshop today. We are one hour behind schedule but we will try to remain on time. And last but not least, I am very grateful to the Thai authorities for the flawless organization of this UN Congress in their beautiful country which is legendary for its hospitality and kindness of its people.

That said, I'd like to make a few key points before we start discussing the practical issues surrounding the scenario which has been introduced yesterday afternoon in the previous panel, Panel 2, under the leadership of Mary Lee. And many of the fundamental issues surrounding money-laundering have already been touched upon this morning by the speakers.

So I only want to make three points. One, having good legislation to deal with money-laundering is key, and this legislation has to cover at least three components: the preventive regime, that is, mandating financial institutions, other institutions and professions dealing with money, to take care, to take caution when dealing with money, for example, identifying their clients, keep records and send suspicious transaction reports to the financial intelligence unit. Number two, there should be a solid criminal law basis as well for prosecuting money-laundering, as well as for confiscating the proceeds of crime. And number three; there should be ability, as well as avenues, for international cooperation at every possible level, including the financial intelligence unit, the police, other law enforcement agencies, as well as the judiciary.

Number two, there should be a solid institutional framework that is based on the legislation. There should be supervisory agencies for banking and non-banking institutions that will make sure that these institutions comply with the legislation, that they do implement the preventive measures effectively.

And number three, there should be training, training provided to every participant in this anti-money laundering regime so that they understand the importance of preventing money-laundering, as well as raising awareness about the threats and risks that they may represent to the institutions and various professions that deal with money.

And as our Moderator highlighted several times, the participation and the active participation of industry, of the private sector and various professionals, is extremely important in this regard. And they should be trained as well in dealing with money-laundering issues.

Now I want to make just a quick note on the IMF's role in this anti-money laundering effort. The IMF, which is my current employer, is a global financial institution, as you know, and it has recently joined the international community's efforts to prevent and combat money-laundering. Its main objective is to ensure the financial stability of its member states, which are over 180 at present, and as part of this work the Fund has embraced the FATF Forty Recommendations on Money-Laundering and the Nine Special Recommendations against the Financing of Terrorism.

It therefore participates actively in the assessments that are conducted against the FATF Forty Recommendations and the Special Nine Recommendations together with the World Bank, the FATF and the FATF Style Regional Bodies. And it also provides technical assistance to its Member States, that so request. And this assistance is related to legal, institutional, supervisory and enforcement issues. And I would like to use this

opportunity of offering assistance from the Fund to any UN Member State that wishes to benefit from such a system, so I would be glad to discuss it on a bilateral basis after the panel ends.

Now I'd like to turn to the Panellists. And we have a very distinguished panel of experts today on the podium, two ladies, two lovely ladies, and two gentlemen, all of them with great experience and with international reputation. Ms. Ishara Bodasing is our first Panellist and she's an experienced lawyer from South Africa who currently holds a position at the Anti-Corruption Department in the Department of Public Service. And her responsibilities include international policy matters in this area. Ishara will be talking about preventive questions in the first part of this discussion.

Now our second lady is Ms. Linda Samuel who is the Deputy Chief of the Asset Forfeiture and Money Laundering Section of the United States Department of Justice. And Linda has been an attorney in this department since 1990 and has a very impressive record of international activities in the area of money-laundering and asset forfeiture issues. And she's a renowned expert also providing assistance to a number of countries around the world.

Our third Panellist is Dr. Robert Wallner from Liechtenstein/Austria. Robert is on the far end of the table, the third person. Robert is the Chief Prosecutor of Liechtenstein, which is a beautiful principality in Europe known for its landscapes and also the financial services. Robert is an Austrian lawyer and he heads up the prosecution service for a few years now in Liechtenstein and before that he worked as a chief prosecutor in Innsbruck in Austria.

*(Spoke in French)* And finally Mr. Henri Pons, who is a French Magistrate, Vice-President of the High Court of Paris. He's very distinguished in France. He has gone through many posts, including overseeing of the stock exchange. He's an expert in money-laundering and a great analyst of monetary and stock exchange work.

*(Spoke in English)* I would like to move to the first subject matter which is reading out the scenario, the case study.[26] Now you have received, I understand, the handout and we were on, in this case scenario you will remember that they are personalities named Mr. Alan, Mr. Banner, Ms. Chung and Ms. Dee. Now the attractive lady in the middle, Ms. Chung, and the other fellows committed at least four types of crimes, which are now shown on the screen. Breach of trust: that is when Mr. Alan lends money to Mr. Banner without requiring collateral. Consumer fraud: when Mr. Banner and Ms. Chung dupe unsuspecting victims with the Internet advertisement, and Mr. Alan also falsely maintains that Lownet Incorporated is in good financial standing. Identity theft: Ms. Chung takes discarded customers' financial records to create false identity documents and also false identification. Ms. Chung asked Ms. Dee to create false identification documents in order to open 15 new bank accounts.

Now I'm going to read slowly the story behind these slides while the various features on the slides are pulled up. We were at the part yesterday where Ms. Chung transferred proceeds up to $5 million in Goldfingers Bank to 15 bank accounts in a country named Zeitstaat. Ms. Chung provided the personal information from the bank trash to Ms. Dee and asked Ms. Dee to use the information to forge false identification documents. Ms. Dee is a national of Zeitstaat and works as an accountant there. Ms. Dee withdrew the funds, $5 million, to the 15 individual accounts from numerous automatic teller machines, ATMs, in small denominations in Zeitstaat over a period of time. At the request of Ms. Chung, Ms. Dee brought $2 million in cash into a country named Xanadu and handed it to Mr. Banner. Ms. Dee did not declare that she was carrying $2 million to the authorities of Xanadu or Zeitstaat, and handed it to Mr. Banner. Mr. Banner deposited $1,200,000 into an account of Kondo Incorporated at Finebills Bank, which is shown on the screen now, which was used then to pay back the loan of $1 million and its interest.

Mr. Banner kept $400,000 for himself and gave $400,000 to Mr. Alan. Both of them kept the money for their personal use. At the request of Ms. Chung, Ms. Dee purchased a villa in Zeitstaat on her behalf for $2 million. This is what we see now scrolling down on the screen. Ms. Dee sent the rest of the money, that is $1 million, to Ms. Chung in Youngland by an underground banker named Mr. Ezura in Zeitstaat, who has his counterpart, Ms. Jabbar, in Youngland.

[26] See Part I of this report. For the complete text of the hypothetical case, see Annex B of the document A/CONF.203/13, also contained in Part I of this report.

It's a little bit late, actually, compared to my notes on the screen because of the - now there is the underground transfer of the money between Mr. Ezura and Ms. Jabbar. And eventually, Ms. Chung paid $10,000 to Ms. Dee as a fee for her services, remember, she was the accountant, and spent $90,000 for her personal pleasure, that is gambling, wining and dining, and purchased various securities amounting to $500,000 from a security company called Midmint Securities and also kept $400,000 in cash in her residence. The bearer securities were kept in a safety box at Handyfunds Bank in Youngland. This is the part where Ms. Chung disperses the assets.

The topics we are going to discuss today include criminal liabilities of the various actors, that is Mr. Alan, Mr. Banner, Ms. Chung, Ms. Dee, Mr. Ezura and Ms. Jabbar, and they have different types of responsibilities for different crimes. We will discuss the various types of offences that have been committed, including money-laundering, as well as the question of how to recover the proceeds of fraud from Xanadu, Zeitstaat, of Youngland, as well as the role of financial intelligence units and the question of reporting suspicious transactions. We will then move on to measures that can be taken against money-laundering, including at the domestic level, as well as international cooperation. We will touch upon freezing, confiscation, seizure, forfeiture and asset sharing, as well as restitution to the victims.

The first issue which we will deal with now is suspicious transaction reporting. And the question is, how could this case come to the attention of a financial intelligence unit in any of the countries concerned? And for that question I will call upon Ishara, who will discuss it in the next few minutes. And then if there is any question, Mr. Wallner, Robert, can come in. I would also like to have Thailand to take one minute to discuss the software and information technology questions related to suspicious transaction reporting given the highly sophisticated system that you have here in Thailand. Ishara, you have the floor, please.

**Ms. Bodasing**:[27] Thank you, Peter. Samuel Taylor Coleridge described a stately pleasure dome decreed by Kublai Khan in Xanadu. I think today the Xanadu that we are looking at is very different, a Xanadu where some rather sophisticated and complex transactions are taking place as part of a cross-border money-laundering scheme.

I am going to presume that Xanadu is in fact a utopia, meaning that I'm going to approach the issues on suspicious transactions reporting, STRs, as if international best practice would apply. So in that regard, if a bank suspects that monies are the illicit proceeds of crime, they must, in terms of law, report this to a financial intelligence unit (FIU), and ideally, this should also apply to members of the legal and accounting professions when they engage in transactions that involve activities such as the managing of a client's monies or assets or security accounts or even the buying and selling of immovable property on behalf of a client.

Also according to international best practice, the requirements regarding STRs should also extend to those who deal in precious metals and stones, in particular if it is a cash transaction that is above the applicable threshold.

And as far as financial institutions are concerned, they are usually protected from criminal and civil liability which may be incurred by the disclosure of information through an STR, however, in order to disclose with impunity, the report must be bona fide and ideally it should be to an FIU.

So as you heard yesterday, the usual rules with regard to the protection of whistle-blowers would apply. We must also bear in mind, considering the facts of the case at hand, that an officer of a financial institution is usually barred from disclosing the fact that an STR has been made to an FIU. And this is commonly known as "tipping off," and normally this doesn't extend to a situation where, for example, an accountant, such as Ms. Dee in this instance, would advise her client not to engage in an illegal transaction.

Furthermore, as regards STRs, it is vital that there are internal controls and policies in place to ensure the sustainable implementation of the requirements of the law. So such controls would include, for example, pre-employment screening and vetting as part of your hiring process, and once in employment they should undergo continuous training to ensure that the stringent standards are maintained.

So in our hypothetical case, a bank employee should have been aware of the danger of disclosing to her

[27] Talking points submitted by Ms. Bodasing are contained in Part III, B of this report.

friend, Ms. Chung, the fact that the bank records were discarded in a trash can outside the bank. Now either because she didn't know or because she didn't care, the employee compromised the integrity of the bank system. And also I would say Mr. Alan should have advised the employee when he shared this information of the danger of repeating such information. I'll stop there.

**Sub-Moderator**: Yes, thank you very much. Can we move on to Robert?

**Dr. Wallner**: Thank you, Mr. Sub-Moderator. Since this is the first time I'm taking the floor, I want to take this opportunity to thank you for your kind introduction and also for the organizers of this workshop to invite me to speak on the workshop. Since we have some time constraints I will be very brief and just add a few words to what Ms. Bodasing has already said.

I think from the point of view of a prosecutor, the question would be here, how would we find out initially about a case like this? How would we know that these offences, these crimes and this money-laundering, have occurred?

Ideally, reporting obligations in the context of banking supervision should already cause Finebills Bank to find out that Mr. Alan, the manager of this bank, has breached the trust of this bank. If this bank has proper internal checks, ideally, Finebills should already find out at this stage that there was some problem in the bank and report this to the Supervisory Authority or even the police. However, in real life banks tend to not take issues like this to the public, but rather solve them internally, and you might only hear that the bank manager has left the bank and wonder why and never find out initially why it has happened.

Secondly, if you look at the bank in Youngland, which is Goldfingers Bank, this Goldfingers Bank, if it does proper due diligence it should have a customer profile of Lownet Incorporated, this company which opened bank accounts with this bank. And probably Ms. Dee, who opened these accounts, told the bank, we are working in the real estate business, we are expecting some transactions in connection with real estate, and then in contrary to this profile, suddenly from all over the world, literally thousands of people pay in small amounts of money into the account at Goldfingers Bank. This should start all the red lights going in Goldfingers Bank and oblige them to file a suspicious transactions report because there is suspicion of predicate offences or money-laundering.

I think I'll leave it at this and just mention that also in practice the victims of this fraud will file complaints locally in their countries of their origin probably and say, we paid in $60 to get a videotape and then we wanted to get a loan and we could never reach these people anymore. This would also be a possibility how law enforcement would find out initially about the case.

**Sub-Moderator**: Thank you, Ishara and Robert. Unlike economic crime, money-laundering is well-defined in the international standards, there is a clear definition, at least since 1988, since the Vienna Convention, and one of the main forms of money-laundering, which countries have to criminalize, is the transfer or disguise of property when the person knows that this property originates from a criminal activity.

Now given that definition, where does the money-laundering offence take place in this scenario? I wonder if we could clarify this with Robert? When is the money-laundering offence happening in this particular case?

**Dr. Wallner**: Well since the money-laundering is the processing of criminal proceeds, you have a whole lot of acts of money-laundering in this case. On the side of Ms. Chung and Ms. Dee, which you have so very well explained already when you read out the case, which involves, generally speaking, all the transactions which have been made and purchases of goods with the proceeds of the predicate offences. I think I'll leave it here generally because we are so short of time.

**Sub-Moderator**: Okay, we have already discussed the preventive regime to some extent in Ishara's presentation, but I'd like to spend some time on the obligations of the gatekeepers, these professionals who have been brought under the umbrella of anti-money laundering obligations recently under the various international standards. And besides traditional financial institutions, like banks, as well as non-financial institutions, like securities and insurance firms, now there is a growing international tendency so as to cover also all sorts of professionals such as lawyers, notaries, real estate brokers, even car dealers, anybody who deals with money at some level and who is involved in substantial financial transactions. And if you could say a few words on the importance of

covering these professions, Ishara, in this particular case.

**Ms. Bodasing**: Yes, Peter. As I mentioned earlier, international best practice suggests that the regime should extend to accountants, lawyers, those who deal in precious metals, precious stones, et cetera, but due to the fact that money-laundering is, by its very essence, transnational in nature, international cooperation is absolutely essential. And the requirements as far as customer due diligence and proper profiling of customers should extend to all the stakeholders that could possibly be involved.

So, for example, in this instance, before establishing a business relationship with Ms. Dee, the Zeitstaat Bank should have verified the identities of the persons in whose names the accounts were opened and also that of Ms. Dee, particularly to ensure that she had the authority to conclude transactions on behalf of those clients.

And having established a proper profile of the client at the outset, then the bank, as Robert has said, the bank employees would have responded to the alarm bells that were triggered when Ms. Dee began to move the money through the accounts, through the ATMs. Just as far as that is concerned, I'd like to point out that in South Africa, and I do believe this is the case in other regimes, if our accounts are opened at different banks in a country, then when small amounts are being moved, for example, through ATMs of the different banks, through small withdrawals these don't usually trigger off suspicion on the part of the bank, at least not to the degree that would require reporting to an FIU.

**Sub-Moderator**: Thank you. I suggest that we move on to the next issue which is the criminalization of money-laundering, and it has already been discussed to some extent in the context of the international treaties, such as the United Nations Drug Convention and the Transnational Organized Crime Convention, as well as the FATF Forty Recommendations. I'd like to ask Robert and Linda to discuss the various issues that are involved in the issue of criminalization of money-laundering please.

**Dr. Wallner**: Well thank you for the question. I think this gives me the opportunity to answer one question that was raised earlier from the floor concerning own-source-money-laundering or self-laundering as it is also called. This is perhaps a question that has not been fully resolved because there are some legal traditions, for instance, in German-speaking countries where you cannot prosecute someone for laundering his own proceeds if he has already been convicted of the predicate offence.

This comes from a legal tradition where you cannot punish the thief for stealing as well as for hiding the stolen goods. It has been altered to some extent to allow at least the initial investigation of the money-laundering offence but not a final conviction if the person is also convicted for the predicate offence. This could, in our case, be a problem in prosecuting Mr. Banner and Ms. Chung for money-laundering because they could say, or their lawyers rather would say in the trial, you can't prosecute us for fraud as well as money-laundering because fraud was the predicate offence to this money-laundering offence.

Generally speaking, though, I must say that in my experience as a lawyer that in practical life this does not impose a huge problem because whether you sentence someone finally to ten years' imprisonment for fraud on its own or for fraud plus money-laundering doesn't make a big difference to him, and also this does not pose an obstacle to mutual legal assistance. And if you want me to, I'll go into the question that was asked by Brazil because I think that touches somehow the same issue because there the question of dual criminality and mutual legal assistance and specialty was raised. You are right in the way that sometimes specialty and dual criminality can be a problem in mutual legal assistance.

However, again from a practitioner's view, I have experienced that a lack of resources, a lack of training of people working in mutual legal assistance, and also sometimes a lack of will to cooperate, is much more the reason that mutual legal assistance doesn't work than the framework that we have because the framework is quite good and specialty and dual criminality, as far as I see it worldwide, is only applied by some countries as far as coercive measures are concerned, including the arrest of people. The argument for keeping up dual criminality being put on the table by these countries is that they cannot arrest their own citizens or other countries' citizens if the behaviour is not criminalized in their own country.

Also, in almost all jurisdictions I know now, dual criminality is not seen in the way that you have to find exactly the same crime in the other jurisdiction, but rather you look at the type of criminal behaviour, and if that type of

criminal behaviour is criminalized in that country, this does not pose an obstacle to mutual legal assistance.

**Sub-Moderator**: Thank you. Linda.

**Ms. Samuel**: Thank you, Dr. Wallner. Like those who've come before me, I wish to express my gratitude to the organizers of this workshop, UNAFEI and the Swedish government and also thank the hospitality of the Thai organizers.

With respect to the criminal offence of money-laundering, as our Sub-Moderator indicated, there is now, as a result of international standards, a clear definition, and generally that definition in broad terms is conducting a transaction with property involved in criminal activity, whether that criminal activity be specific identified predicate offences or, as our Moderator urged, all serious crimes or all indictable offences. Oftentimes it has to be done with the intent to conceal the nature and source of origin of the funds. So to that extent, if you define money-laundering in that way, when Ms. Dee creates the 15 accounts and money is then deposited into those accounts using fictitious names, that would be an example of a concealment laundering offence.

However, in many jurisdictions, mere possession or the spending of criminal proceeds also constitutes a money-laundering offence, and that of course is consistent with the Palermo Convention definition of money-laundering. So in that respect, if you look at the money that went back to Mr. Alan and the money that went back to Mr. Banner, that would be a money-laundering offence, as well as the use of funds by Ms. Chung for personal purposes when she went out gambling and drinking and spending money.

Conducting a transaction with the intent to promote further illegal activities is yet another type of money-laundering offence. And here, back in the very beginning of this scheme, we had an instance of bank fraud where money or breach of trust, a form of bank fraud, where money was given to Kondo Inc., Mr. Banner, and then those funds were used to produce the videotapes which then launched the fraudulent scheme, and so it promoted the illegal activity.

As Dr. Wallner has already said, self-laundering is not an offence in all jurisdictions. In the country where I'm from it is an offence and it's because the actor, in addition to committing the underlying offence, has done something more with respect to the funds. But in those jurisdictions where self-laundering is an offence, you have Ms. Chung dispersing the million dollars and she could be prosecuted for that.

There's also a category of laundering offences related to the failure to file a suspicious transaction report, and here we have numerous instances of that. There was the initial deposit into Finebills Bank of the victims' money in an account created for Lownet, so all of a sudden you have $5 million being deposited into that account. You have a manager of that bank knowing that this is a fraudulent company and an STR should have been filed.

And then you have the wholesale transfer of the funds of that account to Lownet's account at Goldfingers Bank in Youngland. Again, that should have raised suspicions. And then another transfer of that money went from Youngland, then on to 15 separate accounts in Zeitstaat, again, possible STR violation. Certainly, the ATM withdrawals of a huge sum of money, $5 million, should have raised some suspicions, as well as ATM deposits by Mr. Banner of $1.2 million. Also, to the extent that company formation agents are covered by a requirement to file STRs with the creation of the company itself, Lownet could have raised an STR filing. So, too, could have the purchase of real estate, the purchase of the villa using cash, which may, in many jurisdictions, be an irregular purchase by a third party for the benefit of another.

The last category of money-laundering offences would be those involving the transportation of criminal proceeds and the failure to declare currency when crossing borders. And here you have Ms. Dee, a gatekeeper, who acted well beyond the normal duties of an accountant. She hand-carries $2 million from Zeitstaat to Xanadu, and does not report this. And then you also have the transaction involving the alternative remittance system, or the informal value transfer, which I think would be difficult to prove but you have in fact moved criminal proceeds from one place to another.

**Sub-Moderator**: Thank you very much both of you for the very comprehensive explanation of the money-laundering elements and types of money-laundering that are involved in the case.

Perhaps I could add just one word that when the prosecutor establishes the material elements of the money-laundering offence, that is the transfer, the conversion, the possession, the use and the transportation of the proceeds, and then he moves on to establish that these proceeds are of certain types of criminal activity, such as identity theft, fraud, consumer fraud, et cetera. he or she will have to show that the person, the launderer, knew the origin of these proceeds. And what is important here is that the legal system, that is the basis of the prosecution, enables the judge that is trying the case to make inferences from objective factual circumstances as to the knowledge of the offender. If the offender would say, I have no clue about the origin of these proceeds, it was given to me and I had no suspicion, the judge should be able to infer from objective circumstances that actually he should have known and he probably has known about the criminal origin of the property.

Now establishing these facts is actually the job of the investigator and of the prosecutor and there are various methods and techniques involved. And our French investigating magistrate, Mr. Pons, has been involved in such investigations for a number of years. I would like to give him the floor now to make some comments on how should the investigator, prosecutor, go about uncovering these facts. Please.

**Mr. Pons** *(spoke in French)*:[28] Thank you, Moderator. Of course, I should start by joining others who have thanked our hosts, the Thai government, UNAFEI and the Swedish government who have done some excellent organization for this workshop.

Banking investigation on the question of money-laundering, the subject at hand. I'll try to be very specific and practical and speak from the point of view of the man in the field as that is what I am and why I am here.

The first investigation that should be performed when looking at money-laundering cases such as the one in this case study, is to reconstitute the circuit of transfer of funds. In other words, to do work that can be tedious work, looking at bank documents to determine circulation of the funds from suspect origin to final beneficiary. So the first area of investigation would be banking circles or financial circles, which means the question comes up of banking secrecy.

Of course if judges, police, prosecutors, investigators, face banking secrecy imposed by the system governing, then their investigation will not move forward. So doing away with banking secrecy, lifting of banking secrecy is a prerequisite for the success of money-laundering investigations. That's a first point.

Banking investigation can be done through coercion. This depends on the instruments at hand. It might be a phone call first or surveillance of suspect accounts. Such investigative methods can allow to determine responsibility, liability for banking questions and determine whether or not there should be prosecution. In this particular case, the banks involved would be Goldfingers Bank, and in the books there you have the Lownet account and the Handyfunds Bank, where Ms. Chang has the safe deposit box, that's in Younglands as well. So there, there would have to be an investigation in Zeitstaat where 15 accounts were opened under false identity, which brings us back to the Xanadu starting point where there was the Finebills Bank, the Kondo account, where everything started off.

As to what has to be done for the relevant documents to be requested, and there's also the question as to whether this should be a written request or a requisition or should there be something more forcible, a search, there are no rules here. It all depends case by case. When the bank institute isn't under suspicion of voluntary participation in money-laundering transactions, then it could just be a written request. The minute a doubt emerges as to the good faith of the banking institution, then it should be something more forcible with a search all legally done, warrants and all, to have full effectiveness and efficiency.

These searches might be useful in order to obtain documents of opening of account, the files for that, all the various signature papers, powers of attorney, ID provided, when accounts were opened. And in these establishments there will also be records of debit and credit movements, as well as substantiating documents for operations on the accounts, whether transfers or others.

Just a brief example, if I may, to stress the importance of searches in this area. This is an example that I have experienced myself. I performed a search in a bank, I won't be giving you the name of course, in a country that I won't mention either, and during that search, when I got to the file for the signature of the case, I wasn't surprised

[28] Talking points (in French) submitted by Mr. Pons are contained in Part III, B of this report.

to find out that there wasn't a signature to be found on the signature paper as one might have expected, but it was rather a copy of a signature that had been cut out in the way that we did with paper doll cutting. And that cut-out signature was just placed in the right spot. Now with that kind of document, if I had just asked for the signature file through a written request, I would have received a photocopy and I would not have seen how it was made up. Whereas, when you actually have your hands on the document with the cutting and pasting of the signature, and who knows where it was taken from, then you can wonder or see how the bank might or might not have followed the rules and the conditions and observing the FATF recommendations.

So once you've collected all the documents, then there's all the processing necessary. Thanks to that, on a preliminary basis you get to identify the ultimate recipients of the proceeds of laundering, and you can see with all the circulation of funds if the banks and banking institutions involved actually followed the rules of surveillance necessary.

Those are the comments I would like to make on banking investigation matters that might be considered for the case at hand.

**Sub-Moderator**: Thank you for illustrating the difficulty of establishing the facts in a money-laundering case and proving knowledge, as well as the material elements, of the money-laundering offence.

Now money-laundering seldom takes place only in one country. It very typically involves several jurisdictions, as is the case in our scenario here. I wonder whether all you three prosecutors sitting on this panel could just spend one minute on the international cooperation aspect of this case. How is it that you obtain the information, the evidence that is necessary for prosecuting the case, the money-laundering case in a jurisdiction when the evidence information is actually located in a foreign jurisdiction? How do you go about this? Please. I don't know who to start. Linda?

**Ms. Samuel**: Thank you. Basically, in this fact scenario we have evidence in all three jurisdictions and that consists of company formation documents, it's going to consist of bank records, it's going to consist of webpage information, on the setting up of the solicitation. And in order to get that, in order to prosecute the case, there needs to be a basis for making a request, and that could be based on a mutual legal assistance treaty, a bilateral relationship, it could be perhaps pursuant to the Transnational Organized Crime Convention because this is an offence which involves three or more people and is transnational in nature. Or it could be based on letters rogatory which are done as the matter of comity. But there needs to be a basis for making the request.

There is also the possibility of using informal cooperation through law enforcement channels where police in one jurisdiction would seek to obtain information from other jurisdictions. However, bank records typically are not obtainable through this vehicle.

There's also the possibility of making an FIU, a financial intelligence unit request, to help build a financial picture in this case. I think I'll leave it at that.

**Sub-Moderator**: Yes, I think it's very important, as you mentioned, that if there is a financial intelligence unit in the country involved there may be a possibility of exchanging intelligence between this unit and the other units in the jurisdictions involved. Typically FIUs would cooperate through the Egmont Group, which is the international body that garners all FIUs around the world, over 100 members now I think are included in the Egmont Group. But they also could use bilateral MOUs for exchanging intelligence.

Typically in this case, had the banks noticed that something fishy was going on there would have been a suspicious transaction report made to the FIU and the FIU could have exchanged this intelligence in the report with the other FIUs concerned.

Now let's suppose that the investigation is successful, that the prosecutors can prove the case and that the person is convicted of money-laundering. And on top of it, let's suppose that not only they prove their case, but they also manage to seize successfully all the assets that are involved, the proceeds of crime, the instrumentalities or any replacement assets.

Now the ultimate purpose of the case, such a criminal case, is of course not only prosecuting the money-

launderer; it's also to recover the money, the assets because you need these assets, first of all, to pay compensation damages to the victims, but also by removing the assets from the financial circuit you prevent further criminal activities.

I'd like to move on therefore to the next subject matter which is asset forfeiture and victim restitution which is an important aspect to this particular case since there have been a number of victims involved in a number of countries. So this in itself adds to the complexity of the case. What are the available procedures and avenues that we can use for asset forfeiture and then for victim restitution in this case? I don't know. Who wants to start? Linda or Mr. Wallner?

**Ms. Samuel**: In this particular case, we have a number of assets which would be subject to forfeiture. The $2 million cash that was handed to Mr. Banner in Xanadu consisting of the $1.2 million loan repayments, the $400,000 that went to Mr. Banner and the $400,000 that went to Mr. Alan. We also have a $2 million villa in Zeitstaat which is subject to forfeiture, and then a million dollars that was dispersed in the form of payment to the accountant, and then expenditure on personal expenses, and then investment in bearer share securities and then cash on hand at the residence.

How we're going to get this money and who's going to get this money can vary to a great extent depending on the laws and procedures in place in each jurisdiction, and also depends upon in jurisdictions for instance that only have a criminal forfeiture regime. They obviously are going to have to have these actors in hand and prosecute them successfully. And as we know from the fact scenario, they are dispersed in a number of jurisdictions. We have two of them in Xanadu, we have Ms. Dee in Zeitstaat and we have Ms. Chung dividing her time between Youngland and her villa in Zeitstaat.

I think there was a statement made before that there definitely needs the ability to be able to have a mechanism to forfeit property beyond one's border. If countries are left with only a criminal regime, then they are only going to be able to forfeit that property against whom they've successfully prosecuted. However, in my country and in a growing number of other countries, there is what's called an in rem system or a non-conviction based forfeiture system where forfeiture can be achieved irrespective of the conviction of the defendant. And this is particularly helpful in cases where you're dealing with fugitives or you're dealing with the nominees or you're dealing with decedents. And I'll turn it over to Dr. Wallner.

**Dr. Wallner**: I have very little to add to this. I just want to say that protection of victims and assistance to victims is becoming an issue ever more important. For instance, it's at the top of the agenda, as far as I know, at the Conference of the International Association of Prosecutors later this year in Copenhagen. And it's a field where a lot needs to be done because this case is exemplary to this because in a lot of jurisdictions, forfeiture will not be allowed in a fraud case where there are victims making claims which are intended to help the victims, but in real life doesn't help them because they have to file civil suits to finally get the money which has all kinds of difficulties, and they are not helped by the state to actually recover their assets.

So I think victims of fraud funds is a very good way of doing it, and before the money goes into that forfeiting it in a case like this, because if 10,000 victims are all over the world, how do they go to Youngland, if the prosecution is conducted in Youngland, or to Xanadu, and make their claims? They won't bother because the expenses are much higher than their damage. So I think this is field where best practices should still be looked at and many countries could learn from good examples that do exist.

Just one word on civil forfeiture. This is a very helpful tool. For instance, in my country we execute them a lot because typically the perpetrators sit in a foreign country but we are able to free some of the money in some cases in our country, so we have no defendants sometimes to prosecute within the country but we go for the money.

I would just suggest that rather the term "in rem forfeiture" is used because civil forfeiture is misleading and leads to complications in international assistance because the receivers of such requests think this is a civil litigation while really it's a criminal litigation just against the money and not against a person.

**Sub-Moderator**: Thank you very much. I'd like to just mention at the very end of this panel that of course there is a possibility of sharing, splitting the assets concerned between the various jurisdictions as well, and at least two

would have been involved in investigation and prosecution in this particular scenario. And the international conventions, particularly Palermo, do encourage countries to share the confiscated assets in order to use them for victim compensation.

And there has been recently a model agreement as well drafted under the auspices of the United Nations with provisions helping countries to share such assets on a fair basis. And I think such a model agreement can be very useful in the future as an incentive for cooperation as well.

With that I would like to conclude the panel and thank very much the Panellists. Oh, sorry, Henri has something to say, please.

**Mr. Pons** *(spoke in French)*: Thank you, Mr. Moderator. Just a comment that will take 30 seconds. The interest in the description of laundering in certain legal regimes, as in the French case, means that not only could the gains from the offence be taken, but actually all the gains, everything. So the investigation is carried out nationally and internationally, not only to look for the assets resulting from the offences but also any elements of the property of the person concerned so that they may possibly be confiscated later on. So the investigation is not only looking for the product of the offence, but all the property of the persons in question.

**Sub-Moderator**: This question actually has been raised by Felix McKenna the other day because in his system that is a possibility, and as we know, in some countries where this possibility exists, this is typically tied to some serious activity, organized crime, drug trafficking, so this is not typically available for all sorts of activity, but only for serious crime.

So I'd like to thank again the Panellists for their enthusiasm and contribution and for their patience with this panel, and also those who are in the room still and haven't left for lunch. And if you have any questions, I understand the Moderator will handle them. Thank you very much.

**Moderator**: Thank you very much to you, Peter, for this very interesting, comprehensive presentation, and also very practical. I think that we all learned a lot from this presentation.

***Questions and Comments from the Floor***

Now we have the time until about 1:15, so within that time we will give the floor to the Scientific Rapporteur. But before doing that, I would like to ask the Distinguished Representative of Morocco to take the floor, and then I see Egypt and Spain as well. Please, Sir, you have the floor. The Distinguished Representative of Morocco, you have the floor.

**Morocco** *(spoke in Arabic)*: Mr. Chairman, Morocco has developed legislation on laundering and we are going to be adopting the law finally. Now as you know, Morocco is looking for its way through this area because we are a developing country and our future is ahead of us, so to speak, as far as our economic development is concerned. We want to attract capital, but legal capital, and we want to ask you a question.

How do you assess the difficulties which we may encounter in the application of such legislation? We have 25 per cent of capital flow in the banks at the moment, and individuals don't want to confine their capital to the bank in view of the illiteracy rate in the country, in spite of all the efforts which are being made with the authorities to deal with that.

There are also other difficulties of other kinds which are the result of our economy, which is not a codified economy. And then there's also the fact that there are commercial transactions where there are no invoices and businessmen sometimes don't like the paperwork.

So we'd like to know, Sir, quite briefly, what are the proposals and what could you suggest to us so that I can take all this advice and all these suggestions back to my country so that we can deal with the problems at home. Because very often legislation is misunderstood or resented or causes doubts here and there, and any new legislation opens up news roads. And we want to know how we can ensure the application of our legislation. We're quite sure that this Conference will be of great help to us in finding a solution. Thank you very much, Sir.

