

D. Summing-up of the Discussions of Panels 1 and 2 by the Scientific Rapporteur

Moderator: Thank you very much for that, Mary Lee. I would like the Rapporteur to take the floor now for not more than, shall we say, nine or ten minutes, and after that I would like to give the floor to the Distinguished Representative of Brazil, first to see whether he has been satisfied by what Toni Makkai can give us in terms of the definition of economic crime, and then also perhaps to ask an additional question if you so wish. But I would like Toni now to give you the floor for roughly ten minutes but not more. Thank you.

Scientific Rapporteur:¹⁶ Thank you very much. Could I have the PowerPoint up, please? I have ten minutes to sum up everything that has been said in the last couple of hours, so I will run through this very quickly. The Member from Brazil asked the same question that I asked, as I am not an expert on economic crime, in terms of what does it cover, and it is quite clear from the discussions here this afternoon that the definition is extraordinarily broad and it depends on where you're coming from and what it is that you're interested in - in trying to define what is economic crime.

What we do know from the discussions is that there is a sense that whatever this thing is that it is growing. And that the form of economic crime is changing in that it appears to be crossing national boundaries, involving multiple actors, and that often victims and offenders are, in fact, in different jurisdictions. It is also apparent from the discussions and also from the case study that the method for committing such crimes is also changing so that there's greater complexity in the commission of the crime, that there is the issue of professionals as key gatekeepers, and that there also is strong links to corruption.

It is also clear from the discussion that the governments and criminal justice systems vary in different jurisdictions in terms of how they respond to economic crime, and no doubt that is because there is not a clear definition of what this is. There is, in the UN Convention on TOC, a broad provision for comprehensive financial sector regulatory regimes for the detection of cross-border currency and confiscation of assets, but it is very broad.

In terms of the case study, we tried to highlight here, I think, that there are a range of things that can actually be done, practical measures, and I think the key message that I was getting from the case study is that prevention is better than cure and that there is no one solution.

In terms of prevention, there are a range of issues that both government and non-government and the private sector can implement in terms of what we might call governance issues, and those governance issues include the development of policies and procedures for staff, for internal and external audits, for reporting to shareholders, and also providing whistle-blowing legislation and protection.

Another important aspect is also what we might call lesson-drawing from the control failures so that we in fact take, though we have a breakdown, we actually draw lessons from that and therefore modify our procedures.

There was also raised the need for education and training of employers and employees in terms of codes of ethics and integrity, and how we need to be in partnership between government and the private sector; government cannot do everything.

One very interesting point I thought that was made was that education needs to start young. In other words, we need to be into early intervention in terms of building ethical societies.

In terms of law enforcement, some practical measures are that people need to develop the exchange of information across institutions, but also ensuring the exchange of information across borders as well.

And finally, I thought a very good, important point made from this case study was the need for an integrated approach, that you cannot just have one solution, that you need to have a range of solutions that target deterrence, prevention and education.

What was clear, however, is that there is a lot that we don't know. In terms of our data sources, they appear to be very limited and no doubt this is due from this rather poor conceptualization of what economic crime is, and

¹⁶ A PowerPoint presentation by the Scientific Rapporteur is attached at the end of this section.

that therefore affects all of the data that we have available to us in terms of its accuracy, its comprehensiveness, its comparability.

There is, of course, a key issue and that is it is often very difficult to obtain data because of confidentiality provisions, and that also undermines our ability to be able to scope out the size of the problem that we are dealing with so that we know that we have significant under-reporting and we have no idea of what the scale is of economic crime, and particularly cross-border crime. And a complicating factor is that there is no comprehensive source book of data or information across regions or across the globe.

In terms of when I was listening to the discussions, I thought that there was a real lack of information on who are the victims and who are the offenders, and that we didn't seem to really have any clear understanding of how networks actually operated in terms of whether the way in which they are organized, their transnational character and the various links in the chain from the beginning to the end, and we clearly need to have more research done on this.

And a key issue was what works? There was, I think, a weakness here in terms of what is the cost effectiveness of criminal justice interventions, that we need to be better informed in order to be able to assess this.

There was a very clear explanation as to this emerging issue of identity crime, and I have put up here the key issues that I think in terms of what were raised in the presentation, that we have some empirical data, that this is growing, that it is a precursor to other crime. An important aspect of identity crime seems to be the actual trafficking in identity information, which actually forms part of a chain, and that there are many criminals and many victims involved.

