ANNUAL REPORT FOR 2000

and

RESOURCE MATERIAL SERIES No. 59

UNAFEI

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WORK PRODUCT OF THE 119TH INTERNATIONAL TRAINING COURSE

"CURRENT SITUATION OF AND COUNTERMEASURES AGAINST TRANSNATIONAL ORGANIZED CRIME

Visiting Experts' Papers

INTRODUCTORY NOTE

It is with pride that the Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) offers to the international community Resource Material Series No. 59.

This volume contains the Annual Report for 2000 and the work produced in two UNAFEI international training programmes: the 118th International Training Course (conducted from 21 May to 12 July 2001) and the 119th International Training Course (conducted from 10 September to 1 November 2001). The main themes of these courses were "Best Practices in the Institutional and Community-Based Treatment of Juvenile Offenders" and "Current Situation of and Countermeasures against Transnational Organized Crime", respectively.

The United Nations has long recognized the specific problems posed by juvenile offending and at the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Vienna, April 2000, it urged for measures to be taken to address the root causes and risk factors related to juvenile delinquency. Further, in the "Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century", adopted by the Tenth Congress, the international community has accepted that a minimum use of the formal juvenile justice system is compatible with the recent trend towards community and restorative justice (paragraphs 27 and 28 of the Vienna Declaration). It is within this climate that the 118th International Training Course specifically considered the treatment of juvenile offenders both institutionally and in the community.

The 119th International Training Course, in considering the main theme of transnational organized crime, represented one of the annual courses UNAFEI has recently been holding towards the autumn of each year concentrating on this issue. It is anticipated that global commitment to combat organized crime will soon see itself manifested in the ratification of the United Nations Convention against Transnational Organized Crime that was signed in December 2000 by more than 120 member states. Added significance was given to this

Course as it began the day after the atrocities occurred in the United States of America on 11 September 2001. This was an event that has strengthened the international community's resolve to counter every form of organized crime.

In this issue, papers contributed by visiting experts, selected individual presentation papers from among the Course participants, and the reports of the Courses are published. I regret that not all the papers submitted by the Course participants could be published. Also, I must request the understanding of the selected authors for not having sufficient time to refer the manuscripts back to them before publication.

I would like to pay tribute to the contributions of the Government of Japan, particularly the Ministry of Justice, the Japan International Cooperation Agency and the Asia Crime Prevention Foundation for providing indispensable and unwavering support to UNAFEI's international training programmes.

Finally, I would like to express my heartfelt gratitude to all who so unselfishly assisted in the publication of this series; in particular the editor of Resource Material Series No. 59, Mr. Sean Eratt (Linguistic Adviser) who so tirelessly dedicated himself to this series.

October 2002

Kunihiko Sakai
Director of UNAFEI

PART ONE

ANNUAL REPORT FOR 2000

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UNAFEI

MAIN ACTIVITIES OF UNAFEI
(1 JANUARY 2000 - 31 DECEMBER 2000)

I. ROLE AND MANDATE

The Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) was established in Tokyo, Japan in 1961 pursuant to an agreement between the United Nations and the Government of Japan. Its goal is to contribute to sound social development in Asia and the Pacific region by promoting regional cooperation in the field of crime prevention and criminal justice, through training and research.

UNAFEI has paid utmost attention to the priority themes identified by the Commission on Crime Prevention and Criminal Justice. Moreover, UNAFEI has been taking up urgent, contemporary problems in the administration of criminal justice in the region, especially problems generated by rapid socio-economic change (e.g., transnational organized crime, corruption, economic and computer crime and the re-integration of prisoners into society) as the main themes and topics for its training courses, seminars and research projects.

II. TRAINING

Training is the principal area and priority of the Institute's work programmes. In the international training courses and seminars, participants from different areas of criminal justice discuss and study pressing problems of criminal justice administration from various perspectives. They deepen their understanding, with the help of lectures and advice by the UNAFEI faculty, visiting experts and *ad hoc* lecturers. This so-called "problem-solving through an integrated approach" is one of the chief characteristics of UNAFEI programmes.

Each year, UNAFEI conducts two international training courses (three months duration) and one international seminar (one month duration). Approximately 80 government officials from various overseas countries receive fellowships from the Japan International Cooperation Agency (JICA; a governmental agency for ODA programmes) each year to participate in all UNAFEI training programmes.

Training courses and seminars are attended by both overseas and Japanese participants. Overseas participants come not only from the Asia-Pacific region but also from the Middle and Near East, Latin America and Africa. These participants are experienced practitioners and administrators holding relatively senior positions in criminal justice fields.

During its 39 years of existence, UNAFEI has conducted a total of 116 international training courses and seminars, in which approximately 2800 criminal justice personnel have participated, representing 100 different countries. In their respective countries, UNAFEI alumni have been playing leading roles and holding important

posts in the fields of crime prevention and the treatment of offenders, and in related organizations.

A. The 114th International Seminar

1. Introduction

From 17 January to 18 February 2000, 26 participants from 21 countries attended the 114th International Seminar to examine the main theme of "International Cooperation to Combat Transnational Organized Crime - with Special Emphasis on Mutual Legal Assistance and Extradition".

2. Methodology

Firstly, the Seminar participants respectively introduced the current situation regarding the role and function of criminal justice agencies in their country in the fight against transnational organized crime. Secondly, General Discussion Sessions in the conference hall examined the subtopics of the main theme. In sum, the participants comprehensively examined the manifestations of transnational organized crime, including drug trafficking, money laundering and trafficking in women and children, which pose a growing threat to the security of the international society and the stability of sovereign states. How modern criminal justice agencies are to respond to this emerging form of crime through the use of mutual legal assistance and extradition was analyzed, in order to seek concrete recommendations. To conduct each session efficiently, the UNAFEI faculty provided the following three topics for participant discussion:

Topic 1: Specific problems and solutions that arise from cases involving international mutual legal assistance or extradition;
Topic 2: Refusal of mutual legal assistance or extradition; and
Topic 3: The framework of mutual legal assistance and extradition: scope, advantages/disadvantages, and the structure and function of a central authority.

A chairperson, co-chairpersons, rapporteur and co-rapporteurs were elected for each topic and organized the discussions in relation to the above themes. In the conference hall, the participants and UNAFEI faculty seriously studied the designated subtopics and exchanged views. Final reports were compiled, based on the said discussions, and were ultimately adopted as the reports of the Seminar. These reports were printed in their entirety in UNAFEI Resource Material Series No. 57.

3. Outcome Summary

Of grave concern worldwide is the prevalence and complexity of transnational organized crime. Its perpetration, under the influence of criminal organizations, has been a serious problem in various countries in the world, including the Asia-Pacific region. In recognition of the gravity of this situation, the United Nations has given special attention to the issue of transnational organized crime, establishing the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime in 1998. During the debates of the Committee, it has been generally understood

that mutual legal assistance and extradition are two major weapons for effectively combating transnational organized crime.

However these modalities, in their present manifestations and procedural practices, are not entirely satisfactory. For example, establishing dual criminality, one of the traditional prerequisites for rendering mutual legal assistance and extradition, is often a difficult and time-consuming task for both the requesting and requested states. Up-to-date information on the pertinent law and its interpretation by both states is not always fully available. Thus requiring dual criminality rigidly may sometimes undermine the efficiency and effectiveness of the mutual legal assistance and extradition procedure.

Giving due consideration to issues such as the above, the strengthening and improvement of international cooperation in the fight against transnational organized crime through mutual legal assistance and extradition mechanisms were explored. Recommendations included:

(i) To bridge differences in civil and common law systems, there should be limited requirements imposed on a requesting country to provide evidence in its request for extradition or mutual legal assistance. There should also be a flexible interpretation of dual criminality for extradition.
(ii) Adoption of bi-lateral and multi-lateral agreements to decrease uncertainty in the assurance of reciprocity and to increase cooperation in combating serious crime. Referral to the United Nations Model Treaty should be promoted.
(iii) The principle of *aut dedere aut judicare* (extradite or prosecute) should be implemented to bring fugitive offenders to justice. States should enact laws that allow their nationals to be extradited, especially when there is the consent of the offender. Alternatively, states could extradite their own nationals for trial abroad on the condition that, once convicted, the fugitive offenders will serve their sentences in their respective countries.
(iv) The minimum imprisonment system should be adopted by all states to make the scope of offences for which mutual legal assistance can be granted as wide as possible (except in regard to coercive measures).
(v) Where the proceeds of crime are confiscated, the assets should be shared amongst countries to enhance and acknowledge the cooperation necessary to fight organized crime. The basis for asset sharing should be clearly defined in bilateral agreements.
(vi) United Nations to help member states, through the provision of education materials and conferences, to modernize and harmonize their domestic laws.

With transnational organized crime increasing exponentially, it is imperative that the relevant agencies strengthen and improve existing mechanisms for international co-operation in regard to extradition and mutual legal assistance. The introduction of related agreements and treaties, flexible requirements or conditions, and an ethos of cooperation is essential to combat the growing threat of transnational organized crime in the twenty-first century.

B. The 115th International Training Course

1. Introduction

UNAFEI conducted the 115th International Training Course from 15 May to 7 July 2000 with the main theme, "Current Issues in Correctional Treatment and Effective Countermeasures". This Course consisted of 23 participants from 14 countries. The Institute's selection of this theme reflects its concern regarding the contemporary problems increasingly faced by correctional administrations worldwide. These problems include overcrowding and the treatment of special categories of prisoners, particularly women, drug-addicted and foreign offenders. By clarifying the actual situation experienced by correctional administrators in the Asia-Pacific region, solutions and countermeasures to the challenges in these areas can be developed and implimented for the betterment of criminal justice.

2. Methodology

The participants identified the current situation of and problems experienced in relation to current correctional administration, particularly overcrowding and the treatment of female, foreign and drug-addicted prisoners. In this regard, the current trends of prisoners and their problems, and the underlying causes of overcrowding, were acknowledged and explored with a view to reducing disparities in treatment and for the overall improvement of correctional practices.

The objectives of the Course were primarily realized through the Individual Presentations and Group Workshop sessions. In the former, each participant presented the actual situation, problems and future prospects of their country with respect to the main theme of the Course. The Group Workshops further examined the subtopics of the main theme. To facilitate discussion, the participants were divided into the following three groups under the guidance of faculty advisers:

Group 1: Practical Measures to Alleviate the Problem of Overcrowding;
Group 2: Practical Measures to Improve Prison Conditions; and
Group 3: Current Trends and Problems of Prisoners, and Measures for Effective Treatment.

Each group elected a chairperson(s) and rapporteur(s) to organize the discussions. The group members seriously studied the designated subtopics and exchanged their views based on information obtained through personal experience, the Individual Presentations, lectures and so forth. Sixteen sessions were allocated for Group Discussion. In the fifth, sixth and seventh week, Plenary Meetings were held to discuss the interim outline of the Group Workshop reports and to offer suggestions and comments. During the final Plenary Meetings in the seventh week, drafts of the Group Workshop reports were examined and critiqued by all the participants and the UNAFEI faculty. Based on these discussions, the Groups further refined their reports and presented them in the Report-Back Sessions, where they were endorsed as the reports of the Course. The full texts of the reports were published in the UNAFEI Resource Material Series No. 57.

3. Outcome Summary

In recent years, many countries have been confronted with important issues such as overcrowding in correctional facilities, improvement of prison conditions, an increase of drug-related offenders and the shortage of effective treatment programmes. Longer terms of detention for unsentenced inmates and ineffective options for non-institutional treatment are considered two of the major causes of overcrowding.

On the improvement of prison conditions, the Standard Minimum Rules for the Treatment of Prisoners adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, defines the standard of institutional treatment (including prison conditions) to be satisfied by each country. However, many countries are confronted with problems which hinder the fulfillment of this standard.

Similarly, the development and promotion of effective treatment methods for problematic prisoners is becoming more necessary. With the international tendency towards borderless crime, foreign prisoners are increasing in number; with different life customs, language and difficulty in communication becoming significant treatment issues. Additionally, how to control the health of inmates (including HIV positive inmates) has become an important correctional issue, particularly in relation to the treatment of drug-related prisoners. Finally, gender differences in the treatment of prisoners requires equal attention.

In response to the above issues, the following countermeasures are suggested in regard to resource constraints and overcrowding:

(i) Speedy criminal procedure and effective use of alternative measures to imprisonment including the use of fines, suspension of sentence, community service orders, weekend detention, house arrest, binding over and recognizance.
(ii) Introduction of Drug Court, utilizing treatment programmes as an alternative to imprisonment.
(iii) Better utilization of budget to update obsolete facilities, meet base needs and develop reporting/assessment systems to ensure the best use of current resources.
(iv) Consider alternatives to budgetary and space constraints including privatization of services, private sector joint enterprises/ prison works (to augment funding) and open camp prison accommodation.
(v) Increase transparency of the prison administration to raise public awareness and support for non-custodial measures.
(vi) Early release measures including parole, remission/reduction of sentence period and pardons.

Similarly, the following countermeasures are suggested in relation to the treatment of foreign, female and drug-addicted prisoners:

(i) Educate prison officials on the human rights of prisoners, law/legislation, multicultural and addiction issues. Recruit skilled and bi-lingual staff.

(ii) Develop inmate handbooks to advise prisoners (especially new entrants) on human rights expectations and obligations. Provide local language and cultural awareness programmes for foreign prisoners.
(iii) Utilize public sector support and the availability of volunteers for prisoner treatment programmes.
(iv) To ensure the effectiveness of therapeutic programmes, implement measures to control the influx of drugs into prisons and to reduce drug use recidivism. Separate drug-related/abusing prisoners from mainstream prisoners to reduce contact and negative influences.
(v) Ensure that female prisoners receive equal treatment including access to rehabilitative and educational programmes. Provide adequate health and child care services, including necessities and child care facilities such as nurseries.
(vi) The development and promotion of bilateral and multilateral conventions on the transfer of foreign prisoners.

It is necessary for all correctional administrators to work towards the common goal of corrections, that is, to provide humane treatment to all offenders (taking into consideration human rights concepts) and to help them re-integrate successfully back into society. Addressing the special needs of specific groups of prisoners, such as drug-related, female and foreign prisoners, is a fundamental part of this treatment philosophy. Without commitment from all sectors of the criminal justice system, and governmental support, this goal will not be achieved.

C. The 116th International Training Course

1. Introduction

From 28 August to 15 November 2000, UNAFEI conducted the 116th International Training Course with the main theme, "Effective Methods to Combat Transnational Organized Crime in Criminal Justice Processes". This Course consisted of 25 participants from 15 countries. The Institute's selection of this theme reflects its concern regarding the increase of transnational organized crime worldwide. The Course examined current trends and issues in investigating and prosecuting transnational organized crime, particularly the expansion of investigative techniques in the areas of electronic surveillance, controlled delivery, undercover operations and tracing crimes.

2. Methodology

The 116th Course endeavored to explore the best means to more effectively combat transnational organized crime, particularly through the development and expansion of investigative techniques. This was accomplished primarily through the comparative analysis of the current situation and problems in the participating countries. Our in-depth discussions enabled us to put forth effective and practical countermeasures to this problem, so as to improve the global fight against crime.

This Training Course provided a forum for the exchange of information and views on how criminal justice agencies in the respective countries detect, investigate and prosecute transnational organized crime cases, as well as the problems and difficulties encountered in that regard. Discussions also highlighted the importance of

establishing more efficient investigate systems and the need to increase international cooperation in this area in order to eradicate such crime.

The objectives were primarily realized through the Individual Presentations and the Group Workshop sessions. In the former, each participant presented the actual situation, problems and future prospects of their country with respect to the main theme of the Course. The Group Workshops further examined the subtopics of the main theme. To facilitate discussions, the participants were divided into the following three groups, with two focus areas respectively, under the guidance of faculty advisers:

Group 1: (i) Analysis of the current situation of illicit drug trafficking
(ii) Tools facilitating the investigation of transnational organized crime. The current situation, problems and solutions for:
(a) Controlled delivery
(b) Electronic surveillance (wire-tapping, communications interception, etc)
(c) Undercover operations;

Group 2: (i) Analysis of the current situation of illegal firearms trafficking and human (women, children, migrants) trafficking
(ii) Methods for obtaining the cooperation of witnesses to punish organized criminals. Current situation, problems and solutions for:
(a) Immunity system
(b) Witness and victim protection programmes; and

Group 3: (i) Analysis of the current situation of trafficking in stolen vehicles, card fraud, money laundering, major transnational organized criminal groups.
(ii) Components and legal frameworks for combating transnational organized crime:
(a) Criminalisation of participation in an organized criminal group
(b) Anti-money laundering system
(c) Asset forfeiture system (for assets derived from organized crimes)

Each group elected a chairperson(s) and rapporteur(s) to organize the discussions. The group members seriously studied the designated subtopics and exchanged their views based on information obtained through personal experience, the Individual Presentations, lectures and so forth. Seventeen sessions were allocated for Group discussion.

In weeks five and ten, Plenary Meetings were held to discuss the interim outline of the Group Workshop reports and to offer suggestions and comments. During the Plenary Meetings, drafts of the Group Workshop reports were examined and critiqued by all the participants and the UNAFEI faculty. Based on these discussions, the Groups further refined their reports and presented them in the Report-Back Sessions, where they were endorsed as the reports of the Course. The reports were published in full in the UNAFEI Resource Material Series No. 58.

3. Outcome Summary

Transnational organized crime is a growing threat to the security of the international society and the stability of sovereign states. It undermines the integrity of legitimate national economies, global financial systems, the rule of law and fundamental social values. It incorporates all areas of traditional crime including drug trafficking, money laundering, the use of violence and extortion, acts of corruption, trafficking in women and children, fraud, industrial espionage, infringement of intellectual property rights and so forth.

The detection and suppression of transnational organized crime poses unique challenges to investigative authorities. Before addressing these challenges, the groups addressed the current situation regarding illicit drug trafficking, firearms trafficking, the trafficking of stolen vehicles, card fraud, money laundering and the status of major crime groups, to better assess the measures that can be taken to prevent these crimes.

In regard to drugs, the shift of opium production from South East Asia to South West Asia denotes an alarming trend. As the refinement of heroin has diminished in South East Asia, increased production in methamphetamine has occurred in this region. Similarly, increased levels of international drug consumption have been noted in these regions (amongst others), with former drug transit nations now (also) becoming significant drug consuming nations. Corresponding to these shifts in usage, the *modus operandi* and trafficking routes, as wells as the mafia groups involved, have altered dramatically and expanded expoentially.

From the seizures recorded in 1998/99, it is predicted that amphetamine type stimulants (ATS) will be the major drug problem of the 21st century. The small-scale production and easy concealment of these drugs presents complex problems for authorities in terms of detection and prevention, and requires concerted international effort to contain.

Connected to this, the trafficking of firearms has proliferated in many nations due to inter-regional conflicts and porous borders. In some regions, such as Brazil and Papua New Guinea, firearms are allegedly used to purchase narcotics. In other regions, such as Japan, they are primarily used by organized crime groups to carry out their illicit activities. Similarly, aside from human rights considerations, the trafficking of persons has provided increased finance and human resources for international crime groups and their nefarious undertakings. In several regions, illegal immigrants seeking economic alleviation or political refuge have been coerced into prostitution or illegal labor through their links with organized crime groups offering 'safe passage' to foreign nations. In other regions, women and children are forcibly removed from their homelands to be used in combat, slavery or, particularly in Africa, be exchanged for guns.

Of equal concern is the traffic of stolen motor vehicles, card fraud and money laundering mechanisms. The use of underground banking channels such as *Hundi* or *Hawala* allows organized criminal groups to legitimise the proceeds of crime. These channels and similar methods are used to 'clean' funds obtained from the above

activities. Thus the elimination of money laundering plays a pivotal role in crime prevention strategies.

The use of traditional investigative methods to combat transnational organized crime has proved to be very difficult and ineffective. This demands that law enforcement agencies utilize special investigative tools such as controlled delivery, undercover operations and electronic surveillance (wiretapping, communications interception, etc), whilst maintaining citizens' human rights and reasonable rights to privacy. Further strategies to counter transnational organized crime and enhance the overall effectiveness of investigations at the international level are:

(i) Ratification of the United Nations Convention against Transnational Organized Crime.
(ii) Development of multilateral and bilateral treaties for the sharing of intelligence and the transfer of seized assets.

At the national level, recommendations include:

(i) Development of anti-money laundering legislation and reform of bank secrecy provisions/ company law (especially in regard to establishing offshore companies).
(ii) Criminalization of participation in organized criminal groups.
(iii) Adoption of an immunity system for co-operating defendants in organized crime investigations and trials.
(iv) Introducing witness protection programmes, including relocation, identity change, police protection and financial assistance, for organized crime trials.
(v) Identity protection mechanisms in organized crime trials, including non-disclosure of witness information, video link testimonies, out-of-court examination etc.
(vi) Denial of bail for organized crime defendants.

D. Special Seminars and Courses

1. Fifth Special Seminar for Senior Criminal Justice Officials of the People's Republic of China

The Fifth Special Seminar for Senior Officials of Criminal Justice in the People's Republic of China, entitled "Participation of the Public and Victims in Criminal Justice Administration", was held from 28 February to 17 March 2000. Ten senior criminal justice officials and UNAFEI faculty comparatively discussed contemporary problems faced by China and Japan in the realization of criminal justice.

2. First Special Seminar for Kenya on Juvenile Delinquent Treatment Systems

UNAFEI conducted the First Special Seminar for Kenyan criminal justice officials who are working for the prevention of delinquency and the treatment of juvenile delinquents in their country. The Seminar, entitled "Juvenile Treatment Systems", was held from 2 October to 25 October 2000. The Seminar exposed Kenyan officials to the workings of the Japanese juvenile justice and treatment system through lectures and observation visits to relevant agencies. As a result of this comparative study, the officials successfully developed action plans for the implementation and development

of institutional and community-based treatment systems for juvenile delinquents in Kenya.

3. Third Special Training Course on Corruption Control in Criminal Justice

UNAFEI conducted the Third Special Training Course entitled "Corruption Control in Criminal Justice" from 6 November to 1 December 2000. In this course, thirteen foreign officials engaged in corruption control comparatively analyzed the current situation of corruption, methods of corruption prevention, and measures to enhance international cooperation in this regard.

III. WORKSHOP ON CRIMES RELATED TO THE COMPUTER NETWORK

UNAFEI organized the Workshop on "Crimes Related to the Computer Network", during the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which was held in Vienna from 10 to 17 April 2000.

The Workshop was a one-day programme held on 15 April 2000. It consisted of a keynote speech, presentations and panel discussions, with the participation of 17 experts from all over the world. The objective of the Workshop was to provide participants with information and knowledge about computer crime from both a substantive standpoint and an investigative standpoint.

In the Keynote address, the Honourable Ms. Anne McLellan, Minister of Justice and Attorney-General of Canada, noted the growing seriousness of domestic and transnational computer crime, and the importance of developing effective laws and procedures for controlling it, without unduly interfering in the legitimate and beneficial effects of this new technology.

The Workshop held a series of panel discussions. The first panel, entitled "Crimes Related to the Computer Network: What are they? Which abuses should be criminalized, and how? How can they be prevented?", reviewed computer crimes from a criminological and legal point of view. The second panel, entitled "Search and Seizure: Obtaining Data within a Networked Environment", comprised of a case-study scenario on the technical and legal issues that arise from the legal search and seizure of data from computer networks. The third panel, "Search and Seizure: Tracking Suspects across Computer Networks", consisted of a case-study scenario on the tracing of computer communications in multinational networks. The fourth and final panel, "New Partnerships: Law Enforcement and Industry Cooperation", dealt with the relationship between law enforcement, and computer and Internet industries.

As a result of the discussions, the Workshop reached the following conclusions:

1. Computer-related crime should be criminalized;
2. Adequate procedural laws are needed for the investigation and prosecution of cyber-criminals;
3. Government and industry should work together towards the common goal of preventing and combating computer crime, so as to make the Internet a secure place;

4. Improved international cooperation is needed in order to trace criminals on the Internet;
5. The United Nations should take further action with regard to the provision of technical cooperation and assistance concerning crimes related to computer networks.

In furtherance of the objectives of the Workshop, in April 2000 UNAFEI published "Crimes Related to the Computer Network - Challenges of the Twenty-first Century", a compilation of the written contributions to the first Experts Meeting on the Workshop on Crimes Related to the Computer Network held at UNAFEI October 5 to 9, 1998. These contributions provide the common basis of discussion amongst the Meeting's members in determining the scope of the Workshop and the issues to be discussed. It is believed that this publication will benefit those generally interested in crimes related to computer networks, as well as provide a contextual background to the Workshop's development.

IV. TECHNICAL COOPERATION

A. Joint Seminars

Since 1981, UNAFEI has conducted 21 joint seminars under the auspices of JICA and in collaboration with host governments in Asia and the Pacific. With the participation of policy-makers and high-ranking administrators, including members of academia, the joint seminars attempt to provide a discussion forum in which participants can share their views and jointly seek solutions to various problems currently facing criminal justice administration in both the host country and Japan.

1. Nepal-UNAFEI Joint Seminar

The Nepal-UNAFEI Joint Seminar was held in Kathmandu under the theme of "Effective Countermeasures to Combat Organized Crime in Criminal Justice Processes" from 19 to 22 December 2000. The Government of the Kingdom of Nepal, through the Ministry of Home Affairs, and UNAFEI organized the Joint Seminar. The Joint Seminar was attended by high-ranking Nepalese government officials, representing all sectors of the criminal justice system. The UNAFEI delegation comprised of the Director, Deputy Director, three professors, the Linguistic Adviser and an official from the National Police Agency of Japan. The Joint Seminar concluded with the adoption of the resulting recommendations for the betterment of the Nepalese criminal justice system, as from each session.

B. Regional Training Programmes

1. Thailand

In January 2000, UNAFEI dispatched two professors to Thailand to assist the Office of the Narcotics Control Board (ONCB) in organizing the Eighth Regional Training Course on "Effective Countermeasures against Drug Offences and the Advancement of Criminal Justice Administration."

2. Costa Rica

In July 2000, UNAFEI dispatched two professors to Costa Rica to attend the Second Regional Seminar on "Effective Measures for the Improvement of Prison Conditions and Correctional Programmes", organized and hosted by the Government of Costa Rica through the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD).

3. Others

In July and August 2000, two UNAFEI professors were dispatched to Kenya to assist the Children's Department of the Ministry of Home Affairs and National Heritage in a project to develop nationwide standards for the treatment of juvenile offenders.

V. COMPARATIVE RESEARCH PROJECT

Reflecting its emphasis on the systematic relevance of training activities and priority themes identified by the UN Commission, the research activities of the Institute are designed to meet practical needs, including those for training materials for criminal justice personnel. For example, in 2000 UNAFEI updated its research by requesting several experts from countries in the Asia-Pacific region to report on their respective correctional systems. UNAFEI subsequently compiled and published these reports in a book entitled "Institutional Treatment Profiles of Asia" and distributed copies internationally.

VI. INFORMATION AND DOCUMENTATION SERVICES

The Institute continues to collect data and other resource materials on crime trends, crime prevention strategies and the treatment of offenders, from Asia, the Pacific, Africa, Europe and the Americas, and makes use of this information in its training courses and seminars. The Information and Library Service of the Institute has been providing, upon request, materials and information to United Nations agencies, governmental organizations, research institutes and researchers, both domestic and foreign.

VII. PUBLICATIONS

Reports on training courses and seminars are published regularly by the Institute. Since 1971, the Institute has issued the Resource Material Series, which contains contributions by the faculty members, visiting experts and participants of UNAFEI courses and seminars. In 2000, the 55th edition of the Resource Material Series was published, as was "Criminal Justice in Japan", a book presenting a concise picture of the actual practices in, and administration of, criminal justice in Japan. Additionally, issues 101 to 103 of the UNAFEI Newsletter were published, including a brief report on each course and seminar (from the 114th to the 116th respectively) and providing other timely information.

UNAFEI also published "Crimes Related to the Computer Network - Challenges of the Twenty-first Century", a compilation of the written contributions to the first

Experts Meeting on the Workshop on Crimes Related to the Computer Network, held at UNAFEI 5 to 9 October, 1998 in preparation for the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

VIII. OTHER ACTIVITIES

A. Public Lecture Programme

On 10 February 2000, the Public Lecture Programme was conducted in the Grand Conference Hall of the Ministry of Justice. In attendance were many distinguished guests, UNAFEI alumni and the 114th International Seminar participants. This Programme was jointly sponsored by the Asia Crime Prevention Foundation (ACPF), the Japan Criminal Policy Society (JCPS) and UNAFEI.

Public Lecture Programmes increase the public's awareness of criminal justice issues, through comparative international study, by inviting distinguished speakers from abroad. This year, Dr. Michael Platcha (Professor, Faculty of Law, Gdansk University, Poland) and Mr. John E. Harris. (Acting Director, Office of International Affairs, Criminal Division, US Department of Justice, the United States of America) were invited as speakers to the Programme. They delivered lectures respectively entitled "The Lockerbie Affair: When Extradition Fails, are the United Nations Sanctions a Solution? The Role of the Security Council in the Enforcing of the Rule *Aut Dedere Aut Judicare*" and "Mutual Legal Assistance Treaties: Necessity, Merits and Problems arising in the Negotiation Process".

B. Assisting UNAFEI Alumni Activities

Various UNAFEI alumni associations in several countries have commenced, or are about to commence, research activities in their respective criminal justice fields. It is, therefore, one of the important tasks of UNAFEI to support these contributions to improve the crime situation internationally.

C. Overseas Missions

Mr. Masahiro Tauchi (Deputy Director) and Mr. Hiroshi Tsutomi (Professor) represented UNAFEI at the "8th Regional Training Course on Effective Countermeasures against Drug Offenders and the Advancement of Criminal Justice Administration" convened by the Office of the Narcotics Control Board (ONCB), Thailand. Mr. Tauchi and Mr. Tsutomi presented expert lectures on the role of the UNDCP in narcotics law enforcement, and on the work of the ONCB in this regard. The Training Course was held in Thailand from 16 to 29 January 2000.

Mr. Keiichi Aizawa (Professor) and Mr. Shoji Imafuku (Professor) presented at a conference on "Cooperation in Community-based Corrections in 2000", held in Pattaya, Thailand, 21 to 22 February 2000. Mr. Imafuku then traveled to Singapore to conduct research on community-based treatment systems in the field of corrections between 23 to 25 February 2000.

Mr. Hiroshi Tsutomi (Professor) attended the Regional Seminar on Assessment and Classification of Adult Offenders and Juvenile Delinquents held by the Economic and

Social Commission for Asia and the Pacific (ESCAP) in Bangkok, Thailand, from 12 to 16 March 2000.

Mr. Mikinao Kitada (Director) and Mr. Chikara Satou (Professor) visited Tashkent, Uzbekistan, from 19 to 25 March 2000, to attend the Central Asian Seminar on Transnational Organized Crime, held by the United Nations Office for Drug Control and Crime Prevention (UNODCCP).

Mr. Masahiro Tauchi (Deputy Director), Mr. Hiroshi Iitsuka (Professor), Mr. Akihiro Nosaka (Professor) represented UNAFEI at the follow-up seminar to the Bangladesh-UNAFEI Joint Seminar of March 1998, held in Dhaka, Bangladesh 19 to 21 March 2000. The Deputy Director and the professors then visited Manila, the Philippines, to conduct a study tour of the *Muntinlupa* Halfway House and the Philippine Department of Justice, from 22 to 24 March 2000.

Mr. Mikinao Kitada (Director), Mr. Keiichi Aizawa (Deputy Director), Mr. Hiroshi Iitsuka (Professor), Mr. Shinya Watanabe (Professor) and Mr. Katsuhiko Jimbo (officer) attended the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Vienna, from 10 to 17 April 2000. The UNAFEI delegation then attended the Ninth United Nations Commission on the Prevention of Crime and Criminal Justice, also held in Vienna, from 18 to 20 April 2000.

Mr. Yuichiro Tachi (Professor) and Mr. Chikara Satou (Professor) attended the ninth session of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, held in Vienna, Austria from 12 to 18 June 2000.

Mr. Keiichi Aizawa (Deputy Director), Mr. Chikara Satou (Professor), Ms. Mikiko Kakihara (Professor), and Mr. Kenji Koroyasu (President, Research and Training Institute, Ministry of Justice) visited the People's Republic of China, from 12 to 19 July 2000, for the purpose of fostering international exchange in criminal justice administration.

Mr. Hiroshi Tsutomi (Professor) and Mr. Akihiro Nosaka (Professor) visited Kenya as short-term experts, as part of a JICA international assistance scheme for the prevention of crime by children and young persons, from 16 July to 25 August 2000.

Mr. Hiroshi Iitsuka (Professor) and Mr. Shinya Watanabe (Professor) represented UNAFEI at the Second International Training Course on the Improvement of Prison Conditions and Correctional Programmes, San Jose, Costa Rica, from 18 to 26 July 2000.

Mr. Mikinao Kitada (Director) presented a lecture on behalf of UNAFEI at the First World Congress on Public Security and the Procurement and Administration of Justice, Mexico City, Mexico, 25 to 29 July 2000.

Mr. Mikinao Kitada (Director) visited the International Center for Criminal Law Reform and Criminal Justice Policy (ICCLRCJP) in Vancouver, Canada, from 28 to 30

July 2000, to exchange views on the administration of criminal justice institutes and the working programme of each institute for fiscal year 2001.

Mr. Hiroshi Iitsuka (Professor) visited Kathmandu, Nepal, from 8 to 13 August 2000, in preparation for the Nepal-UNAFEI Joint Seminar to be held December 2000.

Mr. Hiroshi Tsutomi (Professor) participated in the Youth Justice 2000 Conference Singapore from the 13 to 15 September 2000.

Mr. Mikinao Kitada (Director) attended the Fifteenth Coordination Meeting of the Network of UN Institutes in Turin, Italy from 19 to 20 September 2000. He then traveled to Courmayeur, Italy to attend the Eighth ISPAC Plenary Session and the International Conference on "Countering Terrorism through Enhanced International Co-operation" from 21 to 22 September and 22 to 24 September 2000, respectively.

Mr. Mikinao Kitada (Director) and Mr. Keiichi Aizawa (Deputy Director) attended the Eighth Asia Crime Prevention Foundation World Conference held in Beijing, The People's Republic of China from 11 to 16 October 2000. UNAFEI was co-organizer of the Group Meeting "Internet Related and Other 'High-tech' Crimes" for this conference; a follow-up forum to the "Workshop on Crimes Related to the Computer Network", which UNAFEI coordinated as part of the Tenth United Nations Congress on the Prevention of Crime and Treatment of Offenders, held in Vienna, April 2000.

Mr. Shinya Watanabe (Professor) represented UNAFEI at the Twentieth Asian and Pacific Conference of Correctional Administrators in Sydney, Australia from 5 to 11 November 2000.

Mr. Keiichi Aizawa attended the First Independent Commission Against Corruption (ICAC) Symposium in Hong Kong from 13 to 16 November 2000.

Mr. Mikinao Kitada (Director), Mr. Keiichi Aizawa (Deputy Director), Mr. Yuichiro Tachi (Professor), Mr. Hiroshi Iitsuka (Professor), Mr. Hiroshi Tsutomi (Professor), and Ms. Rebecca Findlay-Debeck (Linguistic Adviser) represented UNAFEI at the Nepal-UNAFEI Joint Seminar on "Effective Countermeasures to Combat Organized Crime in Criminal Justice Processes", in Kathmandu, Nepal, from 19 to 22 December 2000.

