

G. Panel 4

Case-based Discussion on Money-Laundering

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MEASURES TO COMBAT ECONOMIC CRIME, INCLUDING MONEY-LAUNDERING

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MEASURES TO COMBAT ECONOMIC CRIME, INCLUDING MONEY-LAUNDERING

covering these professions, Ishara, in this particular case.

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

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

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

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

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

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

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

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

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

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

Sub-Moderator: Thank you. Linda.

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

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

However, in many jurisdictions, mere possession or the spending of criminal proceeds also constitutes a money-laundering offence, and that of course is consistent with the Palermo Convention definition of money-laundering. So in that respect, if you look at the money that went back to Mr. Alan and the money that went back to Mr. Banner, that would be a money-laundering offence, as well as the use of funds by Ms. Chung for personal purposes when she went out gambling and drinking and spending money.

Conducting a transaction with the intent to promote further illegal activities is yet another type of money-laundering offence. And here, back in the very beginning of this scheme, we had an instance of bank fraud where money or breach of trust, a form of bank fraud, where money was given to Kondo Inc., Mr. Banner, and then those funds were used to produce the videotapes which then launched the fraudulent scheme, and so it promoted the illegal activity.

As Dr. Wallner has already said, self-laundering is not an offence in all jurisdictions. In the country where I'm from it is an offence and it's because the actor, in addition to committing the underlying offence, has done something more with respect to the funds. But in those jurisdictions where self-laundering is an offence, you have Ms. Chung dispersing the million dollars and she could be prosecuted for that.

There's also a category of laundering offences related to the failure to file a suspicious transaction report, and here we have numerous instances of that. There was the initial deposit into Finebills Bank of the victims' money in an account created for Lownet, so all of a sudden you have \$5 million being deposited into that account. You have a manager of that bank knowing that this is a fraudulent company and an STR should have been filed.

And then you have the wholesale transfer of the funds of that account to Lownet's account at Goldfingers Bank in Youngland. Again, that should have raised suspicions. And then another transfer of that money went from Youngland, then on to 15 separate accounts in Zeitstaat, again, possible STR violation. Certainly, the ATM withdrawals of a huge sum of money, \$5 million, should have raised some suspicions, as well as ATM deposits by Mr. Banner of \$1.2 million. Also, to the extent that company formation agents are covered by a requirement to file STRs with the creation of the company itself, Lownet could have raised an STR filing. So, too, could have the purchase of real estate, the purchase of the villa using cash, which may, in many jurisdictions, be an irregular purchase by a third party for the benefit of another.

The last category of money-laundering offences would be those involving the transportation of criminal proceeds and the failure to declare currency when crossing borders. And here you have Ms. Dee, a gatekeeper, who acted well beyond the normal duties of an accountant. She hand-carries \$2 million from Zeitstaat to Xanadu, and does not report this. And then you also have the transaction involving the alternative remittance system, or the informal value transfer, which I think would be difficult to prove but you have in fact moved criminal proceeds from one place to another.

Sub-Moderator: Thank you very much both of you for the very comprehensive explanation of the money-laundering elements and types of money-laundering that are involved in the case.

MEASURES TO COMBAT ECONOMIC CRIME, INCLUDING MONEY-LAUNDERING

Perhaps I could add just one word that when the prosecutor establishes the material elements of the money-laundering offence, that is the transfer, the conversion, the possession, the use and the transportation of the proceeds, and then he moves on to establish that these proceeds are of certain types of criminal activity, such as identity theft, fraud, consumer fraud, et cetera. he or she will have to show that the person, the launderer, knew the origin of these proceeds. And what is important here is that the legal system, that is the basis of the prosecution, enables the judge that is trying the case to make inferences from objective factual circumstances as to the knowledge of the offender. If the offender would say, I have no clue about the origin of these proceeds, it was given to me and I had no suspicion, the judge should be able to infer from objective circumstances that actually he should have known and he probably has known about the criminal origin of the property.

Now establishing these facts is actually the job of the investigator and of the prosecutor and there are various methods and techniques involved. And our French investigating magistrate, Mr. Pons, has been involved in such investigations for a number of years. I would like to give him the floor now to make some comments on how should the investigator, prosecutor, go about uncovering these facts. Please.

Mr. Pons (*spoke in French*):²⁸ Thank you, Moderator. Of course, I should start by joining others who have thanked our hosts, the Thai government, UNAFEI and the Swedish government who have done some excellent organization for this workshop.

Banking investigation on the question of money-laundering, the subject at hand. I'll try to be very specific and practical and speak from the point of view of the man in the field as that is what I am and why I am here.