**Moderator**: Thank you very much. I recognized the Distinguished Representative of Egypt.

**Egypt** *(spoke in Arabic)*: Thank you, Mr. Chairman. I would just like to propose a few comments on this subject. I see that the existing legislation in Egypt, particularly on laundering, is, well, it shows me that this is a very important subject. It's a very big subject worldwide. The subject of money-laundering is obviously a very important matter, but the danger resides in the fact that laundered capital is capital which is of criminal origin, because any capital which an individual holds, which is the property of an individual, is not necessarily criminal. But laundered money is money that emerges from criminal activity, so there are two crimes: the laundering and the predicate offence. And I believe that the authority of a prosecutor must be able, first of all, to find out the origin of the capital and then determine the consequences thereof.

So we must say that classical laundering, that is by depositing capital to be laundered in a bank or in some kind of a banking organization, then to make different transfers to different countries, we must be able to find a trace of this capital. That's easy to find because once money has been deposited in a bank, however many transfers from one bank to another take place, we can follow them and we can find them. There's no problem with that.

But the problem resides in the fact that at some point this money goes outside the banking service. It's used for investments inside the country and the gains from this investment are then used in the banking circuits, and this is the danger. That is the danger of this capital being used is that it can be used for other criminal activities, I'm thinking of terrorism, for example. So you see, you always have to look in this kind of direction. As I was saying, the problem is that this kind of capital ends up by financing other crimes, particularly terrorism.

A legal point now. The speedy procedures, the effective procedures that we're being asked to take against money launderers, might sometimes be in contradiction with human rights. Now in this respect, while trying to reduce one crime I can't bring about another one. I can't drop banking secrecy, for example. Banking secrecy must be removed according to very specific legal procedures. In other words, I just cannot raise banking secrecy because I suspect that somewhere money is being laundered. No, banking secrecy can only be lifted by legal means, and here we come to the vital importance of mutual legal assistance as far as money-laundering is concerned. This example is a typical example of transnational crime.

So in the various countries of the world there must be a database which will enable an exchange of information to take place with internal and external bodies and which will also enable the international conventions, be they bilateral, multilateral or mutual assistance, these conventions must make it possible to exchange information and intelligence among countries so that we can address the problem of laundering.

And one last point, if you don't mind, Mr. Chairman, and I'm turning particularly to my colleague from Morocco, there's a whole culture of exchanges with banks. It doesn't exist everywhere, particularly in certain parts of the world. We have not yet found a final solution to the question of how to deal with banks. For example, we don't use banking documents, and in our part of the world I'm not using cheques or credit cards. We always prefer to use cash, liquid money, and without this aspect of the problem, things take time because the countries concerned have to be able to understand this and they too have to get into the modern banking circle. I hope I've been clear, Mr. Chairman. Thank you.

**Moderator**: Those were important points that you made there. I would now like to ask the Distinguished Representative of Spain to take the floor. You have the floor.

**Spain** *(spoke in Spanish)*: Thank you. To begin with, I want to congratulate the organizers of these workshops, panels, for the quality of the speakers and for their very full statements. I also want to thank the Moderator for the way in which he has conducted the discussions.

We are talking here about measures to fight economic and financial crimes, including money-laundering. And I'd like to say that in the framework of our cooperation with countries of Latin America and Morocco, there have been two recent conferences during which we managed to adopt a whole series of conclusions and recommendations. I'm not going to read them out here, but I think that there may be in all this three points that need to be emphasized in view of everything that's just been said by the various speakers.

But I particularly think we ought to target two very important points. First of all, we must emphasize everything that has to do with international cooperation, and I think that in this area we ought to recall that Spain has signed

many agreements with various countries, and probably we're going to have to establish a model agreement which can be made available to all those who want to conclude and cooperate and exchange information.

And I would then say that we are very interested in the whole section on property investigations. We think that this should be something systematic, and at the same time it should be in parallel with and follow any investigation of serious offences, money-laundering, drug trafficking, trafficking in humans and other forms of offences which come under the heading of organized crime.

Another couple of words about two programmes which Spain is involved in at present. First of all, we have the establishment of a community or intelligence services on the basis of tools. Well, in a way perspective science. We're setting up a group of people from various financial services, police services, customs services, so that we can have tools, which in the medium term, will enable us to get ahead of the new advances which are being made in crime, such as money-laundering.

And furthermore, we are setting up an observatory for new technologies which are being used by criminal organizations. Indicators on money-laundering are very, very important. So this is the contribution I wanted to make. Thank you.

**Moderator**: Thank you very much for that very interesting information and also for the suggestion to draft a model agreement in this context. Now I take this intervention to be more of an informative character, and also the information that was given by the Distinguished Representative of Egypt, so I don't think that those questions merit, or rather, necessitate any response. I would, however, like to ask Ms. Bodasing to make some comment in relation to the question from the Distinguished Representative of Morocco. You have the floor.

**Ms. Bodasing**: Thank you. I would just like to point out, Sir, that you are not alone in your predicament. In fact, a number of us in the developing world face a similar challenge, a challenge where members of the informal sector of the economy contribute quite largely to our GDP, but for a variety of reasons they have been marginalized from the formal banking processes. And in respect of this, I can use our country as an example to perhaps assist with some suggestions.

Any piece of legislation can't be transposed from a model that is developed outside the country into your own country with your own special circumstances. They need to be tailored. It needs to undergo a consultative process, and it needs to bear in mind the important role played by the informal sector. And I would suggest that perhaps the information that was shared by Sultan Al Suwaidi this morning would be of assistance. And possibly, you look at international best practices, but you need to adapt them, so I would even suggest that you extend, for example, your suspicious transactions reporting requirements to members of the informal sector that are involved in cash exchanges, that you keep the processes simple, that you ensure confidentiality of the system, et cetera. So that would be my suggestion to your challenges. Thanks.

**Moderator**: Thank you very much for that. Now I would like to give the floor to Ms. Toni Makkai, she is the Director of the Australian Institute of Criminology and she's the Scientific Rapporteur of this workshop. We have, of course, also an official Rapporteur with the Distinguished Delegate of Iran. But now, Ms. Makkai, you have the floor.

## H. Summing-up of the Discussions of Panels 3 and 4 by the Scientific Rapporteur

**Scientific Rapporteur**:[29] Can I have the PowerPoint, please? Thank you very much. Thank you, Chair, and thank you, Moderator. I will move straight into this as I have only a few minutes to try and bring together the very interesting discussion that has gone on this morning.

What we have seen in terms of the discussion is that there is quite a lot that we know about money-laundering. We know that it is an important part of criminal activity, that is used to avoid tax, prosecution, and increase the profits of criminals who are involved in this activity.

We have also seen from the case study and from the various comments that have been made that in fact money-laundering is becoming more transnational and therefore requires international cooperation. It is also quite a complex activity and so it requires specialist financial and investigative units in order to deal with the problem.

However, as has been raised from the floor in particular, in a number of countries there in fact is a major cash economy and therefore this also needs to be dealt with, and we had a very informative presentation from UAE on how they are trying to deal with this issue.

We have also seen that legislation varies across countries, and in particular the issue of how different countries deal with the predicate offences.

There was a very interesting presentation going over the various UN conventions which contain within them various norms and standards to deal with money-laundering, and these conventions involve or cover drugs, terrorism, transnational organized crime and corruption.

We also heard from the members that in fact there is a range of technical assistance that is already available, as well as model legislation that has been developed which we can access.

And in addition, a number of the speakers pointed out that effective tools for dealing with money-laundering include measures such as asset forfeiture and mutual legal assistance.

However, what this panel did not provide a lot of information on was, in fact, on the nature of research that is being done in this field. The case study raised a number of practical issues and many of these actually related to yesterday in terms of economic crime and dealing with that problem, for example, governance issues in terms of how institutions, in particular financial institutions, provide policies and procedures within their own institutions to protect both their integrity and to ensure that they are not inadvertently becoming involved in money-laundering, and in particular undertaking customer due diligence requirements.

As part of governance procedures, a very important aspect of that is having external and internal audit processes, and many countries offer very extensive internal and external audit plans which can be located on their websites.

An important part, or an important aspect of identifying money-laundering, which came out of the case study was in fact the need to have mechanisms for reporting of suspicious activities, and in particular for educating employees who work in key sectors on how they might go about reporting those activities.

It was also raised, and this was also raised yesterday with economic crime, the important role of key professionals in the process and the need to have regulatory and educational regimes in order to ensure that those professionals are also not becoming unwittingly involved in this activity.

We also, I saw from the case study, that it's very important to be able to identify when a money-laundering crime occurs and to be able to determine that the offender had knowledge of the origins of the money. And an important part of that is a need to enable access to banking documents, in other words, to legislate against certain kinds of banking secrecy.

It's very important for law enforcement to focus on collecting the documents and the evidence, and although this work is often tedious and takes a considerable amount of time, it is actually very important to prosecuting a successful case.

[29] A PowerPoint presentation by the Scientific Rapporteur is attached at the end of this section.

And of course, as we saw, money-laundering is transnational quite often in its nature and therefore there needs to be extensive coordination with other countries. And that requires countries to invest in building relationships and strategic alliances across countries so that those are in place when an incident happens, so that you already have those relationships and alliances that you can draw upon.

And another important aspect of that, at a more formal level, is developing mutual legal assistance arrangements.

And finally, two important other issues raised from the case study were the need for asset forfeiture, and the tricky issue of victim restitution was highlighted and that there may in fact be increasing requirements on countries to deal with the issue of victims and their restitution.

As I mentioned, one of the gaps that I noticed in a lot of the presentations was that I didn't get any sense of the scale and the trend in the incidence of money-laundering, where is it occurring, who is doing it, how are they doing it, and providing an overview of this kind of activity. In particular, it would be very interesting to understand better about the networks, how they are organized and how they link into the alternative remittance systems that operate, because we saw how what one might call a more formal money-laundering system actually leads into an informal money-laundering system.

And an important issue that was raised was about harmonization, but I didn't get any sense of how we might go about that and I think from the floor the suggestion was made for a need to perhaps provide some sort of model, norms and standards of how that might be achieved.

And finally, it would be useful to know about the cost-effectiveness of different criminal justice interventions.

The big emerging issue I saw was that most people were talking about cooperation and this involved a range of different aspects, developing financial intelligence units that are working across countries, the need for mutual assistance programmes, the assets seizure and freezing of assets, in particular through international forfeiture cooperation activities, and customer due diligence cooperation there in terms of the government working with the private sector, the need for harmonization of laws where appropriate across countries, and of course cooperation across countries in terms of technical assistance.

There are a range of key issues that were dealt with from the floor. People raised or countries raised issues about the changes that are required in the criminal code to deal with this crime, as well as the issue of harmonization.

Two other aspects that were raised in terms of criminal code was the problem of dual criminality in terms of dealing with mutual legal assistance, and then also an issue that was raised yesterday as well was identity theft and the role that it also plays in this activity.

There was also, again, this issue of the predicate offences was raised, and also a member from the floor spoke about reaching out to young people. And that was also touched on yesterday where it was suggested that one of the important things that we needed to do was to actually have in place education programmes with young people to teach them about ethical behaviour and developing a culture of ethics amongst young people.

There was also raised from the floor the ability of how to deal effectively with the banking sector, in particular how to deal with banking security but also the way in which banks operate together. And then a number of other issues were raised about, again, the need for cooperation, international forfeiture of assets, mutual legal assistance, the issue that was raised yesterday about the reversal of the burden of proof, the need to enforce laws, it's just not enough to pass laws, the problem again of dealing with the cash economy, and the need for high level training both domestically and internationally.

How can we move forward? There are a range of areas that we can move forward in terms of research and intelligence issues, in terms of collecting data through using consistent norms and standards and effectively disseminating that data both internally within our own countries but also across countries. There are a range of prevention and deterrence measures, in particular education and regulatory structures for private sector and key professionals, the important need which was raised yesterday as well for whistle-blowing legislation, the range of legislative changes that we can make. Again, the issue we need to have in place, effective enforcement if we are

to have a deterrent effect, the importance of building long-term relationships between law enforcement agencies so that law enforcement agencies can call upon each other when they need them, and also of course developing pro-active investigative measures.

Technical assistance, we have already a lot of packages available, we have also model laws that can be drawn upon, so there is a lot of technical assistance out there that can be drawn upon. And this is very important because money-laundering is a complex issue. So it's important to know what tools are available and where you can get them.

Of course, the need to engage the private sector, as much of the financial transactions occurs through this sector, and the sharing of trends and intelligence of suspicious transactions and activity among law enforcement agencies.

Finally it would be, it is important also in terms of moving forward, efficiency and effectiveness, making sure that our interventions are based on evidence and that we identify the best practice and we promulgate that best practice.

In terms of the priorities, these would vary across countries, but what I took away from the workshop this morning was, again, the need to improve our evidence base to ensure that interventions and technical assistance are more likely to succeed, that we put them in the right place at the right time, that we utilize the latest analytical tools to assist intelligence at policing and build specialist units to deal with this issue, to invest in preventive measures, particularly with the private sector, by developing regulatory regimes to govern their activities, as well as to provide them with norms and standards so that they know what is required, including the sharing of data between the private sector and government agencies.

We, of course, I think need always to improve our legislation so that we have the tools to respond to money-laundering, including asset forfeiture.

Finally, two final measures, one is that quicker action is needed to effectively monitor remittances and cross-border movements of cash. And finally, support capacity-building through technical assistance.

I would just like to end by thanking all of the Delegates here for listening to my scientific rapporteur report. I would like to thank my colleagues from UNAFEI and from Sweden for inviting me to do this. They didn't mention to me that I'd have to do this twice, as I'm not sure whether this was an offence, but it has been a great pleasure to be able to do that and I'm very pleased to have been able to be up here with you on two different days with so many distinguished speakers. Thank you.

**Moderator**: Thank you very much, Toni. I think that you have become a recidivist this morning in terms of giving a very neat presentation of what we have done in the workshop. Now I suddenly understood what we have been doing here this morning, and I'm looking forward to the publication where you will make the report.

Now I would just like to thank everybody, but in particular I would like to thank the interpreters, and I would also like to extend my apologies to them for having taken off your time. The interpretation has been excellent, as always I should say, and I would like all of us here to join in applause to the interpreters. Thank you very much. I now hand over to the Chairman.

**Chairman**: Thank you, Mr. Nilsson.

*(Spoke in French)* Just 30 seconds more, one minute maybe. I would like to join others and thank the organizers of this workshop, and I'd like to remind you, this afternoon we'll begin at 3:00 with Workshop 4, "Measures to Combat Terrorism with Reference to Conventions and Protocols".

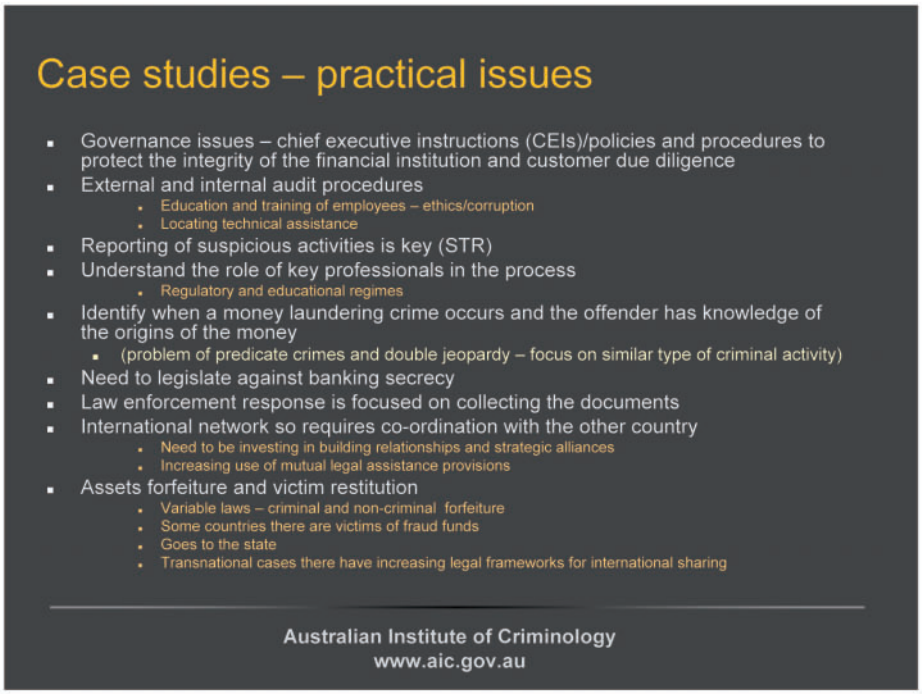
Before adjourning I'd like to give the floor to the Secretariat for some announcements.

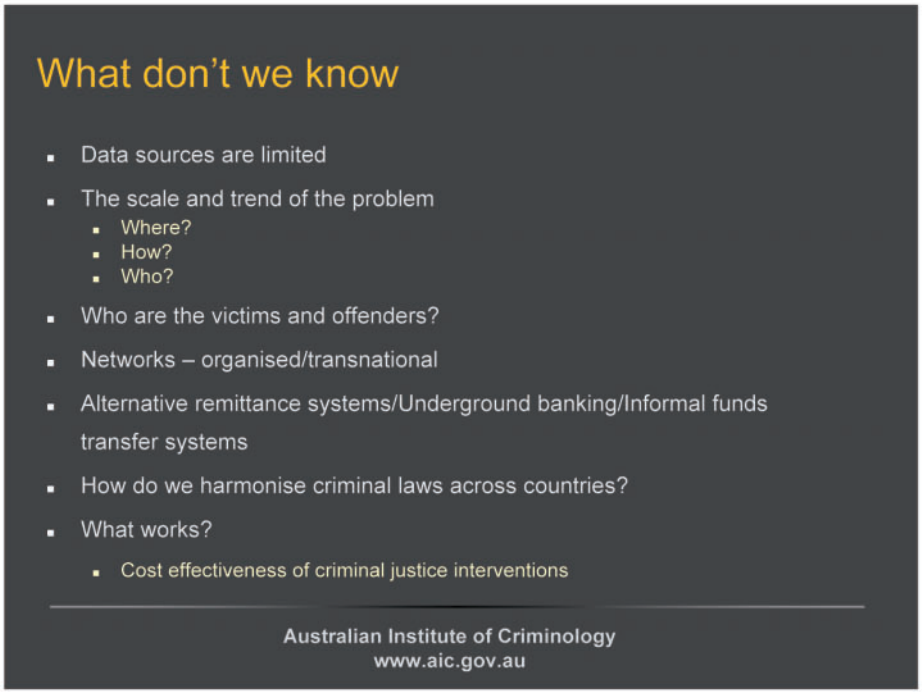
[SECRETARIAT]

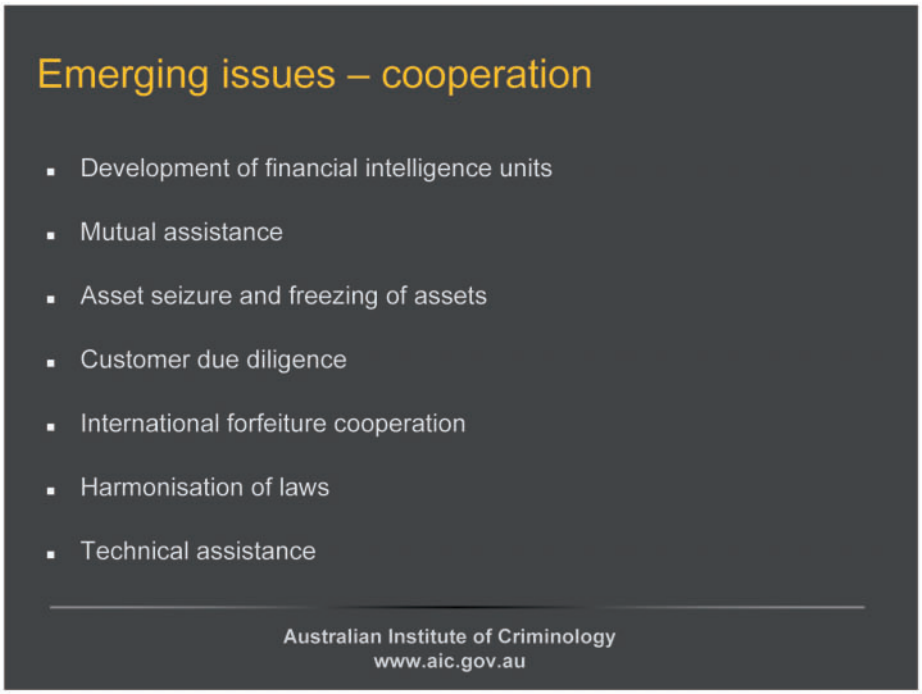
**Chairman** *(spoke in French)*: The workshop is adjourned

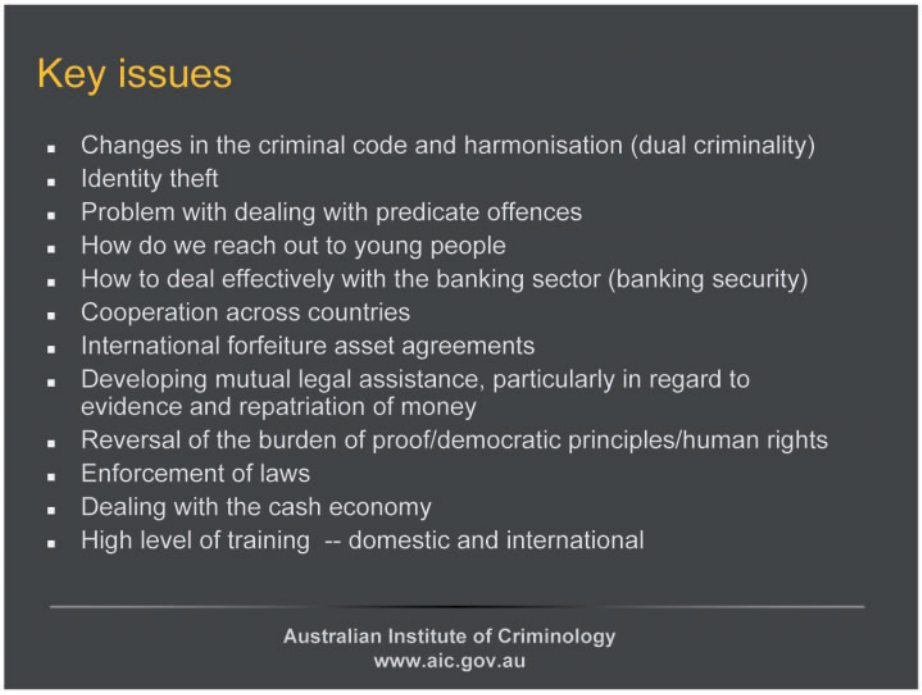

Australian Government
Australian Institute of Criminology
www.aic.gov.au
Scientific rapporteur's technical overview of Workshop on Economic Crime and Money Laundering
Session 2: Money Laundering
Toni Makkai
Director


What do we know?
Money laundering is an important part of criminal activity
Used to avoid tax, prosecution, increase profits
Becoming more transnational requires international cooperation
Complexity requires specialist financial and investigative units
Simple system for monitoring cash transfers for UAE
Legislation is variable across countries -- dealing with predicate offences
Various UN Conventions (Drugs, Terrorism, TOC, and Corruption) provide norms and standards
International and regional standards/recommendations as well as model legislation are available
Effective tools include asset forfeiture, mutual legal assistance
Relatively little high quality research
Australian Institute of Criminology
www.aic.gov.au

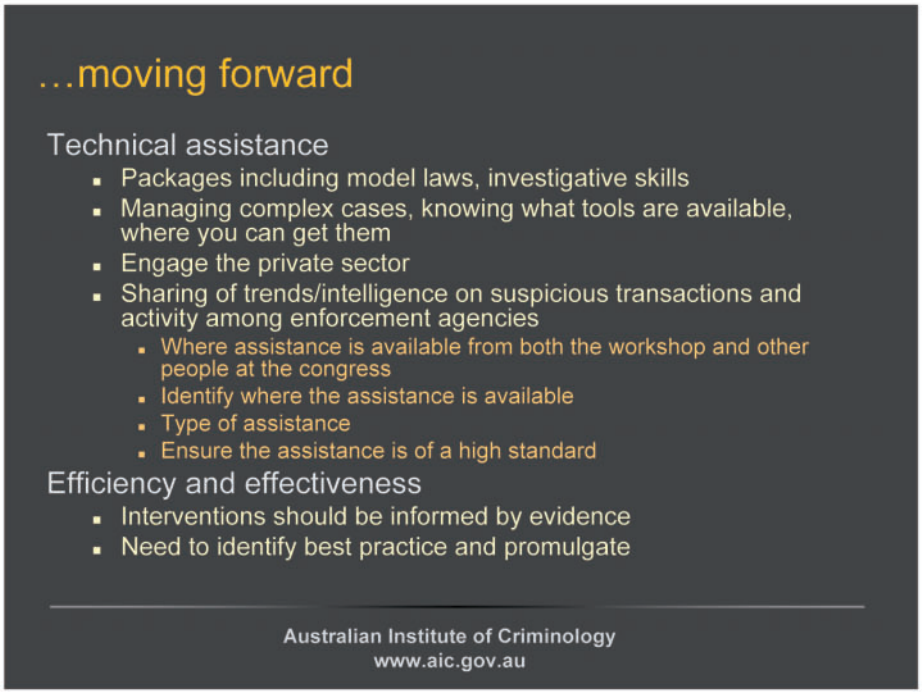

Case studies – practical issues
Governance issues – chief executive instructions (CEIs)/policies and procedures to protect the integrity of the financial institution and customer due diligence
External and internal audit procedures
Education and training of employees – ethics/corruption
Locating technical assistance
Reporting of suspicious activities is key (STR)
Understand the role of key professionals in the process
Regulatory and educational regimes
Identify when a money laundering crime occurs and the offender has knowledge of the origins of the money
(problem of predicate crimes and double jeopardy – focus on similar type of criminal activity)
Need to legislate against banking secrecy
Law enforcement response is focused on collecting the documents
International network so requires co-ordination with the other country
Need to be investing in building relationships and strategic alliances
Increasing use of mutual legal assistance provisions
Assets forfeiture and victim restitution
Variable laws – criminal and non-criminal forfeiture
Some countries there are victims of fraud funds
Goes to the state
Transnational cases there have increasing legal frameworks for international sharing
Australian Institute of Criminology
www.aic.gov.au

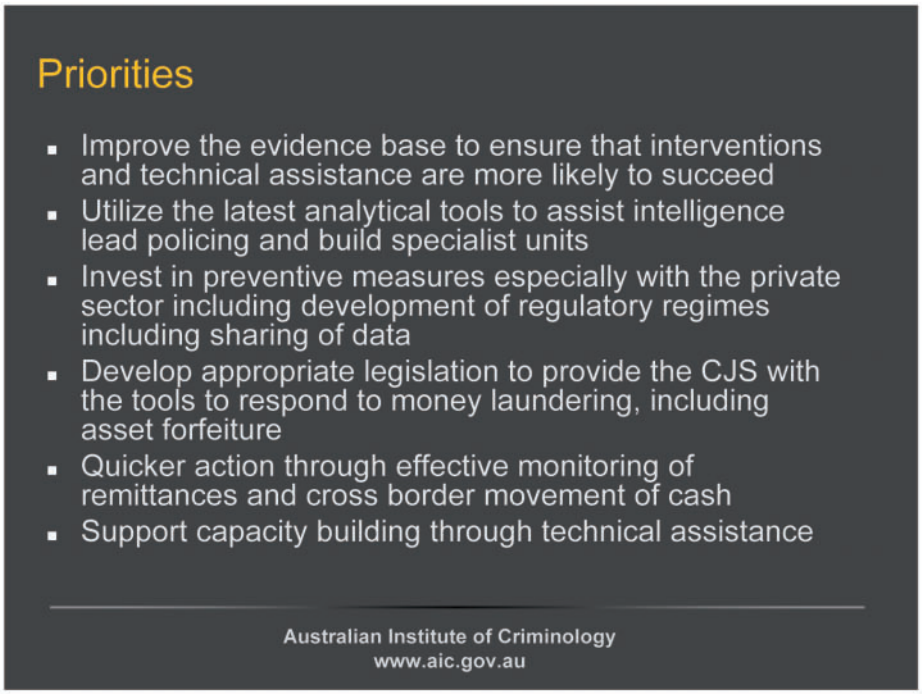

What don't we know
Data sources are limited
The scale and trend of the problem
Where?
How?
Who?
Who are the victims and offenders?
Networks – organised/transnational
Alternative remittance systems/Underground banking/Informal funds transfer systems
How do we harmonise criminal laws across countries?
What works?
Cost effectiveness of criminal justice interventions
Australian Institute of Criminology
www.aic.gov.au


Emerging issues – cooperation
Development of financial intelligence units
Mutual assistance
Asset seizure and freezing of assets
Customer due diligence
International forfeiture cooperation
Harmonisation of laws
Technical assistance
Australian Institute of Criminology
www.aic.gov.au


Key issues
Changes in the criminal code and harmonisation (dual criminality)
Identity theft
Problem with dealing with predicate offences
How do we reach out to young people
How to deal effectively with the banking sector (banking security)
Cooperation across countries
International forfeiture asset agreements
Developing mutual legal assistance, particularly in regard to evidence and repatriation of money
Reversal of the burden of proof/democratic principles/human rights
Enforcement of laws
Dealing with the cash economy
High level of training -- domestic and international
Australian Institute of Criminology
www.aic.gov.au


How can we move forward?
Research/intelligence issues
Develop norms and standards on the collection of data
Effective dissemination of timely research/data through a knowledge management system
Prevention and deterrence
Education and regulatory structures for private sector/key professionals
Whistle-blowing legislation
Legislative changes including broadening the basis of predicate crimes for money laundering, asset seizures and freezing of accounts, mutual legal assistance
Effective enforcement
Building long-term relationships between law enforcement agencies
Proactive investigative measures – interceptions, undercover policing
Australian Institute of Criminology
www.aic.gov.au


…moving forward
Technical assistance
Packages including model laws, investigative skills
Managing complex cases, knowing what tools are available, where you can get them
Engage the private sector
Sharing of trends/intelligence on suspicious transactions and activity among enforcement agencies
Where assistance is available from both the workshop and other people at the congress
Identify where the assistance is available
Type of assistance
Ensure the assistance is of a high standard
Efficiency and effectiveness
Interventions should be informed by evidence
Need to identify best practice and promulgate
Australian Institute of Criminology
www.aic.gov.au


Priorities
Improve the evidence base to ensure that interventions and technical assistance are more likely to succeed
Utilize the latest analytical tools to assist intelligence lead policing and build specialist units
Invest in preventive measures especially with the private sector including development of regulatory regimes including sharing of data
Develop appropriate legislation to provide the CJS with the tools to respond to money laundering, including asset forfeiture
Quicker action through effective monitoring of remittances and cross border movement of cash
Support capacity building through technical assistance
Australian Institute of Criminology
www.aic.gov.au

# III. PAPERS SUBMITTED TO THE WORKSHOP

## A. Presentation Papers of Panels 1 and 3

### "Concept of Economic Crimes as Perceived Across the World - Typology, New Trends and Countermeasures"

**Dr. Abboud Al-Sarraj**
**Professor, Faculty of Law, Damascus University, Syrian Arab Republic**

**I. Concept of Economic Crime and New Trends**

It is difficult to have one legal definition of the concept of economic and financial crimes all over the world because the criminal policy, especially in the economic area, varies greatly from one country to another.

It is also difficult to determine the overall extent of these crimes because their growing perception evolves some of the most rapidly growing predicate offences, as well as the fact that many cases are not reported and the investigation to discover these crimes requires high levels of expertise which is not well developed in many countries, especially in developing countries.

The emergence of new forms of economic and financial crimes over the past decades with a series of high-profile cases in Europe and North America, as well as in developed countries, makes the problem more complicated.

The significant increase in all forms of economic and financial crimes in the era of globalization, the transnational nature of these crimes, the integration of the world's financial markets and the growth of transnational organized crime makes the implications of these crimes truly global and consequently not easy to identify.

The trends (in policy, strategy, plans, incrimination and countermeasures) to combat this phenomenon, especially the new forms of economic and financial crimes, vary in accordance with the Political and Economic System. However, we can identify between all the trends two principle trends:

**Trend I:** It is a broad trend which defines economic and financial crimes as "any action or omission that runs counter to the public economic policy".

This trend considers that the economic and financial laws comprehensively organize economic activity of various descriptions carried on by the government or private sector.

To be more precise we can say: The economic and financial crimes are all actions conducive to inflicting damage on public funds, production activities, distribution, circulation and consumption of commodities and services, as well as the relations related to supply, planning, training and manufacture, to the support of industry, credit, insurance, transport, trade, companies, cooperative societies, taxes and the protection of animal, plant, water and mineral resources.

**Trend II:** It is a narrow trend which considers no necessity for state intervention in all and any economic activity descriptions: it suffices for the economic law to observe the basic principles of economic public order and to lay down in the light of these principles the rules related to planning, manufacture, money, banking, import, export, insurance, transport, trade, customs, etc.

Whatever the economic policy of the country, there is a unanimous position for the incrimination (although the differences are very large for the countermeasures) of these economic crimes.

To cite a few examples of economic crimes covered by both trends:

- Fraud: consumer fraud, corporate fraud, credit card fraud, advanced fee fraud, computer related fraud;
- Corruption: bribery, embezzlement , trading in influence, abuse of function, illicit enrichment;
- Money-laundering;
- Cyber crime;

- Identity theft and counterfeiting of currency;
- Crimes of money contraband, counterfeit and imitation;
- Banking offences inclusive of money laundering;
- Fiscal offences;
- Tax evasion;
- Customs offences;
- Trade offences (adulteration, illicit competition, trademark imitation, fraudulent bankruptcy, default bankruptcy, high prices, monopoly, etc.);
- Intellectual property offences;
- Embezzlement, theft, breach of trust, and sabotage of public funds;
- Cheating the State in the course of tenders, bids and production quality and in execution of the State economic projects;
- Manipulation of stock markets, including the abuse of privileged legal information and capital flight.