D. Assisting ACPF Activities

UNAFEI cooperates and corroborates with the ACPF to further improve crime prevention and criminal justice administration in the region. Since UNAFEI and the ACPF have many similar goals, and a large part of ACPF's membership consist of UNAFEI alumni, the relationship between the two is strong. An example of this cooperation and corroboration can be seen in 8th ACPF International World Conference, which was held in Beijing, the Peoples Republic of China, in October 2000. UNAFEI co-organized the Group Meeting "Internet Related and Other 'High-tech' Crimes" as part of the World Conference. This Group Meeting was a follow-up forum to the "Workshop on Crimes Related to the Computer Network", which

UNAFEI coordinated as part of the Tenth United Nations Congress on the Prevention of Crime and Treatment of Offenders, held in Vienna, April 2000.

IX. HUMAN RESOURCES

A. Staff

In 1970, the Government of Japan assumed full financial and administrative responsibility for running the Institute. The Director, Deputy Director and seven professors are selected from among public prosecutors, the judiciary, corrections and probation. UNAFEI also has approximately 20 administrative staff members, who are appointed from among officials of the Government of Japan, and a linguistic adviser. Moreover, the Ministry of Justice invites visiting experts from abroad to each training course and seminar. The Institute has also received valuable assistance from various experts, volunteers and related agencies in conducting its training programmes.

B. Faculty Changes

Mr. Masahiro Tauchi, formerly Deputy Director of UNAFEI, was transferred to Tokyo Public Prosecutors Office and appointed Deputy Director of General Affairs Department on 1 April 2000.

Mr. Keiichi Aizawa, formerly Professor of UNAFEI, was appointed Deputy Director of UNAFEI on 1 April 2000.

Mr. Shoji Imafuku, formerly Professor of UNAFEI, was transferred to the Kanto Regional Parole Board as Assistant Chief of General Affairs Division on 1 April 2000.

Mr. Yuichiro Tachi, formerly a Public Prosecutor with the Osaka District Public Prosecutors Office, joined UNAFEI as a Professor on 1 April 2000.

Ms. Mikiko Kakihara, formerly an Administrative Official in the Counsellors' Office of the Rehabilitation Bureau of the Ministry of Justice, joined UNAFEI as a Professor on 1 April 2000.

X. FINANCES

The Ministry of Justice primarily provides the Institute's budget. The total amount of the UNAFEI budget is approximately ¥336 million per year. Additionally, JICA and the ACPF provides assistance for the Institute's international training courses and seminars.

UNAFEI WORK PROGRAMMME FOR 2001

I. TRAINING

A. 117th International Seminar

The 117th International Seminar, "Current Situation and Countermeasures against Money Laundering", is scheduled to be held from 15 January to 16 February, 2001. The 117th Seminar purports to explore the ways and means of strengthening and improving international cooperation in the fight against transnational organized crime, particularly through anti-money laundering initiatives. Sharing practical information and experience on how other countries tackle common issues will facilitate our efforts in the fight against transnational organized crime and the illicit proceeds gained therefrom.

B. 118th International Training Course

The 118th International Training Course, tentatively entitled "Best Practices in Institutional and Community-based Corrections", is scheduled to be held from 21 May to 13 July 2001. The 118th International Training Course will examine current trends and issues in Corrections, including the improvement of the treatment of juvenile offenders.

C. 119th International Training Course

The 119th International Training Course, tentatively entitled the "Current Situation of and Countermeasures against Transnational Organized Crime," is scheduled to be held from 10 September to 2 November 2001. The 119th International Training Course will examine the current trends and issues in transnational organized crime, particularly in light of the United Nations Convention against Transnational Organized Crime. This course will assess the current manifestations of organized crime and consider the development and expansion of investigative techniques and legal frameworks and practices, in addition to the strengthening of international cooperation, to combat this type of crime.

D. Sixth Special Seminar for Senior Criminal Justice Officials of the People's Republic of China

The Sixth Special Seminar for Senior Criminal Justice Officials in the People's Republic of China, "International Cooperation in Criminal Matters", is scheduled to be held at UNAFEI from 26 February to 16 March 2001. Ten senior criminal justice officials and UNAFEI faculty will discuss contemporary problems faced by China and Japan in relation to the above theme.

E. Second Special Seminar for Kenya on Juvenile Delinquent Treatment Systems

UNAFEI will hold the Second Special Seminar for nine Kenyan criminal justice officials who are working for the prevention of delinquency and the treatment of juvenile delinquents in their country. The Seminar, entitled "Juvenile Delinquent Treatment Systems", will be held in October 2001. The Seminar will expose Kenyan

officials to the workings of the Japanese juvenile justice and treatment systems through lectures and observation visits to relevant agencies.

F. Fourth Special Training Course on Corruption Control in Criminal Justice

UNAFEI will conduct the Fourth Special Training Course entitled "Corruption Control in Criminal Justice" from November to December 2001. In this course, twelve foreign officials engaged in corruption control will comparatively analyze the current situation of corruption, methods of corruption prevention, and measures to enhance international cooperation in this regard.

III. TECHNICAL COOPERATION

A. Joint Seminars

1. Kenya-UNAFEI Joint Seminar

In August 2001, the Kenya-UNAFEI Joint Seminar, tentatively entitled "Effective Coordination and Cooperation of all Criminal Justice Agencies in the Effective Administration of Juvenile Justice", is scheduled to be held in Nairobi, Kenya. The High Court of Kenya and UNAFEI will organize the Seminar.

2. Philippine-UNAFEI Joint Seminar

In December 2001, the Philippine-UNAFEI Joint Seminar, tentatively entitled "Community Involvement in Criminal Justice", is scheduled to be held in Manila, Philippines. The National Police Commission of the Philippines and UNAFEI will organize the Seminar.

B. Regional Training Programmes

1. Thailand

In January 2001, two UNAFEI professors will travel to Thailand to assist the Royal Thai Government and the Office of the Narcotics Control Board (ONCB) in organizing the Ninth Regional Training Course on "Effective Countermeasures against Drug Offences and the Advancement of Criminal Justice Administration."

2. Costa Rica

In July 2001, two UNAFEI professors will represent the Institute at Third International Training Course on the Improvement of Prison Conditions and Correctional Programmes, San Jose, Costa Rica.

C. Others

In August 2001, two UNAFEI professors will be dispatched to Kenya to assist the Children's Department of the Ministry of Home Affairs and National Heritage in a project to develop nationwide standards for the treatment of juvenile offenders.

APPENDIX

MAIN STAFF OF UNAFEI

Director	Mr. Mikinao Kitada
Deputy Director	Mr. Keiichi Aizawa

Faculty

Chief of Training Division, Professor	Mr. Hiroshi Iitsuka
Chief of Research Division, Professor	Mr. Shinya Watanabe
Chief of Information & Library Service Division, Professor	Mr. Akihiro Nosaka
Professor	Mr. Yuichiro Tachi
Professor	Mr. Chikara Satou
Professor	Mr. Hiroshi Tsutomi
Professor	Ms. Mikiko Kakihara
Linguistic Adviser	Ms. Rebecca Findlay-Debeck

Secretariat

Chief of Secretariat	Mr. Yoshinori Miyamoto
Deputy Chief of Secretariat	Mr. Miyoshi Chishima
Chief of General and Financial Affairs Section	Mr. Norihiko Kimura
Chief of Training and Hostel Management, Affairs Section	Mr. Yoshinobu Gohda
Chief of International Research Affairs Section	Mr. Takuma Kai

<AS OF 31 DECEMBER 2000>

2000 VISITING EXPERTS

THE 114TH INTERNATIONAL SEMINAR

Mr. Hans G. Nilsson	Head of Division, Section III -Judicial Cooperation, Directorate II, Directorate General H-Justice and Home Affairs, Council of the European Union, Brussels
Mr. Senerino H. Gana Jr.	Senior State Prosecutor, National Prosecution Service, Philippines Department of Justice, Philippines
Dr. Michael Plachta	Professor & Chair of Criminal Procedure, Faculty of Law, Gdansk University, Poland
Mr. Sirisak Tiyapan	Expert State Attorney, Legal Counsel Department, Office of the Attorney General, Thailand
Mr. John E. Harris	Acting Director, Office of International Affairs, Criminal Division, U.S. Department of Justice, United States of America

THE 115TH INTERNATIONAL TRAINING COURSE

Mr. Luke Grant	Director, Inmate Classification and Programmes, New South Wales Department of Corrective Services, Australia
Dr. Laurence L. Motiuk	Director General Research, Correctional Service of Canada, Canada
Mr. Candido Cunha	Head, Division of Criminal Law and Justice, Council of Europe, France
Dr. Hanns von Hofer	Professor, Vice-Director, Department of Criminology, Stockholm University, Sweden

APPENDIX

Mr. Somboon Prasopnetr	Deputy Director-General, Department of Corrections, Ministry of Interior, Thailand

THE 116TH INTERNATIONAL TRAINING COURSE

Mr. Peter Yam Tat-Wing	Assistant Commissioner (Crime), Hong Kong Police Force Headquarters, Hong Kong
Mr. Yong-Kwan Park	Director, 1st Prosecution Division, Ministry of Justice, Republic of Korea
Dr. Johan Peter Wilhelm Hilger	Former Head of Division of Judicial System, Ministry of Justice, Germany
Mr. Franco Roberti	Deputy Prosecutor, National Anti-mafia Bureau, Office of the Prosecutor General, Italy
Mr. Bruce G. Ohr	Chief, Organized Crime and Racketeering Section, Criminal Division, Department of Justice, United States of America

2000 AD HOC LECTURERS

THE 114TH INTERNATIONAL SEMINAR

Mr. Yuuki Furuta	Director General of Criminal Affairs Bureau, Ministry of Justice, Japan
Mr. Toshinori Kanemoto	Director General of International Affairs Department, National Police Agency, Japan

THE 115TH INTERNATIONAL TRAINING COURSE

Mr. Noriaki Kojima	Deputy Director, International Research and Training Institute for Criminal Investigation, National Police Academy, Japan
Mr. Rokuro Tsuruta	Director General, Correction Bureau, Ministry of Justice, Japan
Mr. Yoshinobu Baba	Director General, Rehabilitation Bureau, Ministry of Justice, Japan
Ms. Mioko Kuga	Lecturer, Kokugakuin University, Japan
Mr. Takeshi Koyanagi	International Affairs Coordinator, Correction Bureau, Ministry of Justice, Japan

APPENDIX

THE 116TH INTERNATIONAL TRAINING COURSE

Mr. Noriaki Kojima	Director, International Research and Training Institute for Criminal Investigation, National Police Academy of Japan, Japan
Mr. Kou Akatsuka	Director of Management, Asia Crime Prevention Foundation (ACPF), Japan
Mr. Yuuki Furuta	Director General, Criminal Affairs Bureau, Ministry of Justice, Japan
Prof. Masahito Inouye	Professor, Tokyo University, Japan
Mr. Jiro Ono	Director, First Organized Crime Control Division, National Police Agency, Japan
Mr. Minoru Ui	Deputy Director, Criminal Affairs Department, Tokyo District Public Prosecutors Office, Japan
Mr. Yasushi Iijima	Attorney, Ministry of Justice, Japan
Mr. Mune Ohno	Deputy Director, Criminal Affairs Department, Tokyo District Public Prosecutors Office, Japan
Mr. Isamu Ikenoue	Enforcement Division, Customs & Tariff Bureau, Ministry of Finance, Japan
Mr. Megumi Yamamuro	Judge, Tokyo District Court, Japan

Mr. Kenzaburo Yazawa	Attorney, Ministry of Justice, Japan
Mr. Masayoshi Kimura	Attorney, Finance Service Agency, Japan
Mr. Takayoshi Tsuda	Superintendent, National Police Agency, Japan
Mr. Keisuke Senta	Public Prosecutor, Criminal Affairs Department, Tokyo District Public Prosecutors Office, Japan

APPENDIX

2000 UNAFEI PARTICIPANTS

THE 114TH INTERNATIONAL SEMINAR

Overseas Participants

Mr. Md. Abdur Razzaque	Additional District Magistrate, Gopalgonj, Bangladesh
Ms. Miranjela Maria Batista Leite	Police Officer, Fiscal Offences Division, Department of Federal Police, Sao Paulo, Brazil
Mr. Wei Wang	Judge, Research Department, Supreme People's Court, Beijing, People's Republic of China
Mr. Jese Vukinagauna Marovia	Superintendent of Police, Divisional Crime Officer, Southern Division, Fiji Police Force, Suva, Fiji
Mr. Shyam Sundar Prasad Yadav	Inspector General of Police (Recruitment), Office of the Director General and Inspector General of Police, Lakdi Ka Pul, Andhra Pradesh, Hyderabad, India
Mr. Salahudin	Head of Section, Evaluation and Monitoring, Directorate of Criminal, Directorate General of Law and Legislation, Department of Law and Legislation, Jakata, Indonesia
Mr. Sh. Mutlaq Odeh Mutlaq	Lieutenant Colonel District Commander, Almoaqer Police Sulaymaniyin District, Zakar, Jordan
Mr. Eugenijus Usinskas	Commissar of the Criminal Investigation Service, Vehicle Crime Section, Police Department, Ministry of Internal Affairs, Vilnius, Lithuania
Mr. Md. Abdul Jalal Bin Yunus	Officer-in-charge of Criminal Investigation, Kedah Contingent Police Headquarters, Kedah, Malaysia

Mr. Raj Narayan Pathak	Joint Attorney, Office of the Attorney General, Kathmandu, Nepal
Mr. Sotonye Leroy Wakama	Detective, Special Fraud Unit, Criminal Investigative Department, Nigeria Police Force Headquarters, Abuja, Nigeria
Mr. Sh. Ahmad Farooq	Additional Secretary, Law and Parliamentary Affairs Department, Government of Punjab, Lahore, Pakistan
Mr. Fakhari Salama El Nabris	Legal Consultant, Preventive Security, Gaza, Palestine
Ms. Luz Del Carmen Ibanez Carranza	Public Provincial Prosecutor for Criminal Matters, Public Ministry, Trujillo, Peru
Mr. Geronimo Cepillo Datinguinoo	Chief, Local Training Section and Administrative Officer, Directorate for Human Resource and Doctrine Development, National Headquarters, Philippine National Police, Quezon City, the Philippines
Mr. Chun Taek Lim	Senior Prosecutor, Pusan High Public Prosecutors Office, Pusan, Republic of Korea
Mr. Parana Widaneralalage Daya Chandrasiri Jayathilake	District Judge and Magistrate, District Court and Magistrates Court of Horana, Colombo, Sri Lanka
Mr. Jumpol Pinyosinwat	Judge attached to the Ministry of Justice, Office of the Judicial Affairs, Ministry of Justice, Bangkok, Thailand
Mr. Asan Kasingye	Superintendent of Police, Senior Superintendent of Community Policing and Crime Prevention, Uganda Police Headquarters, Kampala, Uganda

Mr. Afzal Nurmatov	Special Agent of the NCB-Interpol, Senior Lieutenant, Ministry of Internal Affairs, Tashkent, Uzbekistan

Japanese Participants

Mr. Masafumi Nishiguchi	Director of Guard and Rescue Department, 6th Regional Maritime Safety Headquarters, Hiroshima
Mr. Yasuhiro Sanada	Deputy Superintendent, Shimei Juvenile Training School for Girls, Hokkaido
Mr. Kazumitsu Suzuki	Director, General Affairs Division, Kinki Regional Parole Board, Osaka
Mr. Makoto Tamura	Judge, Tokyo District Court, Tokyo
Mr. Satoru Yoshimatsu	Prosecutor, Tokyo District Public Prosecutors Office, Tokyo
Mr. Masaaki Yoshiura	Professor, Research and Training Institute, Ministry of Justice, Tokyo

THE 115TH INTERNATIONAL TRAINING COURSE

Overseas Participants

Mr. Wayne Albert Moody	Director of Programmes, Department of Corrections, Belize City, Belize
Mr. Roy Alexander Murillo Rodriguez	Judge in Charge of Penal Sentence, Supreme Court of Justice, San Jose, Costa Rica
Mr. Sikeli Dau Tamani	Officer in Charge of Medium Security Prison, Fiji Prisons Service, Suva, Fiji

Mr. Negi Jagat Bahadur	Inspector General of Prisons, Manipur Central Jail, Department of Prisons, Manipur, India
Mr. Marwan Adli	Head of the Administration of the Cipinang Prison, Department of Law and Legislation, Jakarta, Indonesia
Mr. Peterson Kamunyu Muhoro	Director, Probation and Aftercare Service, Nairobi, Kenya
Mr. Zulkifli Bin Omar	Senior Superintendent of Prison, Alor Setar Prison, Malaysian Prison Department, Kedah, Malaysia
Mr. Babu Ram Regmi	Joint Secretary, Ministry of Law, Justice and Parliamentary Affairs, Kathmandu, Nepal
Mr. Iftikhar Ahmad Rao	Additional Secretary Home, Government of the Punjab, Home Department, Lahore, Pakistan
Ms. Martina Davila Jimenez	Director of Womens Penitentiary Center Quenccoro, National Penitentiary Institute, Cusco, Peru
Ms. Rebecca Ang Santamaria	Social Welfare Officer V, Regional Rehabilitation Center for Youth, Department of Social Welfare and Development, Davao City, Philippines
Mr. Gunarathna Kuruppu	Superintendent of Prisons, Welikada Prison, Colombo Department of Prisons, Colombo, Sri Lanka
Ms. Sivakorn Kuratanavej	Senior Penologist, Department of Corrections, Nonthaburi, Thailand

Japanese Participants

Mr. Yoshia Baba	Classification Officer, Tokyo Detention House, Tokyo

Mr. Masamitsu Fujioka	Probation Officer, Yamaguchi Probation Office, Yamaguchi
Ms. Hiromi Kobayashi	Chief Supervisor, Sapporo Prison, Hokkaido
Mr. Hiroshi Kubo	Public Prosecutor, Kobe District Public Prosecutors Office, Amagasaki Branch, Hyougo
Mr. Shigeru Nakasato	Family Court Probation Officer, Sendai Family Court, Miyagi
Ms. Noriko Ota	Probation Officer, Tokyo Probation Office, Tokyo
Mr. Akihiko Sakamoto	Official, Enforcement Division, Immigration Bureau, Ministry of Justice, Tokyo
Mr. Takahiro Terasaki	Narcotics Control Officer, Technical Officer, Kanto-Shin'etsu Regional Narcotics Control Office, Tokyo
Mr. Naokuni Yano	Assistant Judge, Tokyo District Court, Tokyo
Mr. Akira Yokoi	Public Prosecutor, Nagano District Public Prosecutors Office, Nagano

THE 116TH INTERNATIONAL TRAINING COURSE

Overseas Participants

Mr. Ruy Gomes Silva	Officer of Interpol, Federal Police Agent, Federal Police Department of Brazil, Bahia State, Brazil

Mr. Wang Xue-Qin	Chief of International Cooperation Section, Division of Administration of Aliens and Exit-Entry P.S.B, Yunnan Province, China
Mr. Ramend	Officer in Charge of Advanced Training, Fiji Police Academy, Suva, Fiji
Mr. Sanjiv Kumar Upadhyay	Joint Director, Anti-Corruption Headquarters, Central Bureau of Investigation, New Delhi, India
Mr. Genot Hariyanto	Chief of Criminal Investigation Department, Regional Police of Bengkulu, Indonesia National Police, Bengkulu, Indonesia
Mr. Sengsouvanh Chanthalounnavong	Judge, Criminal Justice Section Supreme People's Court, Vientiane, Laos
Mr. Mustafa Bin Abdullah	Senior Assistant Commissioner of Police, Northeast Police District Headquarters, Royal Malaysia Police Force, Penang, Malaysia
Mr. Donald NgorNgor Awunah	Detective Superintendent of Police, 'D' Department, Force Criminal Investigation Department, Nigeria Police Force, Abuja, Nigeria
Mr. Zafar Iqbal Gondal	Section Officer, Law, Justice and Human Rights Division, Ministry of Justice, Islamabad, Pakistan
Mr. Hubert Sarake	Senior Magistrate, Department of Justice, Bougainville Province, Papua New Guinea
Mr. Ricardo Tiuseco Pamintuan	Court Attorney, Supreme Court of the Philippines, Manila, Philippines
Mr. Iddi Saidi King'wai	Criminal Investigation Department Headquarters, Tanzania Police Force, Daressalaam, Tanzania

Mr. Suwit Savaengthong	Senior State Attorney, Office of the Attorney General, Bangkok, Thailand
Mr. John Kamya	Officer in Charge of Crime Prevention, Crime Prevention Office, Uganda Police Force Headquarters, Kanpala, Uganda

Japanese Participants

Mr. Hiroyoshi Amamoto	Senior Programme Officer, International Affairs Division, Osaka Prison, Osaka
Mr. Toshihiro Fukushi	Assistant Judge, Tokyo District Court, Tokyo
Mr. Yoshihiko Hatanaka	Public Prosecutor, Shizuoka District Public Prosecutors Office, Hamamatsu Branch, Shizuoka
Ms. Keiko Hoshi	Public Prosecutor, Criminal Affairs Division, Urawa District Public Prosecutor's Office, Saitama
Ms. Mitsuyo Inada	Probation Officer, Aftercare Section, Fukuoka Probation Office, Fukuoka
Mr. Shuichi Inoue	Immigration Control Officer, Enforcement Department, Fukuoka Regional Immigration Bureau, Fukuoka
Mr. Satomi Konno	Intelligence Officer, Tohoku Regional Narcotics Control Office, Miyagi

FIFTH SPECIAL SEMINAR FOR SENIOR CRIMINAL JUSTICE OFFICIALS OF THE PEOPLE'S REPUBLIC OF CHINA

Mr. Fu-Qi Zhang	Judge, Supreme People's Court of the People's Republic of China
Mr. Feng Zhou	Judge, Supreme People's Court of the People's Republic of China
Ms. Qui-Yuan Shen	Judge, Supreme People's Court of the People's Republic of China
Mr. Jun-Sheng	Director, Department of Grassroots, Ministry of Justice of the People's Republic of China
Ms. Ping Bai	Deputy-Director, International Division, Department of Judicial Assistance and Foreign Affairs, Ministry of Justice of the People's Republic of China
Mr. Yong-Liang Xu	Deputy Warden, Shanghai Bao Shan Prison
Mr. Jin Wang	Deputy-Director General, Foreign Affairs Bureau, Supreme People's Procuratorate of the People's Republic of China
Mr. Li-Quan Sun	Director, Procuratorial Department for Accusation and Petitions, Supreme People's Procuratorate of the People's Republic of China
Mr. Bao-Ping Zhang	Associate Professor of Law, The Chinese People's Armed Police Force Academy
Mr. Jun Yu	Chief of Staff, Shanghai Municipal Public Security Bureau

APPENDIX

FIRST SPECIAL SEMINAR FOR KENYAN OFFICIALS ON JUVENILE DELINQUENT TREATMENT SYSTEMS

Mr. Thomas Otieno Naam	Officer in Charge, Nakuru Juvenile Remand Home, Nakuru, Kenya
Ms. Elizabeth Nyambura Wainaina	Senior Housemistress, Getathuru Approved School, Nairobi, Kenya
Mr. Patrick Wakhungu Nakasana	Headteacher, Kabete Approved School, Nairobi, Kenya
Ms. Catherine Wanjiru Maina	Children's Officer, Nyeri District Children's Office, Nyeri, Kenya
Mr. Anthony Lundi Mngolia	Children's Officer, Headquarters, Nairobi, Kenya
Ms. Ruth Kanaiza Otwori	Children's Officer, Dagoretti District Children's Office, Dagoretti, Kenya
Ms. Imbayi Genvieve	Children's Officer, Kakamega Approved School, Kakamega, Kenya
Mr. Julius A. Morumbi Ngoko	Children's Officer, Kericho Approved School, Kericho, Kenya
Mr. Charles Okeyo Ogolla	Member, District Children's Advisory Committee, Kisumu, Kenya

THIRD SPECIAL TRAINING COURSE ON CORRUPTION CONTROL

Overseas Participants

Mr. Linbert Llewelyn Willis	Prosecuting Counsel, Director of Public Prosecutions of Belize Office, Belize
Mr. Thai Chanrith	Deputy General Director of Inspection, Ministry of National Assembly Senate Relations and Inspection, Cambodia
Mr. Li Yong	Deputy Division Chief, Policing Supervision Department, Ministry of Public Security, Peoples' Republic of China
Mr. Bachtiar Robin Pangaribuan	State Prosecutor, Attorney General's Office, Indonesia
Ms. Shikuku Agnes Nafula	Acting Principal State Counsel, Public Prosecutions Department, Attorney Generals' Chambers, Kenya
Mr. Nurlan Isaev	Special Agent, Central Department of Struggle against Organized Crime, Ministry of Interior, Kyrgyz
Ms. Nur Aini Zulkiflee	Senior Federal Counsel, Anti-Corruption Agency of Malaysia, Malaysia
Mr. Eruult Sagsai	Chief Prosecutor, Capital City Prosecutor's Office, Ministry of Justice, Mongolia
Mr. Abdalkarim K. S. Alshami	Legal Adviser, Ministry of Justice, Palestine

Mr. Jorge Enrique Bogarin Gonzalez	Judge, Supreme Court of Justice, Paraguay
Mr. Chavez Riva Castaneda Pedro Abraham	Vice-Supreme Prosecutor, General Prosecutor's Office, Peru
Mr. Potjawin Sitsanguan	Judge, Criminal Court of Southern Bangkok, Thailand
Mr. Kalekyezi Edmund Paul	Principal Legal Officer, Inspectorate of Government, Uganda

Japanese Participants

Mr. Tatsuya Kaneko	Public Prosecutor, Yokohama District Public Prosecutors Office, Sagamihara Branch Office, Kanagawa
Mr. Masanori Ogushi	Public Prosecutor, Niigata District Public Prosecutors Office, Niigata
Mr. Masato Tesaki	Judge, Nagoya High Court, Aichi

Distribution of Participants by Professional Backgrounds and Countries

(1st International Training Course - 119th International Training Course, U. N. Human Rights Courses and 1 Special Course)

	Professional Background / Country	Judicial and Other Administration	Judeg	Public Prosecutors	Police Officials	Correctional Officials(Adult)	Correctional Officials(Juc enile)	Probation Parole Officers	Family Court Incestigation Officers	Child Welfare Officers	Social Welfare Officers	Training&Research Officers	Others	Total
1	Afghanistan	7	8	5	3									23
2	Bangladesh	20	11		11	5		4			5		2	58
3	Bhutan				3									3
4	Brunei	4				2								6
5	Myanmar	3			2									5
6	China	12	3	5	10							7		37
7	Hong Kong	14			11	24	3	9		1	3	1		66
8	India	13	10		50	7	1	1			2	6	3	93
9	Indonesia	20	20	19	20	14		3			6		1	103
10	Iran	5	11	8	8	6						2	1	41
11	Iraq	5	3	3	5	5	5					2		28
12	Jordan				4									4
13	Cambodia	1	2	1	5	1								10
14	Oman				3									3
15	Korea	12	3	53	6	19	4					3		100
16	Kyrgyz	1			1									2
17	Laos	5	5	4	10									24
18	Malaysia	19	2	3	42	31	8	3		1	5	3		117
19	Maldives			1										1
20	Mongolia	1			1									2
21	Nepal	27	13	8	31								2	81
22	Pakistan	18	10	2	28	8	1	2				2	1	72
23	Palestine	1			1			1						3
24	Philippines	17	9	21	33	8	3	9	3	1	6	3	5	118
25	Saudi Arabia	4			6	3						1	1	15
26	Singapore	10	18	5	12	10	3	10			3	1	1	73
27	Sri Lanka	21	20	12	20	18	1	11		1	2		1	107
28	Taiwan	12	4	2	2	1								21
29	Thailand	21	30	37	14	14	8	10	1		8	4	1	148
30	Turkey	2	1	1	2							1		7
31	United Arab Emirates	1												1
32	Uzbekistan												1	1
33	Vietnam	10	5	2	7						4	1		29
	ASIA	286	188	192	351	176	37	63	4	4	44	37	20	1402
1	Algeria		3	2										5
2	Botswana	1			2									3
3	Cameroon	3												3
4	Cote d'Ivoire		1		1									2
5	Egypt	1			1							2	1	5

APPENDIX

	Professional Background / Country	Judicial and Other Administration	Judeg	Public Prosecutors	Police Officials	Correctional Officials(Adult)	Correctional Officials(Juvenile)	Probation Parole Officers	Family Court Incestigation Officers	Child Welfare Officers	Social Welfare Officers	Training&Research Officers	Others	Total
6	Ethiopia	3			1									4
7	Gambia				2									2
8	Ghana	1			3	1								5
9	Guinea			1	2									3
10	Kenya	6	4	1	11	7		6				2		37
11	Lesotho				1			2						3
12	Liberia											1		1
13	Madagascar				1									1
14	Mauritius		1											1
15	Morocco			1	4									5
16	Mozambique	1			1	1								3
17	Nigeria	1			5	5							1	12
18	South Africa				2	1						1		4
19	Seychelles				3			1						4
20	Sudan	2		1	13	1						2		19
21	Swaziland				2									2
22	Tanzania	4	3	4	4	1								16
23	Zambia		1		6									7
24	Uganda				5								1	6
25	Zimbabwe	1			2									3
	AFRICA	24	13	10	72	17	0	9	0	0	0	8	3	156
1	Australia			1				1			1			3
2	Vanuatu				1									1
3	Fiji	6	1	9	20	14					1			51
4	Kiribati	1												1
5	Marshall Island	1			3									4
6	Micronesia							1						1
7	Nauru				1									1
8	New Zealand	1			1									2
9	Papua New Guinea	10	1	4	11	9		3			1		2	41
10	Solomon Islands	3			2									5
11	Tonga	2	1		6	2						1		12
12	Western Samoa	1			1			1					1	4
	THE PACIFIC	25	3	14	46	25	0	6	0	0	3	1	3	126
1	Argentina	2	2		2									6
2	Barbados				1			1						2
3	Belize	1			1									2
4	Bolivia		1										1	2
5	Brazil	2		3	14					1	1			21
6	Chile	1			2	2								5
7	Colombia	3	1	2	3					1			1	11
8	Costa Rica	3	4	4								1	2	14
9	Ecuador			1	4		1							6
10	El Salvador	1												1
11	Grenada				1									1
12	Guatemala					1								1
13	Honduras			1	3									4
14	Jamaica	3				1								4

	Professional Background / Country	Judicial and Other Administration	Judeg	Public Prosecutors	Police Officials	Correctional Officials(Adult)	Correctional Officials(Juvenile)	Probation Parole Officers	Family Court Incestigation Officers	Child Welfare Officers	Social Welfare Officers	Training&Research Officers	Others	Total
15	Mexico	1												1
16	Nicaragua		1											1
17	Panama			1	2								1	4
18	Paraguay				9		1							10
19	Peru	4	10	4	2	1						1	2	24
20	Saint Lucia	1				1								2
21	Saint Vincent				1									1
22	Trinidad and Tobago	1				1								2
23	Venezuela	1		1	8							1		11
24	U.S.A(Hawaii)								1					1
	NORTH & SOUTH AMERICA	24	19	17	53	7	2	1	1	2	1	3	7	137
1	Bulgaria				1									1
2	Hungary	1												1
3	Macedonia	1												1
4	Poland				1									1
5	Lithuania				1									1
	EUROPE	2	0	0	3	0	0	0	0	0	0	0	0	5
1	**JAPAN**	103	138	226	87	71	72	170	57	38	2	48	58	1070
	TOTAL	464	361	459	612	306	111	249	62	44	50	97	91	2906

PART TWO

RESOURCE MATERIAL SERIES
No. 59

Work Product of the 118th International Training Course

"BEST PRACTICES IN THE INSTITUTIONAL AND COMMUNITY-BASED TREATMENT OF JUVENILE OFFENDERS"

UNAFEI

VISITING EXPERTS' PAPERS

COGNITIVE BEHAVIOURAL TREATMENT FOR YOUNG OFFENDERS

*Alan W. Leschied, Ph.D. C. Psych.**

I. RATIONALE FOR APPLYING COGNITIVE BEHAVIOURAL INTERVENTIONS WITH YOUNG OFFENDERS

More than any other intervention, Cognitive Behavioural Treatment has garnered the greatest amount of attention in relation to effective correctional treatment. In North America, CBT has become the single most identifiable treatment component in both youth and adult correctional intervention. This chapter situates CBT within the larger sphere of effective correctional practice, emphasizing the role of assessment, case formulation and planning as well as its relation to other systemic interventions. Specific aspects of social learning theory as they relate to CBT are presented along with specific examples of CBT interventions.

A. General Orientation to CBT

Cognitive behavioural treatment (CBT) is a phrase describing interventions that connect responses of an individual's behaviour to the process and content of their thinking. CBT as a general approach to describing psychological intervention became popular during the early part of the 1970's. With leading researchers such as Donald Meichenbaum and Michael Mahoney, progress in effective psychological intervention capitalized on developments from behavioural psychology, psychodynamically-oriented treatment and cognitive science. The results of this confluence of understanding have led to, what has been called, the "fourth pillar" of understanding in psychological treatment—behavioural, person-centred and psychodynamic, being the other three orientations.

With respect to intervention, CBT has been used in many applications, extending from psychosomatically-oriented illnesses—hypertension - to emotionally based concerns - anxiety and depression - to interpersonal development - assertiveness training. Many outcome studies have reported the success of CBT compared with competing interventions of both a psychological and medical nature. While most of the academic journals in clinical psychology publish routinely on the benefits of CBT, *Cognitive Therapies* is a journal dedicated expressly to reporting progress in developing effective cognitively based interventions.

B. Relevance to Child and Youth Populations

CBT has shown itself to be effective through interventions targeting youth. In contrast to the general CBT literature, CBT interventions with young people need to be developmentally appropriate given the context of the stage at which children are able to show flexibility in concept formation and ability to generalize from one set of circumstances to another. The balance of this chapter will focus on interventions with young offenders that contribute to understanding the role that CBT plays in

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effective correctional treatment. It will include a review of; the major predictors of risk, general assessment with youthful offenders, measurement issues in the assessment of relevant cognitions, general treatment issues regarding effective correctional intervention with youth, principles of CBT with young offenders and examples of specific CBT programmes for young offenders

1. The Major Predictors of Risk.

Andrews, Leschied and Hoge (1992) provided an extensive summary of the cross-sectional and longitudinal literature related to anti-social outcomes in youth. In their review, the principle factors that accounted for prediction included; early behavioral history, peer associates, early and current family conditions, interpersonal relationships, personal attitudes/values/beliefs and school-based risk factors. The group of factors summarized in that review contributed to the body of work that Andrews and Bonta (1998) later referred to as the *Psychology of Criminal Conduct*; a generalized term for criminogenic risk factors that reflect a psycho-social understanding of the nature of criminal conduct in general as well as pertaining to youth in particular. The complete list and descriptors are found in Table 1.

Table 1
Summary of Major Risk Factors for Adolescents
(excerpted from Andrews, Leschied and Hoge, 1992)

Factor	Descriptors
Behaviour	early generalized misconduct, aggression, a taste of early behavioral history or risk, problem-solving ability, egocentric.
Peer Associates	association with anti-social others, isolation from pro-social others.
Interpersonal Relationships	indifference to the opinions of others, weak affective ties.
Family Conditions	low levels of family affection/cohesiveness, low levels of supervision, inconsistent discipline
School-based risk factors	below average effort,
Attitudes, Values and Beliefs	high tolerance for deviance, rejection of the validity of the law, applies rationalizations for law violations, thinking style and content are anti-social.

Assessment of general criminogenic risk is an important and critical first step in understanding the nature and context of individual youthful offenders. While several measures of general risk have been developed, the Risk/Need Inventory (Hoge, Andrews and Leschied, 1995) and the Youth Level of Service Inventory (Hoge and Andrews, 1994) are instruments enjoying the widest use in Canada. Beyond the use of a general measure of risk, practitioners and administrators may want to know more detail about specific issues regarding offenders and their offences—including specific attitudes—in order to make clinical/management decisions.