The first investigation that should be performed when looking at money-laundering cases such as the one in this case study, is to reconstitute the circuit of transfer of funds. In other words, to do work that can be tedious work, looking at bank documents to determine circulation of the funds from suspect origin to final beneficiary. So the first area of investigation would be banking circles or financial circles, which means the question comes up of banking secrecy.

Of course if judges, police, prosecutors, investigators, face banking secrecy imposed by the system governing, then their investigation will not move forward. So doing away with banking secrecy, lifting of banking secrecy is a prerequisite for the success of money-laundering investigations. That's a first point.

Banking investigation can be done through coercion. This depends on the instruments at hand. It might be a phone call first or surveillance of suspect accounts. Such investigative methods can allow to determine responsibility, liability for banking questions and determine whether or not there should be prosecution. In this particular case, the banks involved would be Goldfingers Bank, and in the books there you have the Lownet account and the Handyfunds Bank, where Ms. Chang has the safe deposit box, that's in Younglands as well. So there, there would have to be an investigation in Zeitstaat where 15 accounts were opened under false identity, which brings us back to the Xanadu starting point where there was the Finebills Bank, the Kondo account, where everything started off.

As to what has to be done for the relevant documents to be requested, and there's also the question as to whether this should be a written request or a requisition or should there be something more forcible, a search, there are no rules here. It all depends case by case. When the bank institute isn't under suspicion of voluntary participation in money-laundering transactions, then it could just be a written request. The minute a doubt emerges as to the good faith of the banking institution, then it should be something more forcible with a search all legally done, warrants and all, to have full effectiveness and efficiency.

These searches might be useful in order to obtain documents of opening of account, the files for that, all the various signature papers, powers of attorney, ID provided, when accounts were opened. And in these establishments there will also be records of debit and credit movements, as well as substantiating documents for operations on the accounts, whether transfers or others.

Just a brief example, if I may, to stress the importance of searches in this area. This is an example that I have experienced myself. I performed a search in a bank, I won't be giving you the name of course, in a country that I won't mention either, and during that search, when I got to the file for the signature of the case, I wasn't surprised

²⁸ Talking points (in French) submitted by Mr. Pons are contained in Part III, B of this report.

to find out that there wasn't a signature to be found on the signature paper as one might have expected, but it was rather a copy of a signature that had been cut out in the way that we did with paper doll cutting. And that cut-out signature was just placed in the right spot. Now with that kind of document, if I had just asked for the signature file through a written request, I would have received a photocopy and I would not have seen how it was made up. Whereas, when you actually have your hands on the document with the cutting and pasting of the signature, and who knows where it was taken from, then you can wonder or see how the bank might or might not have followed the rules and the conditions and observing the FATF recommendations.

So once you've collected all the documents, then there's all the processing necessary. Thanks to that, on a preliminary basis you get to identify the ultimate recipients of the proceeds of laundering, and you can see with all the circulation of funds if the banks and banking institutions involved actually followed the rules of surveillance necessary.

Those are the comments I would like to make on banking investigation matters that might be considered for the case at hand.

Sub-Moderator: Thank you for illustrating the difficulty of establishing the facts in a money-laundering case and proving knowledge, as well as the material elements, of the money-laundering offence.

Now money-laundering seldom takes place only in one country. It very typically involves several jurisdictions, as is the case in our scenario here. I wonder whether all you three prosecutors sitting on this panel could just spend one minute on the international cooperation aspect of this case. How is it that you obtain the information, the evidence that is necessary for prosecuting the case, the money-laundering case in a jurisdiction when the evidence information is actually located in a foreign jurisdiction? How do you go about this? Please. I don't know who to start. Linda?

Ms. Samuel: Thank you. Basically, in this fact scenario we have evidence in all three jurisdictions and that consists of company formation documents, it's going to consist of bank records, it's going to consist of webpage information, on the setting up of the solicitation. And in order to get that, in order to prosecute the case, there needs to be a basis for making a request, and that could be based on a mutual legal assistance treaty, a bilateral relationship, it could be perhaps pursuant to the Transnational Organized Crime Convention because this is an offence which involves three or more people and is transnational in nature. Or it could be based on letters rogatory which are done as the matter of comity. But there needs to be a basis for making the request.

There is also the possibility of using informal cooperation through law enforcement channels where police in one jurisdiction would seek to obtain information from other jurisdictions. However, bank records typically are not obtainable through this vehicle.

There's also the possibility of making an FIU, a financial intelligence unit request, to help build a financial picture in this case. I think I'll leave it at that.