The other issue that came through is that legislation is lagging behind this kind of crime, and that it has the potential to undermine trust in both government and the private sector.

So, again, we get back to this key issue, what constitutes economic crime? This is what was raised here from the floor, that in fact that economic crime is a reflection of our current environment, the global, the technological and the cultural environment in which we live, but certain behaviour, for example, corruption and money-laundering is the method to facilitate crime, that different forms of crime are flexibly linked but that we appear to have a less flexible approach in terms of being able to deal with this crime, and there was the issue raised about the principle of the burden of proof and are we moving too quickly.

And two further issues that were raised in the discussion were that there is constant change in computer crime, so how do we respond to this? Again, to the former point that I made about flexibility, do we have flexible laws or do we in fact make specific changes to the law? And of course the need for greater cooperation.

There are various ways we can move forward. We need to certainly improve our research and intelligence. We need to implement prevention and deterrence measures. Technical assistance, we need to utilize the existing technical assistance that is available, and we need to be focused on efficiency and effectiveness in terms of ensuring that the interventions that we use are informed by evidence, and that we are able to identify best practice and promulgate that in terms of combating economic crime.

The priorities? The priorities of course will vary across different countries in terms of the issues that have been raised, but some of the priorities that I would see is that building the long-term evidence base, we need to do that in order to ensure that our interventions succeed, that we enhance cooperative mechanisms for long-term intelligence-sharing across countries, that it is important to invest in preventative measures, especially with the private sector, to implement effective control systems, that of course we need to respond and develop appropriate legislation to provide all sectors of the criminal justice system with the tools to respond to economic crime. We have to have the ability to respond quickly when new crimes and new forms of crime emerge, such as identity theft. And finally, we need to support capacity-building through technical assistance. Thank you.

Questions and Comments from the Floor

Moderator: Thank you very much for that very comprehensive and extremely interesting summary. We are soon losing the interpretation so I would like now to ask the Distinguished Representative of Brazil to take the floor

MEASURES TO COMBAT ECONOMIC CRIME, INCLUDING MONEY-LAUNDERING

briefly, followed by the Distinguished Representative of Argentina. Brazil, Sir, you have the floor.

Brazil: Sorry, Mr. Chairman, to ask for the floor again but it will be very quick. Just a question very quickly to Justice Smellie. He has called for harmonization of legislation across borders, and quoting, if I understood correctly, Secretary-General Kofi Annan, he said that mismatches of legal systems must not be a barrier to law enforcement.

So I would like to know if Justice Smellie, according to his opinion, if countries are prepared to provide cooperation without asking for double incrimination. If you could see that in the near future, counsel would be prepared to provide cooperation without asking for double incrimination.

And finally, Mr. Chairman, you would probably invite countries to think and consider the possibility of placing in the final declaration of this Congress something like the expression of Secretary-General Kofi Annan of that mismatches of legal system must not be a barrier to law enforcement. Thank you, Mr. Chairman.

Moderator: Could I first ask Argentina, okay, later then. So, Justice Smellie.

Justice Smellie: Thank you, Mr. Chairman. As I understand the question, it is whether one would care to express a view on the need for reciprocity in international legal assistance. Not reciprocity?

Brazil: I'm sorry, just to clarify. Double incrimination.

Justice Smellie: Oh, dual criminality. I see. As a basic test. Yes. That principle still all depends on a number of mutual legal assistance treaties, and my own view is that so long as the conduct which is alleged involves activity which would be regarded as sanctionable in the requested country, it should not matter whether the requested country has a similar offence as that described by the requesting country in its own laws. That is just my own view. As I said before, my understanding is that there is still the continuing need expressed in many mutual legal assistance treaties for this test of dual criminality.

Moderator: Thank you very much. I could invite you perhaps to come tomorrow afternoon to the workshop concerning extradition where I believe that this question also will be discussed. The Distinguished Representative of Argentina, you have the floor, Sir.

Argentina: Thank you. I will make an observation on your last questions. We would have no problems with dual criminality with extradition, but as my friend from Brazil said, it's different from mutual legal assistance. Perhaps we will press for the idea of having the possibility to the greatest extent for countries to cooperate even in the absence of dual criminality for mutual legal assistance.

Moderator: Thank you.

Well I think that we have now finished the discussion for today, with the exception that the Chairman will make the final statement. Sir, you have the floor.

Chairman: Thank you, Mr. Nilsson. I thank you and all the participants and speakers.