Knowledge of the general literature of risk is critical in the development of

broad-based strategies to assess criminogenic potential in adolescents. Following from the risk principle of case classification (See Andrews, Bonta & Hoge, 1990 for a more complete review of the risk-based concept of classification), knowledge and measurement of risk can assist in case planning and selection of appropriate targets for service to be effective. Hoge and Andrews (1998) make the point that for assessment to be effective for case planning with young offenders, the assessor must make meaningful assumptions about the general *level of risk* to guide the *intensity* of intervention, and specific statements of *areas of risk* to provide *relevance in case planning and targeting* for appropriate treatment to take place. Knowledge with respect to the major predictors of youth at risk have led to the means by which assessment strategies can reflect the degree and nature of risk that a particular youth may be presenting.

C. Measures of General Risk

1. The Risk/Need Inventory

While several general measures of risk with young offenders exist, in order to meet the requirements of *accuracy* and *functionality*, Andrews et. al. developed the Risk/Need Inventory for use in Ontario to classify young offenders age 12-15 years. This assessment and classification system includes a summary of items based on the major risk factors. Each item is weighted and scored using a 0, 1 system based on file reviews or interviews with the youth or key informant(s). Totals are then taken to reflect an over-all risk score with summaries also provided for each risk category. Informed individuals can over-ride the total score and categorization in certain cases. Planning with respect to the extent of supervision and specific case planning decisions related to targets for intervention can be determined by information in each category. The R/N Inventory has been evaluated in several studies related to prediction (Hoge, Andrews & Leschied, 1996; Simourd, Hoge, Andrews & Leschied, 1994).

2. The Youth Level of Service Inventory.

An analogous system of classification, referred to as the *The Youth Level of Service Inventory* is also available that provides summaries and classifications for individual offenders. The YLSI is used with older adolescents age 17-18.

D. Some Promising Assessment Measures for Specific Purposes

There are a variety of measures in use that are relevant to the question(s) being asked of the assessor. Personality assessment continues to be actively pursued in relating adjustment patterns to an individual youth's programme need. The Basic Personality Inventory (Jackson, 1989; Austin, Jaffe, Leschied, Smiley and Sas, 1988) provides an assessment of youth related to factors of depression, psychiatric stability, interpersonal maturity and socialization. The Millon Adolescent Personality Inventory is another measure in widespread use. Similar to the BPI, the MAPI provides useful information about a wide range of concerns related to emotional, cognitive and behavioural adjustment. Similarly, the Child/ Adolescent Behavior Checklists developed by Thomas Achenbach and his colleagues are useful since their assessment contents relate scales that are meaningful to overall youth adjustment. The CBCL has forms that can be completed by the youth, their parents as well as teacher rating forms. Lastly, assessment of psychopathy with young offenders, while not attracting the same degree of interest that is currently displayed in the adult literature, has still

generated some interest (Hare, 1991; Simourd et.al., 1994). The Hare Psychopathy Checklist, is the standard measure in this area. Of additional interest is the use of measures for investigating anxiety — the State/Trait Anxiety Inventory (STAXI); nature of family adjustment in the use of the Family Adjustment Measure or the FACES; and offense-specific measures such as in the use of assessment with adolescent male sex offenders, The Abel and Baker Sexual Interest Card Sort and Cognitions Scale.

Lastly, the choice to be made of the appropriateness of an assessment battery will be dictated by the nature of the decisions to be made. There are many points along the continuum of juvenile justice processing that may/will require input relevant to the needs of both the youth and of the justice system. These decisions may include the decision to find a youth: not fit to stand trial, to query the youth's understanding of the nature of the proceedings or to consider a youth for transfer to ordinary court.

E. Specific Measurement Issues in the Assessment of Cognitions

General measures of risk and personality will be helpful in the overall case planning and formulation of youth However in leading to specific programme formulations for cognitive intervention, there is further necessity to specify the style and content of thinking that a particular youth may present. The following two examples of attitude inventories are commonly used to assess thinking styles and content.

F. Criminal Sentiments Scale

Assessors will want to address general issues of thinking style and content that is consistent with a pro or antisocial orientation. The development of the Criminal Sentiments Scale (Simourd, 1997) is a good example of such a measure that relates attitudes to issues relevant to youth who may be involved with the criminal justice system.

G. Beliefs and Attitude Scale

The beliefs and attitudes scale was developed by Butler and Leschied. While similar to the CSS, the BAS has a vocabulary geared to youth with questions that are pertinent to issues that relate to the major attitude predicators of risk including tolerance toward law violation, attitudes toward authority and help seeking behaviour.

II. GENERAL TREATMENT ISSUES REGARDING EFFECTIVE CORRECTIONAL INTERVENTION WITH YOUNG OFFENDERS

Decisions with respect to CBT will be made in the general context of appropriate correctional interventions that may include a community or residential context, family or individual intervention. The following sections summarize the general context in which CBT may be offered.

A. Overview of the Treatment Literature

Similar to the assessment literature, increasing knowledge with respect to young offender management and treatment has also been witnessed over the past decade. Progress in this area has capitalized not only on the specific effects of young offender programmes, but from the general knowledge base regarding child and adolescent intervention. Kazdin and Weisz (1998) recently noted in their review of child and adolescent interventions, that expressions such as *knowledge-based, data-driven and empirically- supported* now routinely appear in selections made regarding

treatment options for specific client groups. Knowledge with respect to successful programmes for conduct-disordered and anti-social youth has progressed not only in the description of successful *components* of intervention (i.e. cognitive-behavioral) but also in the method of *service delivery* (custody versus community). Meta-analysis is the term used to report *quantitative* summaries of the literature. It represents a significant advancement over earlier qualitative reviews (Wells,1991). Meta-analysis statistically compares the types of treatments that are offered, to whom they are directed and with what outcomes. The meaningfulness of meta-analysis is only limited by the number and quality of the studies that are included in the review. Fortunately, adequate quality and quantity of studies now exist to make interpretations of the treatment literature in youth justice with confidence, although Losel (1997) has offered up some reservations with respect to limiting the generalizeability of such findings. The limitations along with the major outcomes will be summarized in the following section.

1. Major Findings from the Meta-analysis

Mark Lipsey's reporting of two separate analyses (Lipsey, 1992; Lipsey & Wilson, 1997) suggested that the overall effect size linking treatment with reductions in re-offending lie between 20-40 per cent as contrasted with no treatment comparison groups, and only slightly less when compared to groups receiving some type of 'usual service'. As stated in the Andrews, Leschied and Hoge (1992) review, "Thanks to the meta-analyses, the evidence favouring treatment services is now undeniable." (p.148) Stronger effect sizes were found in the Lipsey studies in the following variables; higher risk cases, longer duration of treatment and behavioral-oriented multimodal treatment with a stronger emphasis on 'sociological' than psychological orientation of service delivery.

Effect sizes accounting for total programme outcome across both institutional and non-institutional programmes suggested that the three factors comprising the highest ranking were; interpersonal skills training, individual counselling and behavioral programmes. The second grouping of lesser, yet significant contribution were the two programme factors consisting of multimodal services and restitution for youths on probation.

2. Institutional Versus Non-Institutional Placement for Treatment

Lipsey and Wilson's (1997) subsequent review distinguished placement of treatment, residential versus community, in differentiating characteristics of effective programmes. This is a critical differentiation since much of the debate regarding effective youth justice policies centres on the importance of incarceration as a relevant factor in community safety. Lipsey and Wilson noted in their analysis that different contributions are made for various components of service as a function of the placement for treatment. Table 2 summarizes factors relevant for effective programmes in institutional and non-institutional placements.

Table 2
Programme Factors Contributing to Effectiveness for Institutionalized and Non-Institutionalized Young Offenders

Institutional-Based Components
Interpersonal Skills
Teaching Family Model
Multiple Services
Behavioural Programmes
Individual/Group Programmes
Non-Institutional-Based Components
Interpersonal Skills
Individual/Group Programmes
Multiple Services
Restitution/Probation
Employment/Academic Programmes

III. GENERAL TREATMENT APPROACHES

The meta-analyses have directed attention to the importance of interventions that look at the multi-determined nature of youthful chronic offending. Two general principles apply. The first is that much of youthful offending is accounted for by the context in which the youth experiences systems of influence, the primary ones being family, peers and school (Henggeler, 1989). Systemically-based interventions have therefore taken on new meaning as the prediction literature continues to reinforce the importance of seeing youths in context and treating them in their natural environments. The second principle, again taken from the meta-analysis on prediction, reinforces the importance of cognitions as appropriate targets for intervention. Cognitive-behaviourally oriented interventions have shown themselves to be more effective than traditional psychotherapeutic or medical interventions (Gendreau, 1998). A number of cognitive-behavioural interventions sensitive to client need and the nature of offending have been developed. These two themes of intervention will be discussed along with promising approaches with youths of particular concern, those being sex offender, substance abusing and violent youths.

A. Systemically-oriented Interventions

Both of the meta-analyses reported by Andrews (1998) and Lipsey and Wilson, (1997) suggested that effect sizes linked to more effective outcomes were characteristic of programmes delivered in the community as contrasted to those delivered in residence. Heneggeler (1989) suggests in part this is accounted for by the type and quality of interactions adolescents experience with the social influences that surround them. To be effective, programmes need to be in a position to influence those *social* factors that may in turn be interacting with a particular youth's competencies (e.g. problem-solving skills, beliefs and attitudes). Hence, particular attention is now being paid to interventions that influence the systems that are consistent with the major predictors of delinquency risk, namely, families, peers and schools. This section will focus on *multi-systemic therapy*, an intervention with considerable empirical support in reducing reoffending rates with high risk youth.

Scott Henggeler and his colleagues at the Family Services Research Centre at the Medical University of South Carolina can be credited with developing what is being consistently identified as one of the more promising approaches to effective service with high risk youth. Multi-systemic Therapy (MST) refers to the

consistent application of principles that reflect what is known in the young offender literature. While some reviewers may suggest that MST does not represent 'anything new under the sun', it is in the method of service delivery that MST has shown itself to be effective with high risk youth. Leschied and Cuningham (1999) summarize MST as "... a home-based, family-based, present-oriented therapeutic intervention using family strengths to attenuate risk factors and improve family relations, peer relations and school influence". Consistent with the risk principle of case classification, MST attempts to influence the major criminogenic risk factors through the application of appropriate strategies in a multi-determined, multi-modal fashion.

In addition to reflecting the knowledge-base in the offender literature, MST has been evaluated with a series of randomized clinical trials that have included appropriate follow-up periods. Cost-savings and service utilization rates have also served as part of the evaluation process. In one randomized evaluation study, Borduin, Mann, Cone, Henggeler, Fucci, Blaske and Williams (1995) reported after a four year follow-up, MST completers reflected a 22% recidivism rate, compared to the MST non-completers who demonstrated 47%, completers from individual counselling reported a 71% and treatment refusers reported an 88% reoffending rate. Recently the State of Washington's (1998) review of young offender services suggested that MST was not only more effective in reducing reoffending rates, but also distinguished itself in being *most cost effective* when compared to other interventions which included boot camps and generalized prevention strategies. An overall review of the MST approach can be found in the recently published *Multisystemic Therapy of Antisocial Behavior in Children and Adolescents* by Henggeler and his colleagues (1998).

While MST reflects interventions that have shown themselves to be effective, it is in the method of service delivery *within a specified set of principles* that MST distinguishes itself. The nine principles against which MST adherence is measured consist of the following:

- The primary purpose of assessment is to understand the "fit" between the identified problems and their broader context.
- Therapeutic contacts should emphasize the positive and should use systemic strengths as levers for change.
- Interventions should be designed to promote responsible behaviours and decrease irresponsible behaviour among family members.
- Interventions should be present-focused and action-oriented, targeting specific and well-defined problems.
- Interventions should target sequences of behaviours within or between multiple systems that maintain the identified problems.
- Interventions should be developmentally appropriate and fit the developmental needs of the youth.
- Interventions should be designed to require daily or weekly effort by family members.
- Intervention efficacy is evaluated continuously from multiple perspectives with providers assuming accountability for overcoming barriers to successful outcomes.
- Interventions should be designed to promote treatment generalizations and long-term maintenance of therapeutic change by empowering care givers to address family members' needs across multiple systemic contexts.

B. Cognitive-Behavioural Interventions

Cognitive-behavioural treatment (CBT) with young offenders has received considerable attention. This can be attributed to at least three influences:

- the general literature regarding effective interventions with children and adolescents has been supportive of CBT;
- risk factors regarding attitudes, beliefs and values have shown themselves to be particularly strongly related to anti-social behaviour, and
- recent meta-analyses have shown CBT to be the treatment of choice related to effectiveness over and above the traditional influences of psychodynamic, medical and behavioural interventions.

CBT refers to interventions that connect thoughts to behaviour. Hollin (1990) describes it this way; "… The cognitive-behavioural position acknowledges the importance of environmental influences while seeking to incorporate the role of cognitions in understanding behaviour. Cognitions are given a mediation role between the outside world and overt behavior; cognitions are seen as determining what environmental influences are attended to, how they are perceived, and whether they might affect future behavior".

Interest in CBT has been based not only on disappointing results from medically-based interventions (lack of empirical support generally) and behaviourally-based interventions (lack of support for sustainable gains and generalization) but as well on the general theoretical assumptions about the *social-psychological* understanding of the etiological research on the development of delinquency. This body of theoretical work suggests that the interaction of the individual with systems that can influence attitudes and subsequent behaviour may improve the explanatory value of the studies on prediction and assessment. Hence, the importance of understanding how children/adolescents mediate their experience may not only assist in explaining the behaviour, but may also contribute meaningfully in how to alter behavioural outcomes. Such outcomes can encourage youths to shift their thinking away from attitudes that support antisocial behaviour and towards the development of thinking styles and content that promote pro-social behaviour. Finch, Nelson and Ott (1993) suggest that the general expanded influence of CBT in the child/adolescent literature can be attributed to factors such as:

- Increasing evidence that thought processes influence behaviour.
- Traditional stimulus-response explanations cannot account for all outcomes
- Thought processes can account for behavioural change
- Operant approaches have not provided convincing evidence that S-R theories can account for generalization and maintenance.

Andrews et.al. discuss the important aspect of *clinical relevance* in decision - making when important case management decisions arise. Clinically relevant decisions can be considered as those that link the decision to correctly prioritize or target certain behaviours/ systems for change with the particular risk profile of the individual. Given the importance placed on attitudes from the prediction literature with young offenders, targeting cognitions makes considerable sense as an important focus for service providers.

Not only has CBT made inroads in the promotion of effective intervention with children/adolescents generally, but numerous programmes now exist to train workers in the youth corrections field in both residential and community contexts. Examples include: the Choices Programme developed by Elizabeth Fabiano and Robert Ross that targets general offending patterns: Aggression Replacement Training developed by Arnold Goldstein (Goldstein, Glick, Reiner, Zimmerman and Coultry, 1987) that combines psychoeducational intervention, skill streaming and moral education to reduce aggression in high risk youth; and sex offender treatment controlling inappropriate arousal through cognitive restructuring, a programme summarized in the work of Ryan and Lane (1991). CBT interventions are typically delivered as part of an overall strategy that frequently also includes systems involvement through family therapy and can be delivered either while a youth is in the community or in residential care.

1. Specific Concepts in CBT[1]

The specific aspects of CBT include a knowledge of various concepts generally attributed to social learning theory (SLT). The following section provides definitions of the most relevant concepts of SLT that relate to CBT. Following this outline, specific examples of CBT in relation to young offender intervention are offered.

(i) *Fundamentals of Social Learning Theory*

Social learning theory, a theoretical understanding of behaviour popularized through research by Albert Bandura in the late 1950's and early 1960's is a way to describe the means by which individuals develop behaviour as a function of their interaction with the social influences that they encounter. As a result, attitudes are considered learned behaviours much the same way as behaviours are considered the product of the repeated experience with reinforces. In this context SLT considers attitudes to be:

- relatively consistent ways of reacting to a variety of contexts
- the product of experience with socializing agents (e.g. parents, peers)

(ii) *Inter-relatedness of Thoughts, Feelings And Behaviour*

Not only are cognitions and behaviours assumed to be related or *linked* in a meaningful way, but feelings can also mediate the bidirectional effect of thoughts and behaviour. This assumption includes:

- An increased awareness of the link between thoughts, cognitions and behaviour
- Rewards for linking attitudes with behaviours that are pro-social
- The increasing ability to link thoughts/attitudes and behaviour

Specific examples of applying CBT principles in programme development include, social skills training, reduced aggression and programmes targeting sexually assaultive adolescents. Programmes have also been found to be effective both within the community as well as in residential settings.

[1] This section is based largely on the work completed by the author and Dr. Linda Baker of the Centre for Research for Children and Families in the Justice System of the Family Court Clinic. The financial support of the Ontario Ministry of Community and Social Services is once again gratefully acknowledged.

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MULTISYSTEMIC THERAPY: COMMUNITY-BASED TREATMENT FOR HIGH RISK YOUNG OFFENDERS
Rationale and Overview from the Randomized Clinical Trials in Canada

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I. THE SYSTEM OF YOUTH JUSTICE IN CANADA

Administration of youth and adult justice in Canada has followed the path of most countries in emphasising the use of incarceration to an ever-increasing extent. Concerns have been expressed not only for the cost but also the questionable effectiveness of imprisoning a proportionately large number of offenders. The Commissioner of the Correctional Services of Canada, in the spring of 1998, convened a world conference studying the issue. This followed a meeting of senior Canadian government officials 18 months earlier who, upon reviewing the increasing reliance of custody in the context of other service and demographic trends and costs, concluded that the country could not support these trends either financially or in the spirit of effective service delivery. This observation is no less true in the youth justice system

A. Policy Implications of the Trends in Young Offender Law

The challenge for policy advocates and service providers has been to achieve a balance between the desirability of the lower costs associated with alternatives to custody while being mindful of the community's demand for safety and the high profile nature of criminal justice issues. While these challenges may seem demanding and complex, criminal justice professionals are fortunate in having an extensive literature on which to draw in

providing policy direction for the development of community-based intermediate sanctions that are mindful of both goals of cost-effectiveness and community safety. There is some indication of the government's response to this issue in proposals for reform of the *Young Offenders Act* and the associated processes for youth justice (Department of Justice, 1998). This review of the Canadian situation focuses on levels of custody use and factors that influence the use of custody in the youth justice system. Multisystemic Therapy is one example of an evidenced-based intervention that can guide practice in service selection by appropriately targeting those most likely to be consumers of the most costly and intrusive services.

1. Juvenile Justice Innovation

The guiding philosophy to designing a youth justice system is important to consider appreciating on-going dissatisfaction with what is perceived by many in the public, as a 'soft' on crime approach to young people (Bala and Corrado, 1985). Contemporaneous with other Commonwealth jurisdictions and the United States, Canada created a separate system of youth justice with the enactment of the *Juvenile Delinquents Act* (JDA) in 1908. It took many years for the JDA to be used outside of a few urban centres (Hatch and Griffiths, 1991) but it gradually took hold. The JDA dictated that young people should be responded to not as criminals but rather as 'mis-guided' children in need of 'guidance and assistance' requiring the judge to take the role of a kindly parent in re-directing the behaviour of errant youth.

(i) *Reform in the 1960s to the 1980s*

In the early 1960s, it was recognised that reform of the juvenile system was necessary. Three major influences can be identified as fuelling the debates that spanned two decades and culminated in the 1984 proclamation of the YOA.

The first was the growing recognition that young people needed to be afforded protection under law to ensure their rights were not being violated at any stage of the proceedings from questioning at arrest through to sentencing (Bala, 1998). This concern grew from the observation that the flexibility afforded by the JDA was being misused to justify more intrusive punishments than an adult would garner for the same behaviour.

Second, there was increasing scepticism about the effects of social re-engineering to reduce conditions that were thought to influence the misbehaviour of some young people (Martinson, 1974, Leschied and Gendreau, 1986). Simply put, there was essentially no empirical evidence that the efforts of the juvenile court had been followed by anything other than steady increases in youth crime.

Third, there was recognition that the offence of 'delinquency" was too broad, encompassing, as was often observed, every act from spitting on the sidewalk to murder. It was felt that violations of the criminal law required a different response from actions and situation that, while 'disturbing' to many, were not criminal. These behaviours, called status offences, included (depending upon the province) incorrigibility, sexual immorality, running away, and truancy.

(ii) *Basic Tenets of Young Offender Law Revisions*

Three prevailing principles can be seen as guiding and finally influencing the YOA. These included:

- Protection under law for the rights of youth in insuring access to legal counsel;
- Making accountability for behaviour a guiding principal for decision making, and
- Attempting to strike a balance between the need to make young people accountable for their behaviour while coincidentally providing appropriate guidance and direction.

Data from the mid-1980s revealed the effects on incarceration of the reforms in the YOA. In several studies, placement in custody in Ontario, Canada's most populated province, showed signs of doubling over rates of training school committals under the JDA (Leschied and Jaffe, 1986; 1991

Despite reporting of the early effects of YOA reform, public attitudes continued to hold that the youth justice system, similar to the adult system, was soft on crime and more emphasis was needed to be make the punishment fit the crime In this spirit, at least four significant revisions were made at different intervals that reflected public demand for a tougher law (see Bala, 1998). Data on trends in sentencing under the YOA supported the belief by many justice professionals that the use of custody had become a 'runaway train' in the justice system (Archambault, 1991).

(iii) *Lack of Custody Alternatives*

Sentencing judges in the youth courts have few disposition alternatives that can be resorted to with confidence when an offender poses a risk to the community. This, along with the re-directed emphasis of much of the human and financial resources committed to the young offender system towards custody, has restricted the development of intermediate community-based alternatives to the court.

The 1996 International Crime Victimization Survey found that Canada had levels of crime close to the average of ten other western industrialized countries, with 25% of respondents reporting a victimization in the previous year from among a selected list of crimes (Besserer, 1998). Compared with a larger list of 34 countries, Canada was in the bottom third. Other 1997 figures pertaining to young offenders, those who were at least 12 but under 18 years of age when the offence was committed, are:

- 15% of all people charged with violent offences were under 18
- 20% of young offenders charged with a criminal offence were charged with a violent crime and 53% were charged with a property offence
- Compared with other forms of violent crime, robbery is more likely to involve young people: almost 40% of persons charged with robbery were youths
- Over the past decade, the rate of female youths charged with violent crimes has increased twice as fast as for male youths
- 54 youths were charged with homicide in 1997, five more than

in 1996 and slightly above the decade average of 49 per year

Such declines are reflected in the workload of the nation's youth courts. The rate at which young people have been appearing in court has fallen for five years, most especially true for property offences where the number of youth court cases now correspond with slightly more than 2% of the youth population, a drop of 20.6% over four years (Statistics Canada, 1998). Declines are mostly confined to property offences because rates for violent crimes were basically unchanged. Overall, the rate of youths appearing in court per 10,000 youths dropped 8.5% between fiscal years 1992-93 and 1996-97. Using rates is important because post-war demographics are such that the age distribution of the Canadian population varies over time, most recently with the maturing of the so-called echo boom (born 1980 to 1995), the children of the enormous 'baby boom' cohort born between 1945 and 1960 are entering the crime prone age (Correctional Service of Canada, 1998).

Half of youth court cases involve crimes against property (mostly minor thefts and burglaries) while only one in five cases involve an interpersonal offence such as assault or robbery. A significant proportion of offences involve what are called administration of justice charges, where a youth has not abided by a condition of release or sentence. The five most common offences (minor theft, burglary, failure to comply with a court disposition, minor assault, and other non-compliance offences such as failure to appear in court) together comprise 60% of all cases.

(iv) *Exploring the Range of Dispositions*

For youths, the sentencing options (called dispositions) are listed in the *Young Offenders Act*. Options in essence include custody (open, closed, or both), community supervision (probation, community service order) or measures with no correctional intervention (fine, discharge, compensation orders). Orders for community services and restitution are often embedded in probation orders. Non-compliance would therefore comprise the new offence of breach of probation making them more easily enforced than if they stood alone as dispositions.

While a key intention of the YOA was to extend due process protections to youths as they were processed by the courts, vestiges of the former welfare-based juvenile system remain in four areas:

- Caps on maximum sentences significantly lower than for adults;
- Key emphasis on probation as a correctional measure;
- Limitations on the publication of the names of offenders; Record destruction requirements, and
- Sentencing judges are clearly encouraged to consider individualized sanctions rather than attend purely to the severity of the offence.

Nationally, probation is the most serious disposition in 51% of cases and custody in 34%, followed in frequency by community service (6%), fine (5%), and absolute discharge (2%). Since these data were collected, conditional discharge has also become a sentencing option. Other options, which comprise 2% of the most serious dispositions, include

compensation to victim, seizure, forfeiture, essays, apologies and counselling programmes. These figures represent only the most serious measure ordered even though, in many cases, dispositional options are combined. For example, a probation term may follow after release from custody or victim compensation may be a condition of probation. There is some variation in these figures depending on the most serious offence at conviction, as can be seen in Table 1.

Community-based, or non-custodial, dispositions comprise two thirds of those handed down by youth courts, with probation being the most frequently imposed. Terms of probation can also be ordered to follow release from custody. Probationers are supervised by provincial probation officers for terms that can be as long as two years, as determined by the judge. In 1996-97, only 22% were for more than 12 months (Statistics Canada, 1998). Probation as a stand-alone disposition was most common in cases involving minor assault, motor vehicle theft, and trafficking in drugs. Standard conditions of probation include keeping the peace and being of good behaviour. Optional conditions can include attending school, seeking and maintaining employment, or living at home or with an adult the court deems appropriate.

B. Utilizing Custody in Youth Justice

Custodial dispositions have resulted in 34% of cases that ended in conviction (Statistics Canada, 1998). A custody disposition is most likely to be ordered when a young offender has violated an order of the court, such as when a condition of a probation order is breached. Custody was the most common disposition for being unlawfully at large (89%), escape from custody (88%), manslaughter (87%), aggravated assault (79%) and robbery (57%).

The maximum length of a youth custody sentence is typically two years but, after some public outcry, amendments to the *Young Offenders Act* have permitted longer sentences in some cases such as murder. However, custody sentences are typically short. In 1996/97, 29% were for one month or less and 46% from one to three months. Moreover, there is some evidence to indicate that the length of custody sentences is shortening (Statistics Canada, 1998). Cases with sentence lengths of three months or less now comprise 75% of all custodial sentences, up from 71% in 1992/93. Such figures are matched with decreases in the longer sentences. This trend is observed for both open and closed custody sentences. It is important to note, however, that youth custody sentences are not subject to remission, either statutory or earned. Early release from a custody term is possible under some circumstances by applying to a judge for a review of the sentence.

Young offenders sentenced to custody will generally serve their terms in a stand alone facility for youths, although there are a few places where adults and youth are co-located with strict separation between the two. All young offender facilities are operated by provincial governments. The *Young Offenders Act* differentiates between open and closed custody but each province is free to operationalize those concepts. At the discretion of the sentencing judge, the term can be served in a closed custody facility, an open custody facility, or a specified combination of both. About half

of youths sentenced to custody are sentenced to begin the term in a closed facility. An unknown proportion of them will graduate to an open facility at a set point in the sentence, to facilitate reintegration into the community. The other half serve their entire sentences in an open facility.

1. General Explanations in the Rise in Custody/Imprisonment Rates

Maur (1998) of the Sentencing Project in Washington, D.C., has linked the increased use of imprisonment in North America to four distinct trends:

- The shift from offender-based to offence-based sentencing;
- Decreased emphasis on rehabilitation;
- Shift of resources to institutions; and,
- Limited consideration for non-custodial sentencing options.

Other explanations for the rate of increase include the proliferation of high mandatory minimum sentences (particularly for drug offences), three strikes laws, and 'truth in sentencing' laws, that typically require an offender to serve at least 85% of a sentence before conditional release (Maur, 1998). Indeed, the number of violent offenders in the federal system is small and dropping, being supplanted by those convicted of drug, weapons and immigration offences (Gilliard and Beck, 1998).

2. Specific Factors Influencing Custody Rates for Youth in Canada

A combination of factors can provide understanding of the rapid increase in the rate of increased use of custody in Canadian youth justice. These would include:

- Public attitudes toward community safety
- Federal-provincial cost sharing arrangements
- Rise in the importance of accountability
- Shift in the mandate for the probation service, and
- The lack of alternatives made available to the courts.

Linking many of these factors has also been the shift in the fundamental premise in managing youth that are in conflict with their communities.

(i) *Public Attitudes Toward Community Safety*

Recent evidence reported by Baron and Hartnagel (1996) suggests that the public's fear of crime, conservative values and victimization experience are useful predictors of attitudes in support of the use of custody for young offenders. Canadian respondents, along with those from the United Kingdom and the United States, overwhelmingly choose imprisonment as the most appropriate sentence for a burglar convicted for the second time when asked as part of the International Crime Victimization Survey (Besserer, 1998). Legislators are clearly aware of these public attitudes (Department of Justice, 1998; National Crime Prevention Centre, 1998).

(ii) *Shifts in the Importance of Accountability*

Youth justice administration in Canada dramatically changed in orientation with the proclamation of the *Young Offenders Act* (YOA) in 1984. While changes in implementation over the years had varied the administration of youth justice, the original legislation of 1908, named the *Juvenile Delinquents*

Act, governed justice for young people without major fundamental change for almost three-quarters of a century. Critics of the YOA suggested that this new legislation heralded an increasing emphasis on incarceration of youth (Leschied and Gendreau, 1986). Growing concern by policy makers for the 'drain' on financial and human resources to support the expanding use of custody is but one major contributor to the re-newed emphasis on community-based interventions.

C. Responses to the Over-reliance on Youth Custody

The irony of the emphasis placed on custody is this: these 'deep-end' services are the most costly, but nowhere in the relatively meagre research on the effects of institutionalisation is there empirical support that custody is an effective way to reduce youth crime and increase public safety (Henggeler, Schoenwald, Borduin, Rowland and Cunningham, 1998). Canada is not experiencing the rapid construction of prisons evident in her close neighbour the United States, but the rate at which incarceration is used is higher than many other Western nations (Maur, 1998; Correctional Service of Canada, 1997).

While the general public seems to support more of the 'get-tough' approach, both levels of government in Canada (federal and provincial) appear to be interested in reducing the use of custody, in part because of the enormous cost and the drain it makes on funds available for community-based resources. The Standing Committee on Justice and Legal Affairs (1997), a group of Parliamentarians charged with reviewing the implementation of the YOA, held hearings in 23 sites across the country. One of their conclusions was that:

> *"Canada uses imprisonment in response to youth crime more than many other countries. The bulk of financial resources devoted to youth in conflict with the law in this country have gone to build and operate custodial facilities... This over reliance on the formal justice system and imprisonment is an enormous drain on public dollars, introduces minor offenders to more serious, persistent offenders, stigmatizes offenders and reinforces criminal identity in a deviant subculture. Moreover it fails to deter youth crime". (p. 35)*

There is little doubt that community safety in the short term is enhanced by custody as it is used. Nationally, more youths are incarcerated for administration of justice offences (the most serious offences in 36% of cases where custody is a disposition) than for interpersonal offences (17%). Such offences include failure to comply with a disposition (mostly breaching conditions of probation), failure to appear in court, escaping custody and being unlawfully at large (Statistics Canada, 1998).

Numerous approaches are currently underway to bring youth justice administration in Canada more into balance. These attempts draw on restorative justice principals and community driven responses addressing the causes of youth crime as well as victim involvement in providing more 'satisfying justice' experiences for all concerned parties.

1. Attempts at Providing Alternative Measures, Intermediate Sanctions and Custody Alternatives

The YOA also reflects the need to provide the least intrusive intervention possible at various stages in the

proceedings. This recognition is reflected in the mandated use of alternative measures and community service orders. Reflected in these measures are services targeting offenders who commit acts of a minor nature; the imposition of probation for community monitoring of compliance with the terms spelled out by a judge; and bail supervision for youths who would otherwise be held in a detention centre for the duration of the court proceedings. Yet, as Bala (1998) has suggested, legislation alone is not a solution in curtailing the use of custody. Probation continues to be the disposition of choice with judges making orders to a greater extent than competing choices. However, it is in the *proportion* of custody orders relative to the overall number of youths being processed through the justice system that is both driving the high cost of 'deep end' services and restricting the development of suitable alternatives. For example, the cost of a single custody bed is two and a half times the average yearly salary of a probation officer.

2. Increasing the use of Community Alternatives

Currently in Canada, there is interest in developing alternatives to the formal justice system and to increase the range of choices for high-risk young offenders at the disposition stage when custody would be the obvious next step in legal processing. Borrowing primarily from developments in Australia, New Zealand, and practices known to Canada's First Nations People, alternatives to formal court processing have been given impetus in recent proposals for juvenile justice reform (see, for example, Department of Justice, 1998). Examples of such court diversion programmes include; police cautioning, family group conferencing and circle sentencing. Proposals such as these are targeting youth with minor offences to capitalise on the naturally occurring strengths in a community of committed volunteers. Additionally, these proposals support police discretion in avoiding the use of court for youth that are generally considered as low risk for subsequent offending. In many cases where such diversion programmes are applied, no formal charge is laid.

SECTION SUMMARY

- Rates of custody in nine of ten provinces approximate 34% of youth court dispositions
- 75% of federal to provincial young offender cost sharing funds custody facilities
- Recent amendments to the YOA have focused on increasing severity of sanctions for youth with serious offences while encouraging the use of community-based alternatives

II. EMPIRICAL SUPPORT FOR IMPROVING YOUNG OFFENDER OUTCOMES

A. Revisions to the Young Offender's Act

In the winter of 2001, Canada once again has reviewed legislation that governs the implementation of young offender programmes and policies. Following at least three years of on-going consultation, the revised policy may further the schizophrenic nature of this law in combining *toughness* with *treatment*. Several commentators have already echoed the feelings of then Judge George Thomson in 1982 who noted that the original YOA was attempting to be all things to all people. In the revised Act, now called The *Youth Criminal Justice Act* (YCJA), there is a lowering of the minimum age of the reverse onus provision to fourteen for youth with serious offenses, and a broadening of the basis on which youths can be transferred

to adult court. Coinciding with the "get tough" aspects of the new Act, is the continuing expression of support for rehabilitation as a principal that should guide much of the Act's implementation. For example, there is an emphasis given to *restorative justice* principals that seek to support communities in finding alternatives to the traditional forum of the court. Additionally, the revisions also support the development of *community alternatives* for moderate and certain higher risk youth in an attempt to decrease this country's increasing reliance on custody. During the years 1986-96, 27 per cent more youths were charged following police apprehension when compared to the years 1980-83. There is little doubt, that as public opinion continues to demand a tougher Act, and as increasing numbers of youths find themselves in the court system, increasing creativity will need to be brought to address the dilemma of balancing accountability with effectiveness in youth justice.

1. Treatment Directions from Policy Revisions

Legal revisions to the YOA, as this is being written, are now entering first reading in the House of Commons. Changes may continue to be made through to passage of the Bill. Major emphasis from this renewal includes (for more detail see *Youth Justice Renewal Initiative—www.Canada.justice.gc.ca/en/news/nr/2001/doc*):

- Increase in the use of measures outside the formal court process that can often be more effective in addressing some types of youth crime
- Establishment of a more targeted approach to the use of custody for young people
- Improvement in the system's ability to rehabilitate and reintegrate young offenders
- Increases in the use of community-based alternatives

What seems clear however, is that emphasis on residential custody programmes will continue to be emphasised as sentences are lengthened *but the use of custody will be targeted at the more upper end of violent and persistent young offenders.* Community alternatives will be sought, not only consistent with restorative justice principals, but as a true alternative for the use of custody for certain moderate and high risk youth. In addition, and what could turn out to be not only controversial but also a true test for assessors in youth justice, is the discretion given to non-judicial justice professionals in making judgements regarding placement decisions—use and level of custody—as well as an increasing reliance on early release decisions from custody to community supervision through probation.