Sub-Moderator: Yes, I think it's very important, as you mentioned, that if there is a financial intelligence unit in the country involved there may be a possibility of exchanging intelligence between this unit and the other units in the jurisdictions involved. Typically FIUs would cooperate through the Egmont Group, which is the international body that garners all FIUs around the world, over 100 members now I think are included in the Egmont Group. But they also could use bilateral MOUs for exchanging intelligence.

Typically in this case, had the banks noticed that something fishy was going on there would have been a suspicious transaction report made to the FIU and the FIU could have exchanged this intelligence in the report with the other FIUs concerned.

Now let's suppose that the investigation is successful, that the prosecutors can prove the case and that the person is convicted of money-laundering. And on top of it, let's suppose that not only they prove their case, but they also manage to seize successfully all the assets that are involved, the proceeds of crime, the instrumentalities or any replacement assets.

Now the ultimate purpose of the case, such a criminal case, is of course not only prosecuting the money-

MEASURES TO COMBAT ECONOMIC CRIME, INCLUDING MONEY-LAUNDERING

launderer; it's also to recover the money, the assets because you need these assets, first of all, to pay compensation damages to the victims, but also by removing the assets from the financial circuit you prevent further criminal activities.

I'd like to move on therefore to the next subject matter which is asset forfeiture and victim restitution which is an important aspect to this particular case since there have been a number of victims involved in a number of countries. So this in itself adds to the complexity of the case. What are the available procedures and avenues that we can use for asset forfeiture and then for victim restitution in this case? I don't know. Who wants to start? Linda or Mr. Wallner?

Ms. Samuel: In this particular case, we have a number of assets which would be subject to forfeiture. The \$2 million cash that was handed to Mr. Banner in Xanadu consisting of the \$1.2 million loan repayments, the \$400,000 that went to Mr. Banner and the \$400,000 that went to Mr. Alan. We also have a \$2 million villa in Zeitstaat which is subject to forfeiture, and then a million dollars that was dispersed in the form of payment to the accountant, and then expenditure on personal expenses, and then investment in bearer share securities and then cash on hand at the residence.

How we're going to get this money and who's going to get this money can vary to a great extent depending on the laws and procedures in place in each jurisdiction, and also depends upon in jurisdictions for instance that only have a criminal forfeiture regime. They obviously are going to have to have these actors in hand and prosecute them successfully. And as we know from the fact scenario, they are dispersed in a number of jurisdictions. We have two of them in Xanadu, we have Ms. Dee in Zeitstaat and we have Ms. Chung dividing her time between Youngland and her villa in Zeitstaat.

I think there was a statement made before that there definitely needs the ability to be able to have a mechanism to forfeit property beyond one's border. If countries are left with only a criminal regime, then they are only going to be able to forfeit that property against whom they've successfully prosecuted. However, in my country and in a growing number of other countries, there is what's called an in rem system or a non-conviction based forfeiture system where forfeiture can be achieved irrespective of the conviction of the defendant. And this is particularly helpful in cases where you're dealing with fugitives or you're dealing with the nominees or you're dealing with decedents. And I'll turn it over to Dr. Wallner.

Dr. Wallner: I have very little to add to this. I just want to say that protection of victims and assistance to victims is becoming an issue ever more important. For instance, it's at the top of the agenda, as far as I know, at the Conference of the International Association of Prosecutors later this year in Copenhagen. And it's a field where a lot needs to be done because this case is exemplary to this because in a lot of jurisdictions, forfeiture will not be allowed in a fraud case where there are victims making claims which are intended to help the victims, but in real life doesn't help them because they have to file civil suits to finally get the money which has all kinds of difficulties, and they are not helped by the state to actually recover their assets.

So I think victims of fraud funds is a very good way of doing it, and before the money goes into that forfeiting it in a case like this, because if 10,000 victims are all over the world, how do they go to Youngland, if the prosecution is conducted in Youngland, or to Xanadu, and make their claims? They won't bother because the expenses are much higher than their damage. So I think this is field where best practices should still be looked at and many countries could learn from good examples that do exist.

Just one word on civil forfeiture. This is a very helpful tool. For instance, in my country we execute them a lot because typically the perpetrators sit in a foreign country but we are able to free some of the money in some cases in our country, so we have no defendants sometimes to prosecute within the country but we go for the money.

I would just suggest that rather the term "in rem forfeiture" is used because civil forfeiture is misleading and leads to complications in international assistance because the receivers of such requests think this is a civil litigation while really it's a criminal litigation just against the money and not against a person.

Sub-Moderator: Thank you very much. I'd like to just mention at the very end of this panel that of course there is a possibility of sharing, splitting the assets concerned between the various jurisdictions as well, and at least two

would have been involved in investigation and prosecution in this particular scenario. And the international conventions, particularly Palermo, do encourage countries to share the confiscated assets in order to use them for victim compensation.

