

A. Presentation Papers of Panels 1 and 3

“Concept of Economic Crimes as Perceived Across the World - Typology, New Trends and Countermeasures”

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I. Concept of Economic Crime and New Trends

It is difficult to have one legal definition of the concept of economic and financial crimes all over the world because the criminal policy, especially in the economic area, varies greatly from one country to another.

It is also difficult to determine the overall extent of these crimes because their growing perception evolves some of the most rapidly growing predicate offences, as well as the fact that many cases are not reported and the investigation to discover these crimes requires high levels of expertise which is not well developed in many countries, especially in developing countries.

The emergence of new forms of economic and financial crimes over the past decades with a series of high-profile cases in Europe and North America, as well as in developed countries, makes the problem more complicated.

The significant increase in all forms of economic and financial crimes in the era of globalization, the transnational nature of these crimes, the integration of the world's financial markets and the growth of transnational organized crime makes the implications of these crimes truly global and consequently not easy to identify.

The trends (in policy, strategy, plans, incrimination and countermeasures) to combat this phenomenon, especially the new forms of economic and financial crimes, vary in accordance with the Political and Economic System. However, we can identify between all the trends two principle trends:

Trend I: It is a broad trend which defines economic and financial crimes as “any action or omission that runs counter to the public economic policy”.

This trend considers that the economic and financial laws comprehensively organize economic activity of various descriptions carried on by the government or private sector.

To be more precise we can say: The economic and financial crimes are all actions conducive to inflicting damage on public funds, production activities, distribution, circulation and consumption of commodities and services, as well as the relations related to supply, planning, training and manufacture, to the support of industry, credit, insurance, transport, trade, companies, cooperative societies, taxes and the protection of animal, plant, water and mineral resources.

Trend II: It is a narrow trend which considers no necessity for state intervention in all and any economic activity descriptions: it suffices for the economic law to observe the basic principles of economic public order and to lay down in the light of these principles the rules related to planning, manufacture, money, banking, import, export, insurance, transport, trade, customs, etc.

Whatever the economic policy of the country, there is a unanimous position for the incrimination (although the differences are very large for the countermeasures) of these economic crimes.

To cite a few examples of economic crimes covered by both trends:

- Fraud: consumer fraud, corporate fraud, credit card fraud, advanced fee fraud, computer related fraud;
- Corruption: bribery, embezzlement, trading in influence, abuse of function, illicit enrichment;
- Money-laundering;
- Cyber crime;

MEASURES TO COMBAT ECONOMIC CRIME, INCLUDING MONEY-LAUNDERING

- Identity theft and counterfeiting of currency;
- Crimes of money contraband, counterfeit and imitation;
- Banking offences inclusive of money laundering;
- Fiscal offences;
- Tax evasion;
- Customs offences;
- Trade offences (adulteration, illicit competition, trademark imitation, fraudulent bankruptcy, default bankruptcy, high prices, monopoly, etc.);
- Intellectual property offences;
- Embezzlement, theft, breach of trust, and sabotage of public funds;
- Cheating the State in the course of tenders, bids and production quality and in execution of the State economic projects;
- Manipulation of stock markets, including the abuse of privileged legal information and capital flight.

II. Countermeasures

As we have seen from the concept of economic and financial crimes, the countermeasures vary also from one country to another. However we can divide the different trends into two principle trends:

Trend I: prevail the penalties, even the severe penalties, for some crimes such as imprisonment up to three years in the case of felonies and 15 years in the case of crimes, plus confiscation and fines to be assessed according to the damage sustained.

Trend II: prevail non-criminal sanctions (or measures) as:

1. Civil sanctions;
2. Administrative sanctions;
3. Disciplinary sanctions;
4. Economic sanctions.

When the violation of the economic regulations is serious this trend accepts to go further to the penalties, as fine and imprisonment.