2. Accumulating Evidence for Assessment and Treatment in Youth Justice

There is a good deal of research support for some of these federal initiatives in Canadian youth justice reform. For example, in a recently published summary of the accumulation of evidence on assessment and treatment with young offenders, Leschied and Cunningham (1999) noted that more articles have been published regarding young offender assessment and treatment in the past ten years (1988-1998) than were documented on the major literature data bases than during all of the years prior to 1988. What this points to, is not only an increasing empirical basis for decision making

regarding placement and treatment targets, but as well an indication of the vast knowledge base which practitioners can draw, in designing assessment and treatment strategies.

B. General Principals from the Young Offender Treatment and Assessment Literature

There is now considerable dissemination of the meta-analyses regarding the prediction, assessment and treatment literature in youth corrections (see for example Andrews, Leschied and Hoge, 1994; Loeber and Farrington, 1998; Lipsey and Wilson, 1998; Losel, 1997). Some of the major principles that continue to be reinforced in the reporting of the literature suggest the following:

- Delivery of a human service within the court sanction contribute the greatest in explaining reductions in re-convictions
- Sanctions or punishments alone are not associated with meaningful reductions in recidivism
- High risk offenders benefit most from greater intensity of service
- Certain interventions are associated with greater reductions in offending
- Clinically relevant targeting of interventions is essential to increasing the likelihood of effective outcomes
- Community-based interventions are superior in their ability to reduce offending that residentially-based interventions

There is now a body of literature that is strong enough to suggest that *evidence-based interventions* should provide the basis for deciding on programmes of choice for child and family interventions. The following section regarding Multisystemic Therapy provides just such a context in drawing on the research literature in addressing the challenge of providing an effective intervention for high risk youth within the youth justice system.

C. Developing Intensive Community-Based Services for Higher Risk Youth

While considerable emphasis is currently being given to front end services targeting lower risk offenders (e.g. diversion, community/family group conferencing), there is also support for developing services addressing the needs of higher risk cases who would otherwise be heading towards a custody disposition. Justification for community-based services must first have, as its yardstick, the ability to deliver cost-effective service that does not compromise the community's safety. A key intention of the Department of Justice (1998) with its proposed framework for youth justice reform is to lower the rates of custody ordered in Canadian youth courts. This cannot be accomplished through law reform alone. Members of the public in general, and sentencing judges specifically, must be convinced of several things.

- Incapacitation through custody may protect the public in the short term but not in the long term.
- There are viable community-based alternatives to custody that can both protect the public in the short term and reduce recidivism in the long term.
- The expensive option of custody will not 'purchase' as much reduction in offending as these other non-custodial sentencing options.

Providing empirical evidence of these three factors was one of the principle intents of selecting Multisystemic Therapy (MST). The following review of

effective service outlines the choice of MST as a viable alternative to custody for high-risk young offenders and the implementation of the clinical trial of MST in four Ontario communities.

D. Systemic and Programmatic Requirements for the Choice of a Community-Based Option for High Risk Youth

Lessons learned from the meta-analysis on systemic variables in effective programming for youth corrections suggest that:

- Lower risk cases can be safely assigned to less intensive services
- Higher risk cases are more effectively dealt with in more intensive services
- The differential assignment of youth according to risk is critical in the appropriate delivery of effective service

Accordingly, a spectrum of services to address youths at all levels of risk and need would be a desirable characteristic of any youth correctional system.

1. Effective Programmatic Requirements

Researchers have also addressed the programmatic components of correctional interventions for youth by identifying the content and quality of effective programmes. The components of effective programmes are assessed in relation to their ability to meaningfully reduce recidivism within the targeted group. Programmes assessed as effective were considered as those that:

- systematically assess risk in clients,
- use the risk principle of case classification,
- adopt programme orientations known to be effective,
- employ well educated and well trained staff,
- monitor programme integrity and adherence to the intervention model used,
- and rigorously evaluate the extent to which programme goals are met

A review of literature for effective service in youth justice served as the beginning point in developing the MST clinical trial in Ontario. The search for an alternative to custody for high-risk youth began with the understanding that any service model considered had to match the eight integrity issues summarized by Andrews *et al.* (1990). According to these authors, a coherent and empirically defensible model:

- empirically links interventions with desired outcomes;
- assesses risk and need levels of clients and targets them for intervention;
- has a detailed programme manual outlining the discreet steps involved in the intervention;
- ensures that therapists have structured and formal training in relevant theory and practice;
- ensures that therapists are supervised in a meaningful manner;
- assesses the therapeutic process as delivered to monitor the adherence to key principles and the employment of techniques claimed to be employed;
- conducts assessments of intermediate changes in values, skills or circumstances of clients that are presumed to relate to desired outcome(s); and
- associates level and intensity of intervention to risk, need and responsivity.

The MST approach represented a community-based option that parallels

many of these characteristics and for these reasons was chosen for the current clinical trial. The following section provides a detailed overview of MST.

III. The Multisystemic Therapy Approach

MST was developed by the Family Services Research Centre at the Medical University of South Carolina. It had been become apparent to these researchers, that mental health services for serious young offenders were minimally effective at best, extremely expensive and not accountable for outcomes. They reviewed the research literature and looked for interventions with documented success in shaping good outcomes for anti-social youth. They also noted which interventions, some quite popular, had no empirical support. This process of discarding ineffective techniques while gleaning those most effective means that MST is more an amalgam of best practices than a brand new method.

A. A Social Ecological Understanding of Behaviour

MST adopts a social-ecological approach to understanding anti-social behaviour. The underlying premise of MST is that criminal conduct is multi-causal; therefore, effective interventions should recognize this fact and address the multiple sources of criminogenic influence. These sources are found not only in the youth (values and attitudes, social skills, organic factors, etc.) but in the youth's social ecology: the family, school, peer group and neighbourhood. The needs of youths are understood by assessing the 'fit' between them and their immediate social context, a relationship which is seen as adaptive or functional as well as bidirectional. Treating youths in isolation of these other systems means that any gains are quickly eroded upon return to the family, school or neighbourhood. In fact, it is a key premise of MST that community-based treatment informed by an understanding of a youth's ecology will be more effective than costlier residential treatment. This is even true when selection of MST candidates is made who are bound for residential treatment or custodial placements because of the seriousness of their conduct or emotional problems.

1. Assessing the "Fit" of Targeted Behaviours

The MST process begins with the identification of the problem behaviours, a task, which involves the whole family. In other words, parents are key in identifying treatment targets. Examples of these behaviours include non-compliance with family rules, failure to attend school, failure to complete schoolwork, substance use, disrespect to authority figures, and assaultive behaviour. While the focus of intervention is on the elimination of problem behaviours, this is accomplished in great measure by building on strengths. So the assessment process also involves identifying the strengths in the youth and his or her family, which can include athletic ability, a trusting relationship with an extended family member or teacher, warmth and love among family members, or a hobby.

The next step is an assessment of the factors in the youth's ecology, which support the continuation of the problem behaviours and the factors that operate as obstacles to their elimination. These factors may be found in any sphere of the youth's ecology or the linkages among them. Hence, therapists go to the school, spend time with the peer group, or speak with members of the extended family. Examples of these contributing factors might include; poor discipline skills on

the part of the parents or teachers, marital discord, parental substance use, lack of supervision, peer reinforcement of problem behaviours, neighbourhood culture which condones violence or encourages anti-social values, low commitment to education, chaotic school environment, poor parent-to-school communication, or financial stresses experienced by the family.

By identifying the fit between the problems and the broader systemic context, MST workers are defining both the targets of intervention and the indicators of whether the measures undertaken have been effective. A therapeutic strategy should produce observable results in the problem behaviour or else the strategy is revised. In other words, positive changes in the behaviour (e.g., school attendance) is used as indication that the intervention (e.g., parent contacting the school daily) is on the right track. Failure to achieve positive changes requires a reassessment of the fit and plainly indicates the need to try a new approach. The MST service providers are ultimately accountable for overcoming barriers to change. Blaming language such as sabotage, resistance, and intractable problems, are not permitted. In fact, diagnostic labels of any type are discouraged in favour of a perspective that focuses on challenges and strengths.

2. The Nature of Intervention

MST is designed to be an intense but short-term involvement that can result in the generalization of treatment gains over the long-term. The frequency and duration of contacts will decrease over time, being intense in the beginning but lessening as improvements are observed. No social service intervention can last forever, so the ultimate goal is to empower the family or extended social support system to continue with the strategies and interventions which were successful. An important goal in this process is to foster in the parents or another caregiver the ability to be good advocates for their children and themselves with social service agencies and to seek out supportive services and networks when they are required. In other words, parents are encouraged to develop the requisite skills to solve their own problems rather than rely on professionals.

MST is a highly individualized, flexible intervention tailored to each unique situation. In other words, there is no one recipe for success. Instead, there are nine principles that guide intervention:

THE NINE MST PRINCIPLES

1. **The primary purpose of assessment is to understand the 'fit' between the identified problems and their broader context**
2. **Therapeutic contacts should emphasize the positive and should use systemic strengths as levers for change.**
3. **Interventions should be designed to promote responsible behaviour and decrease irresponsible behaviour among family members.**
4. **Interventions should be present-focussed and action-oriented, targeting specific and well-defined problems.**
5. **Interventions should target sequences of behaviour within or between multiple systems that maintain the identified problems.**
6. **Interventions should be developmentally appropriate and fit the developmental needs of the youth.**

7. **Interventions should be designed to require daily or weekly effort by family members.**
8. **Intervention efficacy is evaluated continuously from multiple perspectives with providers assuming accountability for overcoming barriers to successful outcomes.**
9. **Interventions should be designed to promote treatment generalization and long-term maintenance of therapeutic change by empowering care givers to address family members needs across multiple systemic contexts.**

The MST-specific training augments the education and experience therapists bring from their chosen fields (usually social work or psychology).

3. Research Evidence

Several randomized and quasi-experimental studies of MST have been conducted in the United States and others are now under way (See Borduin, 1995; Henggeler *et al.*, 1996; Henggeler, 1997; Henggeler *et al.*, 1998). MST has been demonstrated to reduce rates of criminal activity (officially recorded and self-reported), institutionalization, and drug abuse. MST intervention is also successful at engaging and retaining families in treatment and encouraging completion of substance abuse programming. It can result in improvements in family functioning and cohesion. These results are notable in a field where successes are few and far between but especially remarkable because MST has been effective in inner-city urban areas, among youth with serious criminal records, youth identified as high risk to reoffend, and among economically marginal families and those with long histories of unsuccessful interventions.

An American study by the Washington State Institute for Public Policy (1998) rated MST as the most effective and cost efficient of the 16 programmes analysed. Each programme followed youths until the age of 25. None eliminated offending but 15 of the 16 documented lower rates of recidivism among programme participants compared with control youth. After subtracting the cost of the MST intervention itself, MST saved taxpayers on average $7,881 (U.S.) per youth for services associated with criminal behaviour, such as incarceration. The cost of the intervention was recouped after two years. In addition, the reduction in crime was associated with $13,982 in savings to potential victims of crime. Five of the programmes reviewed did not reduce crime enough to pay for themselves and none generated the level of savings linked to the MST intervention.

SECTION SUMMARY

- A considerable body of empirically based support now exists to identify programmes that can influence young offender outcomes
- Effective programmes are characterized by clearly articulated components, assessment strategies, and service delivery options
- Community-based services reflecting ecological integrity promote most improved outcomes
- Multisystemic Therapy has shown itself through randomized trials to be an effective means of delivering service to high risk youth
- There now exists a training method to test multisystemic therapy in relatively large scale clinical trials

B. The Ontario Implementation of MST

MST has been implemented in four communities in Ontario, with the co-

operation of nine community agencies. The London Family Court Clinic coordinated the research in association with MST Services Inc. of Charleston, South Carolina. The study began in April of 1997 and concluded in January of 2001. MST Services Inc. has provided initial and on-going training to MST workers and clinical supervisors.

The review by the Washington State Institute for Public Policy (1998) concluded with the observation that most programmes designed to reduce crime are never evaluated. As the Institute (1998: 2) stated: "Some interventions may be working and we don't know it, while others may not be effective yet absorb scarce tax dollars that could better be directed toward effective programmes".

In contrast, the Ontario implementation of MST followed not only the programme integrity issues and knowledge transfer challenges of implementing a complex and rigorous set of programme goals, but also invested heavily in evaluation. An experimental design was used, with random assignment of qualifying cases to either the MST condition or to other services available in the local area. To qualify for the MST trial, referred youth must have been rated as having at least a high moderate to very high chance to offend in the future, a designation made in part on the basis of outcome from the Risk/Need Assessment protocol, past criminal conduct and in consultation with the family and community service providers. A battery of psychological tests was administered at intake before the random assignment was conducted. Parents and teachers completed standardized forms. Those families not assigned to MST carried on with the treatment plan that would have been devised were there no MST. Many of the youths in both groups were on probation at the time of the referral.

The psychological tests were readministered at discharge from MST or, in the case of the control group, after five months. Intermediate target areas (i.e., areas known empirically to be related to offending rates among youth) were assessed along with outcomes related to re-offending rates (number and severity), service utilization rates and cost effectiveness. The youths in both treatment and control groups were tracked until 2001. Adherence to the MST model was also measured (see Henggeler *et al.*, 1997). The overall goal was to determine if MST can be an effective alternative to custody by controlling risk to the community in the short-term as effectively as other penal sentences, reducing the recidivism of high-risk youth up to three years after discharge from MST, and reduce that rate at which MST recipients are placed outside the home in penal, child protection and therapeutic settings. Among the hypotheses were:

- Recipients of MST will be less likely to commit criminal offences during the follow-up period than are a control group of youths who did not receive MST
- Those who drop out of MST will be more likely to offend than those who complete MST
- Recipients of MST who offend will do so after a longer offence-free period than youths from the control group
- Recipients of MST who offend will commit less serious offences than those who did not receive MST
- Recipients of MST who do offend will spend less time in custody than those who did not receive MST

The study has high ecological validity in that the youths were identified by

referral sources as being those youths in the local area that presented the greatest challenge to current services. Unlike many programmes, MST does not screen out treatment-resistant youth or those with serious criminal histories, with the exception of sex offenses.

The methodology employed accommodates three different information needs. First, the evaluation charts *outcomes*. Put simply, an evaluation should be able to document the degree of success in achieving stated goals. The benefits of outcome evaluation include accountability to funders, consumers and the public. This information also contributes to the knowledge base in the area of prevention. Outcomes need to be comprehensive and long lasting. That is, the benefits of the programme should not only be observed in the short term but also sustainable over time. Another goal of MST is to decrease the services utilized by such youths. It is here that programme outcomes can be related to cost-effectiveness and service utilization rates.

Second, the evaluation monitored programme delivery to ensure treatment fidelity, a *process* evaluation. Integrity is crucial to any test of a programme; to be able to unambiguously relate outcomes to the programme as defined. It is also important to be attentive to the possibility of programme drift and intervene when it is observed. Especially with a best practice model compiled from the literature, as with MST, drifting from that practice may dilute the success of the programme overall.

Third, the design accommodated the need for *comparative* information, specifically the portability or transferability of the programme components to any community and for use with any defined group. Comparative information is best gathered by implementing the same programme in several areas. All programmes, even those with demonstrated positive outcomes, do not work equally well in all communities. The four participating sites vary in terms of population size and density, urbanism, ethno-cultural profile, proximity to major centres, and sophistication of social service infrastructure.

SUMMARY

In the context of Canadian juvenile justice reform, community-based alternatives for high-risk young offenders using MST would be most consistent with the goals of cost-efficient and effective service and is consistent with the principles of the administration of justice to youth. These are policy and legislative goals spelled out by both the provincial and federal governments. The major challenge for service providers and policy advocates is to view the use of intermediate sanctions in youth justice processing as being more concerned with community-safety than vested in punishment, consistent with the underlying principles of the *Young Offenders Act*. With these goals in mind, the momentum of debate in young offender services indicates three major conclusions:

- Positive outcomes are best achieved by targeting the needs of high-risk youth,
- Community safety is promoted by addressing the problems of youth in their natural environments, and
- Effectiveness is best achieved using services with clear track records of positive outcomes as identified in rigorous outcome evaluations.

Hence, it follows that the MST implementation project in Ontario could herald a revised look at the mission to effectively service youths at risk and communities in need while stemming the trend towards continued reliance on custody.

SECTION SUMARY

- Ontario's randomized clinical trial included four geographic sites involving nine separate agencies
- MST Inc. trained and licensed each of the four sites during the course of implementation
- Evaluation included variables reflecting both process and outcome evaluation
- Cost effectiveness and service utilization rates were factored separately to evaluate outcomes from intervention

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Appendix A

CLINICAL TRIALS OF MULTISYSTEMIC THERAPY WITH HIGH RISK YOUNG OFFENDERS, 1997 TO 2001

FREQUENTLY ASKED QUESTIONS

Coordinated by:

- Centre for Children and Families in the Justice System of the London family Court Clinic

In Partnership With:

- Associated Youth Services of Peel (Mississauga)
- Craigwood Youth Services (London)
- Crossroads Children's Centre (Nepean)
- Eastern Ontario Young Offender Services (Ottawa)
- Kinark Child & Family Services (Barrie)
- Madame Vanier Children's Services (London)
- New Path Youth & Family Counselling Services of Simcoe County
- William E. Hay Centre (Ottawa)

In Association with:

- http://www.mstservices.com/, Charleston, South Carolina

Funded by:

- Ministry of Community and Social Services (Ontario)
- Ministry of Correctional Services (Ontario)
- National Crime Prevention Centre (Ottawa)

This document describes a four-year study of the effectiveness of Multisystemic Therapy (MST) in four Ontario communities: Simcoe County, London/ Middlesex, the Mississauga area (including Peel, Dufferin and Halton), and Ottawa. MST is a home-based, family-based, present-oriented therapeutic intervention using family strengths to attenuate risk factors and improve family relations, peer relations, and school performance among serious young offenders. MST aims to reduce criminal offending by targeting the multiple causes of anti-social behaviour and empowering parents to maintain the gains made in treatment.

Follow-up studies of MST graduates in the United States—over $10 million of research—have documented re-arrest rates 25% to 70% lower than among control youths. This is followed by significant cost savings in policing, court and correctional budgets. For example, American research has shown that MST can reduce days in out-of-home placements by 47% to 64%. The U.S. Office of Juvenile Justice and Delinquency Prevention asked the Center for the Study and Prevention of Violence at the University of Colorado to identify ten exemplary programmes to promote as models for communities to implement. MST was one of the ten Blueprints for Violence Prevention.

MST is also useful in the treatment of substance abusive youth. The National Institute of Drug Abuse identified MST as one of 12 scientifically based approaches to drug addiction treatment in a 1999 publication called Principles of

Drug Addiction Treatment: A Research-Based Guide.

As evidence mounted that the MST approach is a cost-effective way to keep serious young offenders out of custody without putting the community at risk, we asked: Will it work in Ontario? That is the question behind this evaluation.

The study began in April of 1997, following several months of site selection and accreditation by Multisystemic Therapy Services from South Carolina. Four clinical supervisors and 13 workers joined the MST project. The Ministry of Community and Social Services has supported the implementation of MST for four years to permit its evaluation for youths aged 10 to 15. Beginning in April of 2000, Phase II young offenders (aged 16 and 17) are also eligible for the clinical trial, through the cooperation of the Ministry of Correctional Services.

The long-term goal of MST is to reduce the future offending of those youths judged by their probation officers or other case managers as highly likely to re-offend. This in turn should be followed by lower rates of custody and incarceration. No intervention has a 100% success rate. It is not realistic to expect all MST recipients to remain offence free. But we want to answer these questions:

- Are recipients of MST less likely to commit future criminal offences than a similar group youth who do not receive MST?
- Do those who re-offend do so after a longer period than if they had not received MST?
- Will the offences they do commit be less serious?
- Will they spend less time in custody as a group than if they had not received MST?

To answer these questions, the research design involves random assignment of referred cases so that half of them receive MST and half of them continue on with their individual case management plans. There will be some pre- and post-testing of the members of both groups. These instruments are administered at intake and again at discharge (or after five months in the case of the control group). The youths in both groups will be tracked for up to three years, to gauge their subsequent offending and levels of service utilization.

Over the four years, we involved over 400 youths, 200 of who will receive MST. The evaluation component is funded by the Ministry of Community and Social Services (Year 1) and Department of Justice Canada (Years 2 to 4) through the National Crime Prevention Centre in Ottawa.

- This document provides answers to these frequently asked questions:
- What is MST?
- What do MST therapists do?
- How do we know that MST works?
- Isn't MST too expensive a service?
- Does MST work with older teens?
- Where can I find more information about MST?
- Who can qualify for MST in the Ontario clinical trials?
- Are some youths not appropriate referrals to MST?
- How do I make a referral to MST?
- Is MST available in other areas of Ontario?
- Why do you need a control group?
- Isn't random assignment of referrals unethical?
- How is "effectiveness" being measured?
- When will the research findings be available?

- Where can I get more information on the research?

What Is MST?

MST was developed by the Family Services Research Center at the Medical University of South Carolina. It was apparent that mental health services for serious young offenders were minimally effective at best, extremely expensive and not accountable for outcomes. They reviewed the research literature and looked for interventions with documented success in shaping good outcomes for anti-social youth. They also noted which interventions, some quite popular, have no empirical support. This process of discarding ineffective techniques while gleaning those most effective means that MST is really more an amalgam of best practices than a brand new method.

MST adopts a social-ecological approach to under-standing anti-social behaviour. The underlying premise of MST is that criminal conduct is multi-causal; therefore, effective interventions would recognize this fact and address the multiple sources of criminogenic influence. These sources are found not only in the youth (values and attitudes, social skills, biology, etc.) but in the youth's social ecology: the family, school, peer group and neighbourhood.

It is a key premise of MST that community-based treatment informed by an understanding of the youth's ecology will be more effective than costlier residential treatment. This is true even when you select as candidates for MST those youths that are bound for residential treatment or custodial placements because of the seriousness of their conduct or emotional problems.

Research has shown that treating the youth in isolation of the family, school, peer and neighbourhood systems means that any gains are quickly eroded upon return to the family, school or neighbourhood. Custody stays could also counter-productive because already troubled youth are immersed in a peer culture where anti-social values predominate.

MST uses the family preservation model of service delivery in that it is home-based, goal-oriented and time-limited. It is present-focused and seeks to identify and extinguish behaviours that are of concern not only to referring agents but also to the family itself. In fact, the entire family is involved with MST, in contrast to many intervention which define the youth as the "identified client." MST involvement will typically be between four to six months.

Collaboration with community agencies is a crucial part of MST. The school is a key player and workers may be in daily contact with teachers and administrators. MST therapists also work in close partnership with probation officers that in many cases are the referral source. There may be a need to involve the youth in substance abuse treatment or seek a psychiatric consultation about a parent, for example. While the initial MST involvement may be intensive, perhaps daily, the ultimate goal is to empower the family to take responsibility for making and maintaining gains. An important part of this process is to foster in the parents the ability to be good advocates for their children and themselves with social service agencies and to seek out their own supports. In other words, parents are encouraged to develop the requisite skills to solve their own problems rather than rely on professionals. MST is a flexible intervention tailored to each unique

situation. There is no one recipe for success.

The MST-specific training augments the education and experience therapists bring from their chosen fields (usually social work or psychology).

What Do MST Therapists Do?

MST therapists do the work in the family home rather than in the office and are available 24 hours a day if needed. The average caseload is four to six families. Especially in the beginning, the worker may be in the home every day. As needed, they will spend time at school and meet with the youth's peer group and extended family. A key part of the process begins with engaging the family, a significant challenge in some cases. Workers are closely supervised and monitored for adherence to the MST principles and receive weekly guidance and feedback about their interventions with the families on their caseloads.

The MST process begins with the identification of the problem behaviours, a process that involves the whole family. In other words, parents are key in identifying treatment targets. Examples of these behaviours include non-compliance with family rules, failure to attend school, failure to complete schoolwork, substance use, disrespect to authority figures, and assaultive behaviour. While the focus is on elimination of problem behaviours, this is accomplished in great measure by building on strengths. The assessment process also involves identifying the strengths in the youth and his family, which can include a hobby, athletic ability, a trusting relationship with an extended family member or teacher, warmth and love among family members.

The next step is an assessment of the factors in the youth's ecology, which support the continuation of the problem behaviours and the factors which operate as obstacles to their elimination. These factors may be found in any sphere of the youth's ecology: family, peers, school, neighbourhood or the linkages among them. Therefore, therapists are called upon to find information from all of these sources, by going to the school, spending time with the peer group, or speaking with extended family members. Examples of these factors might include poor discipline skills on the part of the parents or teachers, marital discord, parental substance use, poor supervision, peer reinforcement of problem behaviours, neighbourhood culture which condones violence or encourages antisocial values, low commitment to education, chaotic school environment, poor parent-to-school communication, or financial stresses experienced by the family.

By identifying the "fit" between the problems and the broader systemic context, MST workers are defining both the targets of intervention and the indicators of whether the measures undertaken have been effective. A therapeutic strategy should produce observable results in the problem behaviour or else the strategy is revised. In other words, positive changes in the behaviour (e.g., school attendance) is used as indication that the intervention (e.g., parent contacting the school daily) is on the right track. Failure to achieve positive changes requires a reassessment of the "fit" and plainly indicates the need to try a new approach. The MST service providers are ultimately accountable for overcoming barriers to change. Blaming language such as "sabotage," "resistance," and "intractable problems" are not permitted. In fact, diagnostic labels of

any type are discouraged in favour of a perspective that focuses on challenges and strengths.

MST is designed to be an intense but short-term involvement that can result in the generalization of treatment gains over the long-term. Ideally, the frequency and duration of contacts will decrease over time, being intense in the beginning but lessening as improvements are observed. No social service intervention can last forever, so the ultimate goal is to empower the family or other caregiver to continue with the strategies and interventions that were successful. The clearly articulated definition of success permits objective definition of when the case can be closed.

How Do We Know That MST Works?

Several randomized and quasi-experimental studies of MST have been conducted in the United States, in Missouri, South Carolina, and Texas, and others are now under way. MST has been demonstrated to reduce rates of criminal activity (officially recorded and self-reported) and institutionalization. The MST approach is also successful at engaging and retaining families in treatment and encouraging completion of substance abuse programming. It can result in improvements in family functioning and cohesion. These results are notable in a field where successes are few and far between but especially remarkable because MST has been effective in inner-city urban areas, among youth with serious criminal records, youth identified as high risk to re-offend, and among economically marginal families and those with long histories of unsuccessful interventions. However, we cannot simply assume that the success in the U.S. will automatically be replicated in Ontario. That is why we are conducting a clinical trial, to determine if the use of MST with serious young offenders will produce better outcomes than the services and interventions already available in this province.

Isn't MST too Expensive a Service?

Everyone in the social services system is having to do more with less. With an average worker/client ratio of 1:5, MST is indeed a cost-intensive service. A crucial piece of the evaluation will be to determine cost effectiveness: will spending the money now save money later? A 1998 study by the Washington State Institute for Public Policy rated MST as the most cost effective of the 16 programmes analysed. After subtracting the cost of the MST intervention itself, there was an average saving of $7,881 (U.S.) per youth for services associated with criminal behaviour, such as incarceration. In addition, the reduction in crime was associated with $13,982 in savings to potential victims. The study is called Watching the Bottom Line.

Does MST Work With Older Teens?

With the addition of older adolescents to the clinical trial in 2000, some have asked if the MST approach is as effective with young offenders over 15. Reference to the U.S. research indicates that successful outcomes are achieved and maintained for youths of all demographic categories, both males and females, and youths of all ages.

Where Can I Find More Information About MST?

The Family Services Research Center has published many scholarly articles about MST research. See the end of this document for a bibliography. Dr. Scott Henggeler has written an excellent summary called *Treating Serious Anti-Social Behaviour in Youth: The MST Approach* that is available at the web site of the National Criminal Justice

Reference Service in text and Adobe formats (see here). There is also a great deal of information available at the web site of MST Services Inc.

Who Can Qualify For MST In The Ontario Clinical Trials?

MST is designed to fit into a community service-delivery spectrum at the high end, where youths have demonstrated severe anti-social behaviour that has proved resistant to other interventions. To qualify for the MST clinical trial, youths must have a high or very high risk of criminal offending in the future. For the younger youth, this determination is made with the Risk/Need Assessment used by the Ministry of Community and Social Services. For youths referred through the Phase II young offender system, the Level of Service Inventory is used. In most cases, future risk is indicated by prior serious offending, which may or may not have resulted in charges. Many youths will have other presenting problems such as school refusal, substance abuse, parent/child conflict or conduct disorders.

Are Some Youths Not Appropriate Referrals To MST?

Yes. We will not screen cases for treatment amenability or exclude those with poor prognosis for success. However, there are two categories of exclusionary criteria:

1. the situation of the youth is inconsistent with a family preservation modality of treatment
2. the presenting issues of the youth are not among those for which MST has been empirically validated

Exclusion of the case means that the youth does not qualify for MST (at least at this point but potentially later if the situation changes).

The **first** category of exclusionary criteria requires consideration of these four factors:

1. Requisite Level of "Family" Involvement
   MST being a family-based intervention, a youth must have at least one adult caregiver. This may be a parent but could also be an older sibling, grandparent, aunt, uncle or friend of the family. A Crown ward in a stable foster placement could qualify. However, a CAS client in a new placement may not qualify, as there is no way to determine if the placement will break down. Typically, youths in group homes or other residential settings will not be suitable MST candidates unless a family reunification is imminent or a substitute caregiver can be identified.

2. Current Family Therapy
   If the family were already engaged with a therapist and making gains, the intervention of a MST worker would be neither needed nor appropriate. Should the arrangement break down, however, a referral could be made.

3. Safety of Youth and Family
   MST uses a family preservation model but some families cannot be preserved safely. When assessing the appropriateness of an MST referral, safety concerns override all others, whether that involves youths who are at risk of abuse, at risk of suicide, or at risk of harming other members of the family. MST is not a substitute for CAS involvement, in-patient hospitalization, or community safety through custody/detention.

4. Risk of Injury to Worker
   Clinical supervisors, perhaps in consultation with the police or probation officers, have the discretion to disqualify a case from the clinical trial because of a risk of injury or harm to the MST worker while in the family home. This situation is NOT indicated merely by family violence or assault convictions.

The **second** category of exclusionary criteria pertains to the types of cases with which MST has been demonstrated effective. It has been tested on youths with many presenting problems, all of whom have one thing in common: criminal behaviour.

Based upon clear direction from South Carolina, two groups are ineligible for MST at this point in time:

1. Sex Offenders
   Sex offenders must be excluded because MST has not yet been demonstrated as effective with this group (although a project is under way to adapt MST to this purpose).

2. Acute Psychosis
   Youths who are acutely psychotic are not candidates for the MST clinical trial. However, a psychiatric diagnosis is not a disqualifying factor in itself.

How Do I Make A Referral To MST?
The MST clinical trials were conducted in four areas of Ontario and the referral process is different in each. Contact the Clinical Supervisor in your area:

Is MST Available In Other Areas Of Ontario?
Not at present. The Government of Ontario is awaiting the results of the clinical trial before making decisions about expansion.

Why Do You Need A Control Group?
The control group is absolutely crucial to the study. Without it, we will never know if MST is more effective than the services already available. We need to determine whether changes we see in the youths over time would have occurred anyway or were the result of other interventions such as probation or conventional therapy. No less important is the fact that MST is a relatively expensive intervention. With the control group, we can document if spending this money now will save money that would otherwise be spent later, on custody and prison stays. This is how it works. Random assignment is used to create two groups of equal size that are identical, especially in terms of the characteristics which might impact future offending (criminal history, etc.). One group continues to receive the services available to them in their communities. The other receives MST. After some time has passed, we examine the members of these two groups to see how they have *changed as a group*. More importantly, we examine how the two groups compare to each other. In the aggregate, they were the same when we started. The only difference is that one half received MST. Therefore, any differences between them can be linked unambiguously to the MST intervention. In short, the control group helps us rule out other possible explanations for observed changes (e.g., they grew out of the behaviour, only treatment-amenable youth received MST, etc.). It also allows a basis of understanding what probably

would have happened to these youths if they had not had MST.

Isn't Random Assignment Of Referrals Unethical?

No. Most people have an understandable discomfort with this process. It feels like denial of service to a deserving and probably needy family. However, no fewer youths are receiving MST because of the random assignment. There are a set number of MST placements and eliminating the control group would not change that. More importantly, all the families provide informed con-sent. It is explained to them, verbally and in writing that they have a 50/50 chance of being assigned to MST. The assignment is done using a technique much like flipping a coin. No one can control which case goes into which group so the process is completely fair. Everyone has an equal chance. And they are free to decline involvement and continue to receive the services available to them in their home community. The vast majority of qualifying families consent to participate. Further, there is no negative consequence for not getting MST. They are not denied service. In other words, they do not get a placebo. The youths and their families continue to receive the services defined in their case management plans and available in their communities. We are not comparing the efficacy of MST to doing nothing, we are comparing the efficacy of MST to the what we do now to see if it helps us shape better out-comes than what we are already doing.

How Is "Effectiveness" Being Measured?

We hypothesize that the MST group will show both greater improvements in the short-term and lower rates of offending in the long term compared with the control group. In the short term, pre- and post-testing of both groups will examine changes in internalizing and externalizing symptomatology, social skills, anti-social attitudes, family functioning and parental supervision. As noted above, we will examine both pre and post changes as well as differences between the MST and control groups at the time of post-testing. In the long-term, again using the control group as a comparison, we will look for differences in offending for up to three years after the MST intervention including issues such as patterns of offence seriousness and offence frequency, time until re-arrest, and time spent in both youth custody, residential placements and adult penal institutions.

When Will The Research Findings Be Available?

This study will conclude in March of 2001 and a final report will be prepared for the fall of that year. Annual update reports are prepared for the funding agencies each year in March. These reports are posted on the web site of the Centre for Children and Families in the Justice System of the London Family Court Clinic. An interim report from September of 1999 is now available.

Where Can I Get More Information On The Research?

For more information you can contact:

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WHAT WORKS WITH YOUNG OFFENDERS: SUMMARIZING THE LITERATURE

*Alan W. Leschied, Ph.D. C. Psych.**

I. ACCUMULATING EVIDENCE FOR ASSESSMENT AND REHABILITATION IN THE YOUNG OFFENDER FIELD

In a recently published summary of the accumulation of evidence on assessment and treatment in the young offender area, Leschied and Cunningham (1999) noted that more articles have been published regarding young offender assessment and treatment in the past ten years (1988-1998) than were documented on major literature data bases during the years prior to 1988. What this points to, is not only an increasing empirical basis for decision making regarding placement and treatment targets, but as well, an indication of the vast knowledge base which practitioners need to be aware of, in designing assessment and treatment strategies.

A. General Principals from the Assessment Literature

The following sections will detail findings related to the specifics of young offender assessment that include general as well as specific issues of assessment and classification. The status of the general literature with youth, similar to what Andrews (1990) suggests with the major predictors for adults at risk, is now relatively apparent and continues to reinforce findings reported in recent cross-sectional and longitudinal studies by Farrington and Loeber (1999). This trend suggests that there is a move away from the findings of general personality theory that may have driven much of the research evidence through to the early 1980's (e.g. such as Megargee's MMPI classification system) to a more *risk specific* means of offender classification. Further, specific assessment strategies have now been developed and implemented for specific purposes of young offender management. These include offence-specific assessments ranging from the assessment of adolescent male sex offenders to the management of youth in various security levels in detention facilities. Presentation of these assessment strategies will be presented.

B. General Principals from the Treatment Literature

Similar to the assessment literature, increasing knowledge with respect to young offender management and treatment has also been witnessed over the past decade. Progress in this area has capitalized not only on the specific effects of young offender programmes, but from the general knowledge base regarding child and adolescent intervention as well. Kazdin and Weisz (1998) noted in their review of child and adolescent interventions, that expressions such as *knowledge-based*, *data-driven* and *empirically-supported* now routinely appear in selections made regarding treatment options for specific client groups. Knowledge with respect to successful programmes for conduct-disordered and anti-social youth has progressed not only in the description of successful *components* of intervention (i.e.