## II. Countermeasures

As we have seen from the concept of economic and financial crimes, the countermeasures vary also from one country to another. However we can divide the different trends into two principle trends:

**Trend I:** prevail the penalties, even the severe penalties, for some crimes such as imprisonment up to three years in the case of felonies and 15 years in the case of crimes, plus confiscation and fines to be assessed according to the damage sustained.

**Trend II:** prevail non-criminal sanctions (or measures) as:

1. Civil sanctions;
2. Administrative sanctions;
3. Disciplinary sanctions;
4. Economic sanctions.

When the violation of the economic regulations is serious this trend accepts to go further to the penalties, as fine and imprisonment.

## III. Useful Results and Possible Recommendations

Results and recommendations can be divided into three principle directions:

### A. Prevention:

1. The United Nations office on Drugs and Crime carries out appropriate studies, in cooperation with relevant institutions and other United Nations entities, on the incidence, effects, consequences and seriousness of economic and financial crimes, with a view to developing more effective strategies to prevent and control them;

2. The Eleventh Congress considers the possibility of initiating negotiations on a draft United Nations convention against economic and financial crime, on the basis of a comprehensive study to be conducted by a group of recognized experts;

3. Where feasible commercial codes and regulations, financial laws and administrative controls be reformed to increase the transparency of operations;

4. Economic activities should be subjected to a legal order that lays down clear-cut limits for civil servants, rights and obligations and for the rights and obligations of the economic private sector personnel who carry out State related economic projects;

5. Economic legislation should be accessible to the public through the media for the purpose of familiarizing the public with the importance of implementing such legislation and informing them about the risk involved in the contravention of these legislations on economic life and the national economy;

6. Social and educational institutions may join in disseminating awareness of economic offences;

7. Meticulous control should be imposed on all economic firms, especially banks, customs and fiscal departments, through the appointment of inspection committees specialized in the control of economic offences; and

8. The perpetrators of economic crimes should be tried by specialist judges.

**B. Criminal sanctions:**

1. The main criminal sanctions which should apply to dangerous economic offences are fines and imprisonment. These offences include embezzlement, theft, corruption, crimes of money contraband, counterfeit, and premeditated sabotage of public funds.

2. The judge may confiscate the objects or instruments used in the commission of the crime or freeze the funds arising therefrom.

**C. Non-criminal sanctions:**

It is advisable to apply "non-criminal" civil and economic sanctions to some economic offences.

The civil sanctions recommended are:

1. Indemnification of the damage;
2. Ordering that the work be completed;
3. Annulment of work that runs counter to the economic law;
4. Reinstatement of the status quo to what it was.

The economic sanctions recommended are:

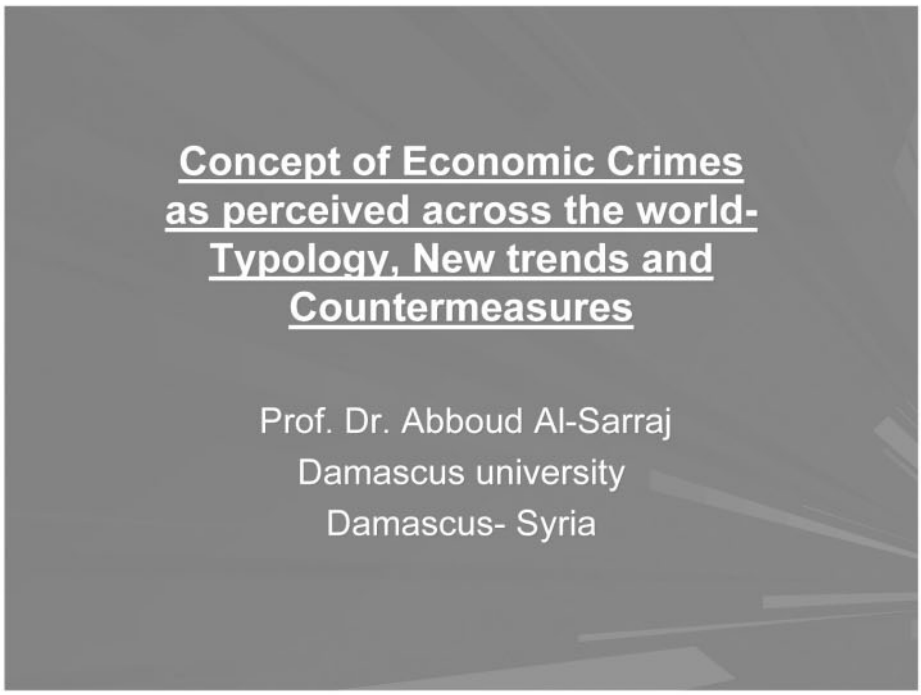
1. Prohibition of carrying on economic activities;
2. Shutdown of the economic firms;
3. Business discontinuation or dissolution of the economic firm;
4. Placement of the economic firm under receivership;
5. Withdrawal of export/import permits;
6. Withdrawal of the economic firm's incorporation act;
7. Exclusion from certain exemptions prescribed in the law

**Conclusion**

In this era where the world has become a small village, where the trends of economic systems have become closer, and the concept of crimes and deviations is almost unified across the world, it is time to consider the following:

The Eleventh Congress may recommend initiating negotiations on a draft United Nations convention against economic and financial crimes, to clearly define Economic Crimes and their sanctions on the basis of a comprehensive study to be conducted by a group of recognized experts.


Measures to Combat Economic Crime, Including Money- Laundering
Eleventh United Nations Congress on Crime Prevention and Criminal Justice
Bangkok, 18-25 April 2005


Concept of Economic Crimes as perceived across the world- Typology, New trends and Countermeasures
Prof. Dr. Abboud Al-Sarraj
Damascus university
Damascus- Syria

## I. Concept of economic crime and new trends

- It is difficult to have one legal definition of the concept of economic and financial crimes all over the world because the criminal policy varies greatly from one country to another.
- It is also difficult to determine the overall extent of these crimes because:

1- their growing perception evolves some of the most rapidly growing predicate offences

2-many cases are not reported

3- the investigation to discover these crimes requires high levels of expertise which is not well developed in many developing countries.

4-The emergence of new forms of economic and financial crimes

## The global implications of Economic and Financial crimes

- The significant increase in all forms of economic and financial crimes in the era of globalization,
- the transnational nature of these crimes
- the integration of the world's financial markets
- the growth of the transnational organized crime

## The trends
### (policy, strategy, plans, incrimination and countermeasures)

The trends to combat this phenomenon vary in accordance with the Political and Economic System .However, we can identify between all the trends two principle trends:

## Trend I

- It is a broad trend which defines economic and financial crimes as "any action or omission that runs counter to the public economic policy".
- This trend considers that the economic and financial laws are comprehensively organize economic activity of various description carried on by the government or private sector.

## Trend I --

- To be more precise we can say: The economic and financial crimes are all actions conducive to inflicting damage on public funds, production activities, distribution, circulation and consumption of commodities and services, as well as the relations related to supply, planning, training and manufacture, to the support of industry, credit, insurance, transport, trade, companies, cooperative societies, taxes and the protection of animal, plant, water and mineral resources.

## Trend II

- It is a narrow trend which considers no necessity for state intervention in all and any economic activity descriptions
- it suffices for the economic law to observe the basic principles of economic public order and to lay down in the light of these principles, the rules related to planning, manufacture, money, banking, import, export, insurance, transport, trade, customs…etc.

Whatever is the economic policy of the country, there is an unanimous position for the incrimination (although the differences are very large for the Countermeasures) of these economic crime.

**Examples of economic crimes covered by both trends**

- Fraud: consumer, corporate, credit card, advanced fee, computer related.
- Corruption:bribery,embezzelement,trading in influence,abuse of function, illicit enrichment…
- Identity theft and counterfeiting of currency

## Examples of economic crimes covered by both trends -

- Crimes of money contraband, counterfeit and imitation
- Banking offences inclusive of money laundering
- Fiscal offences
- Money-laundering
- Customs offences
- Tax evasion
- Cyber crime

## Examples of economic crimes covered by both trends--

- Trade offences (adulteration, illicit competition, trademark imitation, fraudulent bankruptcy, default bankruptcy, high prices, monopoly…)
- Intellectual property offences
- Embezzlement, theft, breach of trust, and sabotage of public funds
- Cheating the State in the course of tenders, bids and production quality and in execution of the State economic projects
- Manipulation of stock markets, including the abuse of privileged legal informations and capital flight.

## II. Countermeasures

- Countermeasures vary also from one country to another. However we can divide the different trends into two principle trends:

## Countermeasures: Trend I

- prevails the penalties even the severe penalties for some crimes such as imprisonment reaching to three years in the case of felonies and 15 years in the case of crimes, plus
- confiscation
- fine to be assessed according to the damage sustained.

## Countermeasures: Trend II

- prevails non-criminal sanctions (or measures) as:
  - 1-Civil sanctions
  - 2-Administrative sanctions
  - 3-Displinary sanctions
  - 4-Economic sanctions
- When the violation of the economic regulations is dangerous this trend accepts to go further to the penalties, as fine and imprisonment.

## III. Recommendations:

### *A .Prevention*

- The United Nations office on Drugs and Crime may carry out appropriate studies,, on the incidence, effects, consequences and seriousness of economic and financial crimes, with a view to developing more effective strategies to prevent and control them

## III. Recommendations:
### *A. Prevention-*

- Where feasible commercial codes and regulations, financial laws and administrative controls be reformed to increase the transparency of operations;
- Economic activities should be subjected to a legal order that lays down clear-cut limits for the civil servants,and economic private sector personnel rights and obligations

## III. Recommendations:
### *A. Prevention---*

- Economic legislations should be accessible to the public through the media and Social and educational institutions for the purpose of the familiarizing the public opinion with the importance of implementing these legislations and informing them about the risk involved in the contravention of these legislations on economic life and national economy;

## III. Recommendations:

### A. Prevention----

- Meticulous control should be imposed on all economic firms, (banks, customs and fiscal departments) through appointment of inspection committees specialized in the control of economic offences
- The perpetrators of economic crimes should be tried by specialist judges.

## III. Recommendations:

### B. Criminal sanctions

- The main criminal sanctions which should apply to economic offences are fining and sentencing (imprison).
- These offences include embezzlement, theft or premeditate sabotage of public funds.
- Economic penalties should rather be avoided in economic offences that do not have the imprint of public law crimes
- The judge may confiscate the objects or instruments used in commission of the crime or still the funds arising therefrom.

## III. Recommendations:
### C. Non-criminal sanctions

- It is advisable to apply "non-criminal" civil and economic sanctions to economic offences.
- Examples of civil sanctions are:
  1- Indemnification of the damage
  2- Ordering that the work be completed
  3- Annulment of the work that runs counter to the economic law
  4- Reinstatement of the status quo to what it was.

## III. Recommendations:
### C. Non-criminal sanctions

- **Examples of economic sanctions are:**
- **Prohibition of carrying on economic activities**
- **Shutdown of the economic firms**
- **Business discontinuation or dissolution of the economic firm**
- **Placement of the economic firm under receivership**
- **Withdrawal of export/import permit**
- **Withdrawal of the economic firm's incorporation act**
- **Exclusion from certain exemptions prescribed in the law**

## conclusion

- In this era where the world changed to be a small village, where the trends of economic system get closer, and the concept of crimes and deviations gets almost unified across the world, it is time to consider the following :

## Conclusion-

The Eleventh Congress may recommend initiating negotiations on a draft United Nations convention against economic and financial crimes, to clearly define Economic Crimes and their sanctions on the basis of a comprehensive study to be conducted by a group of recognized experts.

## "Measuring the Impact of Economic Crime: Can Indicators Assist?"

**Mr. Charles Goredema**
**Senior Research Fellow, Institute for Security Studies, South Africa**

*'These five characteristics – specialisation in market-based crimes, hierarchical and durable structures, use of violence and corruption to achieve monopoly power, high rates of return, and penetration of the legal economy, seem to be what organized crime is all about.'* R. T. Naylor Wages of Crime: Black Markets, Illegal Finance and the Underworld Economy (2002) Cornell University p. 16.

### Introduction

As a general proposition all crime has economic consequences. The result of crime is potentially measurable in economic terms. Some crimes are committed in order to yield material benefit to the perpetrator(s). It is the prospect of acquiring tangible assets which motivates them. Criminologists have drawn a further distinction between predatory offences committed sporadically, when opportunities present themselves on the one hand, and on the other, market based offences.[1] The key distinguishing characteristic is that the former are episodic and do not always require supportive infrastructure, while the latter have to be supported by a modicum of long term organisation and a viable market. Examples of such activities include trafficking - in humans, arms and drugs. Financial crime committed systematically could also be described as market based economic crime. This paper is confined to market based economic crimes encountered in Southern African countries. It is however important at the outset to point out that the cleavage between predatory and market based economic crime is not clinical, as there are areas of overlap between them. The drug trafficking industry perhaps illustrates this reality as well as any other. Typically, cannabis cultivation is carried out at a peasant, subsistence level for downstream international criminal syndicates engaged in marketing the drug, often very far from the source regions.[2] Corruption, even at a grand level, demonstrates a symbiotic link between predatory and market-driven economic crime. Where bribery involves a large corporate institution and state officials, the executives that corrupt the public officials are likely to be repeat offenders, and could be said to be engaging in market based crime, while from the perspective of the recipients of bribes, their activities are *ad hoc* opportunistic acts of delinquency.

The underlying premise of this paper is that market driven economic crime is organised. It manifests itself as various activities or kinds of activities that occur in society, in the same environment in which lawful activities occur. As a result, and depending on its scale, economic crime is able to compete with lawful activity, and even penetrate and undermine it. The paper further assumes that in both developed and developing economies, participation in organised crime is not confined to dedicated or professional criminal groups. Entities established for legitimate business enterprises are just as liable to engage in organised crime as recognised criminal syndicates.[3] There seems to be agreement about the negative impact of organised crime on economies. General spheres in which the impact is encountered include inflation, poverty, commercial crime, development, and corruption.

Aware of this, most countries accept the need to conduct reform in key areas, such as legislation. At the political level, the importance of adopting an enlightened approach to crime detection, and law enforcement seems to have been accepted. It is clear that these initiatives have to be underpinned by an assessment of the precise form of threat that organised economic crime presents.

This paper profiles the nature of the harm attributable to economic crime. It follows up with a discussion of manifestations of harm. In the final part, the paper proposes indicative factors of incidence and scale of economic crime, and suggests possible sources of data.

The relativity of economic crime as a detrimental factor to society as compared to other factors is beyond the scope of this paper. A comprehensive analysis should juxtapose economic crime alongside other phenomena that constitute threats to society. Among those well known to the developing world are 'the depletion of raw

[1] On the distinction, see Naylor *Wages of Crime: Black Markets, Illegal Finance and the Underworld Economy* (2002) Cornell University pp. 14-16.

[2] See P. Bagenda, Chapter 4 of P Gastrow (editor) *Penetrating State and Business: Organised Crime in Southern Africa*, (2003) ISS Monograph series number 86, pp. 81-2.

[3] The debate on paradigms in organised crime discourse is explored further by A. Standing in *Rival Views of Organised Crime* (2003) ISS Monograph series number 77.

materials and capital, an over-dependence on imports, a high ratio of foreign to domestic investment, surpluses of imports over exports, and inadequate regulation of competition from foreign producers'.[4] The true significance of economic crime as a threat can be better demonstrated in that way.

**Economic crime: areas of common concern**

The forms of organised economic crime on which there is consensus, in terms of definition and incidence are:

- armed robbery, including robbery of cash-in-transit;
- theft of motor vehicles;
- serious commercial fraud;
- currency counterfeiting;
- extortion rackets;
- drug trafficking;
- smuggling of precious resources, predominantly diamond, gold, timber and wildlife products; and
- corruption.

One mode of economic crime on which there is unanimity as to its existence, but not quite as to its definition or magnitude, is money laundering. It appears that money laundering, being concerned with the management and disposal of proceeds of crime, has come to be regarded as seriously as any of the other criminal activities. On account of its significance, money laundering is treated in some depth in this paper.

**A profile of economic crime as a threat**

If the proposition that economic crime occurs in the same environment as lawful economic activity is accepted, it follows that economic crime has an impact on such activity. The precise ways in which the impact will be encountered depends on how unlawful activity relates to lawful activity.

In Southern Africa it is widely acknowledged that the relationship is predatory. At one end of the emerging spectrum is the perception that proceeds of illicit activity sponsor unfair competition for lawful business. The following statements summarise this view:

> 'Criminal organizations dealing only in illicit goods and services are no great threat to the nation. The danger of organised crime arises because the vast profits acquired from the sale of illicit goods and services are being invested in licit enterprise, in both the business sphere and the government sphere. It is when criminal syndicates start to undermine basic economic and political traditions that the real trouble begins.' (Cressey 1969)[5]

> '..the real harm done by organised crime comes not from selling inherently illegal goods and services but from the way the profits are subsequently invested' (Naylor 2002)

> 'There are also significant social costs if efforts are not made to counter money laundering. Money laundering, organised crime and economic crime are often integrally linked, and criminal organisations will use their profits to infiltrate or acquire control of legitimate businesses, and to bribe individuals and even governments. Over time, this can seriously weaken the moral and ethical fabric and standards of society, and damage the principles underlying democracy. One cannot rule out the possibility of criminals installing puppet governments by deploying the proceeds of crime to rig and win elections.' (Sithole 2002)[6]

This view substantially forms the bedrock of economic policy based responses to organised crime, which seek to draw illegally acquired funds into the public financial system, through taxation and asset forfeiture. Measures inspired by these objectives aim to deprive criminals of the competitive advantage that they would otherwise derive from the proceeds.

The advantage which stems from economic crime does not arise only from the deployment of proceeds. As many economists have noted, sometimes it is inherent in the trade in commodities obtained by stealth - through theft, falsification or smuggling.[7] The cost to society is greater, perhaps even disproportionate to the benefits that

[4] A. N. Gorodysky, 'Ukraine, International Money Laundering and the Investigation of Organized Crime' unpublished paper, accessible at http://www.ojp.usdoj.gov/nij/international/programs/Laundering.PDF.

[5] D. Cressey *Theft of the Nation* (1969) Harper & Row, New York, p. 3-4.

[6] Majozi Sithole, 'Taking Action Against Money Laundering', in C. Goredema (editor) *Profiling Money Laundering in Eastern and Southern Africa* (2002) ISS Monograph series, number 90, p. 2.

[7] *Finance Week*, 8-10 December 2004.

accrue to the perpetrators. The illicit commodities can displace commodities produced and marketed in compliance with the applicable taxation and import laws, and even precipitate de-industrialization. Unemployment inevitably results. The costs of unemployment in social, economic and political terms can be quite drastic.

There are other forms of harm to legitimate business and the communities in which it exists. Among the costs regularly cited by organized business are:[8]

- Costs of establishing and maintaining security systems that are proactive, reactive and forensic;
- Inflated insurance premiums that take into account increased risk and higher levels of crime;
- Higher levels of taxation to support public expenditure to combat crime.

As Altbeker points out, the impact that crime has on business confidence is just as significant as the effect on the so-called bottom lines. Business confidence, which is a matter of perception, is described as:[9]

> 'the subjective feelings of investors and managers that impacts on decisions to expand, contract, or change direction'.

The kind of decisions taken by investors and managers can therefore be regarded as the barometer by which to measure such confidence.

Fraudulent dealings with savings and investments inevitably precipitate losses to depositors and investors.[10] So can speculative dealings. Occasionally, they result in the collapse of financial institutions. The latest illustrations have been witnessed in Zimbabwe, where losses from banking and asset management sector failures in the period 2003-4 cost investors an estimated Z$251 billion (USD 41,833,333.40).

**Indicators of vulnerability**

The classic view is that economic crime is endemic in states overwhelmed by challenges of transition, or caught up in political crises. At these junctures, the level of vulnerability is acute. The features of a transitional state which produce a peculiar vulnerability may be summarised as follows:

- diminished social control, as reflected by no (or weakly enforced) laws against economic crime;
- greater mobility of personnel within the country and transnationally;
- corruption precipitated by declining wages, increased opportunities, diminished penalties and falling moral values;
- close linkage between political power and access to economic leverage; and
- imbalance in resources between the law enforcement structures and criminal organisations; leading to
- frustration of law enforcement functionaries, and their absorption into the private sector or by organised crime; and
- opening up of avenues for unbridled opportunism to flourish.

With regards to Southern Africa, Gastrow offers a summary of the situation that most countries were in by the beginning of the 90s. He observes:[11]

> 'Many recently independent states were then faced with the overwhelming task of managing a double transition, namely from state-led to market-led economies, and from autocratic rule to transparent democratic politics. With some exceptions, such as Botswana, the SAPs (structural adjustment programmes – *author's note*) tended to produce unintended consequences. Besides being ineffective on a macro-economic level in many countries, there were elements in the political leadership and in bureaucracies who skilfully managed the reforms in a way to suit themselves. These elements were able to use the new ideological changes to engage in "practices of accumulation", by staking out for themselves profitable areas for their own business activities. They straddled positions of public office with positions of accumulation, inevitably leading to corruption. This development was bound to impact on corruption and organised crime. The corrupt practices of so-called accumulators in high positions brought them into contact with 'middlemen', increasingly foreigners, and other entrepreneurs who were operating in the criminal markets...
>
> ...It therefore appears that by 1990, obscured by the major transformation processes and turmoil that were experienced during the post-independence years and by the political conflicts in South Africa

[8] See A. Altbeker, 'Losing our nerve? Business Confidence and Crime in South Africa' (2001) *NEDBANK ISS Crime Index number 4* pp. 16-7.

[9] Altbeker, op cit, at p. 17.

[10] In many parts of the world, fraudulent investment schemes have been used to lure gullible investors to part with their savings. The notorious advance fee fraud schemes (colloquially referred to as '419' fraud) are symptomatic of these kinds of fraud.

[11] Gastrow, op cit, p. 11-13.

during the 1970s and 1980s, transnational organised crime had come of age in the SADC region. The precise causes of its growth are complex and multiple and differ from country to country in the region. However, one experience that all SADC countries went through after independence was a fundamental transformation process. As a general rule, the growth of organised crime is most rapid in those countries, which experience not only a significant political change, but also an associated economic one. This has certainly been the case in a number of SADC states. However, the transition processes experienced in these states differed in content and intensity, and took place over different periods of time. It would therefore be too simplistic to ascribe the growth of organised crime in the region solely to the political and economic transitions that followed independence'.

Within that environment certain indicative factors of economic crime are evident.

**Economic crime: the indicative factors**

Proceeds of economic crime and other illegally acquired income tend to be transferred abroad within a relatively short period of acquisition. The objectives are to prevent detection of the predicate activities or to invest. To facilitate transmission and infusion into foreign economies and financial systems, conversion into acceptable currencies or marketable commodities is often necessary. The availability of such currencies and avenues through which to acquire them can be regarded both as characteristics engendering vulnerability to economic crime, as well as indicators of incidence. Currency exchange establishments, in the formal and informal sector, have been linked with money laundering in many parts of southern Africa and elsewhere. Records of transactions conducted through them, if genuine and comprehensive, would provide evidence of scale. Unfortunately, indications are that in too many instances, they are neither available nor reliable.

*Investments of unexplained or undeclared wealth in external markets and foreign jurisdictions.* Investments of this kind by nationals in politically connected or exposed positions invariably provide illustrations of this phenomenon.

Since the 1980s, large quantities of money have been transmitted to South Africa. Source countries include Angola, the DRC, Malawi, Mozambique, Zambia and Zimbabwe. With the advent of Frelimo rule in the mid-seventies in Mozambique, there was capital flight by the erstwhile Portuguese settler community, facilitated by banks, through direct transfers and payment for fictitious goods. It is estimated that 90% of the Portuguese left the country within the first five years following independence.

The trend does not seem to have abated; part of the reason is that the factors that encourage the trend have remained virtually intact. In certain cases, developments in the source countries have increased the flow. Asset flows to South Africa are influenced by:

*The scope for investment in residential property.* With the exception of Botswana, Lesotho, Swaziland and Zimbabwe, the average price of good quality residential property in South Africa is relatively lower than in other parts of the region.[12] This oddity is probably attributable to the creeping dollarisation of economies in Southern Africa. In addition, the prevailing security of property rights in South Africa is rather less fragile than it is in some other parts of the region.

*The presence in South Africa of a relatively developed financial system and safe investment climate/environment* provides an incentive for cross border asset transmission.

The presence of migrant communities across national borders enriches the environment for the transmission of resources between the respective countries, often informally and with no recourse to the financial institutions and regularly in violation of currency movement control laws. An example is the spread of the Lundas in Angola, the DRC and Zambia, the Tutsi in Rwanda, Uganda and the DRC, the Venda in South Africa and Zimbabwe, or the Chewa-speaking communities on either side of the Malawi/Zambia border. In addition, dual nationality eases movement between the countries, and makes it difficult to regulate currency transmission.

*Conspicuous consumption in luxury commodities.* It has been observed that illegal income is likely to be consumed quicker or invested outside the financial sector than legal income. There are several reasons for this

[12] The average price of a dwelling house in middle-income areas of South Africa in May 2004 was ZAR488,456 (US$75,147). This is lower than that for similar property in neighbouring Mozambique (US$135,000) or Tanzania (US$120,000). Information based on Property Section in the *Weekend Argus* (29 May 2004), which circulates in Cape Town, South Africa.

inclination, partly the desire to conceal such income from detection, and partly to exploit lawful markets with the proceeds.[13] The latter motivation is particularly compelling if the environment in which consumption occurs is afflicted by inflation and unattractive interest rates. Proceeds of crime are then likely to be invested in real estate, commercial properties and luxury motor vehicles.

The market for luxury motor vehicles in Southern Africa transcends borders, which has led to the growth of symbiotic links among crime syndicates. An indeterminate number of South African syndicates engage in theft of motor vehicles in South Africa. The vehicles are thereafter smuggled across borders to Zimbabwe, Namibia and Mozambique for sale to syndicates which sell them on to syndicates that thrive on smuggling precious resources, drug trafficking and currency speculation.[14]

In these circumstances, indicators of incidence and scale of economic crime are likely to be:
1. Data on vehicles stolen in South Africa, less recoveries.
2. Data on average incomes in economic hub centres in Zimbabwe, Namibia, and Mozambique.
3. Data on registration of vehicles imported into those countries.
4. Aggregate values of imported vehicles.

*Abuse of state institutions for private accumulation of capital.* Various scenarios have been encountered in Africa. The first two arise within a context of economic and financial crisis, precipitated by external or internal factors. This usually leads to crisis management, and the creation of an environment replete with opportunities for economic crime on a grand scale. In the first scenario, the state is desperate for foreign currency to support trading activities and debt servicing. The 'bogus exports' fraud that led to the notorious Goldenberg scam in Kenya stemmed from an arrangement ostensibly introduced as an incentive to diversify the national export base. The judicial inquiry conducted over the last two years exposed a corrupt scheme that involved, and was facilitated by government departments at various levels, including the Office of the President, the Ministry of Finance, the Customs & Excise Department, the Ministry of Environment & Natural Resources, the Mines & Geology Department, and the Central Bank of Kenya.

The total funds yielded by the Goldenberg grand corruption and fraud scheme have not been quantified. They are estimated to be between US $600m and US $1 billion. Having been accumulated over a period of time, the funds were consumed gradually. Various entities have benefited from them. At the centre was the Pan Africa Banking Group. Others were - the Pan African Building Society; the Pan African Credit & Finance; the Uhuru Highway Development Corporation - which in turn constructed and managed a large hotel in Nairobi called the Grand Regency Hotel; the Kenya Duty Free shopping complexes at airport terminals; the United Touring Company and the Safari Park Hotel. In fact, the resources illegally gained through fraudulent compensation claims 'provided seed money for criminal infiltration of legal business...' and set up a foundation for the capture of 'major sectors of the legitimate economy'. This typified the classic threat of systematic economic crime on which drastic measures against money laundering appear to be premised.[15] There is speculation that some of the criminally earned assets were used to fund the campaign of a political party in the elections in Kenya in 1992.

In the second scenario, government, under pressure from economic and civil strife, resorts to ill advised ways of earning money, for instance by printing money. During the civil war in Mozambique (1977-1992), the state printed money to pay war-related expenses, and to finance a commodities black market. The market had in turn been fuelled by the war. The capacity of the formal economy and the state to provide goods and services was severely eroded by the war, creating a huge gap for the informal economy to exploit. Large amounts of money in circulation ended up in the hands of speculators.

The third scenario involves the ubiquitous *front companies* and *foreign banking accounts* established ostensibly to support security (espionage and economic) activities of the state. Funds are transmitted directly from the treasury to foreign financial repositories to pay for the activities of 'state security agents' operating

[13] In the words of Naylor

'Usually a legal firm works on the premise that it will be around for a long, perhaps indefinite time, even if the time horizon of any particular set of executives is shorter. On the other hand, an illegal; enterprise has a time horizon equal to that of the illegal entrepreneur. Thus, with its time horizon short to begin with, the illegal enterprise is always in danger of being abruptly terminated, reinforcing its tendency to take a grab-and-run attitude toward market exploitation.'

[14] 'Police smash alleged smuggling ring' Independent on Line (31 March 2005), accessible at http://www.iol.co.za/index.

[15] Authors like Naylor are cynical about the incidence of this kind of scenario. See R T Naylor, op cit, p. 34-7.

abroad. The system leads to the treasury being virtually turned into part of the banking system. To be sure, some of the payments processed in this manner are not looted. Its weakness lies in the absence of rigorous safeguards against theft, and its reliance on the honesty of individual officials. In the '80s and '90s, this avenue was exploited by state officials in various positions in South Africa, Zaire (now the DRC), Nigeria and Zambia to fraudulently transfer money to private accounts held in foreign banking institutions. Where these funds have since been traced, they have yet to be repatriated or fully accounted for.

The fourth scenario revolves around investment undertakings ostensibly undertaken in the interests of the state. Indications of the criminal abuse of these undertakings lie in the lack of accountability on their funding and performance during their existence.

Evidence of this kind of criminal conduct has been observed in mining undertakings that originated in Zimbabwe and Namibia. The mining locations were in the Democratic Republic of the Congo.[16] A study on the implications of inadequately conceived military undertakings by Zimbabwe in the DRC showed unsustainable levels of defence spending. Figures released by the Ministry of Finance revealed that more than 12% of the entire budget for 2001-2 was committed to defence. No provision was made for inflows from the commercial ventures in the DRC. To date, none of the expenditure incurred in that country has been offset by income from the ventures. The scale of the economic decline in Zimbabwe after 2000 appears to be partly attributable to the costs of the DRC campaign. The lack of accountability also creates opportunities for corruption and secondary asset laundering. The latter takes the form of mingling of resources, such as rough diamonds originating from one source with those extracted from another.

In view of the history of its evolution, it is not surprising that market-based economic crime in Southern Africa has cross-border dimensions. Illicit business emulates legitimate business in creating and using trans-national markets. Criminal groups have proved to be adept at taking advantage of globalisation and rapid technological innovation. The composition of these groups has for long been cosmopolitan,[17] and the nature of the activities of engagement varies with the demands of the market. One of the implications of this is the likelihood of cross-border transmission of proceeds of crime. The impact of crime is experienced in both the place where the criminal activity occurs and the destination of the proceeds. Indicators of economic crime cannot be complete if they do not take account of corresponding data in relevant foreign countries. It has been suggested that, as a research tool, data collection should occur on a corresponding basis among affected countries in the region. Major predicate activities should be identified, using material such as police and court records. Patterns of transmission should be mapped out, on the basis of information collected from within the criminal justice system as well as from data sources on routes of trade and other commercial activity. Departments of trade and customs will be important in this exercise. The resulting information is then organised in the form of a table, in which the source activities constitute a vertical column, and the destinations of transmission or consumption are arranged in a horizontal row. For Southern Africa, the table could resemble Table 1 below.[18]

[16] C. Goredema 'Organised Crime in Zimbabwe' in P. Gastrow (editor) *Penetrating State and Business: Organised Crime in Southern Africa*, Volume II (2003) ISS Monograph series number 89, pp. 22-4 and J. Grobler 'Organised Crime in Namibia' in P Gastrow, op cit, p. 30.

[17] See P. Gastrow, *Organised Crime in the SADC Region: Police Perceptions* (2001) ISS Monograph series number 60, pp. 39-65. The author employs tables to illustrate the picture as perceived by police agencies in the region. For a historical overview of the developments in this area, refer to P. Gastrow, op cit, p. 1-17 On the role of networks from West Africa, see *Crime as Business, and Business as Crime* (2003) South African Institute for International Affairs.

[18] Adapted from a methodological framework proposed by John Walker, a criminal justice researcher based in Melbourne, Australia, in 2004 to facilitate a global survey of money laundering trends.

**Table 1: Framework for comparative indicative proceeds of crime data between countries**

| Source activity of proceeds | Consumed locally | Transmitted to country 1 | Transmitted to country 2 | Transmitted to country 3 | Transmitted to country 4 |
|---|---|---|---|---|---|
| Drug trafficking | | | | | |
| Theft of motor vehicles | | | | | |
| Commercial fraud | | | | | |
| Armed robbery (excluding motor vehicles) | | | | | |
| Extortion rackets | | | | | |
| Corruption | | | | | |
| Smuggling of precious resources | | | | | |
| Externalisation of currency | | | | | |
| Money laundering | | | | | |

**Sources of data**

There are significant challenges that can impede the collection of the data required to collate indicators of economic crime. For data on criminal activity to be available at all, it is necessary not just for the activity to be recognised as a crime, but also for it to be officially recorded, and for the records to be stored in an organised and retrievable form. Furthermore, if what is sought is information on the impact of crime, there should be a modicum of analytical content to the record. The preferable record is one that can be objectively verified. It is matter of debate whether the impact of crime is recordable in this sense, and if so, at what stage this can be done.