Before I adjourn this workshop till tomorrow morning, 10:00, I will give the floor to the Secretariat, who has a few announcements to make. Thank you.

[SECRETARIAT]

I adjourn the meeting until tomorrow morning, thank you.



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Scientific rapporteur's technical overview of Workshop on Economic Crime and Money Laundering

Session 1: Economic crime

Toni Makkai
Director

What do we know?

- Definition is very broad
 - Individual-institutional level/Individual to organised
 - Victims range from Individuals to both private and state organisations
- Sense that it is growing in size
 - Highlighted by recent cases of serious fraud in major private sector companies
 - Significant under-reporting of crime/Significant challenges in capturing data
- The form of the crime is changing
 - Crosses national boundaries/Multiple actors/Victims and offenders in different jurisdictions
- The method of committing such crimes is changing
 - Greater complexity in the commission of the crime/Professionals are key gatekeepers/strong links to corruption
- Responsivity of governments and criminal justice systems varies across jurisdictions
 - Legislation/Level of expertise by the CJS to detect and prosecute varies
- UN convention on TOC has a provision for comprehensive financial sector regulatory regimes, detection of cross-border currency, confiscation of assets

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Case studies – practical issues

- Prevention is better than cure/no one solution
 - Governance issues – chief executive instructions (CEIs)/policies and procedures
 - Internal shareholders
 - Internal and External audits
 - Reporting to shareholders
 - Whistle-blower legislation and protection
 - Lesson drawing from control failures
 - Internal investigations
 - Education/training of employees – code of ethics and integrity
 - Partnership between government and private sector
 - Education needs to start young
 - Exchange of information across institutions – private and government (including law enforcement)
 - Need for specialist multidisciplinary investigative teams
 - Integrated approach – deterrence, prevention, education

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What don't we know

- Data sources are limited
 - Terminology
 - Availability/Accuracy/Comprehensiveness
 - Comparability
 - Confidentiality
- The size of the problem?
 - Definitional variations/Legislation varies
 - Significant under-reporting
 - What is the scale of cross border crime
 - No comprehensive source book of data/information
- Who are the victims and offenders?
 - Profiling
- Understanding networks?
 - Organised/Transnational/Links in the chain
- What works?
 - Cost effectiveness of criminal justice interventions

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Emerging issues – identity crime

- Some empirical data on the growth in this crime
- Precursor to other crime
- Trafficking in identity information
- Using new technologies to obtain the information
- Many criminals and many victims
- Cross border co-operation and co-ordination
- Legislation is lagging behind this growing crime
- Need to use both civil and criminal sanctions
- Undermine trust in both government and private sector

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Key issues

- What constitutes economic crime?
- These crimes reflect our current environment -- global, technological and cultural
- Certain behaviour (i.e. corruption/money laundering) is a method to facilitate crime
- Different forms of crimes are flexibly linked – requires an integrated approach
- Changing the principle of burden of proof – moving too quickly?
- Constant change in computer crime – flexible laws or specific changes to the law?
- Need for greater co-operation

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How can we move forward?

Research/intelligence issues

- Research community needs to conceptualise what is economic crime?
- Develop methodologies to address the significant issue of under-reporting, especially where it involves the private sector
- Develop norms and standards and build regional databases
- Need to share information

Prevention and deterrence

- Education and media campaigns -- ethics
- Legislative changes including reversal of burden of proof, requirements ISP, international forfeiture cooperation
- Cooperation of co-conspirators/provide witness protection
- Proactive investigative measures – interceptions, undercover policing
- Effective sanctions – civil and criminal
- Think laterally use domestic legislation such as tax powers and international conventions such as TOC, freezing assets

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...moving forward

Technical assistance

- Utilising the existing technical assistance including model laws, computer training and forensics
- Engage the private sector/ngo
- Sharing of trends/intelligence on cyber crime among enforcement agencies

Efficiency and effectiveness

- Interventions should be informed by evidence
- Need to identify best practice and promulgate

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Priorities

- Build long term evidence base, particularly on cost effectiveness, to ensure that interventions succeed
- Enhance co-operative mechanisms for long-term intelligence sharing across countries
- Invest in preventive measures especially with the private sector to implement effective control systems
- Develop appropriate legislation to provide the CJS with the tools to respond to economic crime
- Respond quickly to emerging economic crimes such as identity theft
- Support capacity building through technical assistance

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