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cognitive-behavioral) but also in the method of *service delivery* (custody versus community). Descriptions of promising programmes are presented that can guide general decisions with respect to youth management. Specific service components are also detailed that can help guide placement decisions in regard to the *context* in which more successful programmes can be offered.

1. Developing Intensive Community-Based Services for Higher Risk Youth

While considerable emphasis is being given to 'front-end' services primarily targeting lower risk offenders, there is also support for developing services addressing the needs of higher risk cases who would otherwise be heading towards a custody disposition. Justification for community-based services must first have, as its yardstick, the ability to deliver cost-effective service that does not compromise the community's safety. A key intention of the Canadian Department of Justice (1998), with its proposed framework for youth justice reform, is to lower the rates of custody ordered in Canadian youth courts. This cannot be accomplished through law reform alone. Members of the public in general, and sentencing judges specifically, must be convinced of several things. First, incapacitation through custody may protect the public in the short term but evidence does not support reductions in offending through incapacitation in the long term (Andrews, *et.al.*, 1990). Second, there are viable community-based alternatives to custody that can both protect the public in the short term and reduce recidivism in the long term. Third, the expensive option of custody will not 'purchase' as much reduction in offending as these other non-custodial sentencing options. This review will outline the choice of interventions such as Multisystemic Therapy (MST) as a viable alternative to custody for high-risk young offenders.

2. Systemic and Programmatic Requirements for Effective Service

(i) *Summary from the Meta-Analyses*

Meta-analysis is the term used to report *quantitative* summaries of the literature. It represents a significant advancement over earlier qualitative reviews (Wells,1991). Meta-analysis statistically compares the types of treatments that are offered, to whom they are directed and with what outcomes. The meaningfulness of meta-analysis is only limited by the number and quality of the studies that are included in the review. Fortunately, adequate quality and quantity of studies now exist to make interpretations of the treatment literature in youth justice with confidence, although Losel (1997) has offered up some reservations with respect to limiting the generalizeability of such findings. The limitations along with the major outcomes will be summarized in the following section.

(ii) *Major Outcomes from the Meta-Analysis*

Meta-analytic reviews of the outcome literature support the desirability of providing programmes that are related to the causes of crime (Andrews *et al.*, 1990; Lipsey and Wilson, 1998; Gendreau and Goggin, 1996). Sanctions provided independent of appropriate rehabilitative efforts have failed to demonstrate significant reductions in offending. These reviews have given rise to a clearer understanding of both the systemic requirements for the delivery of effective service as well as the programmatic requirements to provide meaningful reductions in youth recidivism.

Andrews *et al*. (1990) identified the importance of matching the *intensity of service* to the *relative risk* and need of individual offenders. The *Risk Principle of Case Classification*, a useful means to allocate service, suggests that intensive services are more meaningfully delivered to high-risk youth, while low-risk youth can be safely assigned to less intensive services such as community service, fines, restitution and low-level community monitoring. Inappropriate matching of service to risk level will, accordingly, be seen as an ineffective, non-productive use of services that can further the criminogenic risk of some youths (Andrews *et al*., 1990). There is evidence to suggest that, in the province of Ontario for example, sentencing judges are inclined to place in custody a disproportionate number of youths who would be assessed as low risk for further offending (Hoge, Andrews and Leschied, 1995). Differential association theorists would warn that placing low-risk offenders with high-risk offenders could well adversely affect their risk for reoffending.

Lessons learned, therefore, from the meta-analysis on systemic variables in effective programming for youth corrections suggest that:

- Lower risk cases can be safely assigned to less intensive services
- Higher risk cases are more effectively dealt with in more intensive services
- The differential assignment of youth according to risk is critical

Accordingly, a spectrum of services to address youths at all levels of risk and need would be a very desirable characteristic of any youth correctional system.

(iii) *Findings on Programme Components of Effective Service*

Research has also addressed the programmatic components of correctional interventions for youth by identifying the content and quality of effective programmes (for a detailed review see Andrews, Leschied and Hoge, 1992). Components of effective programmes are assessed in relation to their ability to meaningfully reduce recidivism within the targeted group. Programmes assessed as effective tend to be those that systematically assess risk in clients, use the risk principle of case classification, adopt programme orientations known to be effective, employ well educated and well trained staff, monitor programme integrity and adherence to the intervention model used, and rigorously evaluate the extent to which programme goals are met. Cognitive-behavioural interventions are often identified as having the greatest promise in reducing recidivism when compared with other programming orientations (e.g., Vennard, Sugg and Hedderman, 1997).

Discussion therefore in identifying appropriate young offender service needs to be mindful of the eight integrity issues summarized by Andrews *et al*. (1990). According to these authors, a coherent and empirically defensible model:

- empirically links interventions with desired outcomes;
- assesses risk and need levels of clients and targets them for intervention;

- has a detailed programme manual outlining the discreet steps involved in the intervention;
- ensures that therapists have structured and formal training in relevant theory and practice;
- ensures that therapists are supervised in a meaningful manner;
- assesses the therapeutic process as delivered to monitor the adherence to key principles and the employment of techniques claimed to be employed;
- conducts assessments of intermediate changes in values, skills or circumstances of clients that are presumed to relate to desired outcome(s); and,
- associates the level and intensity of intervention to risk, need and responsivity.

3. Institutional Versus Non-Institutional Placement for Treatment

Lipsey and Wilson's (1997) review distinguished placement of treatment, residential versus community, in differentiating characteristics of effective programmes. This is a critical differentiation since much of the debate regarding effective youth justice policies centre on the importance of incarceration as a relevant factor in community safety. Lipsey and Wilson noted in their analysis that different contributions are made for various components of service as a function of the placement for treatment. Table 1 summarizes factors relevant for effective programmes in institutional and non-institutional placements.

Table 1
Programme Factors Contributing to Effectiveness for Institutionalized and Non- Institutionalized Young Offenders

Institutional-Based Components
Interpersonal Skills
Teaching Family Model
Multiple Services
Behavioural Programmes
Individual/Group Programmes
Non-Institutional-Based Components
Interpersonal Skills
Individual/ Group Programmes
Multiple Services
Restitution/Probation
Employment/Academic Programmes

Effect sizes accounting for total programme outcome across both institutional and non-institutional programmes suggested that the three factors comprising the highest ranking were; interpersonal skills training, individual counselling and behavioral programmes. The second grouping of lesser, yet significant contribution were the two programme factors consisting of multimodal services and restitution for youths on probation.

The work of Don Andrews and his colleagues (Andrews, Zinger, Hoge, Bonta, Gendreau and Cullen, 1990); Andrews, Leschied and Hoge, 1992) were consistent with the findings of Lipsey. However Andrews' work provides more specificity in regards to appropriate targeting for intervention - known as the risk principle - and increasing sophistication regarding style and type of intervention, namely the importance of cognitive-behavioural oriented interventions. On a broader level, Andrews' work outlined characteristics of promising programmes as including:

- Employment of systematic assessment that emphasizes factors relevant to criminality
- Possess therapeutic integrity
- Attend to relapse prevention
- Target appropriately
- Employ appropriate styles of service

With the number and consistency of analyses pointing to factors that relate to effective strategies for reducing youthful offending, considerable attention is now being directed at developing efforts that effectively disseminate and sustain the components of effective programmes. The following section draws on findings that are being reported in the forthcoming book edited by Gary Bernfeld, David Farrington and Alan Leschied through John Wiley Press entitled, "Implementing Effective Correctional Programmes".

II. OVERVIEW OF MAJOR FINDINGS FROM THE META-ANALYSIS

In the mid and latter 1970's, reviews of the programme literature in corrections contributed to an extraordinary discussion that became the touch stone to a generation of corrections professionals. The *nothing works debate* as it is been popularly known, not only became a matter for social scientists to consider, but also played into the hands of policy makers and politicians in criminal justice. Depending upon their particular political leaning, decision makers used the results of such reviews to either proclaim the failure of rehabilitation, thereby perhaps unwittingly heralding the expanded use of get tough measures, or used them to develop the growing science of prediction and treatment in the corrections field. Followers of the debate will now be familiar with the names of Robert Martinson (1976) in the U.S. and in Canada, Jalal Shamsie (1979) whose titles of qualitative reviews of the literature so provocatively proclaimed that "Nothing Worked" and that "Our Treatments Do Not Work: Where do We Go From Here". And with each provocation, there was a Paul Gendreau, Robert Ross (1979) or Ted Palmer (1996) who suggested that a more careful reading of the outcome literature would provide "Bibliotherapy for Cynics".

Two decades have now passed, and with more sophistication in providing *quantitative reviews* of the prediction and outcome literature, meta-analyses have assisted in developing a *science of criminal conduct*. Such a science draws not only on linking factors that help in the understanding of *criminogenic risk levels* of certain individuals - nature and strength - but also on the literature regarding treatments or systems of service delivery that can promote effective outcomes in correctional practice. The following section highlights some of the major findings from the meta-analyses that relates to implementation.

A. Contributions from the Meta-Analyses

There have been a number of contributions to the meta-analysis on corrections treatment. Perhaps the most well-known are those authored by Don Andrews and his colleagues (1990) and by Mark Lipsey (Lipsey and Wilson, 1993; Lipsey 1995). Technical understanding of the approach taken by these authors will not be provided here. Suffice to say that the quality and nature of the meta-analyses that are reported reflect the quality and number of the studies in the field. Hence, the nature and quality of knowledge could not have been achieved and reported on by Andrews and Lipsey were it not for the efforts of so many who contributed to that knowledge base.

B. Major Assessment Issues in Implementation

Both cross-sectional and longitudinal studies have identified factors that link past or current conditions with individuals that place them at increasing risk for criminogenic involvement. Andrews and Bonta (1998) suggest that these studies support a *social-psychological understanding* of criminogenic risk. That is, individuals may cognitively process certain conditions in their environment that develop or reward certain styles or content of thinking that are reflected in anti-social behaviour. Those system variables that influence risk to a greater extent include the following:

- families of origin,
- peer associates, and
- school or working conditions.

Data has also supported the link between anti-social behaviour with substance use in the understanding of crime cycles (Huizinga, Menard and Elliott, 1989). Measures of those factors that contribute most significantly and seem to be attracting the greatest attention in the literature include multi-factored indicators as measured by the Level of Service Inventory (Andrews and Bonta, 1999), the Risk - Need Inventory (Hoge, Leschied and Andrews, 1996),criminal sentiments (Simourd, 1999) and psychopathy (Hare, 1991).

C. Assessing for Criminogenic Risk

Accurate and relevant assessment of criminogenic risk is tied to the major outcomes from the meta-analysis on effective treatment. While Lipsey has identified the major *general* contributors to successful correctional programmes, Andrews, *et.al.*'s principle contribution rests in the refining of understanding regarding the appropriate target of intervention. While Lipsey's results were encouraging regarding the average effect sizes supporting reductions of 10-30 per cent in re-offending within particular types of programming (i.e. behavioral over psychodynamic), Andrews' findings that certain programme components targeted to specific criminogenic risk factors - referred to as clinical relevance - could improve outcomes by an even greater extent. Hence, Andrews articulated the *risk principle of case classification* as a critical component of effective service thereby linking assessment with service delivery in the overall approach to effective correctional treatment. These findings therefore suggest that assessment of appropriate risk relevant to criminal justice involvement are a necessary and fundamental part of successful programme implementation. The following section will begin to address the structural models of conceptualizing implementation issues based on the empirical findings from the meta-analysis.

III. PROGRAMME IMPLEMENTATION AS A SCIENCE IN ITS OWN RIGHT

A. Dissemination of Effective Programme Strategies:

Technology Transfer in the Human Service Field[1]

The transfer of knowledge in the social and human services from what has largely been an academic-based knowledge to applied settings is challenging not only to correctional professionals, but to practitioners in a variety of human service settings. The literature chronicles numerous examples of programmes that were either well conceived and poorly implemented or well implemented but poorly sustained (Bauman, Stein and Ireys, 1991). Of course, there is also the suspicion that the failure to implement or sustain correctional programmes that have demonstrated effectiveness in research may be tied to the more insidious, cynical intentions of some policy and programme 'experts'. This has more to do with the unwillingness of such administrators to disavow the knowledge base in a given area and indeed purposefully undermine the integrity of that knowledge. Andrews and Bonta (1998) refer to this intentional undermining as *knowledge destruction*. Techniques of knowledge destruction are characterized by the seeming sophistication of argument in using scientific principles to negate scientific fact. Erstwhile, the use of such techniques belays the negative beliefs and attitudes on the part of these commentators. A careful reading of what is known about successful programmes is paramount to successfully planned programme implementation.

In an excellent review of the lessons learned from the literature on successful programme implementation, Lisbeth Shore (1991) noted that the implementation of programmes is "shaped by powerful forces" that are not easily modified even by "new knowledge". Indeed, Shore's summary of factors necessary in successful implementation include the necessity of a climate that is "created by skilled, committed professionals respectful and trusting of the clients they serve .....*regardless* of the precepts, demands and boundaries set by professionalism and bureaucracies" (p. 258). The necessity of providing caring programmes, that are coherent and easy to use, providing continuity and circumventing the traditions of limiting professional and bureaucratic limitations were absolutely the prerogative of such effective programmes. Paul Gendreau (1996) of course would add that a senior advocate in an organization who is willing to champion the cause of such a programme is an essential ingredient as well.

'Powerful forces' as Shore calls them are certainly at work in the corrections fields when it comes to transferring knowledge to practice on a broad scale. Political beliefs that have shaped correctional practice have in many cases been antagonistic to the lessons learned from the literature on effective corrections. Deterrence, sanctions and punishment-based correctional practices and policies have been pre-eminent in the last two decades. This is despite what Palmer (1996) amongst others indicates has been a failure of such programmes to demonstrate reductions in offending. Yet, juxtaposed to this emphasis on

[1] The author is grateful for the guidance in developing these ideas on dissemination from Dr. Gary Bernfeld of St.Lawrence College, Kingston Ontario. The forthcoming book by Bernfeld, Farrington and Leschied (Eds.) includes contributions from some of the leading researchers in the area of programme implementation and dissemination. In addition, readers may find the forthcoming Compendiums on effective correctional practice, volumes 1, 2 and 3 produced through Correctional Services Canada (Larry Motiuk, Ed.) of interest.

punishment reflected in correctional policy has been the extraordinary growth in knowledge in the area of effective treatment. The following sections identify the necessary steps in taking evidence-based practice into applied settings.

B. The Necessity of a Knowledge-Based Approach

Cullen, *et.al.*(1998) cite data suggesting that there continues to be many both within and without the corrections profession who have failed to recognize the growing literature on effective treatment with offender populations. Despite this disappointing lack of awareness, the literature continues to grow, documenting not only progress in regards to the accumulation of evidence of effective interventions, but also the summaries from numerous meta-analyses that now speak to the *patterns* of effectiveness being documented *across* studies. Numerous researchers and practitioners now speak about the need for examining 'technology transfer'; the application of what research has suggested can be effective and translating that knowledge into routine correctional practice. This chapter will highlight the factors related to implementation of programmes that attempt to comply with the principles of effective service. Though few in number, there are now studies that report on evaluations that *monitor* the *implementation* of programmes at both the practitioner level - referred to as *treatment adherence* - and the broader programme, service and system level - referred to as *programme compliance*.

Coupled with the move to monitor and measure adherence, is the growing emphasis on *dissemination* of information regarding effective programmes. Training is pivotal, combining both the communication of programme findings along with the kinds of support and consultation required to insure the effective replication of those programmes. Some of the more well-articulated interventions such as Multisystemic Therapy (Henggeler, Schoenwald, Bourduin, Rowland and Cunningham, 1998) and the Teaching-Family Model (1990) are currently developing, along with field input and support, detailed practitioner and supervisor manuals that can assist successful dissemination, although it must be acknowledged that such higher level dissemination efforts that are also being evaluated are still relatively rare in the human services and corrections fields. There are signs however that this situation may be changing. Fixsen, Blase, Timbers and Wolf (1990) have reported on a fifteen year follow-up of an evaluation of programme dissemination with the Teaching-Family Model. This analysis includes an examination of the challenge in developing a means of transferring knowledge to practitioners.

C. General Considerations for Successful Implementation

As with any change strategy in human service, the complexities of factors that need to be addressed in promoting a shift in correctional practice may seem daunting if not absolutely overwhelming to an initiator of programme change. Ellickson and Petersilia (1983) identified six principle organizational considerations that were necessary in initiating programme implementation in corrections. They included:

- Sincere motivation at implementation
- Support at the top of leadership and each group whose cooperation is required for implementation and use
- Staff competence
- A cost-benefit surplus
- Clarity of goals and procedures
- Clear lines of authority

In addition, programme shifts for implementation in corrections requires the support of both legal and non-legal stakeholders in the community. What may make sense from a programme perspective may be seen by the courts as in conflict with the rule of law. For example, if justice is seen as too individualized i.e. sanctions are not seen as proportionate given the nature of the offending, the rule of law may be perceived as under-mined because of the inequity of the severity and nature of the sanction. Clarity in the purpose and role of the courts and other law-related forums need to be seen as complementary to the role and purpose of correctional programmes.

D. Contextual Issues in Successful Implementation

Experience in North America over the past two decades has reflected the trend towards incarceration as the correctional policy of choice. Trends in the support for incarceration coupled with the legacy of the nothing works conclusions of reviewers of correctional programmes in the early and mid 1970's, created considerable challenge to implement programmes that were not predicated simply on adding to the incarceration rate. In many respects, findings from programme reviews suggesting that the community was the preferred context in which to deliver effective programmes flew in the face of the *get tough* school of corrections policy. Hence, development of trends such as intensive probation supervision programmes, even though evidence suggested their abilities to influence offending rates, were tough sells. There are two important factors to be considered. The first is to have an awareness of the extant literature on effective practice; to be aware of what is possible in delivering a successful programme, and to not oversell the effects of even successful programmes. While the general outcome literature is now reporting reductions in offending ranging from 20 to 40 per cent (Andrews et. al. (1990); Lipsey and Wilson, 1998) there are some areas of correctional practice where data has not supported claims of effectiveness. One such area is related to outcomes with psychopathic individuals.

The second critical consideration in promoting programme implementation is knowledge of the willingness, level of acceptance of policy makers, correctional professionals and the immediate community to accept a shift in policy. Petersilia as cited in Harris and Smith (1996) suggests,

> *"Unless a community recognizes or accepts the premise that a change in corrections is needed, is affordable, and does not conflict with its sentiments regarding just punishment, an innovative project has little hope of surviving much less succeeding".*

While there seems some minor variations in interpretation of the effects of the immediate context to support implementation of programmes, as a general statement, community contexts seem more able to support effective outcomes when compared to programmes delivered in residential contexts (Andrews and Bonta, 1998). Henggeler and his colleagues argue that treating high risk youth in the community is a more ecologically valid approach to both assessing and treating high risk youth since it allows for an increased opportunity to work directly with the systems that are both influencing and being influenced by the behaviour of their families and peers. Hoge, Leschied and Andrews (1993) in a study on the components in young offender

programmes found that factors in agreement with items related to effective correctional practice were more likely to be identified in community programmes than in residential programmes.

E. Empirical Findings Related to Implementation: Treatment Adherence and Programme Compliance

The evolution of research development in the corrections field has only recently emphasized the importance of providing outcome evaluation as a standard in service delivery. It may come as a surprise to some that, as reported in Andrews et. al., programmes that were being evaluated *by those charged with their implementation* were actually characterized in their outcomes as more effective than those that were not being as closely monitored. Hence it would seem that evaluation could also be characterized as a factor in successful implementation. Monitoring for programme implementation however has not met with the same level of development. This section will highlight two examples of implementation evaluation which serve to assist in understanding programmes that are relatively successful in identifying effective implementation strategies.

1. Treatment Adherence

For any experienced corrections professional, it will come as no surprise that implementation, while critical, is only a part of any success story. The real challenge arises in trying to, 1) implement a programme consistent with the components reflecting an effective strategy- referred to as programme integrity and, 2) support those factors that can sustain a programme after it has shown itself to be effective.

What are those factors that influence sustainability and help programmes remain true to those factors critical to successful?

Multi-Systemic Therapy: Scott Henggeler and his associates at the Medical University of South Carolina have turned their attention not only to programme contents that are effective with high risk youth, but also to those factors that can sustain an effective programme over the longer term.

A brief overview of MST suggests that a therapeutic focus on certain systemic factors within the lives of highly conflicted youth, (i.e. that share a present, solution, strength-based focus) will be rewarded with significant reductions in youth criminal activity. Results from Henggeler, Melton, Brondino, Scherer and Hanley (1997) suggested that while some treatment gains were sustained in some youths, others were not. Further analysis by the authors suggested that programme sustainability was tied to the presence of certain therapist/programme characteristics that in turn characterized specific components of the MST model. The conclusion of this study suggested that to achieve sustainability of positive outcomes from intervention, adequate and on-going training and consultation was necessary. Further, these authors developed the Therapist Adherence Measure (TAM) which consists of 26 items that ask family members to rate their therapist on items that would reflect consistency of the intervention with the principles of MST. Computer scoring with the TAM allows for a relatively short turn around time to provide a quantified summary to the therapist and their supervisor regarding how consistent the intervention was provided on a case by case basis. Data suggests that therapist adherence is positively correlated with client

outcomes. The development of similar adherence measures particular to a given intervention is possible given clearly identified and well articulated aspects of the nature of the intervention and type of service delivery.

2. Programme Compliance

While studies such as with MST examine treatment adherence at the therapist level, another line of investigation recommends evaluating a programme's ability to comply with pre-set conditions that *evidence has suggested* are consistent with overall components of effective programmes.

The Correctional Programme Assessment Inventory: The CPAI (Gendreau and Andrews, 1996) is an inventory developed out of the meta-analysis literature on effective programmes. It consists of seventy-five items covering six components critical to the understanding of what constitutes an effective programme, along with two areas that are considered integral to effective programmes, namely emphasis on evaluation and ethical considerations. The components consist of: programme implementation, client pre-service assessment, programme characteristics, staff characteristics, evaluation and other (i.e. ethical consideration). All of the components and the questions asked of programmes consist of factors influenced by the reviews of the effective corrections literature. Table 2 summarizes the six components of the CPAI.

Table 2
Summary of the CPAI Components

Scale	Scale Description
1. Programme Implementation	Surveys the conditions under which the programme was introduced
2. Preservice Assessment	Surveys applications of the principle of risk, need and responsivity
3. Programme Characteristics	Assesses targeting of criminogenic factors and the use of cognitive behavioural techniques
4. Therapeutic Integrity	Surveys service delivery, emphasising intensity and matching conditions
5. Relapse Prevention	Surveys extent to which programmes focus on post-release programmes
6. Staff Characteristics	Surveys staff and training issues
7. Evaluation	Examines the extent to which the system emphasizes/encourages research and evaluation activities
8. Other	Assesses emphasis on ethical concerns and security of programme funding

In a relatively large scale review of young offender programmes in one jurisdiction, Hoge, Leschied and Andrews (1993) reviewed over one hundred programmes measured on the extent and nature of their components on the CPAI. The results of this study were telling. Data reflected the range of programme components that were available. Table 2 summarizes the scale scores of the CPAI

as a function of the location of the programmes (i.e. custody, probation) Scores on the important scales from the CPAI tended to be in the community (characterized as Community Support Teams) opposed to custody. Further analysis using a measure such as the CPAI can identify training and staff needs, movement of service from residential to community and approaches in capitalizing on the strengths of certain programmes. While the authors would defer that measures such as the CPAI should not be held as a 'gold standard', nonetheless, such a measure holds promise in assessing programmes on a broad scale.

F. Issues in Dissemination and Training

As programmes generally, and correctional programmes in particular move to higher levels of accountability, the movement towards standards of practice and compliance reviews will be encouraged. Indeed, in the next two years, Correctional Services Canada with the support of the Home Office in the United Kingdom will be moving towards adopting a set of standards to guide the content and delivery of programmes. The increasing challenge therefore will be to move the developing knowledge to the field in order to implement effective correctional practices.

Access to that knowledge is an on-going challenge, both to those who are partners in developing it, and also to those practitioners who are trying to access it. The tradition of developing knowledge, only to have it published in relatively obscure academic journals read by few will, arguably, not move the field dramatically in developing innovative strategies. Indeed, this tradition of distancing knowledge from the field in viewing publication as the end of knowledge development rather than the beginning, may be an answer to Cullen et.al.'s query as to why so many in the correction's field lack familiarity with knowledge in the area of effective corrections. A major challenge in corrections therefore will be to look to innovative ways to communicate what is known in order to support change at the policy and practitioner level. Increasing the availability of knowledge is perhaps the single largest challenge in this area. Four innovations in communication in corrections are worth note as examples.

1. RCJNet is a list serve website that communicates to numerous corrections processionals about knowledge in the corrections field. Currently managed by Irving Kulik of CSC, the service provides website links, summaries of recent justice documents, or summaries of research that may be of interest. Using latest technology, RCJNet serves as a clearinghouse for current corrections information. The Office of Juvenile Justice and Delinquency Prevention (OJJDP) out of Washington D.C. serves a similar purpose in the U.S. in making current documents available on line for wide spread dissemination.
2. The National Institute of Justice (NIJ) has initiated a distance education programme providing learning opportunities to correctional professionals through a system of centres connected through satellite-linked communications systems. From a single source, unlimited numbers of practitioners and policy makers across a limitless geographic area can interact with the leaders in the field in hearing of new programme or policy ideas.
3. The London Family Court Clinic, along with Multi-Systemic Therapy Services Incorporated in Charleston,

South Carolina has developed an interactive website that links MST teams across North America and Europe. Practitioners using MST are able to communicate with one another with respect to promising therapeutic approaches or clinical issues that may arise in the course of service delivery. Recently, the development of an MST clinical team in Norway was able to link to the Ontario teams. Collegial supervision takes on new meaning in this era of expanding technology!

4. The Toronto-Based Institute for Anti-Social and Violent Youth (IAVY) directed by Jalal Shamsie has, for close to twenty-five years, provided an extracting and commentary service on articles of particular interest to the young offender field. Such services help to focus and summarize information of particular currency and relevance to the field by reviewing articles from major journals.

G. Summary and Conclusion

Implementation of programmes in as politically-charged context as corrections finds itself is a challenging prospect. What corrections professionals have going for them however is a knowledge base that supports certain programmes and policies over others with the goal towards increasing community safety and lessening human misery. This chapter has highlighted the major issues in implementation as being:

- An acknowledgement of the literature on what works for effective corrections and policy practices. This literature highlights appropriate assessment strategies that increase the potential for interventions to be clinically relevant to factors that influence criminogenic risk.
- Identification of contextual factors that can influence the probability that programme innovation will be successfully introduced. These factors include leadership support for implementation, staff competence and goal clarification for the reasons behind implementation. It is suggested that a multi-level systems analysis is necessary to fully comprehend the complexities of systems change. The four levels of analysis should include an understanding of the needs of the client, programme, agency, and society.
- Specific contextual factors influence successful implementation. Current knowledge suggests that different factors influence successful *community-based* implementation versus *residential-based* implementation.
- Measures have been developed to monitor the degree of success in programme implementation. These include measures for both treatment adherence and programme compliance. Finally, training and dissemination is now considered the greatest challenge facing implementation in the corrections field. The nothing works debate is now recognized as serving an important purpose in focussing efforts in developing the current extent of knowledge on effective practice. However, as many have cited, the nothing works debate is now over. Arguably what could shape the next generation of corrections professionals is the challenge of communicating the knowledge on effective strategies to practitioners. Using current technology, clearinghouse extracting services, the internet and interactive communication technology are all examples of methods in communicating that knowledge to those who make decisions both for policy and for practice.

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CHALLENGES TO JUVENILE TREATMENT IN NEW ZEALAND

*Pamela Phillips**

I. INTRODUCTION

This paper examines the challenges of the Children, Young Persons and Their Families Act 1989.

II. THE CHILDREN, YOUNG PERSONS AND THEIR FAMILIES ACT 1989

A. Introduction

The New Zealand Children, Young Persons and Their Families Act of 1989 (CYP&F Act) came into effect on 1 November 1989. The legislation introduced new principles and procedures for dealing with young people who had committed offences, and provided for jurisdictional separation between children and young people in need of care and protection and those who had committed offences. The legislation in effect moved practice from a 'welfare' approach to young people who had offended towards a 'justice' approach.

B. Theoretical Base

At the time of development of the legislation in New Zealand much of the debate about the most appropriate way of dealing with young people who offended centred on two models - the welfare model and the justice model.

The table below represents a comparison between the two models.

Welfare (needs)	Justice (deeds)
1. How offending is viewed (causes of crime).	
Offending is due to criminal individual pathology, family breakdown or community disruption.	The process of growing up is characterised by testing boundaries and trying new things out. Therefore behaviour that can be classed as criminal is a normal part of growing up. Some individuals become serious offenders.
2. Intervention.	
The causes of the offending should be found and dealt with. The 'needs' of the child or young person should be focused on rather than the offence.	Intervention should be offence or 'deeds' related.

* Coordinator Community Conferencing, Queensland, Australia (New Zealand)

Welfare (needs)	Justice (deeds)
3. Child's or young persons involvement.	
Programmes should focus on the needs of the individual.	A child or young person has rights that should be protected. They should be held accountable for their actions, although age is recognised as a factor when determining the appropriate sanction.
4. Family/whanau involvement.	
Family are seen as part of the problem, or as being unable to provide adequate care and control of their child or young person.	Family seen as part of the solution and entitled to be primary players in the decision making process.
5. Victim involvement.	
Victims have no right to be involved in the outcome. They are seldom seen as helpful.	Victims have a valid and legitimate entitlement to participate in the process of holding the young person accountable for their offending.
6. Criminal justice system.	
The criminal justice system is used to access welfare resources for the child or young person and their family.	Intervention by way of the criminal justice system should be delayed as long as possible. Such interventions tend to achieve outcomes that are unlikely to have a positive effect on the offending behaviour.

C. Social Background

A number of issues emerged at the same time and shaped the legislation. These issues included:

1. Growing Dissatisfaction among Practitioners

The apparent lack of effectiveness when working with young offenders was resulting in a growing dissatisfaction among practitioners in the youth justice field and this was reflected in the wider community.

2. Self-determination for Maoris

Maori were making new and determined efforts to secure self determination in a mono-cultural legal system which demonstrably discriminated against Maori and places little value in Maori customs, values and beliefs.

3. Rejection of Paternalism of the State and its Agents

Concern was being expressed in the wider community about the needs to redress the imbalance between the power of the state and its agents and that of individuals and families involved in the criminal justice system.

4. Lack of Impact on Levels of Offending

Costly therapeutic programmes were emerging as part of the problem and acknowledged as having no impact on the levels of offending. Pressure was forming to free up resources for other uses and to seek more positive outcomes for young people.

5. Due Process for Young People

Concerns were also emerging in relation to the process of dealing with young people who had committed offences and the sentence outcomes that they were receiving. Courts were dismissing cases where the police had failed to observe procedural safeguards in the questioning and arrest of young people and increasing numbers of young people were being sent to adult courts for sentence.

D. The Reform Process

In 1984 the Government of the day determined that problems with the care and protection provisions could not be remedied by legislative amendment and ordered a full review of the Children and Young Persons Act of 1974.

Much of the attention focused on the care and protection provisions of the Act. The reforms under way in the youth justice provisions elicited little debate. Either the youth justice reforms were swamped by the debates relating to the care and protection reforms or they held widespread acceptance.

E. Feature of the Law

1. Principles

The youth justice provisions of the Act have their own set of principles distinct from the provisions relating to the care and protection provisions. All those working under the Act must apply these principles.

The principles are summarised in the paper "Restorative Justice Initiatives in New Zealand." A further principle that applies is that:

- The vulnerability of young people entitles them to special protection during any investigation in relation to the commission of an offence.

2. Age of criminal responsibility

Child under 10 years: No child under the age of 10 years can be charged with an offence—no criminal responsibility.

Child offenders aged between 10 and 13 years can be charged with murder or manslaughter. The prosecution must prove that the child knew that the act or omission was wrong and contrary to law. In these cases a preliminary hearing is held in the Youth Court and, if a prima facie case is established, the case is transferred to the High Court for hearing, and sentencing if found guilty.

For other offences child offenders can be referred for a Family Group Conference if the police believe they are in need of care and protection because of their offending, and the public interest requires such action. Any court action is in the Family Court.

Young offender is aged between 14 and 16 years is dealt with in the Youth Court, or can be convicted and transferred to the District Court for sentence.

3. Limitations on Arrest and Procedural Safeguards During Investigations

The law limits the powers of police to arrest in preference to proceeding by way of summons. New procedures governed police actions when questioning a young person suspected of having committed an offence and established the rights of children and young people to consult with other. For example no statement made by a child or young person is admissible unless it was made in the presence of a trusted or neutral.

4. New diversion process and the Family Group Conference

There were two major defects in diversionary mechanisms previously adopted by New Zealand. Firstly, they

had been constructed around panels of professionals and co-opted community members and functioned as quasi-judicial bodies, and secondly they were bypassed when police exercised their powers of arrest.

The policy imperative was to find a solution that was not bypassed by arrest, was not susceptible to net widening, and which eliminated the quasi-judicial panel approach. The result was the development of the family group conference, convened and facilitated by a new statutory official, known as the Youth Justice Coordinator.

The restoration of harmony is fundamental to the Family Group Conference. From the outset, the presence of harmony will maximise the potential for relationships between all participants to move away from the adversarial and confrontational atmosphere common to the criminal court and set the scene for a negotiated outcome.

5. The Youth Court.

A new Youth Court was established as a subsidiary of the District Court. The key features of this are:

a. Designated Judge
No judge may be designated a Youth Court judge unless they are suitable by way of training, experience, personality and understanding of the significance and importance of different cultural perspectives and values.

b. Legal representation
All young persons must be legally represented, with the Court appointing a youth advocate where no private arrangements have been made.

c. Lay advocates
Courts may, in addition, appoint lay advocates to ensure the Court is made aware of all relevant cultural matters.

d. Status of Family Group Conference
The family group conference has a status in any proceedings and has the right to make representations.

e. Hearings in the Youth Court
All hearings of the Youth Court are to be held separately from other Courts. The Court schedules hearings to ensure that waiting times are minimised and congregation in common waiting areas are kept to a minimum.

6. Court Orders

A new tariff of court orders was established. Major changes occurred at the top of the tariff with the introduction or limitations being imposed on the following orders:

- Community work order—not more than 200 hours.
- Supervision order—no longer than 6 months.
- Supervision with activity order—3 months, can be followed by a supervision order for 3 months.
- Supervision with Residence order—3 months, must be followed by a supervision order for up to three months.
- Transfer to District Court—only if nature of offence and circumstances of the offender requires this.

F. Flow chart of the Youth Justice System

A flow chart of the Youth Justice system is attached as appendix 1.

III. TEN YEARS ON

The youth justice system has now been a feature of the New Zealand system for ten years.

The following table demonstrates the results against the goals of the youth justice system.