Table 1 rests on the assumption that the police are the main repositories of the relevant information on crime trends. The reality is that in some cases, police statistics are deficient. In other instances, it may not be practical to expect all the information to be available to the police. Agencies mandated to detect, investigate and prosecute species of organised crime, playing a complementary but not subordinate role to that of the police, are occasionally better placed. In respect of corruption, the advent of dedicated anti-corruption agencies is a promising development. There has been growth in the establishment of these agencies in the last few years, in the wake of the adoption of the SADC Protocol against Corruption. The position at the end of 2004 is shown in Table 2.

**Table 2: Dedicated Anti-Corruption Agencies in Southern Africa (2004)**

| Group I: countries with dedicated anti-corruption agencies | Group II: countries contemplating the establishment of a dedicated anti-corruption agency | Group III: countries not contemplating establishing a dedicated anti-corruption agency |
|---|---|---|
| Botswana, Malawi, South Africa, Swaziland, Tanzania, Zambia, Lesotho, Mauritius, Mozambique and Zimbabwe | Namibia | DRC, the Seychelles |

The focus on anti-corruption agencies is influenced by the noticeable tendency to require such agencies to investigate the laundering of proceeds of crime.[19] It is suggested that anti-corruption agencies should be required to collect and exchange data on the magnitude of economic losses attributable to corruption.

Apart from the agencies mandated to tackle corruption, one should also be able to obtain usable information from other sectors which are particularly vulnerable to economic crime. In a survey of auditors in seven countries in the region in 2003, Standing and Van Vuuren found that in most, the banking and finance sector was perceived

[19] As has occurred in Botswana, South Africa, Swaziland, Mauritius, Mozambique and Zimbabwe. The proposed Bill in Lesotho adopts the same approach.

to fall into this category.[20] With specific reference to money laundering, it was found that other sectors were:

- vehicle retailing
- mining
- entertainment
- precious commodities trading
- real estate
- fuel industry
- sugar trading.

It has been observed that the impact of economic crime manifests itself in the phenomena of inflation, poverty, commercial crime, development, and corruption. In each of the stipulated sectors, a key objective of the inquiry will determine the causal connection with criminal business. In each case, the nature and scale of economic crime is compared with the nature and scale of inflation, poverty, commercial crime, development, and corruption. The result should be capable of being presented in the form of a series of graphs, on each of which one pole of the axis represents the scale of economic crime, and the other shows the scale of, for instance, poverty.

In order to secure data relevant to the relationship, one has to look beyond the stipulated sectors. Table 3 presents a possible list of other data repositories that could be relied on to construct a comprehensive picture. It is adapted from an analysis of sources developed at a workshop on money laundering in Blantyre, Malawi.[21] For each source of information, it is important not only to recognise the type of data to be sought, but also the possible limitations that may affect either the source or the utility of data.

**Table 3: Analysis of primary sources of information on economic crime and money laundering scale and trends**

**Economic Crime & Money Laundering: Analysis of Primary Sources of Information on Trends**

| Source | Key repositories of data | Type of data | Limitations |
|---|---|---|---|
| **Police** | Police statistics<br>Senior officers<br>Station heads, detectives, Economic and commercial crime units, Narcotics bureaus,<br>Crime intelligence | Crime statistics<br>Proceeds of crime<br>Criminal syndicate identities<br>Case experiences<br>Existing measures<br>Crime trends and patterns | Might not be comprehensive (will not record unreported crimes)<br>Limited penetration analysis - may overlook destination of proceeds of crime<br>May be reluctant to divulge pending cases<br>Political motive to play down levels of crime |
| **Anti-Corruption Bureau/ Commission** | Director of bureau, investigators | Agency records for pending cases<br>Completed case records/files | Disclosure may be prevented by confidentiality or for legal reasons<br>Records may not be centralised<br>Corruption<br>Political motivation may deter certain investigations |
| **Revenue Authority (customs/ taxation)** | Tax (income, retail and value added) records<br>Duty collection records<br>Trade trends (imports and exports)<br>Trade volumes<br>Statistics officials | Economic statistics<br>Scale and nature of inflow and outflow of imports and exports, declarations of value, avenues of legitimate trade<br>Non-declared income (corporate and individual) | Corruption may compromise record keeping or efficiency<br>Inter-country arrangements may make record keeping unnecessary<br>Illicit sources of incoming/outgoing commodities may not be detected<br>Eventual destination of incoming commodities will not appear<br>Goods through undesignated points unrecorded<br>May be difficult to make sense of mixed mass of information |

[20] A. Standing & H. Van Vuuren 'The role of auditors: Research into organised crime and money laundering' (2003) ISS Occasional paper, number 73.

[21] ISS Workshop on Money Laundering in Malawi, Protea Ryalls Hotel, 29 September, 2004.

| | | | |
|---|---|---|---|
| **Reserve/ Central Bank** | Regulatory units<br>Bank supervision<br>Anti-ML units | Authentication of remittances<br>Fiscal information<br>Economic data<br>Average income levels<br>Size of the legitimate economy | Absence of legislative duty<br>Ethical considerations may impede openness<br>Political pressure may result in non-disclosure<br>Capacity constraints |
| **National Intelligence Bureau** | Internal security unit<br>External security unit<br>Specialised crime unit | Border security<br>Case experiences<br>Effectiveness of existing measures<br>Patterns and level of economic crime<br>Identity of criminal syndicates | Not comprehensive (will not take account of unreported crime)<br>Preoccupation may be with political rather than criminal threat<br>Corruption may effect reliability<br>Confidentiality to protect sources<br>Reciprocal obligations to counterpart organisations may impede information disclosure<br>Political motive to downplay incidence of crime<br>Penetration analysis may be limited |
| **Directorate of Public Procurement** | Director | Tender documents<br>Information on awards of tenders<br>Verification of existing companies<br>Tender compliance | Might not be systematically documented |
| **National Construction Industry Council** | Head of council, officials | Verification of eligible and ineligible companies | Lack of capacity |
| **National Audit** | Auditor General | Information on criminal misuse of public resources | Limited resources and time affect reliability<br>Restricted to public sector |
| **Directorate of Public Prosecutions** | DPP | As with the police | As with the police |
| **Road Traffic Directorate** | Director | Vehicle registration<br>Crime statistics | Corruption<br>Lack of capacity<br>Might not be systematically recorded |
| **Ministry of Commerce** | Head of ministry, bureaucrats | Licences<br>Type of business conducted by companies | |
| **Immigration Department** | Immigration officials and registers | Inflows and outflows of migrants | Corruption may affect availability or reliability of data<br>Accessibility<br>Inadequate technology (records prepared manually) |
| **Registry of Companies** | Companies registrar<br>Actual registers | Intellectual property records and transfers<br>Assets attributable to individuals<br>Beneficial interests in corporate entities<br>Unexplained wealth<br>Suspicious registrations | Corruption may affect availability or reliability of data<br>Accessibility<br>Inefficiency<br>Incomplete records |
| **Currency Exchanges (bureaux de change)** | Transaction records<br>Bureau operators<br>Oral and documentary survey of clients | Transaction records<br>Efficacy of control measures<br>Turnover over pre-determined period<br>Potential for abuse<br>Empirical evidence of actual abuse for ML activity | Poor documentation (sources of currency exchanged not documented)<br>Corruption<br>Involvement in criminal business<br>No obligation to co-operate with non-statutory institutions |

| | | | |
|---|---|---|---|
| **Investment Banks and Discount Houses** | Management | Transaction records<br>Investment values<br>Individual deposits | Bank confidentiality |
| **Insurance Companies** | Insurance agents<br>Insurance brokerages | Asset values and holdings<br>Paid out claims<br>Fraudulent claims<br>Economic impact of crime | High volume of transactions<br>Poor record keeping<br>The use of intermediaries may obscure linkages<br>Absence of relevant legislation<br>Corruption |
| **Estate Agents** | Records of property sales | Property values<br>Beneficial interests in fixed property | Absence of regulation<br>Confidentiality duties to clients<br>Corruption |
| **Legal Profession** | Lawyers<br>Lawyers financial records | Property transactions<br>Trust settlements and identification of beneficiaries | Lack of legal obligation to disclose<br>Client privilege<br>Collusion |
| **Accountants and auditors** | Accountants, auditors | Statement of affairs/accounts<br>Audit reports<br>Verification of existence of corporate bodies | No legislative obligations<br>Confidentiality<br>Collusion<br>Lack of client profiling |
| **Commercial agents** | Sales persons | Origin of goods<br>Value of imports<br>Volume of imports | Collusion with dishonest clients |
| **Clearing and forwarding agents** | Sales persons<br>Dealership owners<br>Sales records | Ownership of goods<br>Value of goods<br>Frequency of imports and exports<br>Duties payable<br>Tax history<br>Methods of purchase | Poor record-keeping<br>Source of funds may not be visible<br>Collusion and corruption<br>High volumes may make task of collating information difficult |
| **Commercial Banks** | Bank managers<br>Bank tellers<br>Foreign currency departments | Individual deposits<br>Fraud statistics<br>Suspicious transaction reports<br>Economic impact of crime<br>Foreign currency levels | Lack of national identification system<br>Not systematically documented<br>Bank confidentiality<br>Competition<br>No obligation to report suspicious transactions |
| **Motor Vehicle Dealers** | Sales persons<br>Dealership owners<br>Sales records | Motor vehicle sales<br>Purchaser identities/nationalities<br>Methods of purchase | Poor record-keeping<br>Origin of funds may not be visible<br>No obligation to report<br>High volumes may make task of collating information difficult<br>Where vehicles financed through third party intermediaries, records will be difficult to use |
| **Interpol (SARPCCO)** | Nat. Crime Bureau reports<br>Economic crime data<br>Bureau chief | Narcotics data<br>Trends and patterns of crime<br>Identity and size of crime syndicates<br>Anti-crime networking | Heavily reliant on constituent members statistics<br>Insufficient analysis<br>Capacity constraints<br>No authority to release data |

## Summary of indicators

The indicators can be grouped into two categories: indicators of the incidence of economic crime and indicators of its impact.

Incidence of Economic Crime

- Scale of the trade in commodities obtained by stealth - through theft, falsification or smuggling
  - data on vehicles stolen in the country, less recoveries
  - data on average incomes in the national economic hub centres
  - data on registration of vehicles imported into the country
  - aggregate values of imported vehicles
- Manifestation of the challenges of transition, or political crisis
  - declining wages, increased opportunities for crime;
  - diminished penalties and falling moral values;
  - close linkage between political power and access to economic leverage;
  - imbalance in resources between the law enforcement structures and criminal organisations.
- Abundance of hard currency
- Unexplained disparities between production declared by the state and exports (of precious resources, such as minerals)
- Unrecorded income from precious resource sales

Indicators of Impact

- Level of inflation
- Level of poverty
- Level of commercial crime
- Level of under-development
- Degree of corruption
- Costs of establishing and maintaining corporate security systems
- Extent by which insurance premiums are affected by levels of crime
- Correlation between crime and levels of taxation

## Conclusion

While there is broad and evident consensus about the need to respond adequately to serious economic criminal activity, clarity on the terrain for which responses should be designed continues to elude policy and decision makers, particularly in Southern Africa. Various reasons may be blamed for this state of affairs. They include the dearth of empirical research on the nature and scale of crime, even in respect of crimes considered to be priority crimes. The gap in the current environment has tended to be filled by misconceptions on the nature of organised crime groups and criminal business in general.

This paper proposes a method by which to develop a set of indicative factors that could facilitate a better understanding of the scope of criminal business (in its most comprehensive form) as well as facilitate the assessment of the threat that this business raises to economies from time to time.

## "Criminal Misuse and Falsification of Identity – Identity Theft as a Precursor to Other Crime"

**Mr. Donald Piragoff**
**Senior General Counsel, Criminal Law Policy Section, Department of Justice, Canada**

One of the principles guiding the work of the United Nations crime prevention and criminal justice programme is to ensure that any increases in the capacity and capabilities of perpetrators of crime are matched by similar increases in the capacity and capabilities of law enforcement and criminal justice authorities. One new crime that is challenging these capabilities is that of "identity theft".

I will address a more detailed definition of identity theft in a moment but if identity theft can be described as the criminal misuse and falsification of a person's identity, it is clear that this crime is growing rapidly. While global statistics are not currently available, there is evidence of rapid growth of this crime in a number of countries. In Canada, for example, identity theft has grown rapidly over the past three years and is estimated to cost consumers and businesses as much as 2.5 billion dollars a year. The 2001/2002 Annual Report of the New South Wales Crime Commission reported that identity theft cost the Australian community more than $3.5 billion dollars annually.

In a survey conducted in 2003, the Federal Trade Commission in the United States found that in the twelve months preceding the survey, 10 million people had been victims of identity theft. The survey found that businesses suffered nearly 48 billion dollars in losses; individuals suffered nearly 5 billion dollars in losses, and that victims spent about 300 million hours trying to reverse the impact of the identity theft. There is also growing evidence that identity theft is being used by organized crime and by terrorist groups to facilitate their activities and to commit crimes that fund their activities.

There are very few countries in the world that have a specific crime relating to "identity theft". I thought it would be helpful to provide a working definition of "identity theft" for the purposes of our discussions today.

In its most basic form, identity theft can be described as the collection, possession, transferring or use of personal identification information for the purpose of committing crime. Some of the ways in which this can be done are very familiar to us and are characterized as crimes in many countries. For example, Mr. Abel pretends that he is Mr. Bond by using a stolen cheque belonging to Mr. Bond and using it to buy goods from Ms. Cantor. In this case, Mr. Abel has committed all of the physical and mental elements of the offence of fraud and has assumed the identity of Mr. Bond only for the purpose of obtaining goods illegally from Ms. Cantor.

There are, however, new ways in which crime is being committed by misuse of the identity of other persons. Identity theft invariably involves the use of personal identification information. Personal identification information can be defined in a number of ways, but it can generally be understood to be information that either alone, or in conjunction with other information, identifies a specific person or provides access to assets held by that person or to benefits or services to which the person is entitled. For example, personal identification information could include a person's gender, age, name, race, address, telephone number, bank account number, bank account balances, investments, lines of credit, credit rating, credit card number, a PIN number (personal identification number), etc. The personal identification information can be tangible, such as information recorded on a piece of paper or contained in an identification document, or it can be virtual information, such as personal data on a computer screen.

Personal identification information can be obtained in a variety of ways, some of which involve the use of new technologies, such as the Internet and computers, and some of which do not. Examples of identity theft that do not involve advanced technologies are as follows:

- Personal identification information, including financial information, can be copied by hand from the files of clients by a dishonest employee or government official and sold to people who want to use the information to make false identification documents in order to commit crime.

- Sometimes personal identification information is taken from trash bins. This has been called "dumpster diving".

- Another way to commit identity theft is to fraudulently redirect mail from the victim's home to the perpetrator's home or to a post office box. The perpetrator then collects the victim's mail and uses the personal identification information set out in various bills and letters addressed to the victim to impersonate the victim and defraud banks, retailers, etc.

- Another method of committing identity theft is called "tomb stoning". It involves the perpetrator collecting information about a person who has died. The perpetrator uses the personal identification information to pretend that he or she is the dead person.

- Other people commit identity theft by positioning themselves in such a way that they can see a victim enter his or her personal identification number (PIN) into an automated debit card system. This PIN number is used in conjunction with a device (called a "skimming device") which surreptitiously records the numbers of the victim's debit card. The perpetrator is then able to match up the PIN number with the debit card number in order to withdraw funds from the victim's bank account.

Examples of identity theft that involve more advanced technologies are as follows:

- The perpetrator hacks into a computer database to obtain the personal identification information of victims for the purpose of making fraudulent identification documents.

- A second example of "high-tech" identity theft is the surreptitious installation of software in a computer system that enables the perpetrator to record the key strokes of victims as they use their computer. This software is called "spyware".

- A third example of identity theft that involves the Internet is called "phishing". This involves directing victims to a false website and inducing them to disclose their personal identification information by advertising products and services that are false.

The advent of computers and the Internet has changed the way that economic crime is committed. It has facilitated the commission of crimes that involve different actors along a continuum of criminal activity. No one actor has committed all of the elements of the crime. Each is responsible for a particular aspect of the activity that cumulatively produces the crime. This represents a significant change in the way that crimes are committed and highlights a need to enhance our domestic and international capacity to address these crimes.

I think I can best illustrate my point by setting out a case scenario. For example:

1. Mr. Abel in Canada works for a bank and copies personal identification information relating to a number of different customers from one of the bank's computers.

2. Mr. Abel then sells the personal identification information to Mr. Bond over the Internet. Mr. Bond lives in Germany.

3. He, in turn, sells the information to Ms. Cantor who lives in Australia.

4. Ms. Cantor uses the information to produce fraudulent identification documents. The "identity" of the various bank customers in this context is now on fraudulent identification documents and in the hands of people who will use it to commit crime.

5. Ms. Cantor sells the fraudulent identification documents to Mr. Douglas.

6. Mr. Douglas distributes the fraudulent identification documents to a couple of his friends.

7. His friends use the fraudulent identification documents to pose as Canadian tourists and commit large scale frauds on local businesses.

8. They sell the goods on a black market.

9. They then share the proceeds of crime with Mr. Douglas.

10. Mr. Douglas channels these moneys back into a money-laundering scheme involving organized crime.

The original bank customers in respect of whom Mr. Abel copied the personal identification information will only become aware that they are victims of identity theft after they start receiving calls from credit card companies demanding that they pay for the purchases made in Australia. They are the first group of victims and will face the long and arduous process of reclaiming their credit ratings. The second set of victims is the businesses and/or credit companies that suffered losses due to fraud. The fact that the monies from the sale of goods obtained by fraud are being used, in part, to finance organized crime highlights the fact that society at large is also victimized.

In the absence of proof of a conspiracy, most countries do not have an offence to cover the activities of Mr. Abel or Mr. Bond (i.e. stages 1, 2 and 3) even though their collection, sale and transfer of personal information of the various bank customers were the initial activities that made it possible for other actors to commit crimes. One of the legal limitations in addressing this form of identity theft is that personal identification information generally is not regarded as property, unless it has a commercial value in and of itself. Also, personal identification information that is copied, either by hand or from a computer screen, does not result in the owner of the personal identification information being deprived of it. It is the confidentiality of the personal identification information that may be breached, rather than any possessory or proprietary rights in that information.

In view of the fact that personal identification information is not characterized as property in most countries, traditional property offences are not an effective means for addressing identity theft involving the copying, collection, transferring and selling of personal identification information as a precursor to committing crimes. This fact highlights a need for countries to address this activity in their domestic legislation.

The example I have given also highlights the need for countries to work collaboratively to respond to persons who traffic personal identification information across borders for criminal purposes that need not be restricted to the commission of economic crime. Identity theft can also be used to help criminals evade capture or detection, to produce fraudulent identification for the purposes of facilitating the movement of terrorists in and out of countries, or to commit transnational crime such as human trafficking.

One of the challenges in formulating possible responses to identity theft, both at the domestic and international level, is to ensure that the scope of domestic offences or international measures are not cast in overly broad terms so as to capture activity that is either legitimate or that does not justify the use of the criminal law. Persons may be in possession of personal identification information in respect of other persons for a variety of legitimate commercial or other reasons. It can be argued that if personal identification information is obtained without the consent and knowledge of the person to whom it relates, an appropriate remedy may lie in civil mechanisms to protect and/or retrieve this information. From a criminal law perspective, the position can be taken that it is not the possession of the information *per se* that generates the social harm that should be addressed but, rather, the intended or actual use of the personal identification information to commit criminal offences. Following this argument, once a person has obtained personal identification information without the consent and knowledge of the person to whom it relates, and has done so with the intent of using that personal identification information to commit criminal offences, he or she has committed behaviour that is more appropriately addressed by criminal, rather than civil, mechanisms.

A strategy to stem the growth of identity theft at both the national and international level will invariably involve both civil and criminal mechanisms. It will also involve co-operation and co-ordination amongst countries. In this regard it is interesting to note that in May 2004, the United Nations Commission on Crime Prevention and Criminal Justice adopted and referred to the Economic and Social Council a resolution proposed by Canada calling for international cooperation in the prevention, investigation, prosecution and punishment of fraud, criminal misuse and falsification of identity and related crimes. The resolution mandates the convening of a group of experts to conduct a study of fraud and criminal misuse and falsification of identity in order to support the development of further measures such as useful practices, guidelines or technical materials for legislators, law-enforcement or prosecutorial officials or other officials. The Commission decided to mandate the study on the understanding, in part, that it would survey Member States and develop a broadly-acceptable model or definition/description of the problem as the basis for further action.

Canada was pleased to sponsor the initial meeting of the group of experts, which was held in Vienna last month. The meeting was held as an open-ended meeting and was attended by representatives of 33 Member

States. As required by the convening resolution, it has submitted a Progress Report on its work to the 14th session of the Crime Commission, and that Report has now been issued in languages as document E/CN.15/2005/11. It contains the preliminary observations of the experts on the nature and scope of the problems of fraud and identity theft, and sets out agreement on the methodology and some of the priorities for the study itself, which include the use of a questionnaire and specific research by the expert group and its members which will extend to both governmental and private-sector sources of information. We expect that the study will provide concrete information about patterns in transnational fraud, and will assist Member States in developing a common concept of identity-theft which can support further work in this area, both within and among Member States.

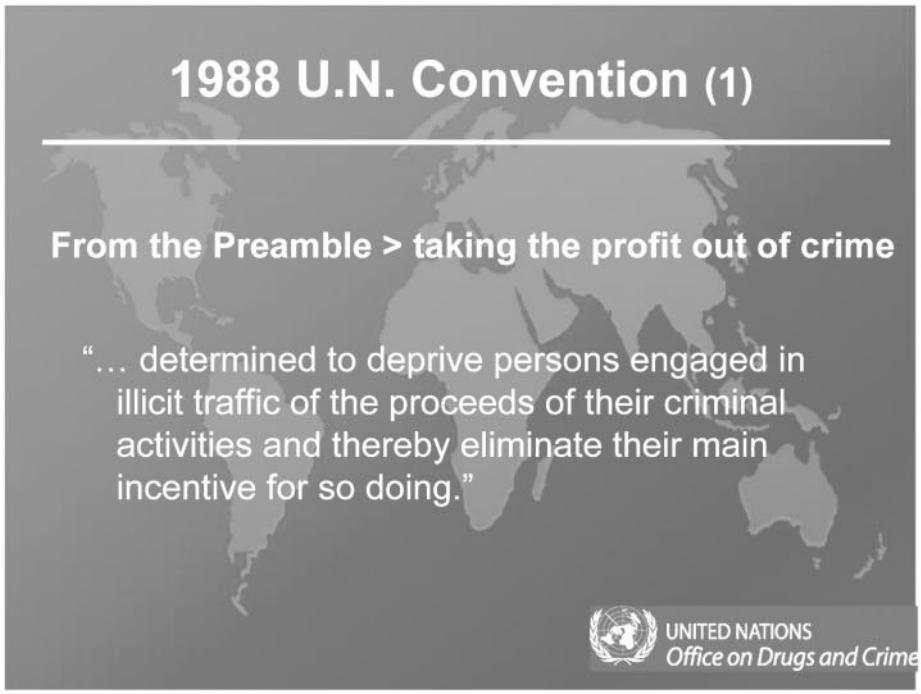
To ensure adequate regional representation, the process will be run as an open-ended intergovernmental process, but the interim work of the group – the actual gathering and analysis of the data – will require a smaller group of experts in the subject-matter, and the Report calls upon interested Member States to consider designating appropriate experts to participate in this work.

Canada was pleased to be able to provide the extra budgetary resources needed to hold last month's preliminary meeting, and we hope that other delegations will also recognize the importance of this work and provide further resources as the work of the study proceeds. Many delegations here have had experience with the growing tide of transnational fraud, and we have seen the role of telephones, fax machines, e-mail, the Internet and other factors which have contributed to the problem. But all we have is anecdotal information from a few countries. We believe that it is essential that we obtain more information from a representative sample of Member States, in order to obtain an accurate and comprehensive picture and permit evidence-based policy-making at both the national and international level.

In summary, I would encourage us to work together to better understand these emerging forms of crime and to enhance our capacity to address them. I believe there are steps that can be taken in both the domestic and international context to stem identity theft as a precursor to other crime.

**"International Standards and Norms to Combat Money Laundering"**

**Mr. Timothy Lemay**
**Chief, Rule of Law Section, Human Security Branch, United Nations Office on Drugs and Crime**



1988 U.N. Convention (1)
From the Preamble > taking the profit out of crime
"… determined to deprive persons engaged in illicit traffic of the proceeds of their criminal activities and thereby eliminate their main incentive for so doing."
UNITED NATIONS
Office on Drugs and Crime


1988 U.N. Convention (2)
·Criminalise laundering (drugs offences as predicates)
·Measures to identify, trace, freeze, seize & confiscate proceeds of crime
·Access to bank, financial records
·Override banking secrecy
·Mutual legal assistance
·Sharing of confiscated assets (parties "may consider")
·Reversing onus of proof (parties "may consider")

## FATF Recommendations

**Legal Systems**

- Scope of criminal offence of money laundering (R.1-2)
- Provisional measures and confiscation (R.3)

**Preventive measures - financial institutions and non-financial businesses & professions**

- Customer due diligence and record-keeping (R.4)
- Reporting of suspicious transactions and compliance (R.5-12)
- Other measures to deter ML and FT (R.13-16)
- Measures – where countries not complying with recommendations (R.17-20)
- Regulation and supervision (R.23-25)

## FATF Recommendations

**Institutional and other measures necessary in systems for combating ML & TF**

- Competent authorities - powers & resources (R.26-32)
- Transparency of legal persons & arrangements (R.33-34)

**International co-operation (R.35)**

- Mutual legal assistance and extradition (R.36-39)
- Other forms of co-operation (R.40)

**Interpretative notes**


U.N. Convention against Transnational Organised Crime
Key provisions for Parties:
• Criminalise laundering on "all serious crimes" basis
• for offences committed in or outside State's territory
• comprehensive financial sector regulatory regime, including
– customer identification
– record-keeping
– transaction reporting
UNITED NATIONS
Office on Drugs and Crime

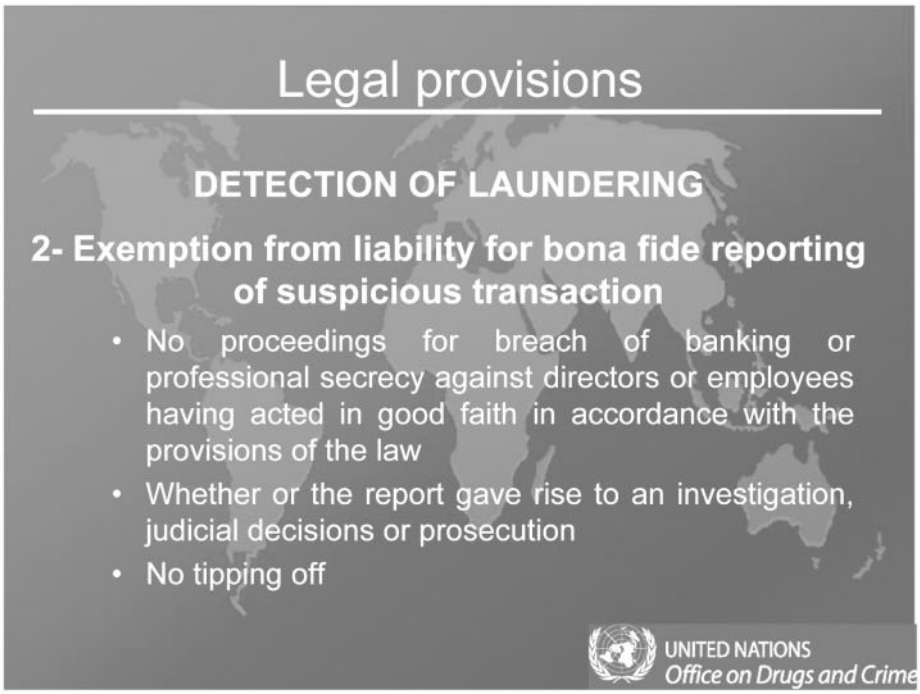

U.N. Convention against Transnational Organised Crime
• Internal regulatory co-operation and information exchange
– Financial Intelligence Unit (FIU) recommended
• Detect cross-border currency
• International co-operation - confiscation
• Corporate criminal liability
• Seize/freeze, confiscate proceeds of crime or equivalent value
• financial records - no bank secrecy
UNITED NATIONS
Office on Drugs and Crime


U.N. Convention against Corruption
(Not yet in force)
• Criminalise money laundering derived from acts of corruption
• Co-operation with law enforcement authorities; between national authorities; between national authorities and private sector
• Asset recovery – prevention and detection of transfer of proceeds of crime; measures and mechanisms for recovery
• International co-operation – mutual legal assistance; extradition; law enforcement co-operation


Legal provisions
PREVENTION OF LAUNDERING
1- Identification of customers : CDD principles and record keeping
• Promote good governance and help maintain the integrity of the financial and non financial institution
• Verify customers' identity and addresses
• Threats through new technologies
• Correspondent banking
UNITED NATIONS
Office on Drugs and Crime


Legal provisions
PREVENTION OF LAUNDERING
2- Identification of customers : Due diligence
• Management of high risk customers and accounts
• Due diligence measures for politically exposed persons
• Maintain and hold at the disposal of the authorities records of customer identification and transactions
• Key role of supervisors
UNITED NATIONS
Office on Drugs and Crime


Legal provisions
DETECTION OF LAUNDERING
1- Reporting of suspicions
• Report to the FIU transactions involving money which appears to be derived from an offence linked to a crime / organized crime / offenses
• Report the transactions carried out:
– not feasible to defer their execution
– became clear after completion that transaction involved suspect money
• Report information confirming or invalidating the suspicion
UNITED NATIONS
Office on Drugs and Crime


Legal provisions
DETECTION OF LAUNDERING
2- Exemption from liability for bona fide reporting of suspicious transaction
• No proceedings for breach of banking or professional secrecy against directors or employees having acted in good faith in accordance with the provisions of the law
• Whether or the report gave rise to an investigation, judicial decisions or prosecution
• No tipping off
UNITED NATIONS
Office on Drugs and Crime


Legal provisions
DETECTION OF LAUNDERING
3- Financial Intelligence Units
• Responsible to receive, analyse & process reports
• May request information and records within the scope of investigations conducted following the report of a suspicious transaction
• Keeps information confidential, relationships of trust with financial institutions.
• Information can not be used for any other purpose
• Role in international co-operation
• Various structural models
UNITED NATIONS
Office on Drugs and Crime


Legal provisions
DETECTION OF LAUNDERING
4- Egmont Group
• Informal group for financial information sharing comprising 84 members, mentioned in interpretative notes of FATF Recommendations
• Statement of purposes and Principles for Information Exchange between FIUs for ML cases
• Working groups including legal, training, outreach
• Egmont Secure Web
• Model MOU
UNITED NATIONS
Office on Drugs and Crime


Model Legislation
• UN Model Legislation on Laundering Confiscation and International Cooperation in Relation to the Proceeds of Crime (1999) (Civil Law Systems)
• UN Model Money Laundering, proceeds of Crime and Terrorist Financing Bill (2003) (Common Law System)
• New model legislative provisions for Civil law systems currently being drafted
UNITED NATIONS
Office on Drugs and Crime

## IMoLIN / Amlid

- Website and database managed By GPML on behalf of various international Organisations.
- Provides information on national money laundering laws and regulations and contacts for inter-country assistance.
- Also UN Model Legislation, Conventions and International Legal Instruments.
- Over 1000 visitors per week
- AMLID analyses countries' anti-money laundering legislation.

UNITED NATIONS
*Office on Drugs and Crime*

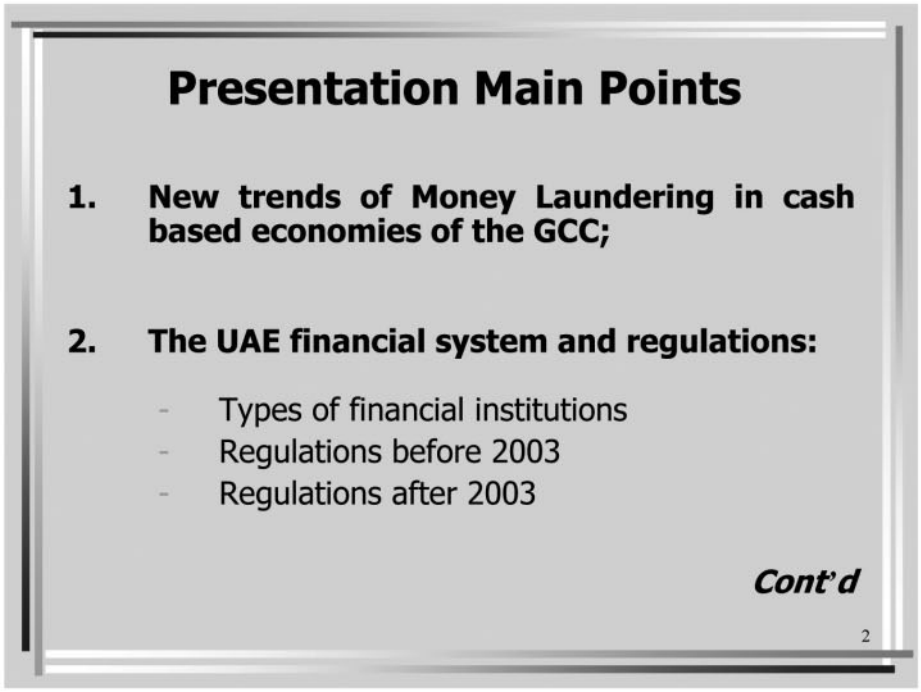
## GPML Internet Access

www.imolin.org

UNITED NATIONS
*Office on Drugs and Crime*

## "Typology and New Trends of Money-Laundering including the Specific Features of Money-Laundering in Informal or Cash Based Economies"

**H.E. Sultan Bin Nasser Al Suwaidi**
**Governor, the Central Bank of the United Arab Emirates**

## Presentation Main Points – continued

**3. Steps taken by the UAE to regulate the Hawala System:**

- **The Hawala Regulations System:**

i. The press announcement issued by the Central Bank of the UAE to Hawala Brokers (Hawaladars);

ii. The Certificate issued to Hawala Brokers (Hawaladars) in the UAE; and the

iii. Reports to be submitted by Hawala Brokers (Hawaladars) to UAE FIU at the Central Bank.