And there has been recently a model agreement as well drafted under the auspices of the United Nations with provisions helping countries to share such assets on a fair basis. And I think such a model agreement can be very useful in the future as an incentive for cooperation as well.

With that I would like to conclude the panel and thank very much the Panellists. Oh, sorry, Henri has something to say, please.

Mr. Pons (*spoke in French*): Thank you, Mr. Moderator. Just a comment that will take 30 seconds. The interest in the description of laundering in certain legal regimes, as in the French case, means that not only could the gains from the offence be taken, but actually all the gains, everything. So the investigation is carried out nationally and internationally, not only to look for the assets resulting from the offences but also any elements of the property of the person concerned so that they may possibly be confiscated later on. So the investigation is not only looking for the product of the offence, but all the property of the persons in question.

Sub-Moderator: This question actually has been raised by Felix McKenna the other day because in his system that is a possibility, and as we know, in some countries where this possibility exists, this is typically tied to some serious activity, organized crime, drug trafficking, so this is not typically available for all sorts of activity, but only for serious crime.

So I'd like to thank again the Panellists for their enthusiasm and contribution and for their patience with this panel, and also those who are in the room still and haven't left for lunch. And if you have any questions, I understand the Moderator will handle them. Thank you very much.

Moderator: Thank you very much to you, Peter, for this very interesting, comprehensive presentation, and also very practical. I think that we all learned a lot from this presentation.

Questions and Comments from the Floor

Now we have the time until about 1:15, so within that time we will give the floor to the Scientific Rapporteur. But before doing that, I would like to ask the Distinguished Representative of Morocco to take the floor, and then I see Egypt and Spain as well. Please, Sir, you have the floor. The Distinguished Representative of Morocco, you have the floor.

Morocco (*spoke in Arabic*): Mr. Chairman, Morocco has developed legislation on laundering and we are going to be adopting the law finally. Now as you know, Morocco is looking for its way through this area because we are a developing country and our future is ahead of us, so to speak, as far as our economic development is concerned. We want to attract capital, but legal capital, and we want to ask you a question.

How do you assess the difficulties which we may encounter in the application of such legislation? We have 25 per cent of capital flow in the banks at the moment, and individuals don't want to confine their capital to the bank in view of the illiteracy rate in the country, in spite of all the efforts which are being made with the authorities to deal with that.

There are also other difficulties of other kinds which are the result of our economy, which is not a codified economy. And then there's also the fact that there are commercial transactions where there are no invoices and businessmen sometimes don't like the paperwork.

So we'd like to know, Sir, quite briefly, what are the proposals and what could you suggest to us so that I can take all this advice and all these suggestions back to my country so that we can deal with the problems at home. Because very often legislation is misunderstood or resented or causes doubts here and there, and any new legislation opens up new roads. And we want to know how we can ensure the application of our legislation. We're quite sure that this Conference will be of great help to us in finding a solution. Thank you very much, Sir.

Moderator: Thank you very much. I recognized the Distinguished Representative of Egypt.

MEASURES TO COMBAT ECONOMIC CRIME, INCLUDING MONEY-LAUNDERING

Egypt (*spoke in Arabic*): Thank you, Mr. Chairman. I would just like to propose a few comments on this subject. I see that the existing legislation in Egypt, particularly on laundering, is, well, it shows me that this is a very important subject. It's a very big subject worldwide. The subject of money-laundering is obviously a very important matter, but the danger resides in the fact that laundered capital is capital which is of criminal origin, because any capital which an individual holds, which is the property of an individual, is not necessarily criminal. But laundered money is money that emerges from criminal activity, so there are two crimes: the laundering and the predicate offence. And I believe that the authority of a prosecutor must be able, first of all, to find out the origin of the capital and then determine the consequences thereof.

So we must say that classical laundering, that is by depositing capital to be laundered in a bank or in some kind of a banking organization, then to make different transfers to different countries, we must be able to find a trace of this capital. That's easy to find because once money has been deposited in a bank, however many transfers from one bank to another take place, we can follow them and we can find them. There's no problem with that.

But the problem resides in the fact that at some point this money goes outside the banking service. It's used for investments inside the country and the gains from this investment are then used in the banking circuits, and this is the danger. That is the danger of this capital being used is that it can be used for other criminal activities, I'm thinking of terrorism, for example. So you see, you always have to look in this kind of direction. As I was saying, the problem is that this kind of capital ends up by financing other crimes, particularly terrorism.