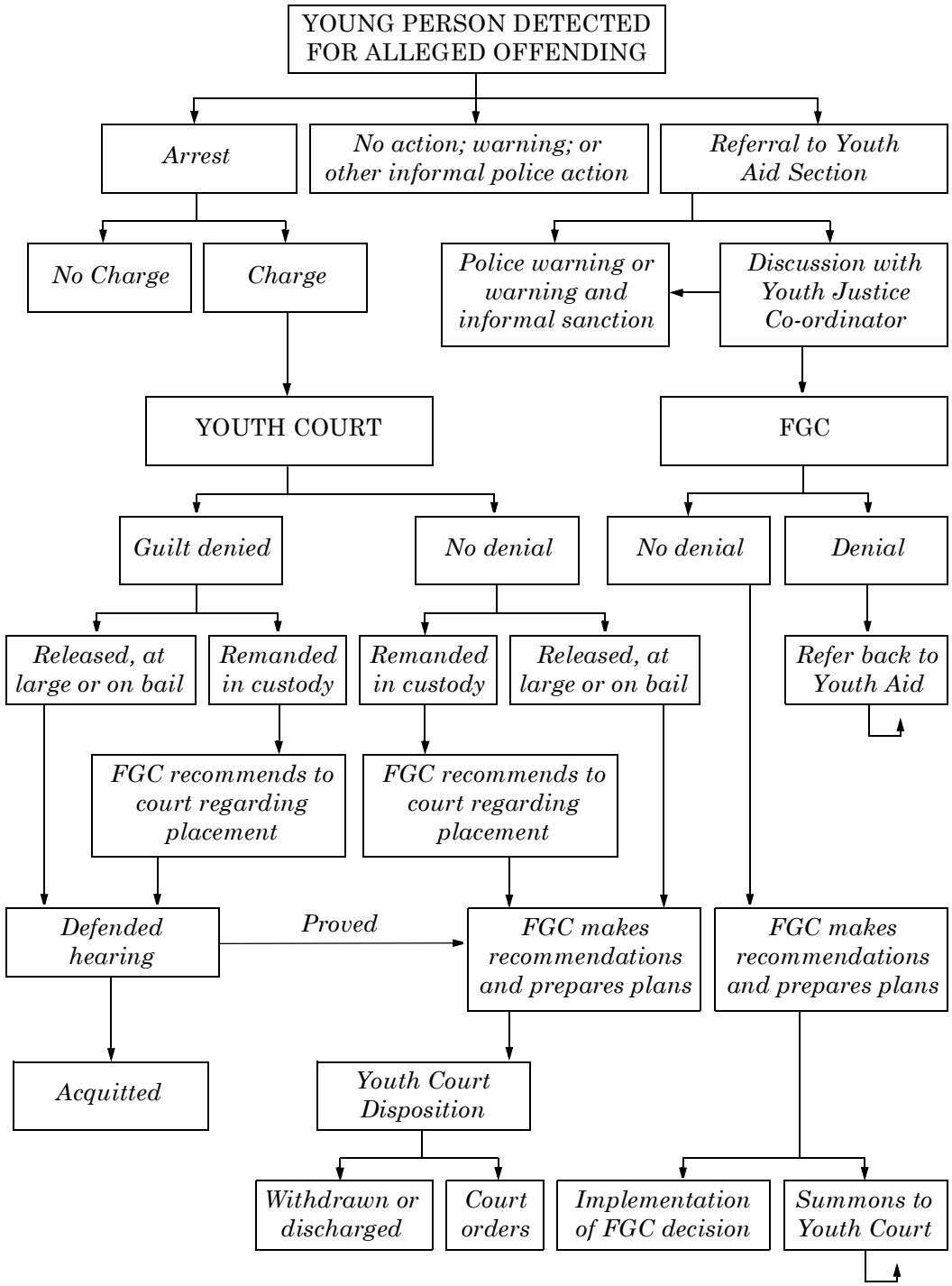
Goal	Result
Diversion: Keeping young people out of courts and out of custody	Court appearances pre 1988: **10,000 - 13,000** Court appearances post 1989: **2,500 - 3,000** Residential beds pre 1988: **250** Current residential beds: **75** FGC's per year: **5,700 - 6,500**
Accountability: Young people taking responsibility for their offending and putting right the harm they have done to others	95% of young people were held accountable for their offending.
Enhancing well-being and strengthening families: Families receiving services that will strengthen them to respond to their families needs.	Appropriate programmes not always available. Families felt they wanted more support.
Due process: Ensuring that young peoples rights are protected.	Proper procedures not always followed by police in relation to questioning of the young person. At times young people felt pressured to admit an offence.
Family participation: Involving families and young people in making decisions for themselves and taking charge of their lives.	Families participated fully, however only one third of the young people felt involved in the process.
Victim involvement: Involving victims in decisions about what should happen to 'put right the wrong' and 'restore harmony'.	41% of victims attended their conference.
Consensus decision making: Reaching agreement between the conference participants on what should happen.	95% of conferences reached agreement about what should happen.
Cultural appropriateness: Providing for different ways of resolving matters and obtaining services, depending on the culture of the young person and their family.	At times the processes were quite foreign to participants particularly families from the Pacific Islands.

IV. CONCLUSION

The Children, Young Persons and Their Families Act 1989, changed the face of Youth Justice in New Zealand. There have been tremendous successes in reducing the numbers of young people in residential care and appearing before the Courts. Victims have been for the first time involved in decision-making in relation to the offence committed against them.

In recent years the body of research on risk and protection factors and interventions known to work with young offenders has been growing. The Department of Child, Youth and Family Services has recently been incorporated into a strategy aimed at the most high-risk recidivist offenders—it is hoped that this strategy has a similar success to the introduction of the Act.

Appendix 1
Flow Chart Indicating Pathways Through the System



RESTORATIVE JUSTICE INITIATIVES IN NEW ZEALAND

*Pamela Phillips**

I. THE FAMILY GROUP CONFERENCE

The Youth Justice Family Group Conference (FGC) is a statutory decision-making process involving, among others, the young offender (alleged or proved), members of their family/whanau, and the victim of the offence and their supporters.

It is a forum to determine whether the child or young person committed the alleged offence, and, where the offence is admitted, to develop a plan that ensures:

- The child or young person is held accountable and encouraged to accept responsibility for their offending.
- The interests of the victim are taken into account.
- Any measures taken for dealing with the offending, strengthen the family/ whanau and family group, and foster their ability to develop their own means of dealing with offending by their child or young person.
- The principles of the Children, Young Persons and their Families Act (CYP&F Act—here after referred to as the Act) are followed.

For the FGC to be valid it must be convened in accordance with the legislation. To enable participants to speak freely and without fear that things they say may be used against them or published, the use of information shared during the conference cannot be used in the courts, or be published.

II. PRINCIPLES

The principles that govern the FGC are set out in the Act. Summarised these principles state:

a. Unless the public interest requires otherwise, proceedings should not be instituted against a child or young person if there is an alternative means of dealing with the matter.
b. Proceedings should not be instituted solely to provide assistance or services needed to advance the welfare of the young person or their family group.
c. Measures taken should be designed to strengthen families and foster their own means of dealing with their offending young.
d. Young offenders should be kept in the community where practicable and consonant with the need to ensure public safety.
e. Age of itself is a mitigation factor in determining whether a sanction should be imposed and the nature of any sanction.
f. Sanctions should take the form most likely to maintain and promote the development of the offender within their family group, and be the least restrictive form appropriate.
g. Any measures taken should have regard to the interests of victims.

III. TYPES OF REFERRALS

There are a number of different types of referrals for a FGC. These are:

* Coordinator Community Conferencing, Queensland, Australia (New Zealand)

A. Child Offender (10 – 13 years inclusive)

1. Grounds
When a police officer has serious concerns for a child's well being, because of their offending and the police officer believes that a declaration that the child is in need of care and protection is required in the public interest.

2. Referred by
Police, after consultation with a Youth Justice Coordinator.

3. Function
To consider whether the child is in need of care and protection because of their offending and if so, to make decisions, recommendations and plans.

4. Time limits
Must be convened within 21 days and completed within one month unless special reasons exist.

B. Young person (14 – 16 years inclusive), Alleged to Have Committed an Offence

1. Grounds
The police allege that a young person has committed an offence. They have not been arrested and the police believe that the public interest requires proceedings to be instituted. This type of referral is known as an 'intention to charge' referral.

2. Referred by
Police, after consultation with a Youth Justice Coordinator.

3. Function
To consider whether the young person the young person admits the offence, whether they should be prosecuted or whether there is another way of dealing with the matter, and if so, to make decisions, recommendations and plans.

4. Time limits
Must be convened within 21 days and completed within one month unless special reasons exist.

C. Young Person in Custody on Denial of Offence

1. Grounds
A young person appears in Court, denies the charge and the Court makes an order placing them in the custody of the Director-General.

2. Referred by
Court directs Youth Justice Coordinator to convene an FGC.

3. Function
To make recommendations to the Court about the custody of the young person pending determination of the charge.

4. Time limits
Must be convened within 7 days and completed within 7 days unless special reasons exist.

D. Young Person Appears in Court—Offence Not Denied

1. Grounds
The young person appears in court either following arrest or on a summons, and does 'not deny' the charge.

2. Referred by
Court directs a Youth Justice Coordinator to convene an FGC.

3. Function
To consider whether the young person admits the offence and whether they should be dealt with by Court or whether

there is another way to deal with the matter. To make decisions, recommendations and plans.

4. Time limits

If the young person is in custody — must be convened within 7 days and completed within 7 days, unless special reasons exist.

If the young person is not in custody — must be convened within 14 days and completed within 7 days, unless special reasons exist.

E. Charge Against a Young Person has been Proved

1. Grounds

A young person appears in Court, denies the charge and the Court find the charge has been proven.

2. Referred by

Court directs Youth Justice Coordinator to convene an FGC.

3. Function

To consider how the young person should be dealt with for the offence and make decisions, recommendations and plans.

4. Time limits

Must be convened within 14 days and completed within 7 days unless special reasons exist.

IV. PERSONS ENTITLED TO ATTEND THE FGC

The Act sets out the people who are entitled to attend the FGC. These are:

- the child or young person.
- every person who is:
  - a parent
  - a guardian
  - a person having care of the child or young person.
- members of the child or young person's family/whanau or extended family group.
- a Youth Justice Coordinator.
- a police officer.
- any victims and support persons, or their representative.
- Youth Advocate.
- persons representing organisations when the child or young person is subject to Court orders.
- any other person the family/whanau or family group of the child or young person wishes to be present.

Exclusion of entitled persons is not permitted.

V. PREPARING FOR THE FGC

When convening the FGC the Act requires the Youth Justice Coordinator to:

- Consult with the young person, their family, the police and victim to set the time, date and place of the FGC.
- Obtain the views of those unable to attend.
- Ensure all relevant information and advise is available to the FGC.

A. Best Practice in FGC Preparation

Thorough preparation is the key to a successful FGC. Necessary preparation includes identifying the entitled members, fully informing the young person, their family and the victim, of their rights and obligations, the importance of their role in the conference, and about the FGC process itself. It is also an opportunity for the participants to build their trust in the coordinator — the coordinator must be perceived as fair, non-judgemental and sensitive to the participants concerns.

1. Interviewing the young person

Face-to-face meetings are usually conducted with the young person in the presence of their parents or caregivers. It is often necessary to speak to the young person alone. This is especially important where there is significant conflict between the young person and their parents, or if the offence was committed by the young person against their parents.

As well as providing information to the young person and their parents, the opportunity is used to identify other family members and significant people in the young persons life.

2. Interviewing the young person's family

Face-to-face meetings achieve the best results in terms of attendance of the wider family group, however distance sometimes prevents this. In these circumstances contact is made via phone in preference to correspondence.

Often the parents of the young person will take responsibility to contact other members of the family and discuss the forthcoming conference with them. When this happens the parents give the contact details of these family members to the coordinator who follows up with a written invitation for them to attend the conference.

3. Interviewing the victim and their supporters

The coordinator is often the first 'official' other than the investigating police officer, to talk to the victim since the offence. It is therefore important that the coordinator meets face-to-face with them and any supporters they wish to bring to their conference. This meeting provides the opportunity for the victim to discuss the offence and its impact. In addition the coordinator will explain the conference process and assist the victim to consider realistic outcomes.

B. Setting the Time, Date and Place for the FGC

The FGC should be arranged for a time and date that suits the young person, their family, the victim and the attending police officer. This usually means outside core school and working hours. Police stations and Courts are not suitable venues for an FGC. For reasons of personal safety or comfort, victims may be more likely to attend an FGC if it is held at a neutral venue.

VI. HOLDING THE FGC

A. Opening the Conference

The opening of the conference is usually determined by cultural protocol. For example if the conference is on a Marae a formal welcome will be made to the conference participants. However, it is important that the coordinator ensures that introductions are made so that everyone is aware of each other's name, their relationships to the offence, and the young person or victim.

Coordinators also take the opportunity to reinforce information given at the conference preparation stage. Particularly:

- The process that the conference will follow.
- The principles of the Act that govern the conference.
- The confidential nature of the conference proceedings.
- That the coordinators role will be to facilitate the process to enable the conference to come to an agreement about what should happen as a consequence of the offence.

B. Determining whether the Young Person Admits the Offence

The usual practice is for the coordinator to ask the police officer to begin by reading out the offence and the summary of facts. The coordinator will then ask the young person whether they admit the offence as the police officer has outlined. If the young person does not admit the offence the conference is closed and the matter is referred back to the police, or the court, for their decision on any subsequent action. If the young person admits the offence the conference proceeds.

C. Information Sharing/Story Telling

In this stage of the conference each participant will tell his or her story. The purpose of this is to elicit the facts of the offence and the impact of the young persons actions on all participants. Each person is given the opportunity to speak without interruption.

1. <u>The young persons story</u>

It is important that the young person begins by telling their story. In this way they begin 'admitting' what they did in front of the victims and their own family. If others start by telling what happened the young person is likely to become defensive and deny points of detail. The young person may leave out details in order to minimise what happened. Victims and co offenders usually correct any inaccuracies. The conference should not move beyond the young persons story until they have touched on:

- What happened on the day/night of the offence.
- What they were thinking about.
- Who has been affected by what happened.
- In what way people have been affected.

Questions may be needed to help prompt the young person to express what has happened, e.g. "What had you been doing?", "What time was it?", "What was it liked to be picked up by the police?". Failure of the young person to provide basic acknowledgement of what happened and the harm caused is likely to result in increasing the victim's sense of indignation.

The use of open questions, basic listening skills, and a limited amount of paraphrasing and summarising can be helpful in assisting the young person. Silence can also be used.

Initially, when young offenders are asked "Who was affected by you actions?" they may not immediately acknowledge the impact on all those who were affected. The young person should be encouraged to acknowledge the harm caused to the victim, themselves and their family. The impact of this harm will be reinforced as the conference proceeds.

2. <u>The victims story</u>

Once the young person has moved towards some form of acknowledgement of the impact of their offending (tacit as it may be) it is appropriate to invite the victim to speak.

Normally victims do not require the same level of prompting as the young offender. The purpose of this stage is not for the victim to abuse or castigate the young person. If the young person has already begun to accept some level of responsibility for their actions, displays of moral indignation from the victim are less likely.

It is important that the victim and their supporters focus on the specific incident and how they were affected. Generalisations are not helpful and

quickly result in the young person 'turning off'. Such generalisations can include the victim blaming the young person for other occasions when they were victimised or blaming the young person for all 'youth crime'. When this happens the coordinators refocus the discussion to the specific offence in question.

After the victim has had the opportunity to tell their story, coordinators usually ask them if there are any questions relating to the facts of the offence that they would like to ask the young person.

3. Victim support group

The victim supporters are next invited to talk about what happened, how it affected them and their friend or family member who was victimised.

4. Young person's family

After the victim's support group has spoken the family of the young person is given the opportunity to talk about how the offence has affected them and what action they have taken in respect of the young person as a result of the offence. Each family member should be given the opportunity to speak.

Once all participants have had the opportunity to tell their story the coordinator will give the views of person who were entitled but unable to attend, and any other information that the conference may need to reach an agreement.

At this stage of the conference it is normal for the discussion to become more free flowing. Coordinators suggest that the general rule of thumb is — the less intervention the better. However, discussion should continue to focus on the incident and its affects. Some diversions are a danger at this point. For example, exchanges between the victim and the young persons family might become aggressive and unhelpful: "If you had control of your kids this wouldn't have happened". If this is allowed to continue the young person will become a detached spectator of other peoples conflict, instead of being encouraged to accept responsibility for his/her own actions.

After everyone has had the opportunity to discuss the offence and its impact the discussion shifts from the past to the present. The object of this phase is to mark the changed perception of both offender and victim about the offence and each other. It is usual at this phase to be marked by family private deliberation time. All other members of the conference are excluded from this time unless specifically invited by the family. It is common for the family to consider what they have heard and what is needed to restore harmony with the victim and within their family.

D. Decisions, Recommendations and Plans

When the family has completed there private deliberations the conference gets back together. The focus at this stage is clearly on the future. The purpose is to develop a fair and workable plan that meets participant's needs for repairing the harm done by the young persons actions. (It is more appropriate to frame this stage in terms of working out how the young person can make amends rather than in terms of setting punishment.)

To introduce this phrase the victim may be asked a general question such as: "Having heard everything what would you like to come out of today?"

It is important that the victim and the young person and their family negotiate the outcome plan for themselves. The police officer and lawyer (if they attend), can provide feedback on whether or not the decisions are in keeping with the principles and legal requirement of the Act.

The coordinator should also test the proposed plan for workability and fairness. The discussion must include monitoring of the agreement. The agreement should be monitored by the parties, (family and victim), but the victim may not wish to have a role in this.

The coordinator records the conference in detail, specifying exactly what has been agreed, roles responsibilities, timeframes and action to be taken if the young person cannot, or does not complete the agreement.

All conference participants sign the agreement.

VII. POST FGC

After the conference the coordinator distributes a copy of the agreement to all the conference participants. A copy of the agreement is also sent to the police or court, depending on which agent referred the matter to the conference.

The persons identified in the plan monitors it to ensure that the young person complies with what was agreed, and notifies the coordinator when the matter is completed. The coordinator will then formally advise all conference participants and the referring agent — either the court or police.

DIRECTIONS OF JUVENILE JUSTICE REFORMS IN SINGAPORE

Chomil Kamal *

I. INTRODUCTION

A. Children and Young Persons Act Chapter 38

The Children and Young Persons Act (CYPA) Chapter 38 is the key legislation governing the administration of juvenile justice in Singapore. Though enacted as early as 23 September 1946, the spirit, intents and purposes of the CYPA remain progressive and very much relevant in our present Singapore society. Welfare of the juvenile is a guiding principle of this Act. Juveniles in conflict with the law are not excused of responsibility or accountability for their misconduct. The Act determines the jurisdiction of the Juvenile Court for persons aged 7 to under 16 year olds and spells out clear principles for care and protection orders, fit person orders, social work and supervised treatment, approved home and young offender in custody. The CYPA balances parental authority and State intervention.

As a nation, Singapore's response to youth offending has been to pursue a fine equilibrium in the management of juvenile offenders such that the justice and restorative models are not opposing paradigms but that they actually compliment each other as mutually supportive elements of the juvenile justice system. The Government's endorsement of the recommendations of the Inter-Ministry Committee on Dysfunctional Families, Juvenile Delinquency and Drug Abuse (1995) which was chaired by the Minister for Community Development, signaled an intensified effort to put in place a series of initiatives to combat juvenile delinquency in a systematic and coordinated manner. Among other things, it led to the setting up of an Inter-Ministry and Agency Committee in that same year. The Inter-Ministry Committee on Juvenile Delinquency (IMJD) which has now been expanded and re-named Inter-Ministry Committee on Youth Crime (IMYC), was tasked to stimulate and coordinate efforts to keep youths from crime and promote their effective rehabilitation. The IMYC takes a proactive stance towards dealing with concerns over world-wide phenomenon of rising juvenile delinquency. Several studies on our youth were done and what ensued were numerous direct and beneficial programmes for targeted groups of youth at risk as well as youth in conflict with the law. 1995 also marked the Singapore Judiciary's introduction of the restorative justice model for disposition of juvenile cases. No amendment was necessary as in essence, the CYPA is firmly grounded on the philosophy of rehabilitation and reintegration of children and young persons.

Section 28 of the CYPA thus became a vital consideration in the assessment of every juvenile brought before the Court:

> *"Every court in dealing with a child or young person who is brought before it, either as being in need of*

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care or protection, or as an offender or otherwise, shall have regard to the welfare of the child or young person and shall in a proper case take steps for removing him from undesirable surroundings' and for securing that proper provision is made for his education and training".

B. Children and Young Persons (Amendment) Act of 2001

The CYPA has just been amended to give the Juvenile Court a wider range of non-custodial options and enhance community orders to meet the varied rehabilitative needs pre-delinquents and young offenders.

The amendment of the CYPA will increase the momentum for juvenile justice reforms in Singapore. We will press on with the stance we have been taking and continue to refine our restorative approach to dealing with juvenile offenders. In his keynote address before an international audience at the Youth Justice 2000 Conference (13–15 September 2000 in Singapore) co-convened by the Ministry of Community Development and Sports and the Subordinate Courts of Singapore, the Honourable the Chief Justice commented:

> *"The values and philosophy expressed in these conventions, like the UN Guidelines for the Prevention of Juvenile Delinquency (which are known as the Riyadh Guidelines), the UN Rules for The Protection of Juveniles Deprived of Their Liberty, the UN Standard Minimum Rules for the Administration of Juvenile Justice (commonly known as the Beijing Rules), the International Convention on the Rights of The Child, have already transformed practice and procedures in some parts of the world. Their promotion of diversion and restorative measures, as well as their insistence on rights and safeguards, signals a new approach to the treatment of young people that has been increasingly influential. We have kept faith with these international standards. On 7 September 2000, Singapore was among the first countries in the world to sign the Optional Protocol to the Convention on the Rights of the Child".*

Expectedly, juvenile justice reforms that have taken place have increasingly centred around:

a. maximising diversion from the court system;
b. minimising penetration into the system;
c. proactively addressing offending behaviour; and
d. engendering public support and confidence.

C. Probation of Offenders Act

The Probation of Offenders Act Chapter 252 requires the Courts to take into account all the circumstances of the case, including the nature of the offence and the character of the offender. Yet the legislation is clear in that while it recognises young offenders can and should be rehabilitated, it is never granted as a right. Restorative justice is predicated on helping the juvenile offender to gain full cognisance of his/her offending and its impact on self, family, others and society in general. It seeks to deal with underlying causes of offending and to integrate offenders and their families into society by involving all significant parties in the offence and the life of the juvenile offender.

The amended CYPA, together with the Probation of Offenders Act provides for:

a. a continuum of graduated yet flexible sanctions to correspond to the needs of each juvenile offender while providing for community safety;
b. immediate and therapeutic intervention at the first sign of delinquent behaviour;
c. ownership and accountability of the family of the juvenile in the rehabilitation process.

Against the backdrop of what has been said, it may be useful to give an overview of how juvenile offenders are managed.

II. OVERVIEW OF THE MANAGEMENT OF JUVENILE OFFENDERS IN SINGAPORE

A juvenile is defined as a person who is between the age of 7 years and below 16 years and by this legal definition, falls under the jurisdiction of the Juvenile Court. The management and treatment of juvenile offenders in Singapore is grounded on the belief that every juvenile has the capacity to change and that our ultimate goal is the rehabilitation and reintegration of each juvenile in conflict with the law.

III. TREATMENT OF JUVENILE OFFENDERS

A. Pre-Court Diversionary Measures

When a juvenile offender is arrested for an offence, besides charging the offender, the police may opt for any one of the following measures:

a. Release the juvenile with a warning to both the juvenile and the parents or guardians;
b. Release the juvenile with a warning to both the juvenile and the parents or guardians and refer them to a social service agency for assistance and counselling;
c. On the advice of the Attorney-General, the Police may ask the juvenile to participate in a 6-month counselling and rehabilitation programme known as the Guidance Programme (GP).

B. Juvenile Court Measures

When a juvenile is brought before the Juvenile Court, the Court in most instances would require a pre-sentence report for the purpose of determining the most appropriate order. Depending on the gravity of the offence and merits of each case, the Juvenile Court may consider one or more of the following options:

a. Discharge the case conditionally or unconditionally;
b. Place a bond on the parent/guardian to ensure proper care and supervision of the juvenile;
c. Place the juvenile under the care of a "fit person";
d. Place him/her on stand alone community service order;
e. Place him/her on stand alone weekend detention;
f. Place him/her on probation for a period ranging from 6 month to 3 years with or without conditions (which may include requiring him/her to go for periodic training as a condition of probation) and with or without a condition of residency in a probation hostel for up to 12 months;
g. Order the juvenile to be detained for a period not exceeding 3 months and place him/her on probation upon discharge;
h. Order him/her to be detained for a period of not more than 6 months;

i. Order the juvenile to be committed to an Approved School for juvenile offenders for rehabilitation for a period between 24 to 36 months;
j. Require the juvenile and parents to participate in family conferencing;
k. Require the parents to go for mandatory counselling.

IV. GUIDING PRINCIPLES IN THE REHABILITATION OF JUVENILE OFFENDERS

The following principles and consideration underpin the rehabilitation of juvenile offenders in Singapore:

A. Diversion from Court Process where Possible and Appropriate

According to police records, the percentage of juveniles let off with warning including all bail and referral cases to other departments is between 88% and 90%.

In October 1997, the Guidance Programme (GP) was launched by the Ministry of Community Development and Sports (MCDS), to strengthen the effectiveness of let-off with police caution for selected juveniles who require more than just a warning to steer clear of future offending. This arose from observation in 1994/5 that 30% of juveniles who were let off with police caution went on to commit fresh offences within 2 years of being let of with mere police caution.

The GP, a programme funded by Government, is an inter-agency networking mechanism which involves the Police, schools and VWOs appointed by MCD to provide a counselling and rehabilitative programme for juvenile offenders. Upon successful completion of GP, a juvenile would be let off with a stern warning in lieu of prosecution for the offences committed. Participation in the programme is voluntary. The GP spans 6-months in the first instance. Where it is deemed necessary and in the interest of the juvenile, the juvenile may be required to undergo the programme for another 6 months, subject to the concurrence of both the juvenile and his parents.

The GP aims to get the juvenile to:

a. recognise the offence committed as a criminal act;
b. make a decision to help himself not to commit an offence again;
c. commit to work on his ability to manage his vulnerability to commit future offences.

Parents in turn are helped to acquire knowledge and skills in effective parenting and supervision of the juvenile. As at the end of 2000, 1081juvenile cases have been placed on the GP programme. Completion rate is about 90%. Only 2% re-offended.

The programme has just been evaluated and the findings, shared with all relevant stakeholders of GP on 30 May 2001.

With effect from 1 Oct. 2001, the Juvenile Court will have the option of giving stand alone orders to deal with selected minor offenders deemed to be able to benefit from community orders without need for supervision orders.

B. Institutionalisation as the Last Resort

Community orders such as stand alone orders and probation offer an alternative to sending a young offender to a correctional facility. However, the challenge lies in ensuring there is adequate support services and

interventions at the probation programme level to lend weight to the viability of community-based orders.

Probation is the conditional suspension of punishment while an offender is placed under the supervision of a Probation Officer and given guidance or treatment within the community. The period of probation ranges from 6 months to 3 years and there are 3 grades of probation; administrative, supervised and intensive probation. The level of service and supervision is matched to the level of risks and potential for rehabilitation. Relevant factors include criminal history, motivation for change, school progress and family situation. The conditions imposed as part of the probation order differ in terms of the level of supervision, frequency of contacts, the number of restrictions and the programmes the juvenile is mandated to attend. The probationers may also be subjected to combination orders. The degree of supervision and monitoring increases progressively with each grade.

Split probation may be considered for cases which are assessed to be needing more intensive supervision or intervention only during the initial period. The system of graded probation allows for optimum use of resources while providing Probation Officers with the flexibility to tailor probation supervision to meet individualised needs. Details of the graded system can be found in Annex II of the "National Standards for the Probation of Offenders as their Rehabilitation in the Community" (in the folder). A copy is attached as Appendix I for easy reference.

Singapore has put in place a continuum of services and programmes to address young offenders' risk issues while enhancing the protective factors to steer young people from offending. Community-based supervision is strengthened when there is a continuum of supportive services and programmes to enable the offender's continued stay in the community throughout the rehabilitation period.

One of the core functions of the Probation Service is to provide the courts with pre-sentence reports on whether an offender is suitable for community-based orders. The availability of community-based programmes and support services which meet the offenders' risk issues, and his/her willingness to receive such services are vital in Probation Officer's assessment of suitability for probation and conditions to be imposed. At the pre-sentence stage, due consideration is also given to factors such as ethnic parenting perspectives of high risk cases. The aim is to draw on the strengths in the family network to support the helping process; whether to assist the offender in school placement, remain in school or be engaged in skills training. Community support and resources are also tapped to address the risk factors in the supervision of cases where probation is recommended.

Increasingly, focus has been on sharpening risks assessment and management to bring about successful rehabilitation of young offenders and their effective restoration to the community without the stigma of a conviction or committal to a juvenile correctional facility. To this end, Singapore is developing a local instrument for pre-sentencing classification of juvenile offenders. The Juvenile Offending Behaviour (JOB) criteria will enable the Juvenile Court to distinguish risk factors for categorisation into "developmental limited versus life course persistent" offenders. The components to the JOB criteria include

assessment of severity of charges, risk assessment based on static and dynamic factors and proximate factors which can affect sentencing e.g. remorse level in Court, behaviour while in remand or bail, chamber discussions, family conferencing and so forth. Studies are also being conducted by the Ministry of Community Development and Sports to identify predictive factors for success and failure on community orders. These coordinated efforts will move us into evidence-based practice in the classification and treatment of juvenile offenders.

At the programming level, several measures have been taken to enhance the effectiveness of community orders, principally probation and promote its credibility as an effective means of dealing with selected offenders.

1. Community Service Order (CSO)

CSO was introduced as a condition of probation in December 1996. CSO is an order of the court requiring an offender to perform unpaid work for a specific number of hours. It is currently meted out either as a stand alone order or as a condition of probation.

The objectives of CSO are 3-fold:

a. As a rehabilitative measure, CSO affords an offender positive experience through community work and this in turn fosters development of empathy and consideration for others. In the process, the offender gains meaningful social experiences, develops constructive social relationship skills, and regains self-esteem and confidence;
b. As a punishment, CSO deprives an offender of his/her leisure hours;
c. As a form of reparation, CSO provides the offender an opportunity to make amends for the wrongs /hurt caused by the offending behaviour through service to the community.

As at December 2000, 1449 probationers have been given between 40–240 hours of CSO as a condition of probation. The rate of completion to-date is 98%. An evaluation study on the effectiveness of CSO from the viewpoints of probationers, parents and CSO work agencies (August, 1998) showed that CSO has met with the objectives of the programme. Benefits cited by pprobationers, parents and CSO work agencies include:

a. Acquisition of new skills;
b. Improved intra-family relationship through better communication;
c. Greater respect for parents, elders in the family, and authority figures;
d. More useful at home, more responsible;
e. More considerate and mindful of others;
f. Tendency for parents to inquire on what transpired at the CSO agency thus increasing parent-child contact;
g. Parents generally pleased their children were constructively engaged;
h. CSO agencies generally found probationers' work good or at the very least, satisfactory.

Since 1999, we have been implementing **value-added CSO** targeting selected young offenders i.e. the non-academically inclined and those assessed to be lacking support and direction in life. Given probationers' overall responsiveness to the programme, we leveraged on the CSO obligation to perform unpaid work for specified hours by choosing placement options calculated to provide experiential learning & acquisition of trade and other marketable skills. Site supervisors with special trade

and other skills were engaged for value-added CSO projects.

More than 500 probationers have completed their CSO by participating in value-added CSO projects such as wheel-chair repairs, minor renovations and landscaping works, painting walls and murals, setting up of Visitor's Corner in children's home, overall improvement of eldercare facilities and eldercare management under the supervision of a state-registered nurse specialising in geriatric care. Two new 2 value added CSO programmes that are currently in force are the "Bizlink Project" which involves the creation of hand-made cards by probationers alongside people with physical disabilities. The cards are then sent to volunteers, schools and other keen supporters of the rehabilitation programme to sustain their motivation to support juvenile offenders.

Another programme that has come on stream is "Empowerment One" which involves the referral of youth who have difficulty benefiting from mainstream educational and vocational system to the Management Development Institute of Singapore to complete modular programmes which lead to a certification. The probationers are then channelled either to mainstream educational or vocational institution. Those who are not inclined towards either set up are placed on industry attachment to keep them economically engaged in a supportive work environment.

Besides using CSO as a platform for vocational development and skills acquisition, CSO placements are also designed to give ample opportunities for young offenders to be self-affirmed. We capitalise on self-enhancing moments to get probationers to process their experience, celebrate success for each well-completed tasks.

Parents are well-engaged in the whole CSO process. For many probationers, the visible output of their CSO and appreciation from parents and services users create powerful "teachable" moments that can be life altering.

In implementing the CSO programme, we strive to establish a nexus between offence committed and the type of community service an offender is required to perform. For cyber offenders, CSO placement includes a stint of volunteering in projects which demand constructive use of IT savvy-ness for a worthwhile cause e.g. developing start-up screens to warn against hacking and consequences of cyber crimes, developing parent education materials on supervising children in internet time, developing IT applications for life-long learning for the elderly or for disabled to plug into the info-tech world.

In 2000, the CSO placement process was fine-tuned to render the process itself a reasoning and rehabilitation tool to promote informed decision making, goal setting, shared responsibility and child participation in his/her CSO placement decisions. This move brings us closer to the principles of respect for the views of the child and child participation in matters concerning him/her espoused in the Convention on the Rights of the Child.

2. Strengthening of Probation Orders

A review of the use of probation orders in 1997 and implementation of the recommendations of the "Report on Strengthening Probation Orders" in January 1998 was a significant move in promoting probation as anything but a "soft option". The graded probation

system seeks to balance the need for punishment and deterrence and the hope for rehabilitation. We take into account the type of offences committed, severity of offences, type of offenders, circumstances of the case, likelihood of re-offending, the personal factors and type of programmes most appropriate in meeting all these considerations.

The strengthening of probation has resulted in better probation outcomes in terms of higher completion rate and lower recidivism over a 3-year post probation period.

3. Institutionalisation of core & elective programmes

Since 1998, a structured programme was devised for probationers to augment reporting and casework. Divided into core programmes i.e. those deemed essential and beneficial to every probationer or parent, and elective programmes which target specific risks and needs depending on the offender and type of offence, the programmes were intended to provide:

a. avenues and measures to benchmark the probationer's progress;
b. opportunities for probationers to work through lapses of bad behaviour;
c. avenues for constructive pursuit of leisure time; and
d. opportunities for specific problems to be addressed.

Core programme include group-based induction for new probationer, victim impact awareness, parents induction, parenting workshops and pre-termination session. Elective programmes in turn seek to address a variety of risks factors or individual needs of probationers which may undermine progress on probation if left unattended. Programmes targeting alcohol dependency, anger and aggression, secret society involvement, drugs misuse, and personal development programmes like making healthy life choices, study skills etc. are some examples.

4. Focused programmes to address specific risks

To minimise non-completion or re-offending for the more serious or high risk probation cases, specific programmes are put in place in collaboration with various government, non-government, people and the corporate sector:

a. Intensive quit smoking programmes for under-aged smoking
b. "Get it Straight — Facts on Alcohol Use and Misuse"
c. "Anti-relapse programme for substance abusers"
d. "Sex Offenders Treatment Programme"
e. "Lucent-SHINE" programme — a motivational programme with strong parent involvement and service learning components for Chinese speaking cases sponsored by Lucent Technology;
f. "POWER" programme for high risk Malay cases;
g. "360%" programme by Rotary Family Service Centre;
h. "Lawless to Lawplus";
i. Empowerment-One (E1).

5. Individualised Programme for Intellectually-disabled (ID) Offenders

In June 2000, a smart_id team (special management and resource team for intellectually disabled) was formed comprising specially trained personnel supported by an inter-disciplinary resource panel (psychologist, medical social workers, experts in various types of disabilities, disability service providers, lawyers etc.) to specialise in the preparation of pre-sentence reports for

intellectually-disabled (ID) offenders. The main objective was to have an individualised assessment and casework that would enhance community-based supervision of ID offenders. The move has resulted in the development of a protocol which requires investigating Probation Officers to exhaust all possible avenues of community-based rehabilitation of ID offenders.