3

## New trends of Money Laundering in cash based economies of the GCC

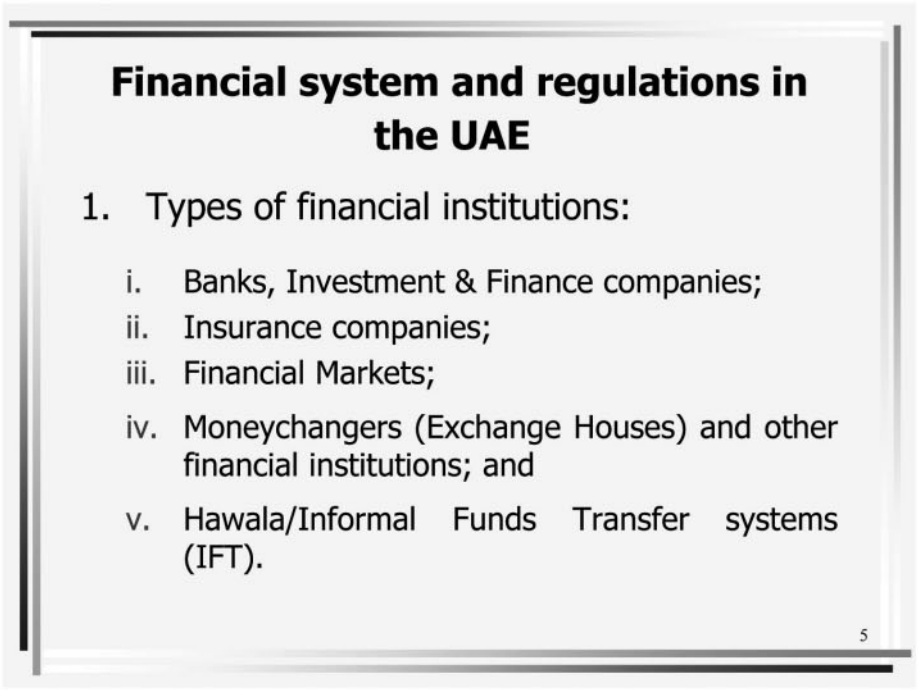
**i. Challenges;**

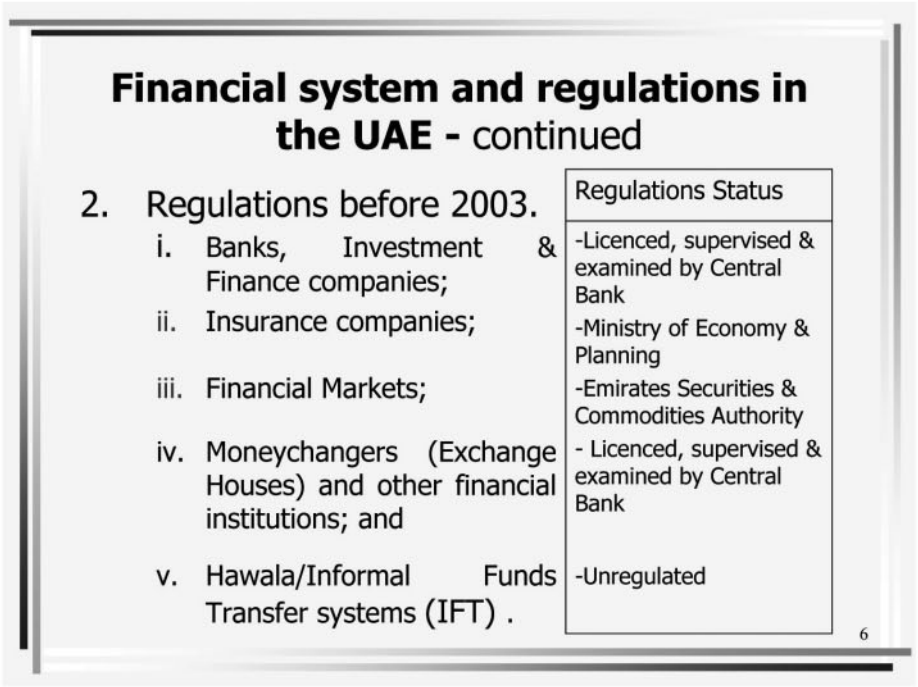
- Smuggling of Cash;
- Using over invoicing or under invoicing in Cross-border trade transactions.

**ii. Action taken / to be Taken by countries of the region to encounter the new challenges;**

a) Exchange of information;
b) Coordination of supervision; and
c) Mutual Legal cooperation.

4


Financial system and regulations in the UAE
1. Types of financial institutions:
i. Banks, Investment & Finance companies;
ii. Insurance companies;
iii. Financial Markets;
iv. Moneychangers (Exchange Houses) and other financial institutions; and
v. Hawala/Informal Funds Transfer systems (IFT).
5


Financial system and regulations in the UAE - continued
2. Regulations before 2003.
i. Banks, Investment & Finance companies;
ii. Insurance companies;
iii. Financial Markets;
iv. Moneychangers (Exchange Houses) and other financial institutions; and
v. Hawala/Informal Funds Transfer systems (IFT) .
Regulations Status
-Licenced, supervised & examined by Central Bank
-Ministry of Economy & Planning
-Emirates Securities & Commodities Authority
- Licenced, supervised & examined by Central Bank
-Unregulated
6

## Financial system and regulations in the UAE - continued

| 3. Regulations after 2003. | Regulations Status |
|---|---|
| i. Banks, Investment & Finance companies; | -Licenced, supervised & examined by Central Bank |
| ii. Insurance companies; | -Ministry of Economy & Planning |
| iii. Financial Markets; | -Emirates Securities & Commodities Authority |
| iv. Moneychangers (Exchange Houses) and other financial institutions; and | -Licenced, supervised & examined by Central Bank |
| v. Hawala/Informal Funds Transfer systems (IFT). | -Registered & Certificate issued by Central Bank<br>– Reporting – |

7

## 4. Hawala System Regulations

**The regulations system in the UAE is based on the Abu Dhabi Declaration on Hawala**

a) Regulations are not overly restrictive;

b) The revised 40 recommendations of the Financial Action Task Force (FATF) on Money Laundering and the additional 9 special recommendations on Terrorist Financing are fully observed through awareness meetings; and

c) The objective is to prevent the Hawala System's misuse by criminals and others.

8

**The press announcement issued by the Central Bank of the UAE to Hawala Brokers (Hawaladars)**

a) The Hawala System is very important to handle transfers of low paid workers who are mostly illiterate;

b) The System is also important because it reaches remote places that are not serviced by normal banking networks;

c) A simple system of registration and reporting; and

d) The Central Bank assured Hawala Brokers that their names will be safe at the Central Bank.

9

**Press Announcement**

10

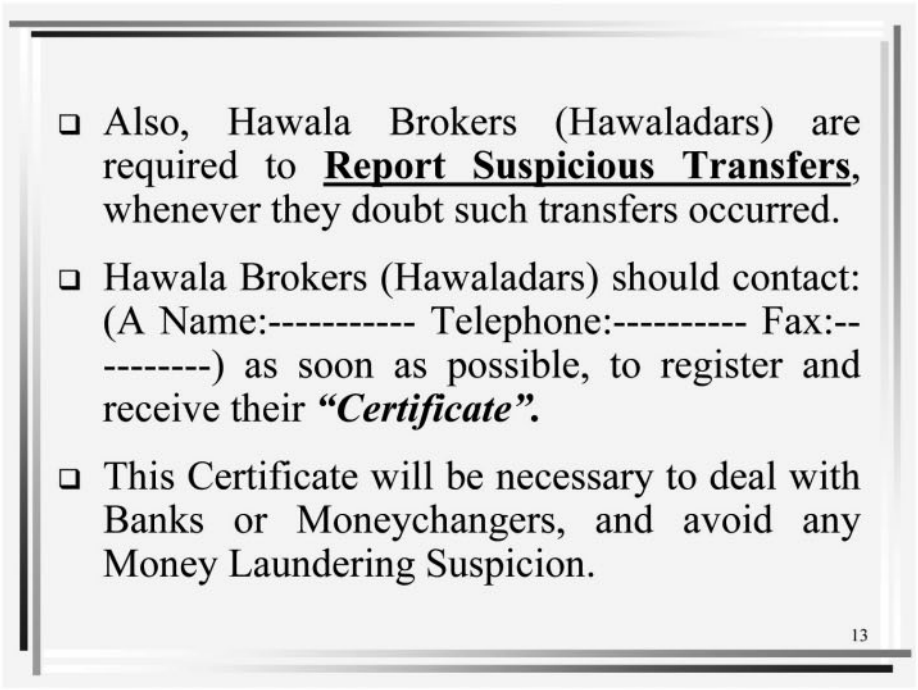
## Announcement Issued by the Central Bank of the UAE to Hawala Brokers (Hawaladars)

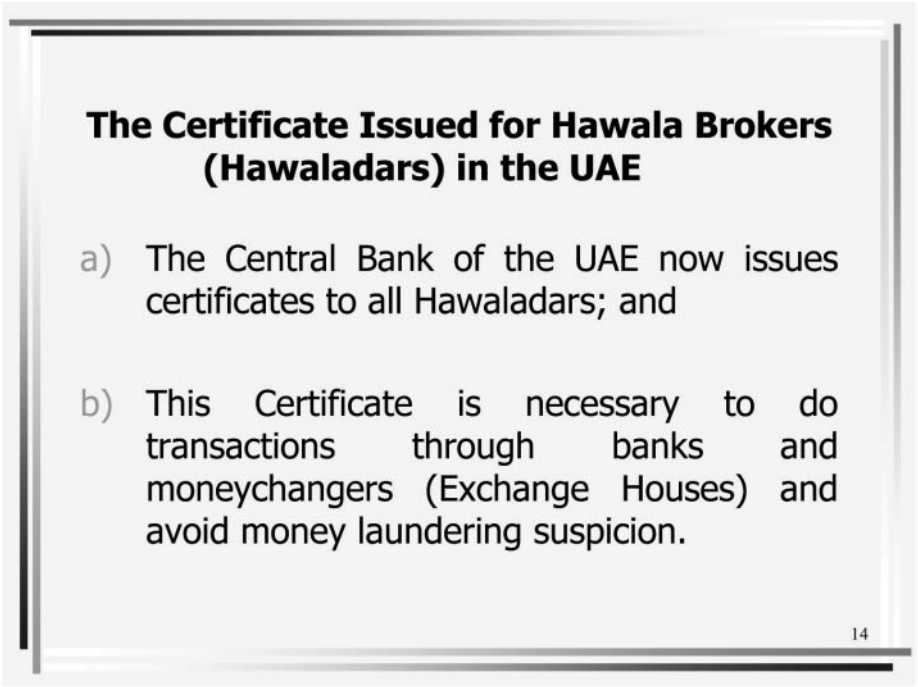
- The Central Bank of the UAE is pleased to announce that it is going to implement **a simple system of registration** and reporting for Hawala Brokers (Hawaladars).
- Based on the **Abu Dhabi Declaration on Hawala**, almost all representatives of the major countries of the world have agreed that the **Hawala System** is very important to handle transfers of low-paid workers who are mostly illiterate. They also agreed that the system is very important because it reaches remote places that are not serviced by normal banking networks.

11

- To regulate this, the Central Bank of the UAE will start registering and issuing **a simple Certificate** to all Hawala Brokers (Hawaladars) in the UAE, free of charge. The Central Bank of the UAE assures Hawala Brokers (Hawaladars) that their names and details will be kept safe at the Central Bank.
- Hawala Brokers (Hawaladars), on the other hand, should provide the Central Bank with details of the Remitters and Beneficiaries who receive transfers from abroad on **simple forms** (available at the Central Bank of the UAE).

12


Also, Hawala Brokers (Hawaladars) are required to Report Suspicious Transfers, whenever they doubt such transfers occurred.
Hawala Brokers (Hawaladars) should contact: (A Name:---------- Telephone:---------- Fax:----------) as soon as possible, to register and receive their "Certificate".
This Certificate will be necessary to deal with Banks or Moneychangers, and avoid any Money Laundering Suspicion.
13


The Certificate Issued for Hawala Brokers (Hawaladars) in the UAE
a) The Central Bank of the UAE now issues certificates to all Hawaladars; and
b) This Certificate is necessary to do transactions through banks and moneychangers (Exchange Houses) and avoid money laundering suspicion.
14

| Application Form to Register as Hawaladar | نمـــوذج طلـــب (تسجيل كوسيط حوالة (حوالادار |
|---|---|

| | | | | |
|---|---|---|---|---|
| Full Name (as in the passport) | : | | | الاسم بالكامل (كما في الجواز) |
| Nationality | : | | | الجنسية |
| Registered Occupation / Official | : | | | المهنة المسجلة / الرسمية |
| Nature of Business / Job | : | | | طبيعة العمل / الوظيفة |
| Age | : | | | العمر |
| Address | : | | | العنوان |
| Res. Tel. | : | | | تلفون المنزل |
| Mobile No. | : | | | تلفون متحرك |
| Signature | : | | | التوقيع |

Encls. Form :

- A true copy of the original Passport.
- A true copy of original Trade Licence (where applicable.
- One Photograph / Photographs of Partners.

مرفقات الطلب :

- صورة طبق الأصل من جواز السفر
- صورة طبق الأصل من الر خصة التجارية أو الرخصة.
- صورة شخصية (أو صور الشركاء).

15

Certificate No: رقم الشـــهادة :

**Certificate**
**For Hawala Broker (Hawaladar)**
**In the United Arab Emirates**

**شـــهادة**
**وسيط حوالة (حوالادار)**
**بدولة الإمارات العربية المتحدة**

The Central Bank of the United Arab Emirates has given approval to :

صـرح مصـرف الإمـارات العربيـة المتحـدة المركزي لـ :

**To carry-out Hawala business subject to the following:**

لقيام بأعمال الحوالة وفقا لما يلي :-

- The said broker will comply with regulations and instructions issued by the Central Bank at all times.

١- يلتزم الوسيط المعني في جميع الأوقات بالأنظمة والتعليمات الصادرة من قبل المصرف المركزي.

- Providing the Banking Supervision and Examination Department with the data as per the attached tables (A)&(B). (Does not apply to moneychangers doing Hawala business).

٢- تزويد دائرة الرقابة والتفتيش على المصارف بالبيانات وفقا للجدولين المرفقين ( أ ) و ( ب) .(لا ينطبق على الصرافات التي تمارس أعمال الحوالة).

- Reporting suspicious transactions to Anti-Money Laundering and Suspicious Cases Unit as per the attached table (C).

٣- الإخطار عن المعاملات المشبوهة لوحدة مواجهة غسل الأموال والحالات المشبوهة وفقا للجدول المرفق (ج) .

The Central Bank will keep all above information confidential in its files.

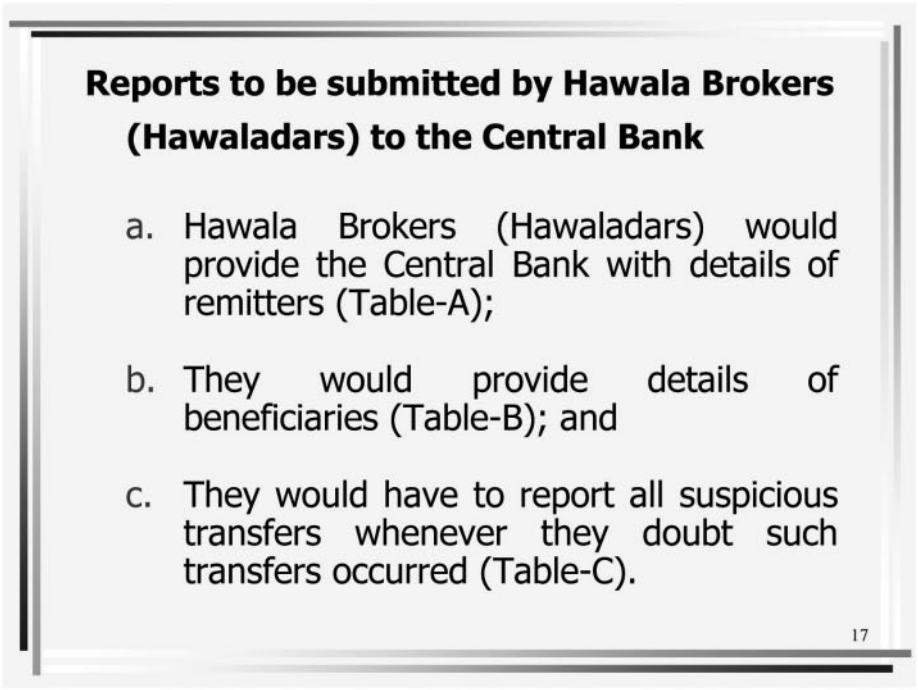
سوف يحتفظ المصرف المركزي بكافة المعلومات المذكورة أعلاه بسرية في ملفاته .

Please note that this certificate does not permit its holder to exchange currencies or sell and purchase travellers cheques.

ليكن معلوما ان هذه الشهادة لا تخول حاملها بديل عملات أجنبية أو بيع وشراء الشيكات السياحية.

Issue date : تاريخ الإصدار :
Expiry date : تاريخ الإنتهاء :

ابراهيم جمعة الحوسني
مسؤول فريق تفتيش رئيسي
دائرة الرقابة والتفتيش على المصارف
**Ibrahim Jumaa Al Hosani**
**Senior In-Charge Examination Team**




| Report on Remittances | تقـــرير بالتحويلات التي تمت |
|---|---|

| From / Date | To | إلـــى | من / تاريخ |
|---|---|---|---|
| Name of Hawaladar | | اسم وسيط الحوالة | |

| اسم المحول | مكان عمل المحول | الجنسية | رقم جواز السفر | المبلغ المحول | اسم الشخص المستفيد | بلد وجهة الأموال | الغرض من تحويل الأموال |
|---|---|---|---|---|---|---|---|
| Name of Remitter | Remitter's Place of Work | Nationality | Passport No. | Transferred Amount | Beneficiary's Name | Country of Destination of Funds | Purpose of Transferring Funds |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |

Table A - جدول أ

| Report on Inward Remittances | تقـــرير بالتحويلات الواردة |
|---|---|

| From / Date | To | إلـــى | من / تاريخ |
|---|---|---|---|
| Name of Hawaladar | | | اسم وسيط الحوالة |

| Name of Beneficiary | Beneficiary's place of work | Nationality | Passport No. | Transferred amount | Remitter's Name | Country of origin of funds | Purpose of transferring funds |
|---|---|---|---|---|---|---|---|
| اسم الشخص المستفيد | مكان عمل المستفيد | الجنسية | رقم جواز السفر | المبلغ المحول | اسم الشخص المحول | بلد وجهة الأموال | الغرض من تحويل الأموال |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |

Table B - جدول ب

## تقرير معاملة مشبوهة
## Suspicious Transaction Report

| To be filled by the concerned Hawaladar : | | | | يملأ من قبل وسيط الحوالة (الحوالادار) : |
|---|---|---|---|---|
| Full name of customer : | | | | الاسم الكامل للعميل : |
| Passport No. / Details of licence : | | | | رقم جواز السفر / تفاصيل الرخصة : |
| Nationality : | | | | الجنسية : |
| Details of suspected transactions : | | | | تفاصيل المعاملات المصرفية المشبوهة : |
| Remitter's Name & Address | Beneficiary's Name & Address | Amount | Inward transfer / Outward transfer | Country of origin / Destination |
| اسم المحـــول وعنوانه | اسم المستفيـــد وعنوانه | المبلغ | التحويلات الواردة / التحويلات الصادرة | مصدر التحويـــل / وجهة التحويل |
| | | | | |
| | | | | |
| Source of suspicion : | | | | مصدر الشك : |
| Signature of Hawaladar : Date : | | | | توقيع وسيط الحوالة (الحوالادار) : التاريخ : |

Table C - جدول ج

## "Mercosur: Money Laundering and International Cooperation"

**Dr. Pedro David**
**Judge, National Court of Criminal Cassation, Argentina**

### THE PROSPECTS OF A LEGISLATIVE HARMONISATION

Section 1 of the Asuncion Treaty sets up the Common Market of the Southern Cone (Mercosur).

It establishes, *inter alia*, 'the commitment of the Member Parties to harmonize their laws in the relevant areas, with a view to strengthening the integration process'. Such a harmonisation implies an intention to establish increasingly common criteria and similar patterns at a sub-regional level to deal with a specific set of rules that are currently dissimilar.

In doing so, a first step towards harmonisation could make use of assimilation practices between national legislation and common-market interests, by virtue of which judges may initially apply national legislation in their decisions while harmonisation is in progress. However, the possibility that such harmonisation may be achieved by the adoption of supranational laws cannot be excluded. Nor can the possibility of a common body for judicial decisions be excluded, a Court of Mercosur, apart from the already existing jurisdiction of the Inter-American Court on Human Rights, the Pact of San José, Costa Rica, which was approved in Argentina pursuant to Act 23054.

The Inter-American Court is a limited but encouraging sign of the prospective creation of a Mercosur Court of Justice. Furthermore, Argentina's Supreme Court of Justice has ratified the supremacy of treaties on national legislation, which leads to a less strict interpretation of s.100 of the Constitution of the Republic of Argentina.

In substantive and procedural criminal law matters, the Meeting of Justice Ministers, 6th-8th November, 1991, convened by Argentina's then Justice Minister, Leon Arslanián, was attended by Chile, Uruguay, Brazil and Paraguay representatives. It aimed at establishing the fundamental basis for understanding and cooperation to comply with the requirements of the harmonisation of laws as set forth in s.1 of the Asuncion Treaty. They agreed on instituting within the Common Market Group a meeting of Mercosur's Justice Ministers, to be supported by a technical committee comprised of representatives of the Justice Ministry. They also agreed on developing a common framework for legal cooperation in civil, commercial, labour and administrative criminal matters, special consideration being given to extradition and other modern developments in connection with the criminal law of nations. To facilitate cooperation among the Justice Ministers, the organization of central authorities was required. Likewise, a system for permanent exchange and updating of information in connection with the laws of the states parties, based on foreign law information agreements and information technology, was recommended.

The meeting advocated the harmonisation of the domestic laws of member states. To that end, it recommended the adoption of model legislation, with a particular emphasis on the existence of model codes for Latin America, in connection with civil law of procedure, criminal law of procedure and a model Criminal Code for Latin America. Finally, it recommended the enactment of common rules on international jurisdiction.

All this focused on the process of harmonisation of criminal policy in these countries. This will afford a great opportunity for adjusting criminal substantive law, the criminal law of procedure and the law pertaining to prisons or jails to new modes of transnational and national delinquency: the so-called white-collar crimes. As the pioneering work of Edwin Sutherland has indicated, white-collar crime encompasses a wide range of crimes with an organizational basis.

### ANTI MONEY-LAUNDERING PROVISIONS IN MERCOSUR MEMBER COUNTRIES

As far as money laundering is concerned, Mercosur member countries[1] are cooperating actively in this fight. Specific legislation against money laundering has been enacted in various countries. On 7th September, 1994, the Republic of Uruguay incorporated into its domestic law, by means of Act 16,759 the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988. In October 1997 some provisions of an executive order passed into Act 14,294 so that the types of crime related to the laundering of assets derived from drug trafficking and the financial sector were modified and extended to supplement the prevention of and fight against such actions.

[1] Countries integrated to form Mercosur are Argentina, Brazil, Paraguay and Uruguay.

Chile's Act 19366 of 1995 penalised illicit trafficking in narcotic drugs and psychotropic substances. It provides a legal definition of criminal offences for the laundering of money derived from drug trafficking and related crimes, and established rules of administration and jurisdiction aimed at both prevention and control.

Bolivia's Act of 19th July, 1988 considers narcotics trafficking an international crime that threatens international security and is contrary to international law. Act 1015 of 3rd November, 1996 governs the duties, proceedings and procedures to be used in the prevention of the use of the financial sector, or any other economic sector, for the carrying out of any acts aimed at the legitimisation of money or property flowing, directly or indirectly, from criminal activities prohibited by law. It also sets forth the types of crime related to property or money laundering and their respective punishments.

Act 9613 of 1st March, 1988 in Brazil provides a legal description of the crime involved in money laundering and concealment of property, rights and securities. Section 1 provides three to ten years' imprisonment for concealing or hiding the nature, source, location or transactions of properties or goods, rights or securities flowing from the illicit traffic in psychotropic substances or related drugs. Further, terrorism, smuggling, the traffic in weapons, ammunition or any material for the manufacture of weapons, kidnapping for ransom, offences against the public administration or the national financial system or offences committed by a criminal organization are also precursors for money-laundering offences. Act 9034/95, passed some time ago in Brazil, concerns instruments of evidence and investigation procedures for crimes resulting from the action of gangs or bands.

In Argentina, Act 23737/89 as amended provides that:

'Any person who, without having taken part or cooperated in the execution of the acts provided in this law, intervenes in the investment, sale, pledging, transfer or cession of profits, property or rights derived from them, or benefit obtained from the crime, shall be sentenced to two to ten years' imprisonment. He or she shall also pay a fine of Australes five hundred thousand, if he or she had known or suspected the source of such property. Any person who purchased, kept, concealed or hid those profits, property or rights or benefits having known or suspected its sources shall receive the same punishment. This section shall apply no matter whether the transaction which originated such profit, property, rights or benefits has taken place in foreign territory or not.

A court shall institute the procedures necessary to ensure that the profits or property supposed to be derived from the facts described in this law are forfeited. During the course of proceedings the interested party may prove its legitimate source, in which case the court shall order the restitution of the property or shall order the corresponding indemnification. Otherwise, the court shall dispose of profits or property as provided by that section.

**RECOVERY OF CRIMINAL ASSETS**

The Argentine legislation in relation to the recovery of criminal assets has been recently modified by Law 21.815 of 2003.[2] According to the new law; confiscation both of the instruments and gains of crime, is mandatory in all criminal sentences (Art. 23) in relation to all crimes of the Penal Code and special laws. All assets are included, personal and real corporal and incorporeal, cars, boats, and also real estate property in cases of kidnapping in respect of the house in which the victims were deprived of their liberty, that is when assets are elements of the perpetration of crimes. All restraint measures are authorized in order to secure the assets, whatever their economic nature might be. The law also modifies Art. 277 of the Penal Code, authorizing forfeiture of illegitimate assets when a person receiving them had reason to suspect, according to the circumstances of the situation, the legitimate origin of the transacted assets.[3]

All assets confiscated shall be allocated for programmes of victim assistance and support.

The criminal sentence in all cases, will decide forfeiture of the assets to benefit the federal state, the provinces or the municipalities. Bona fide parties and victims maintain, however, their rights to prove legitimate ownership. However, if third parties have received benefits from the crime they are subject to forfeiture procedures. If the forfeited assets possess a cultural value, the judge can decide to transfer ownership to public or private enterprises. If there is no value, assets could be destroyed. If they are of any commercial value the judge will

[2] Law 25.815 reforming Art. 23 and Arts. 277-279 of the Argentine Penal Code, ADLA Bol 32/2003.

[3] Palacio Laje. Decomiso y encubrimiento atenuado, La Ley 02/03/2004. Also Bulit Goñi, Roberto. Reformas al Decomiso y Encubrimiento. Adla. 2004-A-34.

order them to be sold.

In relation to restrain measures, Art. 231 of the Federal Procedural Code gives great latitude to the judge to secure all objects related to the crime and amenable of forfeiture.

The same code by Art. 518, authorizes the judge to adopt all restraint measures against the patrimony of participants even before ordering the initiation of criminal proceedings.

When there is danger in not acting swiftly (periculum mora and bonus fumus juris).

Let's remember here, that law No. 25.246, the money laundering prevention and repression law, in Art. 27, gives all forfeited proceeds of crime to the Unit of Financial Information, and to programmes of rehabilitation of addicts, and programmes of labour rehabilitation and health.

Law 25.246 has established that all assets will be allocated by the judge, to the National Executive Power during the duration of penal proceedings, to be administered by the state.

To these effects, since these assets should be under the administration of the state until devolution or forfeiture, the administrative authority should have a provisional reserve not less than 50% of all assets received in provisional manner.

The idea of establishing in the Argentine legal system a procedure similar to the American civil forfeiture has been advocated.[4]

The introduction of a lesser standard of proof in civil forfeiture will certainly help in the effectiveness of the efforts to prevent and repress serious forms of criminality.

Though the Argentine constitution in Art. 17 prohibits the confiscation of assets stating that confiscation should be for always barred from the Argentine Penal Code, the prohibition does not refer to assets related to criminality, but only to a total and general confiscation of all assets of a person.[5]

**HUMAN RIGHTS ISSUES**

Special consideration in relation to the protection of fundamental rights of due process, merits Art. 268, 2 of the Argentine Penal Code dealing with the offence of "illicit enrichment" of public employees.[6]

The Article punishes with imprisonment from 3 to 6 years and absolute inhabilitation from 3 to 10 years, those who duly required, do not justify a substantial enrichment of their patrimony, personally or of a person placed to abscond it. The Article is structured in the fashion suggested later by Art. 20, of the UN Convention against Corruption. Article 20 recommends countries to criminalize illicit enrichment subject to its constitution and fundamental principles of its legal system.

One of the principal objections to Art 268, 2 of the Penal Code is that it ignores the principle in dubio pro-reo introduced in 1889 in the Procedural Penal Code of the Federal Capital.[7] In this manner the crime of illicit enrichment is in fact a punishment for the crime of suspiciousness, a punishment extra-ordinem, (Verdachtsstraffe) applicable to crimes when it was not possible to get complete proof of its commission; and it was sanctioned with a lesser penalty.

Additionally, it was said, in the legislative debates of the times, that illicit enrichment would permit persecutions and vengeance against all functionaries whose patrimony could be in a light fashion, labelled "excessive".

The inversion of the onus probandi, is not the most serious objection, but the fact of the lack of determination

[4] Bulit Goñi, op.cit.

[5] Bidart Campos, Germán J., Manual de la Constitución Reformada, p. 129 (cited by Bulit Goñi).

[6] Law 16.648. BO 18/11/1964. Leer Sancinetti, Marcelo. El Delito de enriquecimiento ilícito de funcionario público, Art. 268,2 CP. Un tipo penal violatorio del Estado de Derecho.

[7] Sancinetti, op. At p. 43.

about what is the forbidden conduct.[8]

Finally, the fact that the accused has to produce proof to legitimize the prohibited conduct, implies violation of Art. 18 of the Argentine national institution, that nobody is obliged to declare against himself".

In concluding: let's add that the Argentine money laundering regime was based on Drug Law No. 23.737 enacted on 10 October 1989.

The law contained provision in order to authorize the seizing and forfeiture of assets related to illicit drug traffic and money laundering crimes.

**JURIDICAL AND TECHNICAL COOPERATION IN THE MERCOSUR**

There is an increasing interest on the part of Mercosur countries to strengthen cooperation mechanisms to provide effectiveness to the fight against money laundering and various forms of international transnational criminality, including the financing of terrorism.

The Mercosur countries have also signed accords of cooperation with the European Union in 1995.[9]

An important dimension to provide for more effective and practical ways to enhance international cooperation is provided by GAFISUD – the South America Group of Financial Action against Money Laundering and the Financing of Terrorism.

GAFISUD has organized a conference of countries in Cartagena de Indias (Colombia, 7 to 9 December 2000) signing a Political Declaration and many accords and projects to share experiences and technology.

One of the conclusions of the Conference of Cartagena de Indias was the importance, for countries of the area to enact legislative comprehensive frameworks to incriminate a vast array of crimes, and provide for innovative investigative procedures, including seizing and confiscation of criminal assets.

An important aspect was the need to establish UFI's, at the national level with mixed functions, police, penal and administrative. Gafisud, with the cooperation of the IMF and the World Bank, the Egmont Group and the Organization of American States have organized seminars for the coordination of regional strategies and the training of practitioners for mutual evaluation of the Units of Financial Investigations, inter alia, one in Santa Cruz de la Sierra, Bolivia (16-19 September 2001) and Montevideo, Uruguay, (18-20 September of 2002).

In summary, Mercosur countries are now pressing for a more effective and prompt response to the challenges posed by the increasing threat of economic criminality.

[8] Sancinetti, pp. 43-46.

[9] See Mendes de Souza Solanges. "Cooperación Jurídica en el Mercosur", Edit. Renovar, Río de Janeiro, Brasil, 2001, p. 277

## B. Talking Points Submitted by the Panellists of Panels 2 and 4

**Mr. Felix McKenna**
**Detective Chief Superintendent, Chief Bureau Officer, Criminal Assets Bureau, Ireland**

As a law enforcement officer I make the following observations and comments on measures to combat economic crime including money laundering.