III. Useful Results and Possible Recommendations

Results and recommendations can be divided into three principle directions:

A. Prevention:

1. The United Nations office on Drugs and Crime carries out appropriate studies, in cooperation with relevant institutions and other United Nations entities, on the incidence, effects, consequences and seriousness of economic and financial crimes, with a view to developing more effective strategies to prevent and control them;
2. The Eleventh Congress considers the possibility of initiating negotiations on a draft United Nations convention against economic and financial crime, on the basis of a comprehensive study to be conducted by a group of recognized experts;
3. Where feasible commercial codes and regulations, financial laws and administrative controls be reformed to increase the transparency of operations;
4. Economic activities should be subjected to a legal order that lays down clear-cut limits for civil servants, rights and obligations and for the rights and obligations of the economic private sector personnel who carry out State related economic projects;
5. Economic legislation should be accessible to the public through the media for the purpose of familiarizing the public with the importance of implementing such legislation and informing them about the risk involved in the contravention of these legislations on economic life and the national economy;
6. Social and educational institutions may join in disseminating awareness of economic offences;
7. Meticulous control should be imposed on all economic firms, especially banks, customs and fiscal departments, through the appointment of inspection committees specialized in the control of economic offences; and

8. The perpetrators of economic crimes should be tried by specialist judges.

B. Criminal sanctions:

1. The main criminal sanctions which should apply to dangerous economic offences are fines and imprisonment. These offences include embezzlement, theft, corruption, crimes of money contraband, counterfeit, and premeditated sabotage of public funds.
2. The judge may confiscate the objects or instruments used in the commission of the crime or freeze the funds arising therefrom.

C. Non-criminal sanctions:

It is advisable to apply "non-criminal" civil and economic sanctions to some economic offences.

The civil sanctions recommended are:

1. Indemnification of the damage;
2. Ordering that the work be completed;
3. Annulment of work that runs counter to the economic law;
4. Reinstatement of the status quo to what it was.

The economic sanctions recommended are:

1. Prohibition of carrying on economic activities;
2. Shutdown of the economic firms;
3. Business discontinuation or dissolution of the economic firm;
4. Placement of the economic firm under receivership;
5. Withdrawal of export/import permits;
6. Withdrawal of the economic firm's incorporation act;
7. Exclusion from certain exemptions prescribed in the law

Conclusion

In this era where the world has become a small village, where the trends of economic systems have become closer, and the concept of crimes and deviations is almost unified across the world, it is time to consider the following:

The Eleventh Congress may recommend initiating negotiations on a draft United Nations convention against economic and financial crimes, to clearly define Economic Crimes and their sanctions on the basis of a comprehensive study to be conducted by a group of recognized experts.

Measures to Combat Economic Crime, Including Money- Laundering

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Concept of Economic Crimes as perceived across the world- Typology, New trends and Countermeasures

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I. Concept of economic crime and new trends

- It is difficult to have one legal definition of the concept of economic and financial crimes all over the world because the criminal policy varies greatly from one country to another.
- It is also difficult to determine the overall extent of these crimes because:
 - 1- their growing perception evolves some of the most rapidly growing predicate offences
 - 2-many cases are not reported
 - 3- the investigation to discover these crimes requires high levels of expertise which is not well developed in many developing countries.
 - 4-The emergence of new forms of economic and financial crimes

The global implications of Economic and Financial crimes

- The significant increase in all forms of economic and financial crimes in the era of globalization,
- the transnational nature of these crimes
- the integration of the world's financial markets
- the growth of the transnational organized crime

The trends (policy, strategy, plans, incrimination and countermeasures)

The trends to combat this phenomenon vary in accordance with the Political and Economic System .However, we can identify between all the trends two principle trends:

Trend I

- It is a broad trend which defines economic and financial crimes as "any action or omission that runs counter to the public economic policy".
- This trend considers that the economic and financial laws are comprehensively organize economic activity of various description carried on by the government or private sector.

Trend I --

- To be more precise we can say: The economic and financial crimes are all actions conducive to inflicting damage on public funds, production activities, distribution, circulation and consumption of commodities and services, as well as the relations related to supply, planning, training and manufacture, to the support of industry, credit, insurance, transport, trade, companies, cooperative societies, taxes and the protection of animal, plant, water and mineral resources.

Trend II

- It is a narrow trend which considers no necessity for state intervention in all and any economic activity descriptions
- it suffices for the economic law to observe the basic principles of economic public order and to lay down in the light of these principles, the rules related to planning, manufacture, money, banking, import, export, insurance, transport, trade, customs...etc.