6. Probation Service in Family Service Centres and Community Focal Points

Efforts to widen probation for young offenders bring in its wake, outreach of Probation Service into schools and the community and the intensification of programmes by offenders to benefit the community. To-date, several family service centres and community centres serve as venues for our individual and groupwork for offenders and their families. Many are ethnic or faith based organisations and therefore best placed to address cultural and other diversity:

a. 4PM-Mendaki Family Service Centre (FSC)
b. Rotary FSC
c. Young Women Muslim Association — Mendaki FSC
d. Pertapis Adolescent Centre (PADC)
e. Singapore Indian Development Centre (SINDA) FSC
f. 8 community centres

7. Employment Development Programmes

Work development programmes have been put in place to cater to out-of-school/ work young offenders who face difficulty staying in school and yet unable to find work. Income generating activities through collaborations with the disability sector e.g. Bizlink Centre, Metta Welfare Association and Movement for the Intellectually Disabled, Singapore (MINDS) are ways in which probationers help people with special needs and the elderly to remain competitive in meeting work targets to secure work contracts. The probationers in turn get the opportunity to develop positive work habits and skills within a sheltered work setting.

8. Condition of Residency

Currently 5 facilities are gazetted as probation hostels or "Approved Institutions" under the Probation of Offenders Act. They are:

For Males

a. Singapore Boys Hostel
b. Bukit Batok Hostel

For Females

c. Pertapis Women's & Girls' Centre
d. Muhammadiyah Home
e. Gracehaven

The Probation of Offenders Act restricts condition of residency on a probationer to no more than 12 months. Sections 6 & 7 of the Act further require a review report be submitted to the court after the expiry of 6 month's stay in a probation hostel for the purpose of helping the court to decide whether continued hostel stay is necessary.

Besides gazetted hostels, there are also numerous other facilities by voluntary welfare organisations which take in probationers who require a brief residential stay on a voluntary basis, to iron out family problems, work through personal or other crisis, or severe ties with negative associates. The availability of options such as these allows for wider use of probation in cases which would otherwise be assessed to be too unstable to benefit from community-based rehabilitation.

Institutionalisation of a young offender is considered only as a last resort after all else have failed and when it becomes sufficiently clear that committing a young offender to an institution is really in his/her best interest.

C. The Family as Basic Building Block of Society and Change Agent

In 2000, about 78% of the probation population were 18 years and below. Of these, a close 80% are either in the school or technical education system. 19% were from single parent.

The family is the basic building block of society. It is also one of the most important change agents for juvenile delinquents and young offenders. In our rehabilitative work with a young offender, we strive to build on the strengths of each family and its networks to effect positive changes in the young offender if not the whole family unit. Probation is used as an instrument of change to re-shape attitudes, values and behaviour. We work on amending flaws within the individual and family system to empower the probationer and family to sustain changes and build up resiliency.

The strengthening families framework used in community-based rehabilitation of offenders begin from the pre-sentence stage right to the end of probation. Family engagement and empowerment include:

a. negotiated action plan where probation is recommended or for resistant cases, the plan of action would have been discussed with the parents;
b. parental bond to exercise proper care and supervision;
c. attendance at core and elective programmes for parents e.g. parents induction, experiential parenting workshops ("Raising troubled Teens Without Raising Blood Pressure"), parents support groups, educational talks on gangs, substance abuse, prison visits (with their offender child);
d. other specialised services e.g. special sessions for parents of young sex offenders;
e. progress review with the parents and providing feedback on outcome of court reviews;
f. family conference, solution or problem-focused counselling and other sessions;
g. pre-termination programme for both probationer and parents.

Parents sessions factor in language the parents are most comfortable in. Ethnic dimensions, single parent status and the availability of a special needs child in the family unit are given due consideration in designing activities and programmes to fully engage parents in the rehabilitation process.

At each stage of the probation process, the roles and responsibilities of parents and what is expected of them are made clear. Disadvantaged families are given additional help to enhance their functioning. Casework in such instances may include sponsorship of a divorced or widowed parent to a computer course or back-to-work programmes.

D. The Many Helping Hands Approach to Community Rehabilitation

The effectiveness of probation, as a community-based rehabilitation programme, is enhanced only if there is community support and involvement. Community acceptance of offenders and their potential for change, understanding of the goals, principles and methods of

probation, and their commitment to support reintegration efforts cannot be overly emphasised.

Thus Probation Service has, since the 70s, and more so in recent years, actively engaged and involve the community in a variety of ways:

1. Volunteer Probation Officers: Community Probation Service

The Community Probation Service (CPS), introduced in June 1971, will be marking its 30th anniversary in October 2001. It is 350-member strong and has evolved into a well-developed volunteer programme. Volunteer Probation Officers (VPOs), complement the work of Probation Officers. By befriending and guiding probationers, VPOs help to steer young people back to the straight and constructive path. For many of our successful cases, VPOs make a real difference in re-shaping the lives of young offenders.

Sustaining, supporting and providing on-going training to keep volunteers continually challenged and motivated poses a grave challenge especially in this line of work where staff burn-out is a very real issue. To appeal to the diversity of interests, skills, talents and volunteer aspirations, CPS offers a wide scope of involvement to cater to VPOs' interests, skills and training received as well as the various stages of their volunteer life cycle. These include:

a. casework;
b. projects e.g. prepare pre-sentence reports, organise activities for probationers & parents individual or group basis;
c. time restriction checks;
d. committee & volunteer coordination; and
e. groupwork.

VPOs are currently involved in formulating annual work plans relating to activities for and by volunteers, organising VPO Skills Training Seminars aimed at sharpening skills in working with today's youth, and recently, even developing a guidebook to support VPOs in rehabilitation work with young offenders.

CPS is being positioned to accommodate group volunteering as well as corporate volunteerism.

2. School-Probation Service-Court Link (SPC) Link

The Schools-Probation Service-Court (SPC) Link was established in April 2000 to provide a school-focus to the probation programme given 80% of probationers 18 years of age and below are either in schools or the institute of technical education (ITE) centres. The SPC Link has been expanded to cover private schools and tuition centres attended by probation cases. The SPC Link has resulted in more streamlined information gathering processes, more opportunities for dialogue between the agencies before, during and after probation, and an integrated management of young offenders through close partnership with Operations Managers or other authorised persons from participating schools.

3. Community Links

Besides collaboration with schools, the Probation Service, has linked up with several voluntary welfare agencies, religious-based organisations, civic and self-help as well as theatre groups, sports bodies, grassroots organisation and the corporate sector to actively engage the "many helping hands" at the local and community level to enhance prospects of rehabilitation and reintegration of young offenders through engagement in

meaningful pursuits for physical, material and spiritual well being.

4. National Standards for the Probation of Offenders & their Rehabilitation in the Community

To reap maximum benefits of partnerships with families and the community, it is important that the probation investigation and supervision process be made transparent to all parties including the probationer and family. Transparency and accountability are twin goals that are especially relevant in the probation context where the balance of power is somewhat tilted against the offender.

As a stamp of commitment to service standards and best practice in probation work, Singapore launched the "National Standards for the Probation of Offenders and their Rehabilitation in the Community" in August 2000. The publication, put together jointly by MCDS and the Subordinate Courts, is a significant milestone in the development of the probation system in Singapore. The standards have been translated into Mandarin, Malay and Tamil to cater to persons more conversant in the vernacular languages.

When community-based orders is either just not viable whether from the viewpoint of a juvenile offender's needs or public safety, institutional orders are meted out. Even so, preference is on placing the juvenile in an open institution to allow him/her to continue on with mainstream education or employment. It is only when all else fail, that we go for a committal order in a secured facility.

Since July 1999, we have introduced a post-sentencing classification system to assess risk of violence, abscondence, self-harm and victimization among newly committed juvenile cases. The risk assessment forms a basis for caseworkers in the juvenile homes to conduct the needs assessments and formulate an individual care plan for the period of the boy's residence and during aftercare supervision. A detailed write-up on the treatment of juvenile in custody can be found in the folder.

V. CHALLENGES FOR THE FUTURE

As we transit into the new knowledge-based economy, and confront all that comes with it, the challenge is for us to continuously strive for a probation system which is cogent and transparent, structured in process and procedures, yet flexible and responsive to changing needs.

One of the strategic thrusts would be to continue to leverage on our national policy of continuous learning and ease of access to info-technology to better prepare probationers to carve job niches for themselves and reduce re-offending due to economic reasons.

Focus will also be on identifying partners for collaborative research, exchange of executive programmes and other partnerships both with local partners and overseas counterparts to continue to inject dynamism in our management, implementation and evaluation of the service both at the programmes as well as system level.

Identification of risk assessment and management tools and data management system that will help us to achieve better outcomes with less manpower, will be vital in Singapore's manpower scenario. No less important are managerial issues; of attracting and retaining suitably qualified staff, providing staff training and career development, and capacity

building of all the constituents of the juvenile justice system.

Widening the use of probation will invariably mean the challenge of having to meet and deal with more complex needs of individuals and families, prioritising responses to target "what works" and providing support and technical expertise to the many helping hands we engage in the rehabilitation of offenders. These issues have to be adequately dealt with at appropriate levels if we are to continue in our drive towards a more progressive, more humane and progressive treatment of young offenders in Singapore.

Appendix 1
Conditions and Duration of the 3 Grades of Probation

Item	Grades And Period of Probation		
	Administrative Probation (6 months to 1 year)	**Supervised Probation (1 to 2 years)**	**Intensive Probation (2 to 3 years)**
Conditions		In addition to the conditions which may be imposed for Administrative Probation, the following may be imposed:	In addition to the conditions which may be imposed for Administrative Probation and Supervised Probation, the following may be imposed:
	• To comply with time restrictions • To work faithfully at a suitable employment or faithfully pursue a course of study or vocational training that will equip the offender for employment • To make a good faith effort towards completion of his/her course of study or vocational training • To participate in or comply with the rehabilitation programme specified by either the court or the probation officer	• To maintain regular contact with the probation officer • To allow the probation officer to visit the offender at reasonable times at his home or workplace or any other place • Not to smoke • Not to consume alcohol • Not to associate with or be in the company of secret society members • Not to associate with or be in the company of persons who are engaged in criminal activities	• To reside for a specified period in an approved institution or home or hostel • To be electronically tagged

Item	Grades And Period of Probation		
	Administrative Probation (6 months to 1 year)	**Supervised Probation (1 to 2 years)**	**Intensive Probation (2 to 3 years)**
Conditions (continued)	• To attend and participate in anti-secret society talks or prison visits • To attend healthy lifestyle awareness programmes • To participate in community projects	• Not to patronise or visit pubs, discotheques, night-clubs, karaoke lounges, billiards saloons or video game arcades • To maintain a neat and proper appearance • If so ordered, to have secret society related tattoos removed by a medical practitioner within a specified period from the commencement date of the probation order • To refrain from any contact, direct or indirect, with the victim or any other person connected to the case • To submit to regular drug and/ or alcohol tests	
Recommended Hours of CSO	Not less than 40 hours	Not more than 120 hours	Between 120 to 240 hours

JUVENILE JUSTICE REFORM IN ENGLAND AND WALES

*Rob Allen**, ***

I think the first thing to say is that the reform of the youth justice system has been a big political priority in my country over the last 4 or 5 years. I don't know if any of you follow politics in the United Kingdom, but in 1997, we had a new government of the Labour Party, lead by Mr. Tony Blair, and this was after a long time in opposition, and in fact he made his reputation in part because of his polices on crime, and he invented a slogan or a saying, 'Tough on crime, tough on the causes of crime' which sums up the Labour Party approach. They think that we should be quite harsh on criminals, and punish them and so on. But they also recognize that the roots of criminality and crime lay in social conditions, in the depravation, poverty, bad housing and so on. And they are trying to change the way in which people live, in their lives, to make it less likely that they would be criminals too. There was a specific interest in the youth justice system. The government said, 'if you look at all the people in prison, all of the adults in prison, most of them started to commit the crimes when they were children.' So if we can make it that this part of the system works better, it would be a good, a very good investment because we would be reducing the number of adult offenders.

When Tony Blair went to the elections in 1997, he produced a little card with 5 pledges, 5 things that he said that the government were going to do. They were about reducing the waiting time for people going to hospitals, or reducing the number of children in classes, making class sizes in schools smaller, but one of them related to young offenders, it was about reducing the length of time it takes for young offenders to be detained with the youth justice system, to have a shorter time from arrest to sentence. For persistent young offenders, and you may say that it is a strange thing for a political party to say: "We are going to do this change" it seems like a rather minor thing, but it shows it has been politically a very important issue in our country. And I will say a little bit about why that is in a minute. What that has meant is that one of the first pieces of legislation, the first laws that the new Labour government brought in to be enacted.

With the Crime and Disorder Act there is another important act, the Youth Justice and Criminal Evidence Act. They brought it one year later in 1999 and I will be talking about that in my third lecture, because that introduces some very interesting new ways of dealing with first time offenders…offenders who appear in court for the first time, ways which borrow heavily from New Zealand and other systems. I will not talk about it today as I'm going to concentrate on measures which for the most part are in the Crime and Disorder Act.

What the Crime and Disorder Act tries to do is to put into effect a new philosophy. And it is a philosophy I suppose which could be summed up by the term 'early intervention'. It is based

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**This paper is a transcript of a lecture delivered by Mr. Allen at UNAFEI during the 118th International Training Course.

on an idea that we know what makes it likely that children will become offenders. We know the kinds of factors: these are children who have problems in their families, these are children who are failing at school, these are children who are at an early age get involved in drugs or alcohol misuse. These are children who get involved in gangs at an early age. So, in principle, if you can do something about those things, than you will make it less likely that they would continue to offend. So you need to intervene early, to do things, to try change the way which young people behave. Now I say that because that philosophy was really in contrast to the old philosophy.

The old system, if it had a philosophy, was something like this: "Well most children commit crime—a little bit of crime, and most of them as they get older they grow out of it." What is more, if they get involved in the system, that makes things worse. This philosophy was very much influenced by labeling theory, the idea that if negative labels are attached to somebody, they live up to them. If you give a dog a bad name then he would behave badly... that kind of idea. So the old philosophy was very much diversion, keeping people out of the system.

The new philosophy is to get a bit into the system. Now I think that might be something we want to come back to and discuss later because I think it is quite an important question—the general orientation that the juvenile justice system has. For my own view, the old system was really only saying, 'don't put people in to the criminal system, let's do things through social welfare through education, through other forms of intervention.' But the problem is that those things will not be done, those problems as well, those needs were not matched through the social welfare system. So it was left open for the criminal system to come and deal with, that is really what is happened in our country I think.

So there is a new philosophy and there is finally a new infrastructure, and by infrastructure I mean bodies and organizations and people to do things with young offenders. At the local level there are youth offending teams. So every area of the country has to have by law a youth offending team, and the Crime and Disorder Act law sets out who is in a youth offending team: a police officer, a prevention officer, somebody from the Health Department, a social worker, somebody from the Education Department. Some youth offending teams have additional people, some have maybe a youth recreation worker, some have somebody who knows about housing and accommodation. But the idea is it is a multidisciplinary, multi-agency approach. Because it is the only approach that can tackle the roots of offending behavior. So there are a hundred and fifty-four, I think, youth offending teams in England and Wales, and at the center there is the Youth Justice Board which is for the first time exercising leadership over the system. So what we now have in effect is a national system, locally delivered, so youth offending teams are local agencies but they are coordinated very much more strongly from the center than was previously the case.

I want to say a little more about the philosophy because the crime and disorder act introduced a new aim for the youth justice systems. So in the law the principal aim for all of the agencies and organizations in the system is preventing offending. It is not punishment, it is not education, it is not welfare, it is preventing offending. Now what that means in practice—well, unfortunately

the position is a bit complicated because we still have other aims and principles which are involved in the youth justice system. So under quite an old law, there is still a requirement that the youth court takes account of the welfare of children appearing before it, in the whole idea that having a separate youth court is based on that children have special needs, special welfare needs that need to be taken into consideration. There is also, a principle of proportionality. I am not sure how easy that one would be to translate, but the idea that intervention measure sentences particularly should be in proportion to the seriousness of the crime. So, in order to send anybody to prison, adults or juveniles, a court must be satisfied that the crime or the offence is so serious that no other penalty will do. And to qualify for a community sentence, the court has to be satisfied that the offence is serious enough.

We basically have in our law 3 kinds of sentences: custodial or prison sentences, community sentences, and at the bottom end-fines and charges which are less serious. The thing that divides them is the seriousness of the offence. And there is a 3rd principle which is growing in importance in England and Wales, but in fact throughout the United Kingdom, which is restorative justice. The government in the UK talk about the system trying to, well having three aims of instilling responsibility in young people, restoration paying back to the victim and reintegration, they call these the "3 R's." We have a joke in English, this won't work very well. People talk about the "3 R's" 'Reading' 'Writing' and 'Arithmetic' well, "writing" and "arithmetic" don't begin with the letter "r" so that's the joke bit. But anyway within the youth justice system there are these 3 words which begin with "r"; "Responsibility" "Restoration" and "Reintegration" which are all seen to be very important. The point I want to make is that each of these principles does not sit very comfortably with the others. If you are about "preventing offending", only about "preventing offending", you will do what is needed to prevent somebody offending whatever the seriousness of the crime, so say somebody has done a very minor crime—he has stolen something from a shop of very small value. But when investigations are made there are all sorts of problems in a child's home life and he is in a gang or is about to be, or he is sniffing solvents or involved in drinking too much. You would say well, he needs a lot of intervention because he is in a high risk situation, but we have the proportionality principle which says 'hang on a minute, he only stole a bag of sweets from the shop'. So how do you in your system manage to find a response which satisfies the proportionality requirement and preventing offending requirement?

If you read the Beijing Rules about the United Nation's Standards Minimum Rules for Juvenile Offenders they talk about sentences needing to take account of the offenders and circumstances of the offender, but we say in England it begs the question, 'which is the more important of these principals?'. You have this welfare principle, you have restorative justice so it is quite a complicated, messy picture and in addition to reducing delay it is not really a philosophy question but it has almost been exalted to the level of a philosophical requirement, the government are very keen that the system works quickly, partly because they had on their card—they will reduce delay, but they think that speed through the system is a very important factor.

I want to say just a word about the background to the changes. In 1996 there was an important report called "Misspent Youth" this is a bit of a pun, a bit of a joke in English because we refer to young people who behave badly as having a misspent youth. They have spent their young years badly. This report was ordered and it reviewed spending by government public spending and their report was saying that the money which is spent in the youth justice system was being spent very unwisely, and being wasted and so on. So the title "Misspent Youth" was a bit of a joke, obviously not a good joke. But this report was very responsible for this question—high lighting that question of delays, how long it takes to deal with youngsters in the system, it was very critical of the fact that lots of children went through the criminal justice system but nothing much was done to them. At the end they would get a fine or discharge. Nothing was done to change their behavior, and it was critical of the fact that nobody knew really what was happening in the youth justice system, that there was very little measurement of the impact, of interventions on children. And it wasn't really a system at all. So this report which was very critical, was a part of the reason that the reform programme was undertaken.

The second background report that was important was produced in 1997 by the inspectors at the prisons. In England we have an independent inspector who visits all of the prison establishments throughout the country, at the moment he is a man who used to be the general in the armed forces. And it is very interesting that he had never been in a prison, I think, before he took this job, but he was very critical of the conditions that he found in many of the prisons in England, and I think his view was that we do not treat people like this in an army, and there are very similar young men often in prison. Anyway he produced a report about the juvenile establishment, that was very highly critical and called for major reforms.

The third point isn't really a point because I am afraid to say that the British government has not really taken very much account of the United Nations Convention on the Rights of the Child. As you will know, the country has to submit reports every 5 years, I think. Last time the United Kingdom submitted the report it was criticized by the Commission on the Rights of the Child, particularly over the low age of criminal responsibility which is 10 years old, and the low age at which courts can send young offenders into custodial establishments. Well, both of those things continued to be the case. The government has not made any reforms, on account that, I am sad that the government would say, that it respects the spirit of the U. N. Convention, because although the age of criminal responsibility is 10, the way in which the criminal justice system deals with young children is very much modified from the way it deals with adults. It is not really the same sort of system at all.

What has been much more important in terms of the context for change in the youth justice system has been public and media concern about crime. I do not know if you remember this, but in 1993 there was a terrible case, in which two 10 year old boys murdered a small baby in Liverpool, which is a city in the north of England. It was a very shocking crime, and it was one of those 'how could they do such a terrible thing?'. Ever since then, it has been this way, juvenile crime is often in the news papers, and it is often said that there are children out of control, who

have committed lots of crimes and the system needs to get tougher, and what I am afraid of is that government ministers listen to that rather than the U. N. Convention on the Rights of the Child, and that is the political reality in which these things work.

The reformed youth justice system has 6 key objectives, and I want to just briefly start by saying why it's got these objectives The first of these questions spread through the system—why is that important, well, there are number of reasons for having a long delay between being arrested and being sentenced. It is obviously a time of uncertainty for a young person, it is a time of uncertainty perhaps for a victim if there is a trial; and maybe quite a lot of stress all around which should be kept at a minimum. There is a risk of course that some children will offend before the trial, if they are not locked up in an institution, if they are given bail. Then the longer they are in a period of uncertainty, there are some children who say 'well I am going to be sentenced for this crime anyway' so I might as well do a couple more. And it would be rolled up into one sentence, so they sometimes go on what we call a "spree," a number of crimes, because they think they have nothing to lose. Having a long time between being arrested and being sentenced, means that for some children, they simply have forgotten what it is that got them into trouble. These children often, if they are young, maybe do not go to school, they might not have a very strong sense of time, they live very much in the present, they can not remember what it was they did 3 or 4 or 5 months ago and obviously having a speedy, a speedy response means that you can take action early to try to do something about the offending, to try to take some measures quickly that would keep youngsters out of trouble.

The second key objective is about getting young offenders to take responsibility and by that the idea is that the government criticizes the previous system for being too lenient in the sense that, they called the white paper, one of the white papers that proceeded the legislation, "No More Excuses." They felt the system was making too many excuses for children who commit crimes, or it wasn't their fault, it was their parent's fault, or it was a school's fault or society's fault. So the idea of a new system is that it is a proper level of responsibility or accountability. If children do realize what effect they have on their victim, they are less likely to offend perhaps. And of course society demands increasingly that children do accept some proper level of responsibility for what they have done. And there will be those of you who, with young offenders, think that a lot of young offenders try to not take responsibility I think it was an American sociologist criminologist Maxwell, who talked about techniques of "neutralization". He used this phrase to describe the way which offenders, if you talk to them they would say that "Well that wasn't my fault, he was asking for it," "he had insurance, it was so and so's idea, I was just going along with him" all of these things will be familiar to prevention officers and social workers every day. So the idea is that a proper level of accountability and responsibility for young offenders is needed in the system. Third, the idea of tackling risk factors, as I had said, lots of lots of research has identified the general factors that suggest that somebody will become an offender, it is true that there are a lot of youngsters who will get involved in minor crimes maybe once or twice, as an experimentation. But I am talking about factors that predict more chronically persistent or serious delinquency, and those factors are related as I said to the families, schools and so

on. But obviously the presiding factors will depend on the individual. So the idea is that the system should have in place, at the local level, the resources to be able to tackle both individual risk factors for young offenders who are coming to the system.

The fourth objective is "proportional punishment." I mentioned the question of proportionality, obviously it is important that the general public have confidence in the system, that it does deliver something in the way of punishment. Research that the government has conducted shows that the youth court was the part of the criminal justice system that the general public had least confidence in. They were not happy with the way the youth court was operated. Now in fact the public are not very well informed about the facts of the youth court or any other courts actually. People tend to underestimate the severity of the system and part of my work to try to change public attitudes to punishment is simply to try to get the public better informed about the facts and evidence because at the moment we have a public who is very ignorant in our country, about how the current system works. But some levels of proportional punishment are obviously important.

Fifth, reparation. I mentioned this question of getting young people to take responsibility. Obviously reparation provides a prospect of a better deal for the victim of juvenile crime. Certainly in our system, both for adults and juveniles, the victim has not been a very important player, until very recently, it has been a very minor consideration. But the idea that juveniles who commit a crime should be paying back in someway, has become an important thing, and the final objective is about reinforcing and strengthening parental responsibility, the responsibility the parents have for the children. As you will know the research shows that poor parenting, parents who are inconsistent—one minute very strict, the next minute very relaxed with their children—tend to produce children who do not really know when they could behave well, when they could behave badly. So providing some guidance, support and also some threat to parents to try and help them to become more effective parents is an important objective.

OK, first of the objectives, "Speed through the system". In 1997, the average time from arrest to sentence was 142 days, so over 4 and half months, and the government, as I said, wanted to have that time reduced. That figure is now 83 days, so there has been a lot of progress made in reducing delay. In fact the vast majority of cases now are done much more quickly than not. In our system, the most serious cases can be sent to the Crown Court so cases of murdering another, grave crimes, can be transferred to be done in a more serious adult court, and those cases can take a very long time.

I mentioned those 2 boys who murdered the baby in Liverpool, they were tried one year after they had been arrested. That is exceptional but there will often be 6 or 7-month delays in those Crown Court cases. What has been achieved in the Youth Justice Board has been an important part in achieving this end to what we call "judgment culture." If you had come to Britain 4 or 5 years ago and sat in the youth court which doesn't look unlike this building; Actually, we could arrange to have this youth court and you would sit in the back of the youth court and watch what was going on, you would not see a case sentenced, you would see lot of cases coming through and magistrates would say we will put it off for 3 weeks, because either the legal

representatives, or the social worker would say, or the prosecutor would say, 'we are not ready to proceed with this case'. So that was a culture of simply putting off and putting off, and sometimes the prosecutor would say: "Oh, this boy has committed another crime since then" and we want to deal with these crimes together, so we will put it off and put it off. That has changed and now there is much more emphasis by the police, by the crown prosecution service the independent prosecutors, by the courts, in terms of getting these cases dealt with quickly. And what was meant is that priority is given by those agencies to juvenile cases. You might say, well if priority is given to juvenile cases then less priority is given to adult cases. And I think the government say "yes that is right, because if we get it right with juveniles we will be saving ourselves problems in the future".

This emphasis on speed through the system has clashed, has been in conflict with some other priorities and particularly with "restorative justice" it is difficult to go quickly. If you want the system to involve the victim of the crime, then you need to take time with the victim. We had an example where, when I was working for my last organization, "NACRO," the National Association for the Care and Resettlement of Offenders, we were running a programme which provided reparation orders which is a new sentence I will talk a little bit about later. One of our workers was asked by the court when there was an opportunity for the victim to be involved when they wanted reparation directly, wanted the offender to do something to them, and the worker said: well I don't know we hadn't had chance to talk to them yet. So the court said: 'Can't you phone up them now and ask them'; and our worker said: "That is not very good practice to ring up and say: 'Hello, I heard you have been a victim of a crime. Would you like the offender to come around and clean up your garden? Or do something for you? That is not the right way to do these things. And if you do it the victim will say 'no! I want to know more I need time to think about it'. The result is that the victims are not involved as much, because of the priority attached to speed the system.

Taking responsibility, that was the second of the objectives, but one of the elements was that the government reacted to remove what was the legal doctrine called *doli incapax*, which would be interesting for lawyers but perhaps not so much for others here. Until 1998, for children under the age of 14, I said the age of criminal responsibility is 10 but until 1998 there was a safe guard, there was a protection, the prosecution had to prove that the child knew what they were doing was seriously wrong, before they could be convicted, because obviously the child of 10, 11, 12 might not really know what they were doing. But the government took a rather dim view of that, and said well they are old enough to know what is right and wrong, at the age of 10, so we will scrub that protection, we will take away that safe guard. So when the United Kingdom reports to the United Nations Commission on the Rights of the Child next year they will have to say that, I am afraid, we have not risen the age of criminal responsibility, in fact we have removed one of the safeguards we had, in terms of *doli incapax*. I expect that the United Nations Commission on the Rights of the Child will not be very impressed with that particular change.

More important is a new scheme for reprimands and final warnings, and in the printed version of the paper there is

quite a detailed appendix which describes the reprimand and final warnings scheme. Before that was introduced we had a system that was called police cautioning. The police would give offenders a caution, which was like a warning but that system was not a statutory system. That was just a practice that was grown up by the police, and consequently there was a lot of inconsistency about how it was done. There were a lot of stories, whether they were true or not, about some children who had 5 or 6 cautions, it was supposed to be only used once. But there are stories that there are some young people who offended and have got cautions and they offended again, 2 or 3 weeks later and they got another caution. But in fact there was only a very small number but this became one of those things that happened, the public got the idea that all these children are being let off. Well in fact cautioning—police cautions—really grew during that year when I was talking about when labeling theory was influential. In fact, 10–15 years ago, people tried to caution a lot of children, because the aim was to keep them out of the system. Anyway the current system is much more rigid, much more laid down in the law. So, basically, at first, when you commit a crime and if it is a minor offence, say stealing from a shop, which is quite common among children, you are likely to get a reprimand and that means you are warned, your parents come to the police station, a record is made of that, but no further action is taken. If your first offence is a serious one, you can be prosecuted immediately, and if it is a medium one you can get a final warning immediately. If you already had a reprimand, and you committed an offence, then you can have a final warning and that is a most serious matter because after a final warning you get no more chances. What happens now is that in a lot of cases, as well as simply being warned by police officers, about your future behavior, you are actually sent to the youth offending team who make an assessment of your case. You maybe get involved in some kind of programme, to try to improve the way you behave. In some parts of the country we have introduced restorative conferencing at this stage of the process, so that if you have maybe stolen something from somebody, stolen a bicycle from somebody, you get a final warning. If you are in a part of the country which operates this system a meeting might be called, in which the person, a victim whose bicycle was stolen comes, the child comes, the parent comes. The child says they are sorry and offers to do something to put that right. And if they do that, that is the end of the matter. In other areas they maybe assess the child's needs, and if he has some problems, then maybe some effort to do some work is done to try improve it. So the final warning is the first stage in the system where action is taken to try to prevent future offending.

What the Crime and Disorder Act also does is put limits on the youths getting conditional discharges. This is one of the sentences that is available in the youth court and basically it means that nothing will happen to you providing that you stay out of trouble for the period of the discharge. So if you get a conditional discharge, for 1 year, you don't have to do anything, all you have to do is stay out of trouble, if you commit another crime, you can be sentenced both for the new crime and for the old crime. So it is a kind of chance, and the government said, well if we want these young offenders to take responsibility it does not seem very sensible to go all the way to the court. The court says we are giving you another chance. So there are limits on the way the

court can use this. If you have a final warning in the previous 2 years you cannot receive a conditional discharge. What that means in practice is that you can receive one of the orders.

An important part of getting young offenders to take responsibility is through the sentences that the youth court can impose. I thought it might be useful just to say a word about the range of sentences that are available in youth courts in England and Wales. When the government reformed the youth justice system it did not repeal all the existing legislation and change it completely. It just added a new layer on. So, we have a lot of different sentences, some of which are very similar to other ones. Some people from other countries think that it is a very strange way to behave.

I mentioned the system in Scotland, and I just say one thing about that. They have a tribunal court the children's hearing or children's panel, which deals with most cases of juvenile offenders in Scotland, but they only have one effective sentence of supervision. They can make the supervision requirement on the juvenile, and they can introduce, within the box of a supervision requirement, anything they think needs to be done. That, I think, is the approach in many countries.

In England and Wales we have developed all these different kinds of specific court orders. The person who asks the question. "Will the young people understand the system" I think it is unlikely that many young people properly understand the youth justice system, I think many of the people who work in it struggle to understand it, because it is quite complicated, all these range of options. On the left we have discharges, I mentioned, the conditional discharge, there is also the absolute discharge, which is very rarely used for cases when somebody is guilty but it is a very, very minor crime and it is often technical, technically an offence. Fines, in England and Wales parents can be made responsible for paying the fines of juveniles, and in fact in the cases of under 16s, children under 16—parents should be made liable for paying fines. There are also things called "bind overs". Parents can be bound over to take proper care and control of the child. A bind over is like a suspended fine, you are bound over for some money, 100 pounds say. If the child behaves badly you can forfeit or lose that money. There is a compensation order available. Compensation orders are supposed to be available throughout the system, for juveniles and adults. The reparation order effectively allowed the court to order the juvenile to do unpaid work, either for the benefit of the community, or for the individual victim of the crime. We have, for about 30 years, had the sentence of community service for adults and young people down to the age of 16, and in some respects the reparation order is a kind of junior version of community service, or the possibility of paying back something to the specific victim is a distinctive part of reparation orders.

Community penalties, community sentences are sentences for which the court has to be satisfied are offences serious enough to need a sentence like this and at the top there is a new sentence, the action plan order, which is a 3 months intensive sentence designed to try and really shake the youngsters lifestyle, so they change the way they behave. So the member of the youth offending team will work very hard for 3 months to try to get to the bottom of why the youngsters are committing the crime and to try to do something about it. I

mentioned that there were limits on the courts' use of conditional discharges. Up to 3 or 4 years ago, a large number of young offenders got conditional discharges, now they either get a reparation order or an action plan order. And many of them, when is it introduced, will get a referral order. The government's idea that we will intervene earlier and we will do more to change the behavior, is really enshrined in these sentences. The other sentences on the right hand column are ones that have been available for a while. The Crime and Disorder Act has made some changes to them. The attendant center, that is a sentence that requires juveniles to go on Saturday afternoon for 2 or 3 hours at a time for a period of up to 36 hours, they are organized by police officers, And the idea is they get 3 or 4 hours of instruction and discipline from police officers, there is a supervision order, and supervision order plus requirements, so you can head straight for a supervision order which places you under the supervision of a member of the youth offending team or requirements, conditions can be added to the supervision order. Requirements that you refrain, that you do not do certain things, that you do not go to certain places, you do not talk to certain people, they may be conditions that you actually do certain things, you undertake certain activities designed to try keep you out of trouble, whatever that is. Counseling, group work, therapeutic work, sport and leisure activities, the supervision order is a main way in which youth offending teams construct a programme of measures to try to meet the needs of the offender to stop them getting in trouble, for the more serious offenders.

Three orders only are available for 16 and 17 year olds in the youth court: the community rehabilitation order, the community punishment order, and community punishment and rehabilitation order. You may not recognize those terms, I don't really recognize them, because, they have only been the names for orders since April I think. The community rehabilitation order used to be known as a prevention order. The government decided that people did not understand what prevention meant. So they decided to call the prevention order a community rehabilitation order, they decided that people did not understand what community service was so they decided to call it community punishment and there is one other which used to combine, prevention and community service, so that is now a community punishment and rehabilitation order. The government were going to change the name prevention service to community but they decided not to do that, so we still have prevention service in England and Wales. There was a lot of debate about the name of this service.

I want to take just a minute to say a little about the prevention service in our country, because obviously it is mostly important for adult offenders, but they do play an important part, they are one of the members of youth offending teams, and particularly for 16 and 17 year olds. In the youth court, prevention officers play an important role. The prevention service has undergone a lot of changes over the last 2 or 3 years, it is not just a youth justice system that has been reformed, the government has undertaken to arrange quite major changes to public services over the last 3–4 years, and as some will know the government of Tony Blair was reelected a couple weeks ago and he has promised to do even more to modernize public services. So there will be even more changes, but there are 3 main changes to the prevention service which are worthy

of perhaps mentioning, the first of which called the modernization programme. Until April, there were about 50 prevention services around the country, which were in a way independent and local. They reported to local communities. That is all changed now, we have a national prevention service, so there is one person who is appointed by the government, who is in charge of the whole prevention service. So it is like a prison service, in that respect, so if something goes wrong maybe somebody who is on prevention, does some terrible act, the minister can call one person and say: what is going on here? I think that is a part of a desire to have a much more centralized nationalized service to introduce more consistent programmes and so on.

