

A. Opening (20 April 2005)

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

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

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

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

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

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

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

And the Committee has the following documents before it. Firstly, an information document on Workshop 5 which is called "Measures to Combat Economic Crime, including Money-Laundering", and this document is called A/CONF.203/13. There is also a discussion guide which has the following number, A/CONF.203/PM.1. And finally, the reports of the regional preparatory meetings for the Congress with the following numbers, CONF.203/RPM.1/1 and RPM.2/1, RPM.3/1 and RPM.4/1.¹

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

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

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

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

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

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

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

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

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

Keynote Speech

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Thank you for your attention.

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

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

Moderator's Comments on Technical Assistance

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

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

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

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

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

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

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

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

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

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

Moderator's Comments on the Role of the Private Sector

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

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

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

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

² See Part I, A of this report.