Investment Fraud embraces a number of methods used by serious and organised criminals to defraud investors, typically involving non-existent companies or fictitious commodities. The value of these frauds can be very large. A well planned investment fraud might generate around €500,000 while one bogus investment company, the organisers of which are now serving prison sentences, defrauded customers of €3 million between 1995 to 1997. An investment fraud may involve individuals acting under the umbrella of a genuine investment company or through wholly fictitious or fraudulent investment brokers. Generous returns from money invested in the scheme are promised, the initial investors may be paid dividends out of the money received from later investors prolonging the life of the fraud, the deception is often elaborate, meetings are held in good hotels, fine restaurants or even in offices located within bank premises. The criminals are well dressed and carry one or two mobile phones which are constantly ringing during a meeting. Some fraudsters operate only via the telephone or email and discourage or continually cancel pre-arranged meetings. Victims are often encouraged to join by other investors (who turn out to be in league with the fraudsters).

### The Use of Information Technology in Economic Crime

From my own experience in the investigation of 419 frauds, also known as West African or Nigerian letter frauds; this type of fraud involves the victim being asked to facilitate the transfer of significant funds, usually from an account belonging to someone who has been forced to leave their country following political unrest. The fraudsters/conmen are willing to exploit any opportunity to achieve their aims and letters and emails have been noted asking for assistance to access money belonging to victims of September 11. Publicity in early 2003 raised local awareness in Ireland of this type of fraud and the Irish Police had a steady stream of reports throughout the latter part of the year amounting to nearly 300 reports. I am aware most internet service providers also now encourage their email account holders to report to them examples of 419 emails received, in order that they can bar the sender from sending such correspondence. Therefore, Information Technology is a means of creating an awareness in the general public to safeguard them against fraud.

### The Use of Whistle-blowers i.e. Bank Employees

My own experience in the investigation of Money Laundering and the concept of suspicious transaction reports to encourage staff/people to come forward, is that they should have some protection. Under Irish legislation i.e. the Criminal Justice Act 1994, Bank Employees who make unusual/suspicious transaction reports are given protection under the legislation to make such reports. In this hypothetical case the Bank Employee, if the legislation was in place, could have made a suspicious transaction or an unusual transaction report to a Senior Compliance Officer in their headquarters bypassing the Bank Manager if protection/safeguards were in place.

### Information Technology Used by Organised Crime

New Technology is used in crime, such as fraud, blackmail and extortion as well as paedophilia and child pornography. The national high-tech crime unit defines this type of crime as

A. New Crimes New Tools - New crimes committed against computers and IT networks which present new opportunities to criminals and new challenges to law enforcement agencies, e.g. hacking and viruses, denial of service attacks and spoof websites; and

B. Old Crimes New Tools - Traditional crimes supported by the use of the internet and new technology such as fraud, blackmail and extortion. Paedophilia, pornography, identity theft and cyber stalking.

High-tech crime has become a rapidly growing phenomenon over recent years, computers and in particular the internet provide great benefits for our society; however, there is a real threat that criminals will exploit these mediums, turning a tool designed to benefit society into a tool to help them commit crime.

**Prevention by Law Enforcement Officials of Schemes Prior to Victims Incurring Loss**

In practical terms, if this situation existed in Ireland and from a practical case point for law enforcement to identify large amounts of money in Ireland, there is a law, the civil restraint powers under the Proceeds of Crime Act, 1996 which enables law enforcement officers in Ireland to obtain a freezing order against all monies held in the bank accounts. This is done by the sharing of information from within the jurisdictions where the victims have transferred monies from and where law enforcement investigations are active and alive. The freezing order can then remain in force until the principals are apprehended in due course and the monies are therefore protected and safeguarded for the safe return to the victims.

Additionally, under our money laundering legislation, provisions are available in some jurisdictions for a restraint order to be placed over monies such as in this example. However, also there are provisions in money laundering legislation in Europe and in Ireland, whereby the financial institutions identified in this hypothetical case are alerted to a money laundering investigation proceeding in their country or an adjoining country and thereby a letter indicating that if they deal or transmit any of these monies, they are then involved in the conspiracy or involved in aiding and abetting money laundering and the accounts can be locked by means of a letter to the bank which will have the effect of freezing any monies held there.

**The Common Law Approach - Tracing and Confiscation of Assets**

Based on the Proceeds of Crime Act, 2002 in the United Kingdom and the Criminal Justice Act, 1994 as amended in 1999 in Ireland.

Common law systems of criminal confiscation focus on the prosecutor applying to a designated court or the court of trial for the investigation in the court as to the extent of the benefit which a convicted person made from criminal activity. In drug related cases the investigation can extend beyond the particular offence to all associated drug related crime. Where crime other than drug related crime is involved, the investigation is likely to be limited to a specific crime of which the person was convicted. The investigation aims at imposing on the convicted person, a legal obligation to pay to the State the sum assessed as the value of the benefit. The order does not focus on any one particular property and the defendant can decide on which steps are needed to discharge the obligation. If he fails to do so he runs the risk of imprisonment in default.

While the benefit investigation aimed at the confiscation order can only take place after conviction, assets may be restrained prior to the trial to ensure that they are not dissipated. The restraint is likely to be against all the assets of the defendant, though cases of assets are likely to be identified. Assets in the name of third parties which are believed to be the property of the defendant can also be restrained. Restraint orders will usually allow money to be paid out for living expenses even for the carrying out of a business. The prosecutor might ask the court to appoint a receiver or manager to preserve the restrained assets.

During the investigation the prosecution will have the advantage of certain presumptions. These include a presumption that property acquired by the defendant after a certain date in the statute, usually 6 years before the charge or after conviction, was obtained as a result of the criminal conduct and that any expenditure incurred by the defendant after a certain date was met from property obtained as a result of the criminal conduct. These presumptions can be rebutted by evidence from the defendant. At the confiscation hearing the standard of proof is the lower balance of probabilities test rather than the higher beyond reasonable doubt test which is the one generally applied to criminal matters. Thus the court starts from the position that the defendant's property was obtained illegally and that it is up to him to show that it is, or part of it was obtained legitimately.

The confiscation hearing will probably not follow immediately after the conviction, there could be a number of adjournments while the prosecutor or agency collects evidence of benefit. The confiscation order will not be for the entire amount of the benefit but will be limited to a sum which can be realised in the hands of the defendant. However, there is usually a power to re-open the assessment of benefit even after the conviction order has been made if new information about the size of the benefit or of the assets available to the defendant comes to light.

**Civil Forfeiture and the use of Tax Powers**

The modern use of legal processes focusing on the assets produced by the criminal activity rather than on the guilt or innocence of specific offenders started with US developments in the 1980's, powers of civil confiscation had existed since the 18$^{th}$ Century and the US Customs Laws. The concept of civil forfeiture has withstood constitutional challenges in the US Supreme Court. The court decided that civil forfeiture was not a criminal

sanction and was constitutionally acceptable so long as the individual case was not grossly disproportionate to the gravity of the offence.

Parallel to the US developments was the introduction in Italy in 1982 of a law which allowed the courts to seize the assets of persons belonging to a mafia conspiracy and of relatives or associates suspected of holding assets for them. These provisions were later challenged before the European Court of Human Rights and were found that they were acceptable as proportionate preventative measures. In N - V - Italy in 1991, the applicant argued that civil forfeiture was punishment without a conviction and thus breached Article 6, subsection 2 of the European Convention of Human Rights but the Commission on Human Rights said that the proceedings did not include a finding of guilt and thus the applicant never acquired the status of an accused person.

Special legislation was introduced in Ireland in 1996 to serve the civil restraint of assets which are believed to be the proceeds of crime and if they are not claimed by a legitimate owner within 7 years they can be transferred to the State. The court must accept that the belief in criminal origin is reasonable. The process is run by an agency made up of police, revenue and social welfare officers. The Irish legislation is unusual in that the same agency uses Revenue powers to tax the income accumulated by criminals from criminal activity.

The Proceeds of Crime Act 1996 introduced a new cause of action of a freezing order leading to eventual civil forfeiture. Asset focused in rem rather than in personam. It is a freezing process with a confiscation application after seven years, limited to property over €13,000. Civil standard of proof, no conviction needed. See the UK case of McCann 2002 on what the civil balance of proof means in an anti-social behaviour case. The applicant's belief can go into evidence. Limited but significant exception to the hearsay rule. Must be reasonably grounded. Shifts or shares the burden of proof when the CAB makes a statable case. Payment out applications for legal services, etc. Use of receivership orders. Ireland sells the assets rather than manages.

The tax approach used in Ireland and in the latter UK law has the advantage of incorporating heavy revenue penalties and interest and provisions for reversing the burden of proof which have long been considered acceptable in tax cases. This approach is only feasible in States with elaborate and well resourced tax enforcement systems and where virtually all the population are recorded on the tax system. The law can provide that a citizen with a mysterious income must show that all tax obligations have been met. The tax authorities are only interested in the existence of income whether its origin is legal or illegal should be irrelevant. There is no need to trace particular assets or associate them with particular crimes.

Some tax codes include powers to freeze and seize assets while the tax obligations are clarified. The tax approach has the advantage that it is morally neutral while, through the collection of substantial arrears interest and penalties, it can effectively remove the criminal profits and get the income and indeed the tax payer into the legitimate economy. This approach has fewer human rights and constitutionally difficulties except that the special revisions for criminal profits will constitute a form of discrimination requiring a rational justification. In addition civil tax enforcement powers can be used in combination with criminal penalties for tax offences. In order to make it effective, special provisions had to be introduced to allow for the sharing of information from tax records with the officers investigating the assets.

In Ireland, a special agency called the Criminal Assets Bureau was set up in order to tackle and deprive organised crime of their profits.

**Suspicious Financial Activity Reporting and the Scale of Activity**

The scale of Money Laundering activity is very difficult to estimate on a global spectrum. As well as making extensive use of cash, serious and organised fraudsters will often go to great lengths to avoid arousing suspicion with the regulated financial sector and suspicious financial transactions, including cash payments, to aid disclosure regime. However the use of the regulated sector is unavoidable if serious and organised fraudsters wish to legitimise their criminal proceeds (like in our hypothetical case).

One way of laundering money, particularly at the layering stage is to invest in financial products with a view to selling them quickly. The use of insurance policies, share portfolios or high yield savings accounts to launder funds often involve incurring penalties for the early withdrawal of savings or the closing of policies or the selling of shares at a loss. Serious and organised criminals, particularly major fraudsters may and are prepared to bear such costs if they perceive that the overall risk of detection is lower than other money laundering methods. Given

that some level of financial expertise may be needed to launder money effectively in this way, this is an area where criminal fraudsters may look to corrupt a financial professional in helping them, as occurred in this hypothetical case with the Manager, Mr. A.

**Banks & Financial Services Providers who are at Risk by Money Launders**

All banks and financial service providers are at risk of being used to facilitate money laundering. Large banks and financial service providers which provide a wide range of financial products and services and which also have operations in both high and low risk jurisdictions may be particularly at risk. Although the money launderer faces the challenge of due diligence checks being carried out by those larger institutions, they are attractive to money launderers because their size and reputation mean that receiving institutions in other countries are likely to ask fewer questions about transfers of money. As with what happened in this hypothetical case where money is being transferred from a major bank to a number of minor banks in another jurisdiction.

Mr. A in the hypothetical case, who is the bank manager, allowed himself to be the victim of serious and organised criminals, as in this case fraudsters to assist them to launder monies by providing the expertise and inside information in respect of the activities of the bank. Mr. A may well have carried out his activities as a result of a lack of awareness or curiosity amongst bank managers who may be used to launder money, some may turn a blind eye or there may be a degree of collusion. In the latter instance, the professional may not be an entirely willing accomplice, as Mr. A may not be in this case, since serious and organised criminals are often prepared to use intimidation as well as other inducements to obtain the help they need.

**The Use of Front Companies and High Cash Businesses**

Serious and organised criminals frequently launder cash through legitimate and quasi-legitimate businesses. These businesses are often owned or part-owned by criminals or their associates, although legitimate businessmen may also be duped into providing means for laundering criminal proceeds. The businesses typically have a high cash turnover, this makes it easier for criminally acquired cash to be mixed in with legitimate funds, e.g. restaurants, nightclubs, fast food outlets, tanning salons, taxi firms, car sales or repair companies.

These are my observations and comments on economic crime with some references to the exposures in the hypothetical cases.

**Justice Anthony Smellie**
**Chief Justice, the Supreme Court, Cayman Islands**

I have been asked to speak to the hypothetical case[1] scenario with particular focus upon the position of offshore jurisdictions, coming, as I do, from the Cayman Islands.

One should begin by setting the context for the discussions. The true implications of the case scenario and the true nature of the position of offshore jurisdictions, can only properly be considered by acknowledging the increasing globalisation of crime.

While international crime is not a new phenomenon,[2] the increasing concern about cross-border crime of all kinds, and its implications for the international community, is clearly manifested in the very theme of this 11th U.N. Congress.

Modern economic and social conditions have combined to create a situation that is readily exploitable. The increased mobility of people across borders, the seemingly ungovernable technology of the internet, the creation of the free market in goods and services and the encouragement given to the free movement of capital, have all enabled the growth of cross-border criminality and the internationalisation of criminal enterprises. These concerns are for instance, clearly expressed in the European council's opening statement in its first 30-point action plan to combat organised crime;[3]

> *"Organised crime is increasingly becoming a threat to society as we know it and want to preserve it. Criminal behaviour is no longer the domain of individuals only, but also of organizations that pervade the various structures of civil society, and indeed society as a whole. Crime is increasingly organizing itself across national borders, also taking advantage of the movement of goods, capital, services and persons. Technological innovations such as the internet and electronic banking turn out to be extremely convenient vehicles either for committing crime of for transferring the resulting profits into seemingly licit activities. Fraud and corruption take on massive proportions, defrauding citizens and civic institutions alike".*

To this litany of weaknesses must regrettably now be added the ability of terrorist organisations to access the international financial system.

Offshore financial centres, as part of the phenomenal emergence of this new global economy, are by definition no more or no less prone to being abused by the organized criminal than other financial centres.

The Caribbean region encompasses several such jurisdictions.[4] It has therefore been important that the Caribbean regional response, in the form of the Caribbean financial action task force (the CFATF) as an offshoot of the financial action task force of the g15,[5] has been a signal success. Through its mutual evaluation process, all CFATF member states have been evaluated and now meet at least the minimum standards set by the FATF and the Vienna convention.[6]

---

[1] See Annex 1 "Management of the Hypothetical Case".

[2] International cooperation and strategies for dealing with cross-border crime date back to at least the 17th century, and are commonly to be found in Treaty laws which establish or confirm them (see N. Boistev "Transnational Criminal Law" 2003 EJ1L).

[3] [1997] OJ C.251/1] Similar sentiments are expressed in the second version of the Plan which was created because of the problems created by lack of harmonization of laws and procedures across the member states of the E.U.: "The Prevention and Control of Organized Crime: A European Union Strategy for the New Millennium". Accompanying this, the Commission created a new scoreboard system to monitor the progress of the states in both of the Action Plans (http://www.ex.ac.uk/politics/pol).

[4] Within the Caribbean region, the Cayman Islands apart, the following countries have or are developing different levels of international financial services industries: Anguilla, the Bahamas, Barbados, the British Virgin Islands, the Netherlands Antilles (Aruba, Curacao), Costa Rica, Panama and the Turks & Caicos Islands. (Bermuda, which is a mid-Atlantic territory, is often referred to as one of the regions offshore centres).

[5] First convened in Aruba, June 1990 when the conference of representations of Caribbean regional states resolved to adopt the 40 recommendations of the G15 Financial Action Task Force on money laundering as well as 21 original recommendations (later reduced to 19) of their own.

[6] For a summary of the first mutual evaluation report on the Cayman Islands see www.1.oecd.org/fatf/FATdocs_en.htm.

The Cayman Islands assumed a leadership role in the formation of the CFATF and was the first member state to be evaluated.[7]

With the major international financial centres, including the Cayman Islands, having criminalised the laundering of the proceeds of crime and having adopted measures to ensure that mutual legal assistance can be given for the restraint and confiscation of the proceeds,[8] such centres can fairly be regarded as having taken important initial steps to combat and discourage economic crime. Indeed, experience has shown that the likelihood of criminal proceeds being restrained and confiscated is highly increased once they enter a well regulated jurisdiction such as the Cayman Islands.[9]

It is against this background, which for some will no doubt present a paradigm shift, that one should consider the position of offshore centres when examining the hypothetical case scenario which we have.

The term “offshore” is relative and properly understood in the context of global financial activity taken shorn of pejorative connotations means simply that a foreign jurisdiction is regarded as offering certain advantages typified by a low or preferential tax regime, relative to a local jurisdiction.

So, for instance, New York or London may be regarded as an alternative offshore centre for investments relative to states in mainland Europe; Singapore or Hong Kong relative to the rest of mainland Asia or the Cayman Islands relative to mainland America.

No less a body than the IMF has concluded that so-called “offshore” jurisdictions play an important role in managing and facilitating the flow of international capital and pose no threat to world economic stability.[10]

That being the relative position of offshore jurisdictions, it cannot be over-emphasised that the nature of the responsibility of offshore jurisdictions to interdict international crime or to assist in the recovery of assets or proceeds, is no different from that of the rest of the global economic community.

There can therefore be no question that offshore financial jurisdictions share the same universal

---

[7] For a list of the rounds of evaluations through 2000 see “Mutual Evaluations” at the same web site.

[8] The Vienna Convention having been adopted by more than 150 countries and with Article 7 containing a form of mutual legal assistance arrangement in respect of drugs cases and the proceeds of drug trafficking, mutual legal assistance is now globally available in relation to such matters. The United States of America has MLATS with 33 other countries, including that between the United States and Great Britain on behalf of the Cayman Islands, which was the third such and was ratified by the Cayman Islands legislature in 1984.

[9] Apart from the mutual evaluation process of the CFATF and the rather less transparent “blacklisting” process of the FATF, the Cayman Islands has co-operated with and participated in several international or institutional initiatives for the enhancement of anti-money laundering and regulatory regimes. The most recent such initiative has been taken by the IMF which, in a two volume report on the Cayman Islands noted: “A sound legal basis and robust legal framework for combating money laundering and terrorist financing has resulted from major regulatory revisions and improvements in the past four years” and “An intense awareness of anti-money laundering and combating the financing of terrorism (AML/CFT) is supported by a sound supervisory programme. The Cayman Islands has been a leader in developing anti-money laundering programs throughout the Caribbean region”. Both volumes of the IMF Report on the Cayman Islands are available at www.imf.org or www.gov.ky. Offshore Financial Centres (OFCs), to date do not appear to have been a major causal factor in the creation of systemic financial problems....Not all OFCs are the same. Some are well supervised and prepared to share information with other centres, and co-operate with international initiatives to improve supervisory practices. (See Financial Stability Forum - Report of the Working Group on Offshore Centres, 5th April 2000 at www.fsforum.org/publications/OFC_Report_-_5_April_2000a.pdf ).

[10] See Report of the FSF Working Group on Offshore Centers, 5th April 2000 at www.fsforum.org. See also address by the Cayman Islands Government to the OECD Forum on Harmful Tax Competition: Paris, France, 30 August 1999. The Cayman Islands is recognized as one of the leading offshore centres offering the following major advantages: (i) a competent and efficient public service; (ii) a competent, fair, flexible and unencumbering regulatory system; (iii) stable, democratic, even-handed and transparent government; (iv) a highly developed and sophisticated legal system based upon British common-law; (v) an independent and respected judiciary and judicial administration; (vi) a highly skilled and knowledgeable body of professional expertise; (vii) a sophisticated and knowledgeable private sector, providing all types of ancillary goods and services required by the financial sector; (viii) the presence of all the world’s major banks and financial houses; (ix)modern infrastructure; (x) geographic proximity to some of the world’s largest economies and; (xi) a relatively crime-free and hospitable social environment; (xii) and, of course, a competitive no tax regime including no tax on capital gains.

responsibilities and burdens for the interdiction and prevention of economic crimes.[11]

There are, however, often different dynamics at work in the manner that offshore jurisdictions become involved with economic crimes and these must be identified and recognised in order to ensure the best coordinated and most effective response, in conjunction with other jurisdictions.

Typically, as in the given hypothetical case scenario, the predicate crimes are committed elsewhere, and the proceeds sought to be kept in or laundered through an offshore centre, such as, in this case, the Cayman Islands.

The connection with the offshore jurisdiction will therefore typically arise because the proceeds have been transferred there in the hope of secreting them away or of laundering them through the international banking system for onward transfer to yet another jurisdiction or back to the first jurisdiction; with the origin of the proceeds being thus disguised.

Often, the predicate criminal will also seek to launder the proceeds through intermediaries - personal or corporate – both in the jurisdiction of origin of the proceeds and in the offshore jurisdiction.

He will seek to exploit the differences between the laws and enforcement regimes that exist from one state to the other. Often the victims of crime will be in one country, the perpetrators of the crime in a second country, the evidence required to prosecute or recover the proceeds in a third, whilst the proceeds themselves are in a fourth. This all points to one fundamental and common objective: the harmonisation of national laws and procedures to enable the prosecuting state to prosecute the offender, to secure the evidence and to recover the proceeds.

When considering the dynamics of economic crime, these concerns bring into sharp focus the importance of three specific factors:

(i) The ability of the legal and law enforcement systems of the original or first jurisdiction to interdict the predicate offence and to prevent its financial system from being used for money laundering;

(ii) The ability of the international banking systems – operating as between all the affected jurisdictions – which are used for the transfer of the proceeds, to detect and prevent money laundering; and

(iii) The ability of the offshore jurisdiction at the receiving end of the spectrum, also to detect and prevent money laundering, as well as to restrain and recover the proceeds of crime and to honour requests for international legal assistance.

The point to be emphasised is that the greater the lack of symmetry between the laws and the enforcement capabilities of countries, the greater is the potential for the exploitation of the international financial system by the criminal.

Our hypothetical case provides a useful practical scenario that brings together for discussion, many of those concerns described above. The central core of the facts of the hypothetical case actually represents the facts of a real case, dealt with between the United States and the Cayman Islands. It was a case which engaged the Cayman Islands authorities and went as far as the Cayman Islands Court of Appeal, over a period of some three

[11] Apart from this principle now being reflected in the universal adoption of the Vienna Conventions, of the FATF 40 original recommendations and the widening adoption of the U.N. Convention.
"Offshore" jurisdictions have through, the Offshore Groups of Banking Supervisors formed in 1980, long since adopted the Bash Concordat of 1992 in "Minimum Standards for the Supervision of International Banking Groups and their Cross-Border Establishments". In the Bash Committee's Report of 8th October 1996, 29 further recommendations were adopted designed to strengthen the effectiveness of the supervision by home and host-country authorities of banks which operate outside their national boundaries. For this Report at www.bis.org/publ/bcb585.htm.
The view was taken at the United Nations Offshore Forum held in the Cayman Islands on 30th - 31st March 2000 and hosted jointly by the UNODCCP and the Cayman Islands Government, that the responsibility to adopt and enforce counter-measures against financial crimes is globally the same. The implementation of international standards and compliance thereto are all issues with which the well regulated offshore centres, like the Cayman Islands, have already been addressed: See FATF Twelfth Annual Report on Money Laundering, Paris, 22nd June 2001.

years. Many lessons were learnt from it, not least the importance of ensuring that international requests for assistance by way of the restraint and forfeiture of the proceeds of crime, are properly grounded; and this was both in terms of the law of the requesting state, as well as that of the requested state.

**The Circumstances of the Case**

Mr. and Mrs. McCorkle were the perpetrators of a bold tele-marketing fraud in the United States. Through the use of "infomercials" and seminars, the McCorkles promised potential customers that they would partner them in real estate transactions by providing the capital necessary to purchase such properties. The McCorkles offered a 30 day money-back guarantee in relation to the introductory video-tape, the price of which was USD69.00. They sold tens of thousands of these tapes. But the McCorkles failed to provide the capital for the real estate ventures as promised and frequently failed to honour the 30 day money back guarantee. When complaints were made, the introductory video-tape turned out to be nothing but a fraudulent misrepresentation by which the McCorkles enticed people to part with their money. Investigations in the United States showed that the McCorkles had wire-transferred millions of dollars of the proceeds of their fraudulent telemarketing activities to the Cayman Islands, through the international banking system.

By use of further information provided by the Cayman authorities pursuant to a request under the mutual legal assistance treaty (MLAT) between the United States and the Cayman islands - these monies were traced to accounts which had been opened with the Royal Bank of Canada by the McCorkles in the Cayman islands, using corporate entities and in their own names.

The request from the United States for assistance in the case fell within the ambit of Art. 1 Para 2 (g) and (h) of the MLAT which is enforced by the mutual legal assistance law of the Cayman Islands.

This reads:

> "for the purposes of Paragraph 1. Assistance shall include ...
> (g) immobilising criminally obtained assets;
> (h) assistance in proceedings related to forfeiture, restitution and collection of fines ..."

No detailed provisions are set out in the treaty for the implementation of these forms of assistance. However Art. 16 states:

> "1. The central authority of one party may notify the central authority of the other party where it has reason to believe that proceeds of a criminal offence are located in the territory of the other party.
>
> 2. The parties shall assist each other to the extent permitted by their respective laws in proceedings related to;
> (a) the forfeiture of the proceeds of criminal offences.
> ...".

The request for restraint of the bank accounts came to the Cayman Islands from the United States in early 1997, shortly after the enactment of legislation in December 1996, which makes it a crime to launder the proceeds of all serious crimes and which gives power to the courts of the Cayman Islands, to restrain and ultimately to forfeit such proceeds. Legislation had been in place from 1986 enabling the restraint and forfeiture of the proceeds of drug trafficking[12] but as these were the proceeds of the McCorkles' fraud, the new 1996 law, the Proceeds of Criminal Conduct Law ("the PCCL") applied to the case.

However, being conviction based, the PCCL required the showing of a prima facie case that a conviction would be obtained against the McCorkles and a confiscation order thus likely to be obtained against them, before a restraint order over the accounts could be obtained.[13] This involved showing that criminal proceedings would be brought against the McCorkles themselves, not just civil "in rem" proceedings for the recovery of the proceeds of their fraud.

---

[12] The Misuse of Drug Law, which also contained provisions (prior to the advent of the Vienna Convention) for the restraint and forfeiture of drugs proceeds in aid of a foreign request from a designated country, including in respect of foreign *in rem* proceedings.

[13] See Attorney General v Carbonneau et al [2001 CILR Note 11].

The PCCL further required at that time, that the United States authorities, if they did not already have such proceedings instituted against the McCorkles, must have, within 7 days of the restraint order being obtained in the Caymans, instituted such proceedings.

When, after the passage of more than 7 days after the making of the restraint order by the Cayman court, the U.S. authorities had not managed to institute proceedings against them; the McCorkles sought and obtained an order discharging the restraint orders.

The Grand (high) Court held that the restraint order being in place for more than 7 days without the institution of criminal proceeding in the United States exceeded the jurisdiction given by the PCCL.[14] The court of appeal agreed.[15] The provision in the MLAT which required that assistance be given, including for the restraint and forfeiture of criminal proceeds, could operate only insofar as allowed by local law. Orders for costs were also made in favour of the McCorkles against the Cayman Attorney General, albeit without his opposition.

Fortunately, however, the United States authorities were able to institute proceedings against the McCorkles and re-submit a request under the MLAT for restraint orders, before the McCorkles were able to transfer the funds out of the Cayman Islands.

The accounts were restrained again and, when the McCorkles entered into a plea agreement with the U.S. authorities, most of the funds in the Cayman Islands - approximately 7 million dollars - were immediately returned to the U.S. authorities for restoration of the victims.

As it transpired, further funds totalling over USD2.5 million which the McCorkles had given over in trust to their attorneys in the Cayman Islands to be used as their “legal defence fund”; became the subject of more protracted litigation. Their lead attorney in the United States was charged for refusing to pay over much of that trust money, which the Cayman attorneys had paid to him, purportedly as legal fees for his representation of the McCorkles. Only after his imprisonment for contempt did he reluctantly relinquish the fund.

Still further sums of money (approximately $450,000) came to light much later when it was discovered that the McCorkles had opened other accounts with the banks in the Cayman Islands and those sums of money were only recently - more than 6 years later - returned to the United States authorities.[16]

Another point of interest arising in the Cayman Islands from the McCorkle case had to do with the non-retrospectively of the PCCL which had come into effect only so shortly before that case came to light. On behalf of the McCorkles, it was argued that the provisions of that law could not apply to their case because the monies had been in the accounts in the Cayman Islands before the law came into effect and, as the PCCL was expressed in section 2 (4) not to have retrospective effect, the powers could not be used to restrain or forfeit the accounts. The Court of Appeal held that although the law did not have retrospective effect, since the McCorkles’ criminal activity of laundering the proceeds within the Cayman Islands was an ongoing scheme of deception, both before and after the commencement date of the PCCL, a purposive construction could be applied to permit assistance being given to the United States authorities under the law.[17]

At the end of the day, and after the matter of restoration of the victims of the fraud was settled, there turned out to be a significant amount of the McCorkles’ proceeds of crime available to be shared between the U.S. Department of Justice and the Cayman Islands authorities.

Such proceeds are to be applied, in keeping with the spirit (if not the letter) of the U.S. – Cayman asset sharing agreement; to drug rehabilitation, law enforcement and justice administration programmes.[18]

It will be apparent from the McCorkle case that there are many lessons to be learned:

---

[14] See In re McCorkle 1998 CILR 1.

[15] Affirmed by the Court of Appeal. See 1998 CILR 224.

[16] By Order of the Cayman Island Grand Court dated 4th November 2003 (containing $330,000 of which the Legal Defence Fund contained $300,000) and 10th August 2004 (containing $121,000).

[17] 1998 CILR 224 at 235 lines 5-12.

[18] This sort of statement of intention is now standard rubric in Asset Sharing Agreements.

1. The importance of due diligence to prevent the misuse by criminals of the financial system at all levels and stages of transactions: domestic, international and offshore.

2. Equally, the importance of ready access to financial records generated at all levels and stages of the financial systems in order to be able to trace, restrain and recover the proceeds of crime.

3. The unending ingenuity of the money launderers in the creation and use of artifices for the laundering and even the apparent alienation of proceeds of crime from themselves. Witness for instance the use of the McCorkles of different corporate entities and even the legal defence trust fund, in their attempt to put proceeds beyond the reach of the authorities. This ingenuity calls not only for due diligence, but also hand in hand with due diligence, constant study and analysis of the methodologies and typologies of money laundering.[19]

4. The importance of having in place effective mutual legal assistance arrangements for the provision of information to trace and restrain and ultimately, to forfeit the proceeds of crime.

5. That point noted, the importance also of compliance with any deadlines or other requirements of foreign law in the place where the restraint and forfeiture of the assets are to take place. In the ultimate spirit of cooperation, it is pleasing to note that the 7 day deadline imposed by the Cayman law was recognised by the Cayman government as imposing too short a response time for the U.S. authorities for the institution of proceedings; and so the PCCL was amended to allow 14 days from the making of the restraint order.

6. Nonetheless such deadlines, as well as the ultimate requirement upon the requesting state, to be able to provide a conviction based order of forfeiture before the proceeds can be forfeited in the requested state, are unnecessary obstacles to the proper and final objective of depriving the criminal of the proceeds of crime. Those requirements point to the need for the adoption of international standards for the civil *in rem* forfeiture of the proceeds of crime. And thus, without the need, in the first place, to obtain a conviction against anyone for the predicate crime which produced those proceeds or for laundering them. Several states, including a number of the G8 countries; have adopted such civil *in rem* provisions for forfeiture.[20] The universal adoption of the civil in rem provisions to enable direct recourse against the proceeds of crime would be a most significant step towards the ultimate objective of harmonisation of laws and procedures relating to the confiscation of such proceeds.

7. The need where anti-money laundering legislation is being introduced or updated, to recognise that money laundering is a continuing offence and so allow for the restraint and forfeiture of the proceeds which were in the banking system before, but which continued in it, after the law came into effect and after the money laundering offence was created.

8. Such legislation must also of course allow for the restraint and forfeiture of proceeds based upon a foreign request and for the enforcement of the forfeiture orders (including ideally foreign in rem orders) of foreign courts.

   The Cayman Islands legislation now allows for this where the orders come from courts of foreign countries which are specifically designated under the law.[21]

9. As to the matter of legal costs, it is important in the public interest that the authorities in a requested state should not be at risk of having to pay the legal and other costs of the alleged criminals or money launderers resulting from an unsuccessful but bona fide attempt to enforce a foreign request to restrain or forfeit the proceeds of crime.

   Costs were ordered against the Crown in the McCorkle case when the restraint orders were at first discharged, but that order was unopposed by the Attorney General.

---

[19] A fact which is recognized by the CFATF and the FATF in their annual programmes of analysis. See “Money Laundering Methods and Trends”: www1.oecd.org/fatf/fatdocs_en.htm#trends.

[20] For a survey of the adoption of this type of provision, see Smellie: “Prosecutorial Challenges in Freezing and Forfeiting Proceeds of Transnational Crime and the use of International Asset Sharing to Promote International Co-operation,” Journal of Money Laundering Control, Vol. 8. No. 2. November 2, 2004, Henry Stewart Publications.

[21] See Cayman Islands Proceeds of Criminal Conduct Law (2003 Revision) Section 29 and The Misuse of Drugs Law (1999 Revision), Section 48.

