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.