A legal point now. The speedy procedures, the effective procedures that we're being asked to take against money launderers, might sometimes be in contradiction with human rights. Now in this respect, while trying to reduce one crime I can't bring about another one. I can't drop banking secrecy, for example. Banking secrecy must be removed according to very specific legal procedures. In other words, I just cannot raise banking secrecy because I suspect that somewhere money is being laundered. No, banking secrecy can only be lifted by legal means, and here we come to the vital importance of mutual legal assistance as far as money-laundering is concerned. This example is a typical example of transnational crime.

So in the various countries of the world there must be a database which will enable an exchange of information to take place with internal and external bodies and which will also enable the international conventions, be they bilateral, multilateral or mutual assistance, these conventions must make it possible to exchange information and intelligence among countries so that we can address the problem of laundering.

And one last point, if you don't mind, Mr. Chairman, and I'm turning particularly to my colleague from Morocco, there's a whole culture of exchanges with banks. It doesn't exist everywhere, particularly in certain parts of the world. We have not yet found a final solution to the question of how to deal with banks. For example, we don't use banking documents, and in our part of the world I'm not using cheques or credit cards. We always prefer to use cash, liquid money, and without this aspect of the problem, things take time because the countries concerned have to be able to understand this and they too have to get into the modern banking circle. I hope I've been clear, Mr. Chairman. Thank you.

Moderator: Those were important points that you made there. I would now like to ask the Distinguished Representative of Spain to take the floor. You have the floor.

Spain (*spoke in Spanish*): Thank you. To begin with, I want to congratulate the organizers of these workshops, panels, for the quality of the speakers and for their very full statements. I also want to thank the Moderator for the way in which he has conducted the discussions.

We are talking here about measures to fight economic and financial crimes, including money-laundering. And I'd like to say that in the framework of our cooperation with countries of Latin America and Morocco, there have been two recent conferences during which we managed to adopt a whole series of conclusions and recommendations. I'm not going to read them out here, but I think that there may be in all this three points that need to be emphasized in view of everything that's just been said by the various speakers.

But I particularly think we ought to target two very important points. First of all, we must emphasize everything that has to do with international cooperation, and I think that in this area we ought to recall that Spain has signed

many agreements with various countries, and probably we're going to have to establish a model agreement which can be made available to all those who want to conclude and cooperate and exchange information.

And I would then say that we are very interested in the whole section on property investigations. We think that this should be something systematic, and at the same time it should be in parallel with and follow any investigation of serious offences, money-laundering, drug trafficking, trafficking in humans and other forms of offences which come under the heading of organized crime.

Another couple of words about two programmes which Spain is involved in at present. First of all, we have the establishment of a community or intelligence services on the basis of tools. Well, in a way perspective science. We're setting up a group of people from various financial services, police services, customs services, so that we can have tools, which in the medium term, will enable us to get ahead of the new advances which are being made in crime, such as money-laundering.

And furthermore, we are setting up an observatory for new technologies which are being used by criminal organizations. Indicators on money-laundering are very, very important. So this is the contribution I wanted to make. Thank you.

Moderator: Thank you very much for that very interesting information and also for the suggestion to draft a model agreement in this context. Now I take this intervention to be more of an informative character, and also the information that was given by the Distinguished Representative of Egypt, so I don't think that those questions merit, or rather, necessitate any response. I would, however, like to ask Ms. Bodasing to make some comment in relation to the question from the Distinguished Representative of Morocco. You have the floor.

Ms. Bodasing: Thank you. I would just like to point out, Sir, that you are not alone in your predicament. In fact, a number of us in the developing world face a similar challenge, a challenge where members of the informal sector of the economy contribute quite largely to our GDP, but for a variety of reasons they have been marginalized from the formal banking processes. And in respect of this, I can use our country as an example to perhaps assist with some suggestions.

Any piece of legislation can't be transposed from a model that is developed outside the country into your own country with your own special circumstances. They need to be tailored. It needs to undergo a consultative process, and it needs to bear in mind the important role played by the informal sector. And I would suggest that perhaps the information that was shared by Sultan Al Suwaidi this morning would be of assistance. And possibly, you look at international best practices, but you need to adapt them, so I would even suggest that you extend, for example, your suspicious transactions reporting requirements to members of the informal sector that are involved in cash exchanges, that you keep the processes simple, that you ensure confidentiality of the system, et cetera. So that would be my suggestion to your challenges. Thanks.

Moderator: Thank you very much for that. Now I would like to give the floor to Ms. Toni Makkai, she is the Director of the Australian Institute of Criminology and she's the Scientific Rapporteur of this workshop. We have, of course, also an official Rapporteur with the Distinguished Delegate of Iran. But now, Ms. Makkai, you have the floor.