

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.

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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.

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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.

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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.

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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 will 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

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laws. I can cite the case concerning Salabiaku⁸ and there is another case called Pham Hoang⁹ 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.203/7¹⁰, 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.