Whatever is the economic policy of the country, there is an unanimous position for the incrimination (although the differences are very large for the Countermeasures) of these economic crime.

Examples of economic crimes covered by both trends

- Fraud: consumer, corporate, credit card, advanced fee, computer related.
- Corruption: bribery, embezzlement, trading in influence, abuse of function, illicit enrichment...
- Identity theft and counterfeiting of currency

Examples of economic crimes covered by both trends -

- Crimes of money contraband, counterfeit and imitation
- Banking offences inclusive of money laundering
- Fiscal offences
- Money-laundering
- Customs offences
- Tax evasion
- Cyber crime

Examples of economic crimes covered by both trends--

- Trade offences (adulteration, illicit competition, trademark imitation, fraudulent bankruptcy, default bankruptcy, high prices, monopoly...)
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- Embezzlement, theft, breach of trust, and sabotage of public funds
- Cheating the State in the course of tenders, bids and production quality and in execution of the State economic projects
- Manipulation of stock markets, including the abuse of privileged legal informations and capital flight.

II. Countermeasures

- Countermeasures vary also from one country to another. However we can divide the different trends into two principle trends:

Countermeasures: Trend I

- prevails the penalties even the severe penalties for some crimes such as imprisonment reaching to three years in the case of felonies and 15 years in the case of crimes, plus
- confiscation
- fine to be assessed according to the damage sustained.

Countermeasures: Trend II

- prevails non-criminal sanctions (or measures) as:
 - 1-Civil sanctions
 - 2-Administrative sanctions
 - 3-Disiplinary sanctions
 - 4-Economic sanctions
- When the violation of the economic regulations is dangerous this trend accepts to go further to the penalties, as fine and imprisonment.

III. Recommendations:

A .Prevention

- The United Nations office on Drugs and Crime may carry out appropriate studies,, on the incidence, effects, consequences and seriousness of economic and financial crimes, with a view to developing more effective strategies to prevent and control them

III. Recommendations:

A. Prevention-

- Where feasible commercial codes and regulations, financial laws and administrative controls be reformed to increase the transparency of operations;
- Economic activities should be subjected to a legal order that lays down clear-cut limits for the civil servants, and economic private sector personnel rights and obligations

III. Recommendations:

A. Prevention---

- Economic legislations should be accessible to the public through the media and Social and educational institutions for the purpose of the familiarizing the public opinion with the importance of implementing these legislations and informing them about the risk involved in the contravention of these legislations on economic life and national economy;

III. Recommendations:

A. Prevention----

- Meticulous control should be imposed on all economic firms, (banks, customs and fiscal departments) through appointment of inspection committees specialized in the control of economic offences
- The perpetrators of economic crimes should be tried by specialist judges.

III. Recommendations:

B. Criminal sanctions

- The main criminal sanctions which should apply to economic offences are fining and sentencing (imprison).
- These offences include embezzlement, theft or premeditated sabotage of public funds.
- Economic penalties should rather be avoided in economic offences that do not have the imprint of public law crimes
- The judge may confiscate the objects or instruments used in commission of the crime or still the funds arising therefrom.

III. Recommendations:

C. Non-criminal sanctions

- It is advisable to apply “non-criminal” civil and economic sanctions to economic offences.
- Examples of civil sanctions are:
 - 1- Indemnification of the damage
 - 2- Ordering that the work be completed
 - 3- Annulment of the work that runs counter to the economic law
 - 4- Reinstatement of the status quo to what it was.

III. Recommendations:

C. Non-criminal sanctions

- Examples of economic sanctions are:
- Prohibition of carrying on economic activities
- Shutdown of the economic firms
- Business discontinuation or dissolution of the economic firm
- Placement of the economic firm under receivership
- Withdrawal of export/import permit
- Withdrawal of the economic firm’s incorporation act
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conclusion

- In this era where the world changed to be a small village, where the trends of economic system get closer, and the concept of crimes and deviations gets almost unified across the world, it is time to consider the following :

Conclusion-

The Eleventh Congress may recommend initiating negotiations on a draft United Nations convention against economic and financial crimes, to clearly define Economic Crimes and their sanctions on the basis of a comprehensive study to be conducted by a group of recognized experts.