Since then, such orders have been repeatedly refused by the courts of the Cayman Islands on the basis, as was stated in the latest such judgment:

> *"Having received the request from France, the Attorney General's obligation was to carry the matter forward and seek a ruling, as he did. I think he would have opened himself to justifiable criticism if he had said to the French government that he was refusing to bring the application [(for restraint of certain bank accounts)].*
>
> *These are matters which I can and should take into account when exercising my discretion on the subject of costs. When acting at the behest of a foreign government the Attorney General is not "a litigant like any other" [(quoting the standard dictum applied in costs ruling)] —- I have concluded that it would be inappropriate to award costs against the Attorney General on the present application".*

Per Henderson J. In cause 10 of 2003, in the matter of an application by the Attorney General pursuant to the proceeds of criminal conduct law (2001 revision), in the matter of a request by the French government, and in the matter of Pierre Falcone (defendant), judgment given on 11th February 2004.

10. Finally, the importance of asset sharing as a means of enhancing international co-operation and law enforcement is not to be overlooked. The McCorkle case is but one example of many cases in which asset sharing has taken place as between the United States and the Cayman Islands in respect of assistance given in the tracing, restraint and recovery of the proceeds of crime.

**Ms. Nina Radulovic**
**Counsellor, Commission for the Prevention of Corruption, Slovenia**

**Key points of the intervention:**

- Organizational integrity;
- Integrity and reputation of the bank;
- Transparency;
- Authorizations and supervision (no one-person decision);
- Whistle-blowers' protection;
- Harmonization.

We can easily imagine somebody breaking internal rules also in the public sector. Mr. Alan from our hypothetical case (taken from the private sector) took the opportunity and succeeded. By self-dealing he breached his duty of care and duty of loyalty to his employer and also business judgment rule. His decision was neither reasonable nor rational (from the point of view of the bank).

Improving integrity based management relies on incentives and encourages good behaviour. Thus it is needed in both sectors, since the public sector deals with resources entrusted to it and private sector entities have obligations to their investors.

I am going to ask you a question: Why do you keep your doors locked? The reason is pure and simple - prevention. We can prevent opportunities becoming a reality by systematic and organized methods in both sectors. Finebills bank could – in our case – self-asses its internal organization and decision-making system by detecting vulnerabilities and foreseeing the possible *modus operandi* of wrongdoers. Detecting vulnerabilities leads us to raising awareness. They could for instance check whether internal rules exist, if employees are familiar with them, and the most important, if they actually use the rules. Mr. Alan failed as we have seen. Transparency could be improved by a clear division of tasks and the four eyes principle.

According to the economic crime survey up to 86% of all economic crime detection came from audits and whistle-blowers.

Let me explain the last term. "Whistle-blowers" is *terminus technicus* for informants; those who disclose misconduct.

This brings me to the importance of their protection. Creating safeguards for whistle-blowers on a national level is the basis. The bank should build the protection of its employees-whistle-blowers from detriment (detriment might include different forms of discrimination such as denying overtime or promotion, reassigning work, reducing pay or hours - to name just a few of them) into its internal system. Creating a good working environment, fostering open communication and encouraging discussion of problems and issues, checking references and personal integrity (know your employee principle) and rotation of staff might serve as a precondition and prevention. Disclosures made to a supervisor or legal advisor in good faith and with reasonable belief should be protected.

Exchanging best practices and experiences, including problems among private entities themselves and among the private and public sector, would help to foresee and prevent possible unwanted situations – consumer fraud for example in this hypothetical case.

**Mr. Tony Kwok Man-wai**
**Former Deputy Commissioner, Independent Commission Against Corruption**
**The Hong Kong Special Administrative Region of China**

**Introduction**

Firstly, I wish to declare that I will be speaking in my capacity as an individual expert, not a representative of Hong Kong. I am an expert on corruption, having served in the Hong Kong Independent Commission Against Corruption (HK ICAC) for 27 years. In HK ICAC, we dealt with not only corruption but also all corruption related crime, including economic crime. Based on the hypothetical case, I have the following observations and comments.

- In the investigation of economic crime, one should not overlook the possibility of corrupt involvement in the hypothetical case, it is highly likely that corruption may be involved in the following scenario:

  - There might be a corrupt relationship between Mr. Alan & Mr. Banner. It would be inconceivable that Mr. Alan had abused his position purely due to friendship, without obtaining some sort of advantage from Mr. Banner.

  - Lawyer/accountant accepted an advantage from Ms. Chung in setting up the shell company.

  - Instead of retrieving bank data from rubbish bins (which is rather unlikely these days), bank staff might accept an advantage in divulging a client's information.

  - Bank staff of Goldfingers Bank accepted an advantage in assisting Ms. Chung to open the account.

  - Mr Alan accepted an advantage from Ms. Chung for giving a false bank assurance.

  Hence one must also investigate all the possible corruption. If we want to be effective in tackling economic crime, we must ensure that private sector corruption is a criminal offence.

- Secondly we should spread our investigation net wider to cover other possible offences. On the breach of trust in regard to the loan, there is also a possible offence of bank fraud, i.e. the bank has been deceived by its own staff and client in awarding the loan. The investigation will entail meticulous examination of bank documents.

- In Hong Kong, we had lots of criminal prosecutions of such cases. Apart from the typical offences of conspiracy to defraud and deception, we can also prosecute offenders for false accounting and forgery. It is also an offence when an agent (employee) uses a false document to deceive his principal. Hence in this case, if it can be proved that the bank manager had made any false representation in any documents in the loan transaction, he will be guilty of the offence.

- The prerequisite to effective investigation is the setting up of a user-friendly public complaint system, so that the offence can be discovered at an early stage. In the hypothetical case, it is doubtful whether any members of the public who might have suspicions of the scheme, knew the channels for lodging a complaint. The country designated law enforcement agency must ensure there is sufficient publicity of the complaint channel. One way is to establish a cyber police station.

- Proactive Investigation – There are often two methods of investigation. One is the reactive type, after the offence has been committed - this is very difficult. The ideal is the proactive method. If we came to be aware of the scheme early enough, one can use a telephone intercept and undercover agents for entrapment. In such a case there is a good chance to get all the culprits and the mastermind red-handed.

- There is a need to encourage use of undercover agents operating in cross jurisdiction. Also sharing of undercover agents. The HK ICAC had a case of getting the assistance of an overseas law enforcement officer to act as an undercover officer in HK. It would be useful to identify best practice procedure in the use of undercover agents.

- On the Consumer fraud case, there are several difficult aspects to the investigation – cyber crime, identity theft, computer forensic, extraterritorial.

- Information Technology can be a threat and aid to investigation. As a threat, it makes the criminal activities more sophisticated and transnational; As an aid, it can assist in intelligence analysis, behavioural profiling, as a crime prevention/detection tool using data mining (process of discovering unknown patterns and relationships amongst variables by analyzing data from different sources with statistical and pattern cognition techniques) and complicated financial investigations.

- Compared with physical evidence, the advantage of digital evidence is that it can be recovered even after deletion/destruction, given the right forensic tools (and this is unknown to most criminals). The problem is the process of collection, recovery of data, authentication, analysis and how to ensure the integrity of the evidence.

The issues here are:
  - Capability of law enforcement agency in computer forensics
  - Encryption and passwords
  - Proper training of all investigators in the seizure and collection of evidence, to ensure integrity of evidence
  - The authentication of expert evidence in court
  - Transnational problems – different laws and co-operation

The solutions are:
  - Sharing of forensic expertise
  - Training centre for investigators - UNAFEI
  - Recognized scheme of experts
  - Legal power to law enforcement agencies in obtaining passwords
  - Intercept – fax, email, SMS

- On the collection of evidence from internet service providers, firstly, all countries should have a licensing requirement for ISPs. Then, there is a need for legal provisions to ensure the co-operation of the Internet Service Provider; power to require production of records, to keep log files for an extended period (90 days); and legal access to encryption and passwords, etc.

- International cooperation – At present there are provisions for judicial assistance (Letter of Request system) and mutual legal assistance. However, both normally require availability of evidence to trigger off the assistance. This is not good enough. There is a need to develop closer mutual investigative assistance amongst agencies – including assistance in bank a/c checks, telephone interception, surveillance, joint search operations, undercover operations, and sharing of evidence.

- There should be adequate legislation to facilitate investigation, to cover

  - definition of the full range of possible offences –conspiracy, attempt, fraud, deception, false accounting, forgery and private sector corruption

  - provision of adequate investigative powers – bank a/c, telephone interception.

- Capability to conduct financial investigation and on money trail, so as to obtain the evidence; recover the money and make it difficult for the culprits to get their ill-gotten gains. Use of forensic accountants.

- Use of immunity witness – Hong Kong has a resident informant scheme, where the accomplice has to plead guilty to the offence first before becoming an immunity witness. In return, he is entitled to have 2/3 of his normal sentence reduced and he is subject to protection whilst in jail custody as well as after his prison sentence.

- Intelligence support – no criminal investigation can be successful without intelligence support. Agencies should be prepared to share intelligence on cyber crime.

**Building Integrity in Financial Institutions**

- HK ICAC is one of the few anti-corruption agencies that are actively involved in building integrity both in the public and private sector, and have 30 years of experience in both.

- Hong Kong has effective legislation against private sector corruption.

- HK ICAC has dealt with many major corruption related bank fraud cases in the past. Just to take two examples:

    - The Overseas Trust Bank Case – this was the third largest local bank in Hong Kong, which collapsed in 1986 due to loss in bad loans amounting to US$385M. I was head of a joint ICAC/Police Task Force set up to investigate the collapse. This investigation revealed numerous incidences of bank fraud and corruption involving senior management of the bank. As a result, there were five major successful convictions, including the chairman, managing director, the general manager of the bank and the fraudster.

    - Bumiputra Malaysia Finance case – this was a case of the proprietor of a publicly listed company bribing senior bank officials to obtain massive loan and credit facilities. In the end, the listed company collapsed and the bad debt to the bank amounted to US$850M. The investigation and prosecution took 15 years to complete, with successful extradition and prosecution of the bank's chairman and two directors, and of course the listed company proprietor. The bank's internal auditor was murdered just prior to the investigation and the legal advisor committed suicide.

- HK ICAC has been assisting the banking sector in integrity building through the three pronged strategy – prevention (system control, procedural guidelines, supervisory checks, transparency and accountability), education (staff integrity, code of conduct), and deterrence.

- Zero tolerance & a proactive policy versus don't wash your dirty linen.

- ICAC offers advice to enhance the system and audit control in the bank; and in partnership with the Association of Bankers, issue best practices packages.

- ICAC, supported by business associations, set up an Ethics Development Centre. It serves as a resource centre as well as an advisory service to assist banks to draw up their unique code of ethics. ICAC recommends that the code should cover, amongst other things:

    - Restriction on staff receiving gifts and lavish entertainment from customers

    - Requirement for staff to declare their private investments and any conflict of interests

    - Strict prohibition on unauthorized disclosure of confidential or restricted information

    - Clearly stipulate the relationship between bank staff and customers.

- ICAC publish a "Practical guide to bank manager".

- I have been advocating that banks should consider having an "Ethics manager" within the financial institution, responsible for:

    - Formulating an effective internal anti-corruption/fraud strategy

    - Adopting a 3 pronged strategy –– i.e. system prevention, ethics building and deterrence

    - Setting up and administering an internal complaint system – an effective complaint system should include:
        - Encouraging complaints
        - Promising confidentiality
        - Protection of whistle-blowers
        - Quick response capability
        - Professional handling/investigation
        - Accountability to complainant and suspects

    - Staff monitoring and conducting internal investigations

- Look for red flags
  - Big spenders
  - Staff with financial problems
  - Rule breakers

  And prompt investigation

- Partnership with law enforcement agencies, instead of adopting a "don't wash your dirty linen in public" policy!

- Universities should be encouraged to organize diploma/certificate courses on ethics management. I have set up the world's first Postgraduate Certificate Course at the University of Hong Kong to provide training for such positions as well as for anti-corruption officials.

**Conclusion**

I suggest the workshop can seek to have agreement on the following future actions, in addition to recommendations from other panellists, for inclusion in the Bangkok Declaration:

- Each country must have comprehensive legislation criminalizing private sector corruption, with a dedicated agency responsible for law enforcement

- Setting up a centralized training course for cyber crime investigators

- Promoting the establishment of an "Ethical Manager" in banks, to demonstrate that the private sector has a clear role in fighting corruption in society

- Simplifying the procedure for mutual legal assistance and enhancing inter-agencies mutual investigative assistance

- Prepare model legislation to enforce cyber crime

- Establish an expert research centre for computer forensics

- Establish a centralized intelligence databank on economic crime and money laundering.

**Mr. Henri Pons**
**Vice Président chargé de l'instruction, Tribunal de Grande Instance de Paris, France**

**Point n/4: Les investigations en matière de blanchiment:***

Quelles sont les principales investigations à effectuer pour caractériser et mettre en évidence les faits de blanchiment dans le cas pratique?

Ces investigations devront être effectuées quelque soit le pays dans lequel l'enquête du chef de blanchiment sera ouverte, et présenteront un caractère interne mais également international (recours aux commissions rogatoires internationales).

**1) Caractériser l'origine frauduleuse des fonds et l'infraction initiale sousjacente:**

Les fonds objets de l'opération de blanchiment, soit la somme totale de 5 millions USD, provenant d'une fraude à la consommation commise par Mlle CHUNG dans le cadre de l'activité de la société LOWNET INC., il conviendra de verser à la procédure d'enquête portant sur les faits de blanchiment tous éléments de la procédure d'enquête diligentée sur les faits de fraude à la consommation. Cela permettra d'établir que les fonds provenant de la société LOWNET constituaient le produit d'une fraude commise à l'aide de cette société.

Dans la pratique, cette preuve de l'origine frauduleuse des fonds est souvent la plus difficile à établir, notamment lorsqu'on est confronté à des flux financiers présentant un caractère suspect mais dont on ne peut prouver formellement qu'ils soient le produit d'une infraction.

**2) investigations bancaires: établir la traçabilité des fonds**

Ces investigations doivent permettre de reconstituer le circuit de transfert des fonds d'origine frauduleuse et donc d'identifier, in fine, les auteurs et bénéficiaires des opérations de blanchiment. Elles porteront sur les phases de "placement" et de "conversion" du processus de blanchiment.

Le secret bancaire ne devra en aucun cas pouvoir être opposé en cas d'investigations judiciaires, faute de quoi celles-ci ne pourraient prospérer.

* Ces investigations devront donc être menées auprès des différentes banques concernées (au besoin, par la réalisation de perquisitions et saisies de documents dans les locaux des établissements bancaires visés par l'enquête, et plus particulièrement dans les bureaux des gestionnaires de comptes concernés):

- GOLDFINGERS BANK (compte de la société LOWNET INC.), HANDYFUNDS BANK (coffre de Mlle CHUNG), et locaux de la société financière MIDMINT SECURITIES, au YOUNGLAND
- banques situées au ZEITSTAAT dans lesquelles 15 comptes ont été ouverts sous de fausses identités par Mlle DEE aux fins d'y transférer la somme totale de 5 millions USD provenant de la société LOWNET INC.
- FINEBILLS BANK au XANADU (compte de la société KONDO).

* Il conviendra de demander la transmission par l'ensemble des banques précitées des documents suivants se rapportant aux comptes visés par l'enquête:

- documents d'ouverture des comptes bancaires (fiche d'ouverture de comptes, cartons de signatures, documents d'identité produits, procurations éventuelles, fiche KYC),
- relevés des opérations constatées au crédit et au débit de ces comptes,
- documents justificatifs des opérations créditrices et débitrices constatées sur ces comptes (avis et ordres de virements, bordereaux de dépôt et de retrait d'espèces),
- documents identifiant le titulaire d'un coffre.

* L'exploitation de ces documents permettra:

- d'identifier les complices ayant participé aux opérations de blanchiment et les bénéficiaires finaux des sommes ainsi blanchies,

---

* An informal English translation of this paper follows on page 181.

- de vérifier si les obligations de vigilance imposées aux responsables du secteur bancaire ont bien été respectées en l'espèce, et si Mlle CHUNG a bénéficié de complicités au sein des banques concernées.

**3) Identification des auteurs de l'infraction de blanchiment: quelles personnes sont susceptibles d'être poursuivies du chef de blanchiment?**

Seules les personnes pour lesquelles l'élément intentionnel de l'infraction de blanchiment sera établi, pourront être poursuivies. Cet élément intentionnel consiste en la connaissance de l'origine illicite des fonds blanchis, cette connaissance pouvant être déduite de circonstances factuelles (ex: non respect caractérisé de normes de vigilance par des établissements bancaires).

**a) personnes dont le cas pratique indique qu'elles ont connaissance de l'origine frauduleuse des fonds:**

- Mlle CHUNG:

Cette personne est l'auteur de l'infraction initiale de fraude à la consommation dont le produit a été blanchi, à hauteur d'une somme totale de 5 millions USD. Elle est également l'initiatrice et la principale organisatrice du circuit de blanchiment mis en place.

Si la loi interne du pays où les poursuites du chef de blanchiment sont diligentées le permet, cette personne pourra être poursuivie non seulement pour les faits de fraude à la consommation, mais également du chef de blanchiment du produit de cette fraude, soit la somme totale de 5 millions USD (un tel cumul de poursuites du chef de l'infraction initiale et du chef de blanchiment est possible sous certaines réserves en FRANCE, il convient dans un tel cas de démontrer la réalisation d'actes matériels.

Distincts: par exemple, faits de trafic de stupéfiants et blanchiment du produit de ce trafic par le biais de circuits bancaires impliquant le recours à des sociétés offshore).

- Mlle DEE:

Cette personne pourra être poursuivie pour la totalité des faits de blanchiment commis, portant sur la somme de 5 millions USD:

- ouverture de 15 comptes bancaires sous de fausses identités au ZEITSTAAT, puis retrait de la somme de 5 millions USD,
- remise de la somme de 2 millions USD à M. BANNER au XANADU,
- achat d'une maison d'une valeur de 2 millions USD au ZEITSTAAT pour le compte de Mlle CHUNG,
- transfert d'une somme de 1 million USD au profit de Mlle CHUNG au YOUNGLAND.

- M. BANNER:

Cette personne pourra être poursuivie pour des faits de blanchiment portant sur la somme de 2 millions USD:

- 1,2 million USD: fonds déposés sur le compte de la société KONDO à la FINEBILLS BANK au XANADU et utilisés pour rembourser le prêt contracté par cette société auprès de cette banque,
- 400.000 USD remis à M. ALAN,
- 400.000 USD conservés à titre personnel.

- M. ALAN:

Cette personne pourra être poursuivie pour des faits de blanchiment portant sur la somme de 1,6 million USD:

- 1,2 million USD: fonds déposés sur le compte de la société KONDO à la FINEBILLS BANK au XANADU et utilisés pour rembourser le prêt contracté par cette société auprès de cette banque,
- 400.000 USD: somme remise par M. BANNER.

**b) personnes dont le cas pratique n'indique pas qu'elles ont connaissance de l'origine frauduleuse des fonds:**

Ces personnes ne pourront donc être poursuivies que si les investigations démontrent qu'elles avaient connaissance que les fonds, utilisés pour l'opération à laquelle elles auront concouru, avaient une origine frauduleuse.

Ces investigations porteront sur la phase d'"intégration" du processus de blanchiment et permettront notamment de s'assurer du respect par certains professionnels de leurs obligations de vigilance (en particulier déclaration de soupçon à la cellule de renseignements financiers du pays concerné):

- M. EZURA (ZEITSTAAT) et Mlle JABBAR (YOUNGLAND) (personnes ayant effectué le transfert illégal de la somme de 1 million USD entre le ZEITSTAAT et le YOUNGLAND).

Ces deux personnes pourront également faire l'objet de poursuites du chef d'exercice illégal de la profession de banquier.

- Notaire en charge de la réalisation de l'opération immobilière effectuée par Mlle DEE au ZEITSTAAT pour le compte de Mlle CHUNG (achat de la villa de 2 millions USD),

- responsables de l'entreprise d'investissement MIDMINT SECURITIES ayant vendu les titres au porteur à Mlle CHUNG,

- responsables d'établissements bancaires (notamment gestionnaires de compte):
  - GOLDFINGERS BANK (compte de la société LOWNET)
  - HANDYFUNDS BANK
  - banques du ZEITSTAAT utilisées par Mlle DEE pour y ouvrir 15 comptes sous de fausses identités
  - FINEBILLS BANK (compte de la société KONDO)

Si la loi interne du pays où sont diligentées les poursuites du chef de blanchiment le permet, les personnes morales, telles que les banques ou entreprises d'investissement, intervenues à l'occasion des faits pourront également être poursuivies pénalement pour leur participation à ces faits de blanchiment.

S'agissant de la HANDYFUNDS BANK, des banques situées au ZEITSTAAT utilisées par Mlle DEE, et de la FINEBILLS BANK, il conviendra de s'attacher à vérifier que ces établissements bancaires ont effectivement respecté:

- les normes de vigilance (fiches KYC, vérification de l'origine des fonds ayant crédité les comptes de leurs clients, vérification de l'arrière-plan économique et de l'activité des clients ainsi que de leur identité),

- l'obligation de procéder à une déclaration de soupçons en cas de constatation de transaction douteuse.

**4) La coopération internationale: quelles sont les autorités judiciaires territorialement compétentes pour poursuivre les faits de blanchiment?**

→ compétence concurrente des autorités de plusieurs pays:

- ZEITSTAAT:

  Lieu de commission des faits de blanchiment suivants portant sur 5 millions USD:

  * Transfert de la somme de 5 millions USD, provenant du compte ouvert dans les livres de la GOLDFINGERS BANK au nom de la société LOWNET INC. immatriculée au YOUNGLAND, au crédit de 15 comptes ouverts par Mlle DEE sous de fausses identités.

  * Lieu de retrait de ces fonds par Mlle DEE au moyen de distributeurs automatiques de billets.

  * Lieu d'achat, par Mlle DEE, pour le compte de Mlle CHUNG, d'une maison d'une valeur de 2 millions USD.

Les autorités du ZEITSTAAT sont donc compétentes pour diligenter des investigations pénales du chef de blanchiment sur l'ensemble des fonds blanchis, soit la somme totale de 5 millions USD.

- XANADU:
  Lieu de commission des faits de blanchiment suivants portant sur 2 millions USD:

  * remise par Mlle DEE d'une somme de 2 millions USD en espèces à M. BANNER, propriétaire de la société KONDO INC.

  * dépôt par M. BANNER d'une somme de 1,2 million USD en espèces, provenant des fonds remis par Mlle DEE, au crédit du compte de la société KONDO ouvert dans les livres de la FINEBILLS BANK, et remboursement du prêt contracté par cette société auprès de cette banque avec cette somme.

  * partage de la somme de 800.000 USD, provenant des fonds remis par Mlle DEE, entre M.BANNER et M. ALAN, chacun conservant 400.000 USD à titre personnel.

- YOUNGLAND:
  Lieu de commission des faits de blanchiment suivants portant sur 5 millions USD:

  * transfert, sur les 15 comptes ouverts au ZEITSTAAT, de la somme de 5 millions USD portés au crédit du compte ouvert au nom de la société LOWNET INC. dans les livres de la GOLDFINGERS BANK.

  * réception par Mlle CHUNG d'une somme de 1 million USD en espèces transmise par Mlle DEE, par l'intermédiaire de personnes se livrant à l'activité illégale de transfert de fonds (M. EZURA au ZEITSTAAT et Mlle JABBAR au YOUNGLAND).

  * achat par Mlle CHUNG de titres au porteur de la société MIDMINT SECURITIES, pour une somme de 500.000 USD.

  * conservation de ces titres au porteur dans un coffre ouvert à la HANDYFUNDS BANK.

  * conservation au domicile de Mlle CHUNG d'une somme de 400.000 USD en espèces.

La compétence concurrente des autorités judiciaires du ZEITSTAAT, du XANADU et du YOUNGLAND pour investiguer sur les faits de blanchiment pose le problème de la coordination des investigations lorsque les faits de blanchiment présentent un tel caractère transnational: dans un tel cas, doit-on mener une seule enquête dans un seul pays avec le recours à l'entraide pénale internationale pour procéder aux investigations nécessaires dans les deux autres pays ou doit-on, au contraire, procéder à des enquêtes dans chacun des trois pays avec, in fine, dénonciation des faits par deux pays au profit d'un troisième pays afin que ces faits de blanchiment ne fassent l'objet que d'un jugement portant sur la totalité des fonds blanchis?

*

* *

**Point n/5: La confiscation d'avoirs et les restitutions aux victimes:**

Quelles investigations doit-on effectuer aux fins de saisir, en vue d'une éventuelle confiscation judiciaire, les fonds blanchis ou correspondant au produit de l'opération de blanchiment?

Ces investigations pourront être effectuées par le biais de commissions rogatoires internationales. Ainsi, la saisie-conservatoire d'avoirs pourra-t-elle être réalisée dans le cadre d'une demande d'entraide pénale internationale, la confiscation de ces avoirs intervenant ultérieurement lors du jugement de l'affaire par le Tribunal. Dans un tel cas, il conviendra de mettre à exécution ce jugement dans le pays étranger sur le territoire duquel la saisie-conservatoire aura été pratiquée.

* Perquisitions:

  - domicile de Mlle CHUNG au YOUNGLAND (pour saisir la somme de 400.000 USD en espèces),

  - coffre ouvert par Mlle CHUNG à la HANDYFUNDS BANK au YOUNGLAND (pour saisir les titres au porteur de la société MIDMINT SECURITIES d'une valeur totale de 500.000 USD),

  - domiciles de MM. BANNER et ALAN au XANADU (pour saisir les fonds qu'ils ont conservés, à hauteur de 400.000 USD chacun).

* Blocage des comptes bancaires:

  - compte de la société KONDO à la FINEBILLS BANK (XANADU),

  - compte de la société LOWNET à la GOLDFINGERS BANK (YOUNGLAND).

Concernant ces saisies et blocages de comptes bancaires, dans certains pays, en cas de poursuite du chef de blanchiment, il n'est pas nécessaire de prouver un lien entre les biens ou avoirs saisis et leur origine frauduleuse, le régime juridique de l'infraction de blanchiment permettant alors de procéder à la saisie de tout le patrimoine des personnes mises en cause, qu'il présente ou non une origine frauduleuse.

**Informal English translation of Mr. Henri Pons' paper by UNAFEI**

**Point no. 4: Investigation as regards Money Laundering:**

What kind of investigation is needed to clarify and underline the facts of money-laundering in a practical case?

The investigation should be conducted in the country where the investigation against the suspected money-launderer was first initiated, and it would have a domestic, but at the same time, an international character (recourse to letters rogatory).

**1) Establish the fraudulent origins of the funds and the predicate offence:**

As for the object funds of the money-laundering operation, i.e., 5 million US dollars derived from a consumer fraud committed by Ms. CHUNG within the framework of LOWNET INC. it would be appropriate to attach to the investigation file of the money-laundering case all the evidence acquired by the investigation into the consumer fraud. This will enable the investigators to establish that the funds coming from LOWNET constitute proceeds of the fraud committed making use of this company.

In practice, this proof of the fraudulent origin of the funds is often most difficult to establish, in particular, where the flow of finances has a suspicious character, but it cannot formally be proved that they contain the proceeds of a crime.

**2) Bank investigation: establish the traceability of the funds**

This investigation should enable a reconstruction of the route taken and the transfer of the funds of fraudulent origin, and thus identify, in detail, the actors and beneficiaries of the money-laundering operation. The investigation will target the "placement" and "conversion" phase of the laundering process.

Bank secrecy must not in any case be able to impede the judicial investigation; otherwise, the investigation cannot succeed.

* This investigation should therefore be conducted at the various banks concerned where necessary, through search and seizure of documents in the buildings of banks under investigation, and more particularly, in the offices of managers in charge of the accounts concerned):

  - GOLDFINGERS BANK (account of LOWNET INC.), HANDYFUNDS BANK (safety box of Ms. CHUNG), and the building of the financial company MIDMINT SECURITIES in YOUNGLAND;
  - Banks located in ZEITSTAAT, in which fifteen accounts were opened under false identities by Ms. DEE for the purpose of transferring into them the sum of 5 million US dollars from LOWNET INC.; and
  - FINEBILLS BANK in XANADU (account of KONDO INC.).

* It would be appropriate to request all the banks above to transmit the following documents relating to the accounts under investigation:

  - documents concerning the opening of the bank accounts (forms for opening the accounts, signature cards, identity documents presented, documents concerning proxy if any and Know Your Customer documents);
  - records of credit and debit operations of the accounts;
  - documents justifying the credit and debit operations made on these accounts (transfer notifications, notes of deposit and withdrawal of cash); and
  - documents identifying the safety box holder.

* Utilization of these documents will enable:

  - the identification of accomplices having participated in the money-laundering operations and the financial beneficiaries of the proceeds thus laundered; and
  - the verification of whether the obligations of due diligence imposed on the officials of the banking sector have been respected on these occasions, and whether Ms. CHUNG has benefited from complicities within the bank concerned.

**3) Identification of the actors of the money-laundering offence: who could be charged for money-laundering offences?**

Only persons for whom the intentional element of the money-laundering offence could be established can be charged. This intentional element consists of the knowledge of the illicit origin of the funds laundered, and this knowledge may be inferred from factual circumstances (e.g. non-respect of the due diligence norms by the banks).

**a) Those with regard to whom the present case indicates that they have knowledge of the fraudulent origin of the funds include:**

- Ms. CHUNG:

Ms. CHUNG is the principal offender of the initial consumer fraud, the proceeds of which have been laundered amounting to 5 million US dollars. She was also the initiator as well as main organizer of all the money-laundering activities.

If the domestic law of the country where the investigation of the money-laundering suspect is being carried out permits, Ms. CHUNG may be charged not only for the consumer fraud, but also for laundering the proceeds (5 million US dollars) of this fraud (such double charges against the person suspected of committing the predicate offence and that of the money-laundering is possible under certain conditions in France. It is appropriate in such a case to distinguish the distinct material acts: for example, the acts of trafficking in narcotics and the laundering of its proceeds through the banking system in a roundabout way, using offshore companies).

- Ms. DEE:

Ms. DEE can be charged with all of the laundering activities, amounting to 5 million US dollars:

  - opening of fifteen bank accounts under false identities in ZEITSTAAT, and subsequent withdrawal of 5 million US dollars;
  - delivery of 2 million US dollars to Mr. BANNER in XANADU;
  - purchase of a villa for 2 million US dollars in Zeitstaadt for the account of Ms. CHUNG; and
  - transfer of 1 million US dollars to Ms. CHUNG in YOUNGLAND.

- Mr. BANNER:

Mr. BANNER can be charged with the laundering of 2 million US dollars:

  - 1.2 million US dollars - money deposited in the account of KONDO INC. at FINEBILLS BANK in XANADU, and used to pay back the debt of the company to this bank;
  - 400,000 US dollars handed to Mr. ALAN; and
  - 400,000 US dollars kept for his personal use.

- Mr. ALAN:

Mr. ALAN can be charged with the laundering of 1.6 million dollars:

  - 1.2 million US dollars - money deposited in the account of KONDO INC. at FINEBILLS BANK in XANADU, and used to pay back the debt of the company to this bank; and
  - 400,000 US dollars - sum received from Mr. BANNER.

**b) Those who do not appear to have had knowledge of the fraudulent origin of the funds:**

These persons, therefore, can only be charged if the investigation establishes that they had the knowledge that the funds, with regard to which they were involved, were of a fraudulent origin.

The investigation will target the “integration” phase of the laundering process to determine whether, in particular, certain professionals have respected their obligation of due diligence (in particular, suspicious transaction reporting to the Financial Intelligence Unit of the country concerned):

- Mr. EZURA (ZEITSTAAT) and Mr. JABBAR (YOUNGLAND) (those who were engaged in the illegal transfer of 1 million US dollars between ZEITSTAAT and YOUNGLAND).

These two persons will also be charged for the offences relating to their professional obligations.

- Notary Public who was engaged in the purchase of the real estate by Ms. DEE in ZEITSTAAT for the account of Ms. CHUNG (purchase of the villa for 2 million US dollars);

- Employees of the investment company MIDMINT SECURITIES having purchased bearer securities for Ms. CHUNG; and

- Employees of the banks (especially those in charge of customers' accounts):
  - GOLDFINGERS BANK (account of LOWNET)
  - HANDYFUNDS BANK
  - Banks in ZEITSTAAT used by Ms. DEE to open fifteen banks accounts under false identities
  - FINEBILLS BANK (account of KONDO INC.)

If the domestic law where the investigation of the suspected money-laundering permits, legal persons, such as banks or investment companies, involved in this conduct can also be criminally charged for their participation in these laundering activities.

As regards HANDYFUNDS BANK, the banks located in ZEITSTAAT used by Ms. DEE, and as regards FINEBILLS BANK, it is appropriate to pay particular attention to whether these banks have effectively respected the following:

- The norms of due diligence (Know Your Customer documents, verification of the origin of the funds credited into the accounts of their clients, verification of the economic background and the activities of the clients, as well as their identities),

- The obligation to report a suspicious transaction.

**4) International cooperation: Which judicial authorities are competent in terms of territoriality for the investigation of money-laundering?**

→ In this case there is concurrent jurisdiction of several countries:

- ZEITSTAAT:
  Place of commission of the money-laundering of 5 million US dollars, as follows:

  * Transfer of the sum of 5 million US dollars from the bank account in GOLDFINGERS BANK in the name of LOWNET INC. registered in YOUNGLAND, to fifteen bank accounts opened by Ms. DEE under false identities.

  * Place of the withdrawal of these funds by Ms. DEE via ATM.

  * Place of the purchase by Ms. DEE, for the account of Ms. CHUNG, of a 2 million US dollar Villa.

    The authorities of ZEITSTAAT have therefore the competence to conduct a criminal investigation against the suspects in regard to all the funds, i.e., 5 million US dollars.

- XANADU:
  Place of commission of the money-laundering of 2 million US dollars, as follows:

  * Delivery by Ms. DEE of 2 million US dollars in cash to Mr. BANNER, the owner of KONDO INC.

  * Deposit by Mr. BANNER of 1.2 million US dollars in cash from the funds delivered by Ms. DEE into an account of KONDO INC. at FINEBILLS BANK, and the paying-back of the debt of KONDO INC. to the FINEBILLS BANK from this fund.

  * Distribution of the 800,000 US dollars delivered by Ms. DEE between Mr. BANNER and Mr. ALAN, each keeping 400,000 US dollars for their personal use.

- YOUNGLAND:
  Place of commission of the money-laundering of 5 million US dollars, as follows:

  * Transfer into fifteen bank accounts opened in ZEITSTAAT of 5 million US dollars deposited in the account of LOWNET INC. at GOLDFINGERS BANK.

  * Receipt by Ms. CHUNG of one million US dollars in cash sent from Ms. DEE via underground banker (Mr. EZURA in ZEITSTAAT and Ms. JABBAR in YOUNGLAND).

  * Purchase by Ms. CHUNG of bearer securities amounting to 500,000 US dollars from MIDMINT SECURITIES.

  * Deposit of these securities in a safety box of HANDYFUNDS BANK.

  * Keeping 400,000 US dollars in cash in Ms. CHUNG's house.

Since money-laundering activities have a transnational character, the concurrent competence for investigation of the judicial authorities of ZEITSTAAT, XANADU and YOUNGLAND poses the problem of coordination of investigation: in such a case, should one country alone conduct the investigation, conducting the necessary investigation in the other two countries with recourse to mutual legal assistance in criminal matters? Or, should there be, an investigation in all three countries, and two countries eventually cease the investigation for the benefit of the third country so that there will be only one judgment concerning the total sum of funds laundered?

*

* *

**Point no. 5: Confiscation of proceeds and restitution for victims:**

What kind of investigation should be conducted for the purpose of seizing, with a view to eventual confiscation, the laundered funds, or the funds or property derived from the money-laundering operation?

These investigations may be conducted by means of letters rogatary. Also, freezing of property will be available within the framework of the request for mutual legal assistance in criminal matters, while the decision regarding confiscation of such property will be finally made by the judgment of the court. In such a case, it is appropriate to execute the judgment in a country where the freezing of the property takes place.

Investigation

* Search and seizure:

  - residence of Ms. CHUNG in YOUNGLAND (to seize the 400,000 US dollars cash)

  - Safety box opened by Ms. CHUNG at HANDYFUNDS BANK in YOUNGLAND (to seize the bearer securities from MIDMINT SECURITIES, total value 500,000 US dollars)

  - Residence of Mr. BANNER and Mr. ALAN in XANADU (to seize the money kept there, amounting to 400,000 US dollars each)

* Freezing of bank accounts:

  - account of KONDO INC. at FINEBILLS BANK (XANADU)

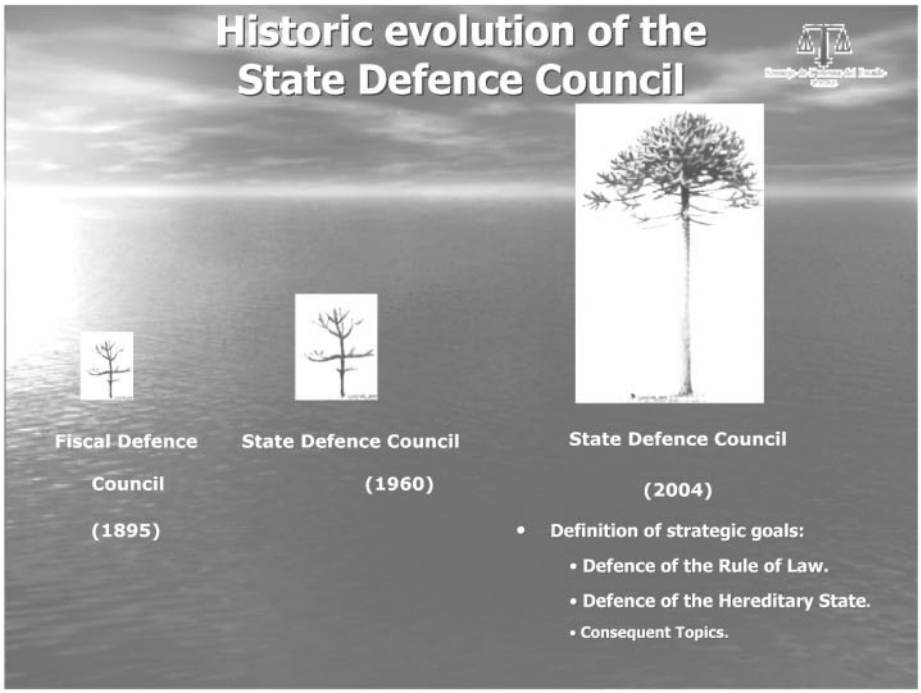
  - account of LOWNET at GOLDFINGERS BANK (YOUNGLAND).

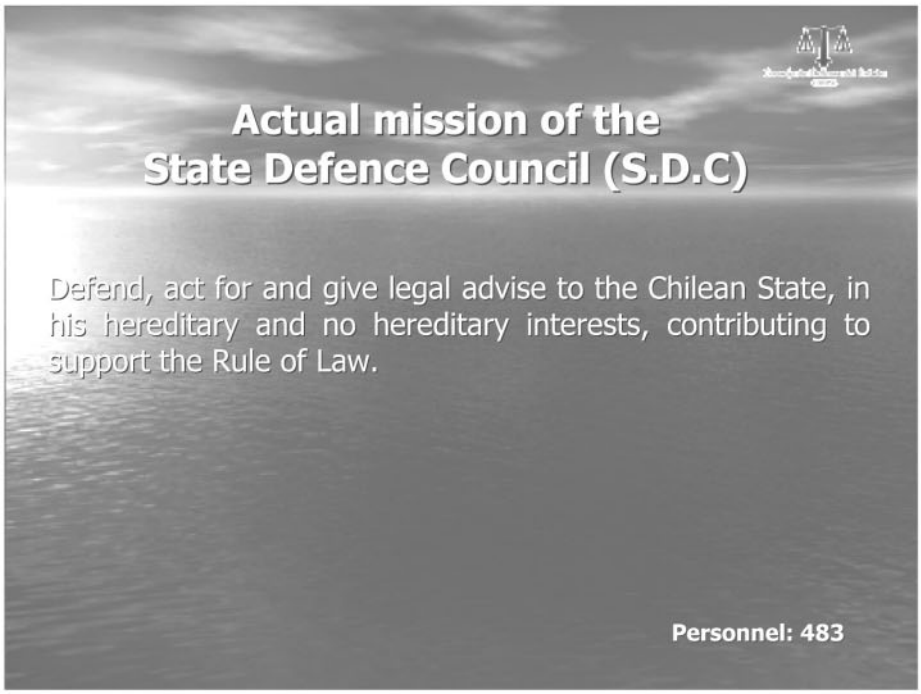
Concerning seizure and freezing of bank accounts, in certain countries, in the case of the prosecution of the money-laundering suspect, it is not necessary to prove the link between the goods or property seized and their fraudulent origin. The legal regime of the offence of money-laundering thus enables the seizure of all the property of the accused person, which sometimes does not present any fraudulent origin.

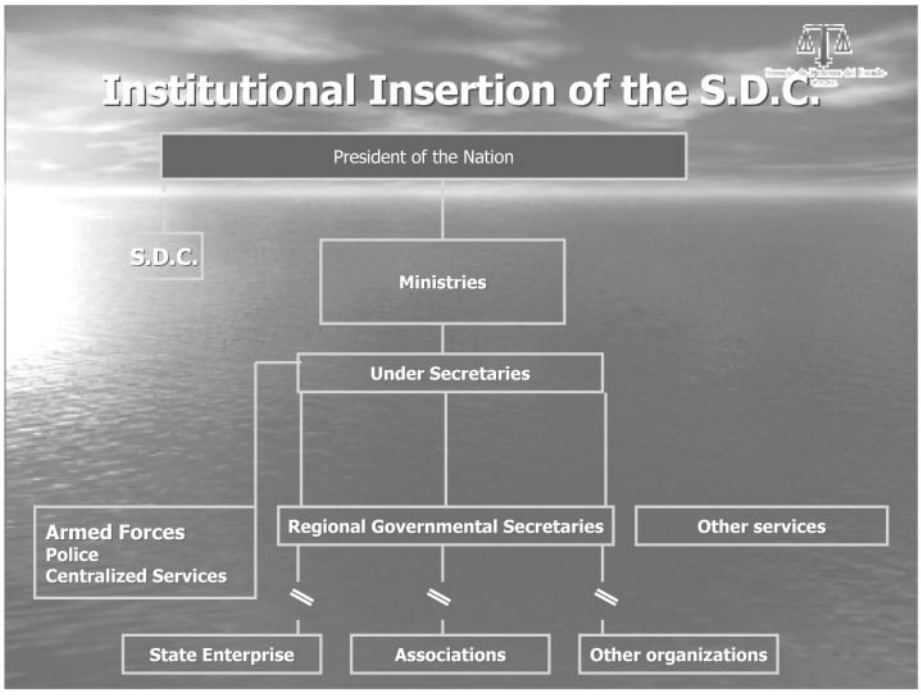
# IV. PAPERS PRESENTED BY DELEGATIONS

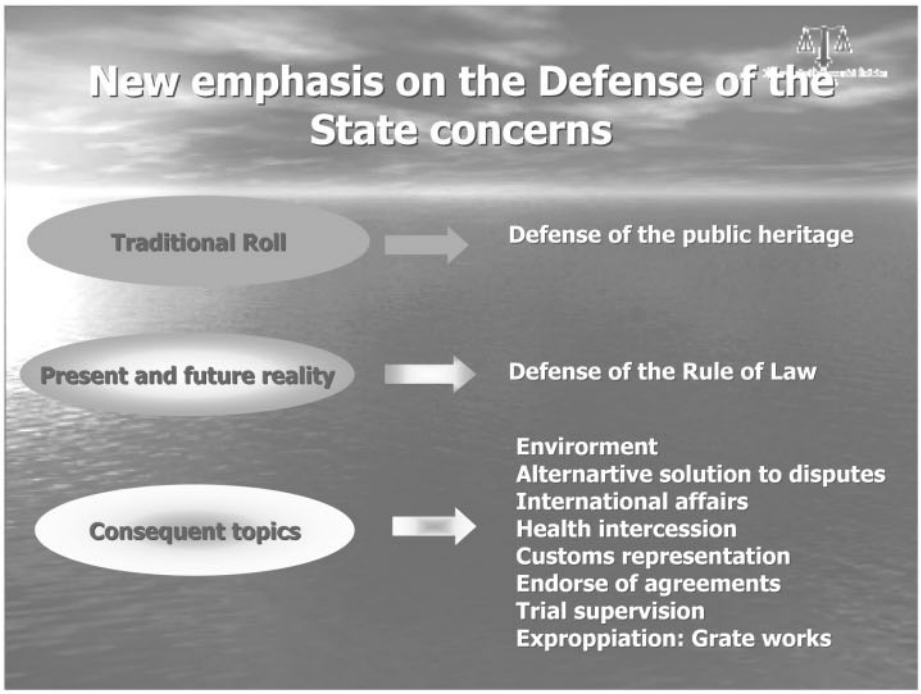
**A. Chile**

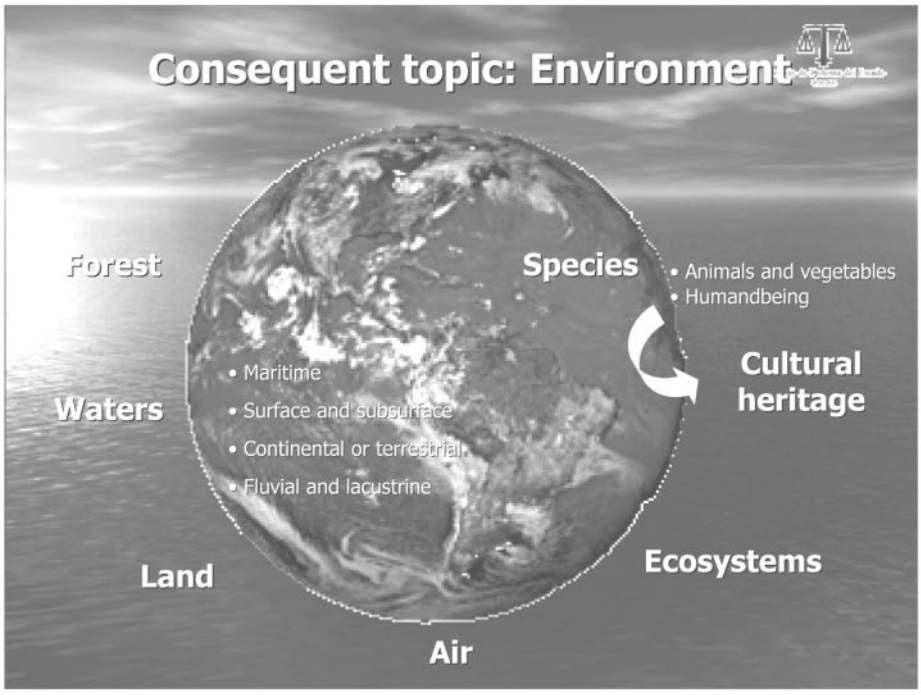

STATE DEFENCE COUNCIL


Historic evolution of the State Defence Council
Fiscal Defence Council (1895)
State Defence Council (1960)
State Defence Council (2004)
• Definition of strategic goals:
• Defence of the Rule of Law.
• Defence of the Hereditary State.
• Consequent Topics.

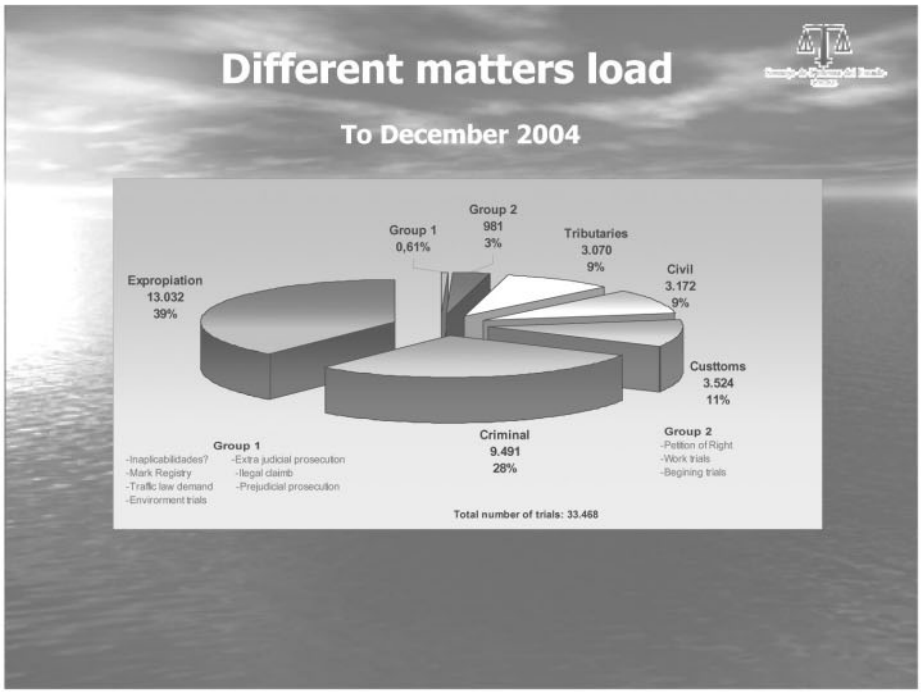

Actual mission of the
State Defence Council (S.D.C)
Defend, act for and give legal advise to the Chilean State, in his hereditary and no hereditary interests, contributing to support the Rule of Law.
Personnel: 483


Institutional Insertion of the S.D.C.
President of the Nation
S.D.C.
Ministries
Under Secretaries
Armed Forces
Police
Centralized Services
Regional Governmental Secretaries
Other services
State Enterprise
Associations
Other organizations


New emphasis on the Defense of the State concerns
Traditional Roll
Defense of the public heritage
Present and future reality
Defense of the Rule of Law
Consequent topics
Envirorment
Alternartive solution to disputes
International affairs
Health intercession
Customs representation
Endorse of agreements
Trial supervision
Exproppiation: Grate works


Consequent topic: Environment
Forest
Species
• Animals and vegetables
• Humandbeing
Cultural heritage
Waters
• Maritime
• Surface and subsurface
• Continental or terrestrial
• Fluvial and lacustrine
Land
Ecosystems
Air


Judicial effectiveness index
December 2004
State requested amount
USD $ 337 millions
Fulfil amount
USD $ 6 millions
Avoid amount
USD $ 331 millions
Porcentage avoided to the State
98%


Different matters load
To December 2004
Group 1
0,61%
Group 2
981
3%
Tributaries
3.070
9%
Civil
3.172
9%
Expropiation
13.032
39%
Custtoms
3.524
11%
Criminal
9.491
28%
Group 1
-Inaplicabilidades?
-Mark Registry
-Traffic law demand
-Enviroment trials
-Extra judicial prosecuiton
-Ilegal claimb
-Prejudicial prosecuiton
Group 2
-Petiton of Right
-Work trials
-Begining trials
Total number of trials: 33.468

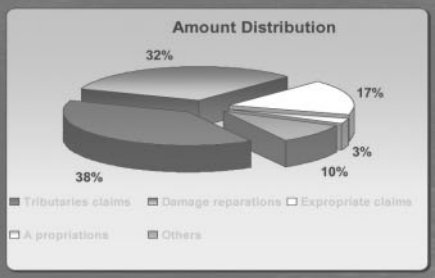
## Total Amount of Contentions

To December 2004

| Contens | Amount | % of Amount | Number of Trials |
|---|---|---|---|
| Tributaries claimbs | 5.070.636.444 | 39% | 3.070 |
| Damage reparations | 4.198.173.202 | 32% | 976 |
| Expropriate claimbs | 2.180.527.150 | 17% | 2.603 |
| A propriations | 350.724.975 | 3% | 16.730 |
| | **USD 11.800.061.770** | **90%** | **23.379** |
| Others | 1.260.346.652 | 10% | 10.089 |
| | **USD 13.060.408.422** | **100%** | **33.468** |

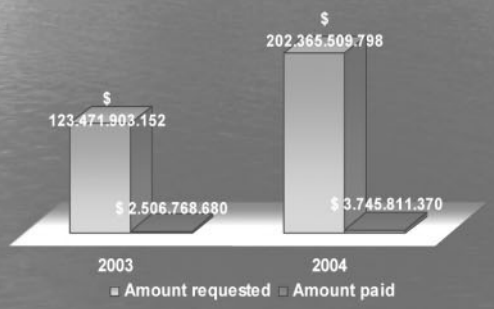
**Total USD$ 13.060.408.422(*) Equivalent to 20% of the Gross National Product**

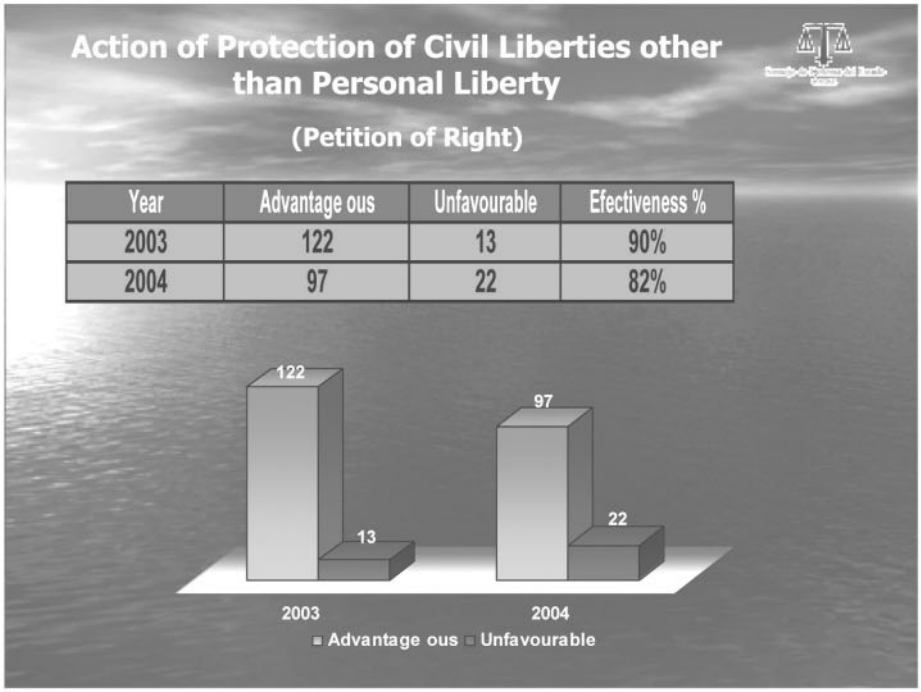
(*) GNP 2003 USD$ 68.629.255.685

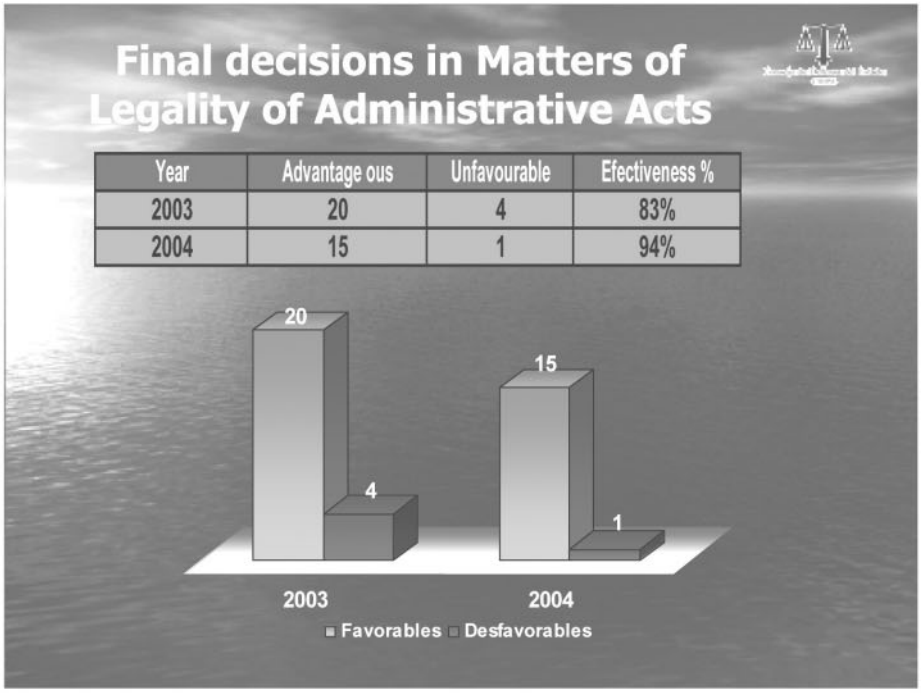



## Damage reparation State request

| Year | Amount requested | Amount paid | % Avoided Payment |
|---|---|---|---|
| 2003 | $ 123.471.903.152 | $ 2.506.768.680 | 98% |
| 2004 | $ 202.365.509.798 | $ 3.745.811.370 | 98% |




Action of Protection of Civil Liberties other than Personal Liberty
(Petition of Right)
Year | Advantage ous | Unfavourable | Efectiveness %
2003 | 122 | 13 | 90%
2004 | 97 | 22 | 82%
122
13
97
22
2003
2004
Advantage ous
Unfavourable


Final decisions in Matters of Legality of Administrative Acts
Year | Advantage ous | Unfavourable | Efectiveness %
2003 | 20 | 4 | 83%
2004 | 15 | 1 | 94%
20
4
15
1
2003
2004
Favorables
Desfavorables

## B. Libyan Arab Jamahiriya

### Intervention of Dr. Mustapha Debara of Libya on Money-Laundering

In the preparation of a new law against money-laundering, the Libyan legislator has taken into account international developments and experiences in the field of countering money-laundering. The undertaking of such a task started with the enactment of law number 7 of 1990 on combating drug trafficking and psychotropic substances in pursuance of the United Nations Drug Convention against Illicit Trafficking of Drugs and Psychotropic Substances (1988). The law contains provisions criminalizing money-laundering resulting from drug trafficking and psychotropic substances related crimes.

Such efforts were crowned by the enactment of law number 2 of 2005 on money-laundering, which entered into force on 12 January 2005. The law contains criminalization of money-laundering operations resulting from any crime, as well criminalization of other related acts, such as releasing information on any person who may be accused of being involved in money-laundering operations, warning him or drawing his attention of possible arrest.

The law stipulates the establishment of a “financial information unit” within the Central Bank of Libya as well as sub-units in other commercial banks so as to monitor suspected operations with a view to verifying money-laundering attempts.

The law also stipulates the establishment of a National Committee on combating money-laundering under the presidency of the Governor of the Central Bank or his Deputy. Its membership comprises of representatives of the Bank, Foreign Affairs, Economic Affairs, Financial Affairs, Justice, Public Security, Customs and Tax Authorities. The main objective of the Committee is to elaborate strategies and implementation mechanisms required to deal with money-laundering operations and suggest the required actions to combat them. The Committee was expected to be fully operational at the beginning of May 2005.

The law contains measures that should be undertaken to combat money-laundering such as freezing, seizures and confiscation as well as measures for cooperation with other countries in the field of information exchange, investigation and implementation of orders and sentences in pursuance of international, regional and bi-lateral agreements as well as the application of the principal of reciprocity.

## C. Benin

**Mme. Adjai Cica Anna**
(Expert de l'Agence de la Francophonie du présent Congrès)

Prévention – Quelle sont les mesures de prévention mise en œuvre pour protéger les jeunes contre la delinquance financière et le blanchiment de l'argent?

Nous pensons que la nécessité de mettre en place une politique de prévention ardue à travers une sensibilization, une éducation orientée vers la jeunesse s'impose.

Beaucoup de jeunes étudiants sont aujourd'hui dans le cadre de ces deux crimes; les auteurs de ces crimes leur demandent par une lettre qui leur est addressée ou de leur portable de communiqué leur numéro de compte ou d'autre renseignements pour permettre de virer sur leur compte beaucoup d'argent que les auteurs de ces actes criminals auraient gagné de façon licite, honnête ou bien par héritage.

Ils demandent qu'ils pouraient retirer cet argent à leur remettre, en retour ils pourront avoir un pourcantage pour améliorer leur vie.

Au niveau des banques, on leur demande de donner des renseignements liés a la banque, ou bien a l'identité de certains client importants. Certains ne connaissant pas tous les risques s'engagent. Mais d'autres avisés dénoncent le fait aux structures indiquées. C'est dire que les jeunes sont entrepris face à la misère grandissante dans les pays en développement. Il faudrait que les jeunes soient protégés. Les auteurs de ces crimes pensent que c'est une voie facile pour placer leur argent et les retirer par la suite. Il serait indiqué que cette situation que commence par vivre les jeunes dans les pays en voie de développement soit prise en compte et que des réflexions soient menées.

# V. ANNEX

## A. List of Participants (Speakers/Panellists)
## (Participants' positions and organizations are as of at the time of the Workshop)

**Argentina**

| | |
|---|---|
| Dr. Pedro David | Judge<br>National Court of Criminal Cassation |

**Australia**

| | |
|---|---|
| Dr. Toni Makkai | Director<br>Australian Institute of Criminology |

**Canada**

| | |
|---|---|
| Mr. Donald Piragoff | Senior General Counsel<br>Criminal Law Policy Section<br>Department of Justice |

**Cayman Islands (the United Kingdom of Great Britain and Northern Ireland)**

| | |
|---|---|
| Justice Anthony Smellie | Chief Justice<br>Supreme Court |

**The Hong Kong Special Administrative Region of China**

| | |
|---|---|
| Mr. Tony Kwok Man-wai | Former Deputy Commissioner<br>Independent Commission Against Corruption |

**France**

| | |
|---|---|
| Mr. Henri Pons | Vice Président chargé de l'instruction<br>Tribunal de Grande Instance de Paris |

**Ireland**

| | |
|---|---|
| Mr. Felix McKenna | Detective Chief Superintendent<br>Chief Bureau Officer<br>Criminal Assets Bureau |

**Liechtenstein**

| | |
|---|---|
| Dr. Robert Wallner | Prosecutor General<br>Princely Prosecution Service |

**Slovenia**

| | |
|---|---|
| Ms. Nina Radulovic | Counsellor<br>Commission for the Prevention of Corruption |

**South Africa**

| | |
|---|---|
| Ms. Ishara Bodasing | Senior Anti-corruption Specialist<br>Department of Public Service and Administration |
| Mr. Charles Goredema | Senior Research Fellow<br>Institute for Security Studies |

**Syrian Arab Republic**

| | |
|---|---|
| Dr. Abboud Al-Sarraj | Professor<br>Faculty of Law<br>Damascus University |

**Thailand**

| | |
|---|---|
| Pol. Maj. Gen. Peeraphan Prempooti | Secretary-General<br>Anti-Money Laundering Office |

**United Arab Emirates**

| | |
|---|---|
| H.E. Sultan Bin Nasser Al Suwaidi | Governor<br>Central Bank of the United Arab Emirates |

**United States of America**

| | |
|---|---|
| Ms. Mary Lee Warren | Deputy Assistant Attorney General<br>Criminal Division<br>U.S. Department of Justice |
| Ms. Linda Samuel | Deputy Chief<br>Asset Forfeiture and Money Laundering Section<br>Criminal Division<br>U.S. Department of Justice |

**United Nations**

| | |
|---|---|
| Mr. Timothy Lemay | Chief, Rule of Law Section<br>Human Security Branch<br>Division for Operations<br>United Nations Office on Drugs and Crime (UNODC) |

**International Monetary Fund**

| | |
|---|---|
| Mr. Peter Csonka | Senior Counsel<br>Legal Department |

**Council of the European Union**

| | |
|---|---|
| Mr. Hans G. Nilsson | Head of Division<br>Judicial Cooperation |

**Sweden**

| | |
|---|---|
| Ms. Gudrun Antemar | Director-General<br>Swedish National Economic Crimes Bureau |

**UNAFEI**

| | |
|---|---|
| Mr. Kunihiko Sakai | Director |

## B. List of Experts in the Preparatory Meetings
## (Experts' positions and organizations are as of at the time of the preparatory meetings)

**Australia**

| | |
|---|---|
| Dr. Russell G. Smith | Deputy Director of Research<br>Australian Institute of Criminology |
| Mr. Rob McCusker | Research Analyst in Transnational Crime<br>Australian Institute of Criminology |

**Canada**

| | |
|---|---|
| Ms. Karen Markham | Counsel, Criminal Law Policy Section<br>Department of Justice |
| Mr. Christopher Ram | Legal Counsel<br>Criminal Law Policy Section<br>Department of Justice |

**Thailand**

| | |
|---|---|
| Mr. Amnart Netayasupha | Senior Public Prosecutor<br>International Affairs Department<br>Office of the Attorney General |
| Ms. Sunisa Sathapornsermsuk | Divisional Public Prosecutor<br>International Affairs Department<br>Office of the Attorney General |

**United Nations**

| | |
|---|---|
| Mr. Jean-Paul Laborde | Chief, Terrorism Prevention Branch<br>Division for Treaty Affairs<br>United Nations Office on Drugs and Crime (UNODC) |
| Mr. Dimitri Vlassis | Chief, Crime Conventions Section<br>Division for Treaty Affairs<br>United Nations Office on Drugs and Crime (UNODC) |

**Asia/Pacific Group on Money Laundering (APG)**

| | |
|---|---|
| Ms. Bronwyn Somerville | Consultant<br>APG Secretariat |

**Sweden**

| | |
|---|---|
| Ms. Annika Brickman | Director-General of Legal Affairs<br>Ministry of Justice |
| Ms. Marie-Louise Ollén | Legal Adviser<br>Division for Criminal Law<br>Ministry of Justice |
| Mr. Kazimir Åberg | Director<br>Swedish National Economic Crimes Bureau |
| Mr. Håkan Öberg | Director<br>Division for International Affairs<br>Swedish National Economic Crimes Bureau |
| Ms. Elisabeth Makarov | Secretary<br>Swedish National Economic Crimes Bureau |

**Japan**

| | |
|---|---|
| Mr. Koji Kishima | Deputy Director<br>Japan Financial Intelligence Office<br>Financial Services Agency |
| Mr. Hideo Tsuda | Deputy Director<br>Japan Financial Intelligence Office<br>Financial Services Agency |
| Mr. Tatsuya Sakuma | Director of Public Security Division<br>Criminal Affairs Bureau<br>Ministry of Justice |
| Mr. Yoshimitsu Yamauchi | Attorney<br>Criminal Affairs Bureau<br>Ministry of Justice |
| Mr. Tomoyuki Shirai | Attorney<br>Criminal Affairs Bureau<br>Ministry of Justice |
| Mr. Kouichi Muranaka | Attorney<br>Criminal Affairs Bureau<br>Ministry of Justice |
| Mr. Kouichi Nakamura | Attorney<br>Criminal Affairs Bureau<br>Ministry of Justice |
| Ms. Chiori Nakata | Attorney<br>Criminal Affairs Bureau<br>Ministry of Justice |
| Mr. Kenichi Nishikata | Attorney<br>Criminal Affairs Bureau<br>Ministry of Justice |
| Mr. Akihiro Oda | Attorney<br>Criminal Affairs Bureau<br>Ministry of Justice |

**UNAFEI**

| | |
|---|---|
| Ms. Tomoko Akane | Deputy Director |
| Mr. Motoo Noguchi | Professor |
| Mr. Keisuke Senta | Professor |
| Mr. Yasuhiro Tanabe | Professor |
| Mr. Takafumi Sato | Professor |
| Ms. Sue Takasu | Professor |
| Mr. Simon Cornell | Linguistic Adviser |