The second change has been a much greater emphasis on enforcement of orders. Research was under taken, which shows that of those prevention officers who were supposed to take offenders back to court if they were not compliant with the orders, they were not doing as much as they should, so some offenders were getting away with not attending and not participating, and the government rightly said it is no good, it is not good for public confidence, it is not good for the offenders, so there is much more emphasis now on enforcement, but I think it is an example of the pendulum swinging the other way. And we may end up with prevention officers who are more like prevention officers in the United States, where the job is really only about enforcement of orders, and they carry guns. The slogan of one prevention service, I think in California is, "Surveil them, nail them, jail them". It means "watch them", "wait until they go the wrong way" and then "jail them" so that is not a vision of prevention service that I particularly look for. So I hope that is not the way we are going.

The third change of the prevention service is this— a major emphasis on what is called 'effective practice'. It is known as the "what works initiative" and this is based loosely on the North American system—mainly research that shows that certain programmes with offenders can produce good results in terms of reducing re-offending. This is a big deal for the prevention service, there is a lot of money and effort and training going on. These programmes which are quite psychological, there are lot more psychologists in the prevention service— if you want to get on in the UK in the criminal justice system become a psychologist at the moment. For my taste these programmes are too psychological, they are about trying to change the way offenders think and behave. And they sometimes do not take enough account of the environment in which offenders are living. So you can have a very good scheme for teaching an offender, the consequences of their actions and to know what is the right thing to do and what is the wrong thing to do. But if that youngster has no proper place to live, is sleeping on the floor of a friend's house, has no income, is being offered drugs, then those programmes are not going to work. So you need to make sure that you are attacking the problem in a whole way. But I think the idea of doing effective things, rather than doing the ineffective is a very good idea.

One of the other ways in which the changes are trying to tackle the question of responsibility is by a new custodial sentence. It is called the Detention and Training Order. It can last between 4 months and 24 months on the whole and the idea is that it is served half in detention and half under supervision in

the community. A lot of sentences for juveniles and adults have had elements of supervision after release, but I have to say in practice this has always been the part of the system that has been very weakly implemented, when somebody comes out of prison, they don't get a lot of supervision or help. Another problem in our country was that, people who work in custodial establishments, such as prison officers or social workers were on a really very different track from people who worked in the community. Often they would be working with the same young people, there was very little in the way of joint work or planning. The idea of the Detention and Training Order is that it is a similar sentence, it is one sentence without joining. So within a few days of a young person getting the detention training order there is a planning meeting held at the institution which involves the youth offending team and with the plan for what to do with the young person lasts through the sentence in a secure detention part and also in the community part. How well that is happening in practice I do not know.

One of the problems with the training order is that it appeared to be very attractive to the sentencers, so the number of young people who are receiving this sentence has grown. Because in theory it is obviously a much better idea, if are going to send somebody to custody, it is much better, and you plan their release from day one, and when they are released back to the community, there is a place at school, there a place to stay, some supervision with their family and all of that. And of course if you are in a court, if you are a magistrate, that appears very attractive, because the Youth Justice Board says we are making these institutions much better than they used to be. And there is some progress being made, that of course makes the sentence attractive, and it is an age-old problem for penal reform and change how you improve conditions in custody without making custody so attractive that more people go and you can not continue the improvement, because you have too much crowding, and too many people, and trying to get out from that circle is quite important.

The other custodial sentence that is still available is long-term detention for those youngsters who commit grievous crimes. I mentioned two boys that were convicted of murdering the baby in Liverpool. They were 11 by the time they were sentenced. They received what is an automatic sentence of detention "at her majesty's pleasure" which is effectively a life sentence, it does not mean that they spend their whole lives locked up, and in fact there has been a great deal of litigation, and a great deal of public debate about precisely how long these boys should serve. I think this week the parole board, which is a body that decides when long term prisoners should be released is considering the case of these two boys. They will probably be given new identities when they are released, and there is some talk that they may be given new lives in other parts of the world. I do not know but that's by the by. It shows how much public concern there has been about this case. But there are long-term detentions for other grievous crimes and the law, I think, compared with other systems around the world is very tough in our country for youngsters who commit serious crimes. By grievous crimes we mean any crime broadly that in the case of the adult carries 14 years imprisonment or more. In fact, 1 or 2 other offences as well, but that means that an offence like robbery, which carries the maximum life imprisonment, you can as a juvenile get any thing up to life imprisonment for a robbery. Robbery

obviously covers a huge range of different kinds of crimes, from armed robbery where people are hurt, through to somebody taking something off from somebody on the street. In London we have had a real spate of theft of mobile telephones. I don't know if you have this problem in Japan. I don't think so, because it seems that you do not really have crime here in Japan, but you have a lot of mobile phones. In Great Britain, in the cities, there has been a big problem of children stealing mobile phones from each other and sometimes threatening each other. Now if the are caught they can be charged. If they said, "give me your mobile phone or I will hit you," that could be robbery and so, some of these boys are getting quite long sentences for that. So, that's a little about custodial sentences,

Moving back to the framework that I talked about, we went to the third of the six objectives. I have already talked about the final warning intervention. The idea when someone gets a final warning it isn't just a police officer saying don't you do that again. It is actually referred to the youth offending team, who say, who look at the case and say, "right, is this youngster going to school, how are they doing with their mother and father, is there any problem with drink or drugs?" They are actually making some kind of assessment, and if necessary doing something. Maybe it is not a great deal because remember the proportionality question, we are not talking about great intervention here, but we might be talking about a number of sessions designed to try to improve the way the boy thinks about going to school, or control his temper, or some advice about drinking and drugs and health education. At least there is some intervention.

Obviously, multidisciplinary youth offending teams in themselves are a way of tackling the risk factors, by having somebody from the Education Department, and somebody from the Health Department, that provides the opportunity for the experts from those fields to be able to try and ensure that the youngsters are getting the services that they need. Now this leads into the question of whether those services were provided directly by youth offending teams, and this is an issue I think that's coming up in a workshop group that I will be involved in. Certainly my view is that if a child has a right to be educated, which they do until 16 in our country, then they don't lose that right by being an offender. What we do now is that a lot of offenders are out of school, they maybe don't want to go, they maybe have been excluded from the school, but it is no reason for the schools to wash their hands of their responsibility for these children, and by having somebody from the Education Department in the youth offending team to teach the kids to read, write or geography or science or whatever, they are there to get a child a place in school, where they can properly learn those things. Similarly the person from the Health Department isn't there necessarily to provide psychiatric intervention, they are there to get that service. So that is an important distinction. Of course those people may do some direct work with the individuals, but I think it is important there are gateways to the mainstream services for these boys and girls, rather than setting up some shadow service which would be very much worse—that is the idea anyway.

The third item on here is ASSET. ASSET is the name of the assessment tool or assessment form that the Youth Justice Board has developed. It is part of an initiative which YJB has created, but

basically the exception is that ASSET is used on all young offenders or certainly all that go to court. It is a bit too time consuming to undertake at the final warning stage, so we are developing a smaller version of it. But the idea is that there is a systematic assessment of the needs and the risks that an individual poses. There is a particular concern about drug misuse in our country, a lot of young people misuse drugs. Fortunately it's mostly cannabis, marijuana, soft drugs, there are a small number who use hard drugs, amphetamines or ecstasy or there are smaller numbers still who become involved with cocaine or heroine, highly addictive opiates and so on. Obviously involvement with drugs very often means a link with crime because needing to pay for drugs means you need to have money, and youngsters will often not have money. There is also the problem with a lot of youngsters who drink too much alcohol, there are a lot of alcoholic drinks which seem to be targeted at young people particularly. The idea is that every youth offending team will from this year have a worker who will be responsible for trying to ensure that youngsters are screened, are assessed specifically for this question of drugs misuse, and where appropriate, some services are put in place to deal with that. New projects, effective practice, better detention facilities, these are all part of a package of reforms to try to tackle risk factors, that the Youth Justice Board is doing quite a lot about.

Perhaps I have said enough about the whole proportionality question, but one thing again I will mention now are intensive supervisions and surveys. As programmes these are new kinds of projects that will be established this year by the Youth Justice Board in local areas. I mentioned that the conditions in custodial establishments, we are trying to improve them, they are still really not very adequate, the reconviction rates for young people coming out of custodial establishments are about 85% reconvicted within 2 years. So more than 8 out of 10, nearly 9 out of 10, which is very, very high. We, the Youth Justice Board, also did some research which found that there were some young people of any age who were being sentenced or remanded in custody, because there was nothing in the local area that provided intensive enough supervision.

Even with the youth offending teams and infrastructure I have talked about, there are some young people who need very much closer supervision and monitoring. The intensive supervision surveillance scheme will provide 2 things: very intensive programmes, this may provide actual education, this will be for children who can't for whatever reason go to local schools, so this scheme may well actually provide direction during the day, education during the day, they will have a restorative component, they will work on offending behavior, but they will also have a surveillance component, that will comprise what is called intelligence-lead policing, so the police will keep a very close watch on those individuals who are subjected to this. Or it will be supplied with electronic monitoring, so the young offenders will wear a bracelet on their ankle which emits an electronic signal and this is a way of enforcing curfews. So if the youngster agrees to the scheme and part of the rules are he has to be at home from 7o'clock every week day, then the electronic bracelet is the way of knowing whether he will keep that curfew. We have also another technological system called voice verification, in which an imprint of the voice of the young person is taken, and then they are phoned at home, and they have to answer some questions which are different every day. And you

know where the person you are talking to is at the time you want. That is, in a way, a better way of enforcing curfews, because it does not require wearing the bracelet on the ankle. It also enables you to monitor if the young person is wherever they are supposed to be during the day, at school, keeping appointments with so and so at work, going to see a psychologist or whatever, it provides a way of keeping track of where the young offender is. The idea is, this is a very close monitoring and supervision, very likely to be more criticized, that question about whether practitioners support these changes, some practitioners do not like this so much. My argument is if I had a choice of going to prison or having an electronic tag, I would have an electronic bracelet. So why should I not allow this choice to others in that position, and as long as it is used on people who would go to prison, then it is fine, the problem with these intensive alternatives is that they are sometimes not used to replace the prison population, but to supplement the community treatment population, so you do not reduce the prisoners. That is something we will have to watch very closely.

The final objective was about parenting and parental responsibility, again this has been a slightly controversial subject, because the idea that parents should be, have to account for offences committed by their children, some people find in conflict with basic principles of law. Basically the Crime and Disorder Act allows the court to place a parenting order on parents. And the parenting order has 2 components and 2 elements, first of all, it requires the parents to take proper care and control of the child, and secondly it can require the parents to participate in a course of guidance, a session designed to try to improve their parenting skills, and what is controversial about this is that they can be required to do this, and if they do not participate, they can be fined, and if they don't pay the fine, they could automatically be imprisoned. It has never happened, but it is a possibility in theory. I was initially quite against forcing parents to do this, I think there is a lot to be said for developing these courses on a voluntary basis, and trying to provide support and help to parents, but I have changed my mind because I have talked to some parents and I have seen evidence that some parents say that they would not have attended if they had not been forced by the court and they have found the classes very helpful. The Youth Justice Board has been funding some projects, parenting projects, and we have a little bit of evidence about how they are working. There are 3 final orders which have some relevancy to parental responsibility, the first—local child curfews—this was a measure that was introduced in the Crime and Disorder Act which allowed the police and the local government to apply to central government to institute a local curfew in a particular area and that would mean that anybody under the age of 18 would not be allowed out the homes on the street after the certain time unless they are accompanied by an adult. Now, as far as I know there have not been any of these yet implemented. I think I made a mistake with the ages initially, the local curfew was introduced for children under the age of 10, and the government has recently extended it not to 18 but to 16, so it would be interesting to see whether these are used, and if they have any impact. They are used in certain cities in the United States, they have been used in Scotland, and some people say that have had a great impact on public order in terms of crimes committed by young people. Other people said that it is a great infringement into civil liberty, not being able to leave your house at certain times.

So we have that discussion to come.

Obviously the link with parents is that if one of these schemes is in operation and the child is found to be out after the curfew, then the parents will be summoned to the police station and required to make some kind of undertaking that this would not happen, but if it happens repeatedly the expectation is that there would be an investigation by the welfare authority into the possibility of proceedings if the child is not being properly supervised Similarly the child safety order was an order that was introduced for children in respect of children under the age of 10. I said that the age of criminal responsibility was 10, but obviously there are children under 10 who do things that if they are over 10 would be described as crimes I guess, or at least they take things from shops, they behave badly in certain ways, the government have introduced an order which the youth offending team or the social services departments can apply for to the court, in these circumstances, and it allows some work, some measures, some programmes to be introduced to even these younger age groups of under 10 year old children. Now there have only been a very small number of these orders made, because in practice there are other measures available under the child welfare law to deal with these problems. So in a way I think it is unnecessary.

Finally, and again this has been quite controversial in our country, the government has introduced something called an antisocial behavior order, and this is really a kind of legal injunction where somebody is behaving badly, where they are, I think the term in law is "causing alarm harassment or distress to somebody," perhaps they are up till late at night making a lot of noise, over and over again, and they won't let any body sleep, they might be out drunk every night in public housing, threatening people as they go home, and everything has been done to change that, and application can be made for an antisocial behavior order which would allow the court to say, 'right you must not go to this place, we are making the legal rules that you stay away from this particular public housing area, or this particular part of town, between these hours or this period of time.' This has been used on a number of juveniles in Britain, particularly juveniles who have committed quite a lot of crimes. But there has not been evidence to be able to use criminal law to convict them, often they might be serious things, and everybody seems to know that it is a particular boy who was doing all of this, but nobody, perhaps they are too frightened to give evidence, perhaps nobody really is prepared to say or whatever. What it means is the injunction is broken if this person continues to behave that way and can then be sentenced in the case of adult custody and in the case of juveniles automatically put in secure accommodation. It is controversial that this law is framed in a very general kind of way, and there are some human rights lawyers who do not like the way it is drafted in such a general way which allows such a wide range of behavior, to be thrown into an encompassment of measures of somebody losing their liberty. And obviously there are implications for parents of children who are made subject of those orders.

In conclusion, I hope what I have described is a quite wide ranging reform. But really the implementation in practice is the key to whether it will work or not. There is more change on the way, because there is this important change to how the first time offenders in court adapt to it.

YOUTH JUSTICE BOARD INITIATIVES IN REDUCING OFFENDING

*Rob Allen**, ***

In my first lecture I hope I gave a picture of the system a little bit in England and changes we have had. Today I am concentrating on the role that the Youth Justice Board plays in my country. The Youth Justice Board you will remember was set up by the Crime and Disorder Act, so it has only been going for about just over two years. And I am going to say a little bit about the work of the Youth Justice Board and particular initiatives that have been undertaken to try to reduce youth crime.

What is the Youth Justice Board? Well, in law it is an executive, non-departmental public body. Now that is not very clear, I think. But it means it is set up by the government, but is not part of the government, it does not belong to a government department. But it is one step removed from the government, I don't know if you have these kind of bodies in your countries, but in England we have a number. An example of another body like this would be the parole board in our country. It is set up by the government but it is not run by the government. It has some independence. And it reports to a minister that is set up by the Home Office. In England the government department is called the Home Office, which is, I guess, like the Ministry of Justice, and the minister is called the Home Secretary. We have funny words in England for describing these things. Each government department has a chief civil servant, and that is called the permanent secretary, and I know sometimes when this is translated by interpreters they translate it as "eternal typist" for permanent secretary. But secretary means two things in English, someone who types but also someone who is at the very top. So we have the home secretary, who I do not think does typing.

It is set up by the Home Office, and the Board consists of 12 members, one chairman, a man called Lord Warner, who is in the House of Lords, which is the second chamber in our parliament, and there are eleven other members, and I am one of these members. And they have been selected, so I applied to become a member, there was an advertisement in the newspapers, anybody could apply, because we have special rules for appointments to bodies like this to prevent the government simply appointing their friends, otherwise they would just put their friends on these. I think probably they are mostly the government's friends anyway.

My background is in non-governmental organizations looking at the government policy and research. There is on the Board a chief constable of policing, a police officer, there is a magistrate, there is someone who has been a chief probation officer, someone who has been a director of social services, there is a doctor, a psychiatrist who is an expert on adolescent mental health. There is only one person who is a member of the Board

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who has not previously worked in the youth justice system and he is a man who was formerly an editor of a newspaper, the editor of the Times newspaper, and I think he was appointed because he knows about the media and public relations, and this is very important, to be able to communicate the efforts that are being made by the Youth Justice Board and by government and by youth offending teams to try to improve public confidence, because I think I said before public confidence in the system is rather low, so we need to raise that. So there are 12 members but there is also an executive staff, there is a chief executive of the Board and a staff of almost 100 staff who are involved in doing the work of the Board.

It has a number of roles which are laid down in statute, in the law. It has a role of advising the home secretary, advising the government about the youth justice system and how well it is doing in meeting its objective of preventing offending by young people, and it also has a specific role in advising about standards, and we will talk a little bit later in this lecture. In England we have a system of national standards for supervision of offenders, and these are introduced and revised every so often, and the Youth Justice Board has a role in advising what the standards should be. It has a role in monitoring the operation of the youth justice system. The youth courts, how they are working, the youth offending teams, how they are working, and also the secure accommodation estates, the detention facilities. And it has a role thirdly in developing best practice, in identifying and disseminating what works in dealing with young offenders, so undertaking and funding research, and then funding programmes and projects which try to put the research into action. So it is not simply about doing the research and saying, well, this is what works, it is about developing programmes on the ground to try to prevent offending.

There are two more important roles that the Board has taken on. The first is to do with the funding of youth offending teams. Most of the funds that pay for the members of the youth offending teams come from local services. So you will remember I said the youth offending teams comprise of a police officer, a social worker, a probation officer, somebody from health, somebody from education, and there is a manager of the team at the local level. Now the funds that pay for, the money that pays for these people comes from these agencies from their local budgets. But the Youth Justice Board does have some additional funds that it gives out to youth offending teams to top up that money, and that enables the Youth Justice Board to exercise some control, because we can say, you can have this money provided that you spend it on this. Because this is a system which, although it is centrally directed by the Youth Justice Board, it is locally implemented. One of the dangers with that system is that the local agencies do what they want to do, they don't do what we want to do. So, having some funding allows some leverage, some ability to control and target the work of the offending teams particularly, and I will talk about how we do that later. Also this role in funding the secure estates, the detention facilities, the Youth Justice Board is responsible for all, now, of the facilities, we have taken over the budgets that were previously held by the prison service and by other parts of the system, and we administer that.

So, in summary, the Youth Justice Board provides a leadership role in the youth justice system. Before the Youth

Justice Board was created there was no real focus, or leadership within the youth justice system, and this was one of the weaknesses that was identified by the audit commission, by the auditors that looked at the system five years ago, they said, this is not really a system at all, it is lots of local people doing things, and it needs something in the center, to drive it, and this is what the Youth Justice Board is trying to do.

I will just say a little bit about the vision that the Youth Justice Board has, what it is trying to achieve. We think, at the Youth Justice Board, that it is important that young people are treated fairly whatever their background in the system, this is an important priority. You may say that should go without saying, that I should not need to say that, of course the justice system should be fair. But we do have a particular problem in the United Kingdom, in England and Wales, this is a disproportionate use of custodial detention for people from racial minorities. I don't know how many of you have been to England and know about the composition of the population, but about 5% of the general population in Britain is made up of racial minorities from Afro-Caribbean, South Asia mainly, some from the Far East, but the Afro-Caribbean and Asian subcontinent are the main racial minorities in the U.K., but they are over-represented in the criminal justice system, particularly amongst young people. And that is a problem, there has been some research in the past that has suggested that the system discriminates against people of color, in our system, which is very bad, and we are trying to ensure that everything is done to remove any discrimination of that kind.

The second point is about opportunity. The philosophy of the Youth Justice Board is that young people should be given opportunities to contribute, and that if we do give genuine opportunities to young people, that is the best way of keeping them out of trouble. And it is in a way what distinguished the youth system from the adult system. We treat young people differently because they are younger, they have not yet reached their full potential, and if we can give them the right opportunities that is an important part of helping them develop into law-abiding adults. Having said that, there is a second part of the vision, which is that we think it should be a matter of shame for young people if they appear in the youth court. This concept of shame, I'm sure Pam Philips will talk about this in the context of restorative justice, but I think on the Youth Justice Board we feel it is important that young should feel some shame if they are caught, if they get into trouble, and are brought to court. And I think some young people have not really felt much shame. They have shrugged their shoulders and said, so what, it doesn't really matter.

We need a system, thirdly, that respects the rights of victims, and the rights and responsibilities of young people and their parents when they get into the criminal justice system, and finally, a system in which people are proud to work. I think it is fair to say that the youth justice system has not particularly had a high status in our society, so it is not a kind of work that necessarily has attracted the best people, people haven't said when they're at school, yes, I really want to work in the youth justice system, that is what I want to be when I grow up. So there is an effort to try and raise the status, to raise the way in which people think about this work, because it is important to society as a whole that people who are engaged in trying to help young people to grow up as good citizens, that is a very important

role in society, and we are trying to make the system one in which people are proud to work. And also, we are trying to ensure that people who work in the youth justice system see the need for working in partnerships with other parts of the social policy system. Because, and this is a theme that I will refer to, I think on the Youth Justice Board, we think that the youth justice system on its own will not achieve the prevention of offending, even with the multidisciplinary team, it is about other parts of social policy giving a higher priority to young offenders than they have in the past.

Just the aims of the Youth Justice Board, these echo very much the aims of the system I talked about on Tuesday. Reducing crime by young people, we want to see fewer young people getting into trouble in the first place, we want to see fewer offences committed by young offenders when they do commit crime, and we want to see a reduction in the seriousness of crime by young people. And a reduction of frequency. So it is a reduction all the way along the line. We want to reduce the need to use the youth courts, and the number of young people who acquire a conviction in the youth court. We want to reduce if we can the use of penal institutions, and we want to improve regimes, activities that go on in secure facilities, the detention centers.

How are we going to achieve this? Well, I talked about the philosophy on Tuesday of early intervention in the lives of young people, so I won't about that again. What I want to talk more about is how in a practical way we will do this. First of all, we need to ensure that the local services are strong, and do work at a high quality with young people. As I mentioned, youth offending teams are local. What the law requires, it requires each area to have a youth offending team, and above the youth offending team there is what is called a steering group, a youth justice steering group in every local area. And on that steering group should be the chief officers of all of the agencies which are involved, so the chief of police, the chief probation officer, the chief of social services, somebody senior in the health department, and they will meet every three months or six months to discuss youth justice issues in their area. And we think it's very important that those steering groups have the senior people, there is a great danger that the chief probation officer will say, "oh, I'm to busy to go to this meeting on youth crime", and send somebody more junior to him/her, but we like the people to be involved in the steering group who are as senior as possible, and our recommendation is that it should be chaired by the chief executive of the city or the chief executive of the area. Now of course the chief executive is a very busy person, and he may say, "I have no proper time, you may be very concerned about youth crime but I have lots of other issues in my city that I have to worry about." But from the Youth Justice Board point of view we try to get senior representation in the steering group because that ensures proper local investment in the local youth offending teams.

One consequence of that is that we think it is important to intervene strongly where local agencies are failing, where the quality and standards of services for young offenders are not good. We think we need to intervene strongly. Now you may say what does "intervene strongly" mean? And I think I will talk a little about this later, but I think our philosophy is, what we say in English, carrot and stick. I don't know if that makes sense, I think it is if you are dealing with a donkey or a horse, you offer them a carrot to try and get them to

do something, and if that doesn't work you hit them with a stick. So it is a combination of encouragement and resources and help and support, but also saying if you do not do this we will take some more severe action. And one way of doing this, which is quite popular in some areas of public services, is to publish a league table, a table of performance by different agencies. They have introduced this with schools in my country, by examination results, so schools that are doing very well are top of the league table, and everybody can say, oh, that is a good school, that is the head teacher, that is very good, those are the tops of them, they say, well that is not very good. And that is kind of a shaming process, I suppose. It is not very popular with the schools. We have not done this yet with youth offending teams, but it is one of the possibilities that we would say, if we need to do that we would produce a table which is comparing the performance of different youth offending teams.

Finally, about achieving the aims, it is important to coordinate approaches across government, because obviously there are other government ministries and departments who are doing work in very closely related areas, particularly education, but also the department of health, which is responsible for welfare and social services. We have had a programme of devolution of power in my country, so in Wales, which is part of England and Wales, there is a separate assembly now which has responsibility for social services and public services in Wales. So part of the role of the Youth Justice Board is to be a champion within government, although we are not part of government, to try to get these other government departments to keep young offenders and youth crime as a priority. So those are the main ways in which we try to achieve them.

What I want to talk about now are the specific initiatives that we have undertaken over the last two or three years in the Youth Justice Board. And the first things I will talk about are the specific projects and programmes that we have set up in local areas. Before I give specific examples I just want to mention three or four things that are common to these different programmes, in terms of how we have administered, how we have run these programmes. The first is that generally-speaking, the funding that we give is for three years only initially, and local agencies, youth offending teams have to bid for the money. So the Youth Justice Board sets aside some money and says, we are going to make 15 million pounds available for these kinds of programmes and then invites local agencies to say what sort of programme they want to set up, and effectively there is a competition, because we have a limited amount of money, we cannot fund every area for every project. So we held a kind of competition and judged the best projects. We will sometimes require what we call matched funding, so we will require local agencies to put some funds in alongside the central funding. So, for example, the first funding initiative we ran was for bail support and supervision programmes for young people awaiting trial. Special projects to try and ensure that they did not commit crimes while they were on bail and that they appeared in court when they were supposed to and so on. And we gave 90% in the first year of the funding, 60% in the second year, 30% in the third year, and then the central funding stopped. Because the idea is that the local agencies assume responsibility for funding the programmes after the central money finishes. This is quite common in funding as in development and things like this. So sometimes we would require local money. We would always require commitment

from the local agencies to fund the programmes after three years, provided that they work. Obviously if the projects are not very successful then the local agencies might say, we do not want to waste our money on this.

I mentioned the intensive supervision programmes, and I'll say a bit more about those. We are funding, we are giving the whole of the money for those programmes, but we are saying to agencies that if they prove successful then they must continue after three years to fund those. They have to fund them if it works, so we need to know whether these projects work, so we are insisting on all of the projects that there is some independent evaluation of the impact of the project, each project has to have an evaluator, so it might be a local university. Our bail support and supervision programme is funding 170 projects, we at the Youth Justice Board have an evaluator to see whether that programme overall is having the impact that we wanted.

Finally, we have always provided technical assistance to these projects by, what we call national supporters. So we have a contract with an organization, maybe a university, or an NGO, or a private consultancy company, and the idea that they are expert organizations, they help to ensure that the projects that we are paying for start on time, work with the right children, that the money is not used for other things to try and keep these projects on course, because sometimes if in the center you give money out, they say, thank you very much, and they go and spend it on something else, which is not really what you want them to do. So we have the evaluators, but we also have national supporters, and the national supporters also do provide some technical help for programmes that require some specific input like some of the restorative justice programmes, or some of the cognitive behavioral programmes when there is some clear work to train the staff to do things in the right way, that is the role the national supporters play. In combination the money on the evaluation and the national support is about 10% of each programme which is spent on this, which we think might be quite high. If you have a block of money for an initiative, we say about 10% could be spent on making sure the project works and measuring it. I think that is about right, because you are trying to get the best use of the money for these initiatives.

The first sort of project I am talking about are prevention projects. Although we are called the Youth Justice Board, we are interested in preventing young people from getting into crime in the first place as well. And I thought it was an interesting discussion yesterday in the report of group 1, Mr. Kitada talked about the fact that it is important for the deliberations to concentrate on the role that the police and probation and prosecutors and prisons and so on play with prevention. But I think it is interesting in my country we have something called the Youth Justice Board, but it is very much interested in prevention and some of the projects that we fund are designed to work with children who have not yet been in trouble at all. So youth inclusion, we have funded 70 projects across England and Wales, and the idea is that they identify 50 children age 13 to 16 who are most at risk of getting into trouble. These projects are all in high-crime areas. When I said we had a competition for funds, and we invited people to apply, sometimes we only invite certain neighborhoods to apply, targeted initiatives on high-crime areas, and youth inclusion is just in the

worst areas. So basically the projects involve a coordinator who identifies these 50 children, this is the ideal model, and the way they identify is by talking to the police, by talking to social services about youngsters with family problems, talk to education about children who are not doing well at school, and often these will be the same children who show up on the lists of these agencies. In lots of areas, everybody will know that it is these children who are the ones who are very much at risk, often they will have brothers who are already in the system, although not always, and that is one interesting question from the criminological research, why sometimes in families you have some children who get into trouble and others who do not. But, the idea then with these 50 children is to set up an individual programme for them which tries to make sure that they do go to school, that they are getting the best out of education, that they have some constructed activities in the evenings, if necessary they have family counseling and help and so on. So it is trying to nurture, trying to help those children that have been identified.

The second kind of project, called Splash, that grew out of the youth inclusion project, programme, though there are now 150 Splash projects, and these are only in operation during the school holidays, because it is quite well known that when children are not at school, in our country there are three school terms, so now children will finish school in about, well about the same time you're finishing here I think, and then they will start at school again in September. So that is a long period, from the middle of July until early September, and they will be at high risk of being bored, nothing to do, they get involved in vandalism or theft, so if you can provide activities that these children will actually attend, that is sensible targeted crime prevention. They have funded 150 of these programmes in summer holidays and spring holidays.

Third, we have a small initiative called Positive Futures, which is a programme which uses sport to engage the participation of young people, particularly football, soccer, which is very popular in the U.K., but also other kinds of recreational activities including art and music and drama, but it is mainly sport, and the idea is that you can sometimes engage, and get youngsters involved by organizing them through football and so on, and then you can do other work with them. So football is the gateway, soccer is the gateway to doing work. So those are the three specific prevention initiatives that are underway. Unfortunately, I know you are going to ask me, do they work, and I have to say, I don't know yet, because it is too early to tell. Although there have been some studies of the crime rates in areas which had the school holiday schemes which did show big falls in some kinds of crimes, but it is very difficult to be absolutely sure that it is the impact of this scheme. One of the problems for evaluators is that there are a number of different initiatives going on, we had our new government in 1997, and they are doing a lot, they had been out of government for 18, 19 years, and when they came to power they wanted to change everything, so they have put money into doing regeneration of communities, improving schools, more police, so when you go to an area and say, well is this project making a difference, it is difficult to tease out, to say it is this and that has made the reduction in burglary or the reduction in car crime or the reduction in vandalism. So it is a hard job for evaluators, but at least the crime in the areas is going down, and that is good. We need now to find out which of

the things that are being done are responsible for that. Which is really the point I want to make about broader prevention efforts.

There are important initiatives going on in England. For example, the government made a very bold commitment to end child poverty in the U.K., and what we mean in the U.K. by child poverty is families who have less than half average earnings, that is the kind of definition. And they want to reduce and ultimately end that. So there are a number of initiatives designed to end family poverty, and they are starting to work, and I think if these sort of policies are successful then they will probably do more to reduce crime in the long-term than anything you do through the youth justice system. There are some specific programmes to improve the early education of children. We have a scheme called Sure Start, it is based on the American programme called High Scope that was a programme under the head start initiatives in the 1960s in the United States in which children from poor families were given enriched educational experiences in their early days at school. And we have introduced this. So we have a lot of different kinds of things going on in the prevention side, so I don't want you to think that it is just the Youth Justice Board that is engaged in this, it is much broader.

On prevention, we do have under the Crime and Disorder Act a requirement, separate from the youth justice changes, a requirement that the police and local government produce every three years a crime prevention plan, a crime reduction plan based on an audit, a measurement of crime problems and consultation with the local community. This is done at a very local level, so it would be at the city level here, Fuchu City would have to have a prevention plan, it would be the responsibility of the chief of police and the mayor to produce that, and there would be other agencies who would need to be involved, probation and health, who would need to be, a strategy drawn up and consultation with members of the community to produce that.

I want to turn now to intervention projects, and by intervention projects I mean projects that are designed for children who are in the youth justice system. These are for youngsters who, they may have received a final warning, they may be under a court order, under supervision of some kind. And the Youth Justice Board has funded projects in these areas, more than 400 projects all together. Restorative justice, education training and employment, parenting, drugs and alcohol, cognitive behavioral, bail support and supervision and mentoring. I'm going to talk about the mentoring projects in my final lecture which is about community involvement in youth justice. But I want to say a little bit about each of the other projects because I said that all of them have been evaluated. Well, fortunately a few weeks ago the evaluators have produced interim preliminary reports after the first year or so of operation. So we do have some data, we do have some findings from these. But I would say, although we did use these national supporters, these technical assistance people, what is true across all of these projects, is that they have been quite slow to start. And I think, maybe this is something that is specific to the U.K., there are not a lot of skills out in agencies, skills for people to get projects up and running, get them working quickly are not there. And that is partly because for several years we had a government that did not really invest a lot in that. We had a conservative government that was more about

reducing public expenditure. So people in agencies were more used to cutting services. So now a government comes and says, well actually we want to provide you with some money to set up programmes, people say, well thank you very much, but they do not necessarily know how to do this very well, and it takes time to recruit staff, and we are lucky in the United Kingdom we have low unemployment, and so the recruitment of staff has not always been straight-forward for these projects.

Restorative justice, the Youth Justice Board funded 46 projects which have so far produced two and half thousand interventions. So two and a half thousand young people have been worked with under these projects. The evaluators say that 70% of these have been successful. And by successful they mean that the intervention has had a successful conclusion. But the interventions have varied enormously. For the most part they have been relatively minor, modest interventions, so the offender has maybe apologized to the victim, or maybe has undertaken some work for the community, unpaid work for the community, and that has been successfully completed. In only 7% of cases has there been direct victim-offender contact. I think, for us, it is partly a problem to do with the speed through the system, which has made it difficult for victims to be fully involved in these projects. And so people running the projects have said, we have not got the time to do this, so we will just get this boy to do 12 hours work cleaning the canal or clearing up rubbish or doing some kind of payback type work, which is okay, it is good, but I think the promise of restorative justice should be higher than 7%, that is too low I think for us to be comfortable.

We have funded 40 education, training and employment projects, and they are very varied, some are courses which train people in skills, some are school inclusions, so there will be some support given to a young person to help them to stay in the school, through mentoring or something, some provide career advice, helping youngsters to pursue a career through college and training. Others are courses which involve elements of physical activity, taking youngsters on courses to try and improve their character through challenging activities in the outdoors. About 1,700 participants. One disappointing finding from the evaluators, up to 50% of the young people drop out from these schemes, which I thought was high, but you will remember at the halfway house yesterday, when we were hearing about the scheme for teaching boys to be chefs in Chinese restaurants there were dropout rates of about this, I think two out of the six so far had succeeded all the way. Because we are talking about difficult young people we are not going to have 100% success, so within that 50% dropout some of the programmes were more successful and some of them were less successful, and the importance of the evaluation is to be able to identify the factors or the characteristics of the successful programmes. It seems to me that the programmes that are most successful are the ones that provide the highest intensity of contact, which is not surprising, it is what you would expect. If you just say to a boy, come once a week and talk to me about what job you want to do, that is one part of intervention. If you say, right, you are going to come everyday, and we're going to do this, we're going to get your literacy levels better, and then we're going to talk about this, if you can engage the youngster like that, that is much more likely to turn

around the motivation in their life. So I think intensity is important.

Parenting, we have funded 42 schemes. Almost all are women attending, rather than fathers. The research found that three quarters of sessions were attended by parents. The impact is not yet know, thought the evaluators say that a lot of the women that went said that they found it very helpful, which is good. What we don't know is whether it made any difference when they went home, and in their families, and in the way they related to their children, whether that changed, and indeed even if that changed, we don't know whether that had an impact on how their children behave. So there are a lot of ifs, but it is quite encouraging. It is disappointing that so few fathers appeared to have been involved in these courses, but I think the reality is that a lot of young offenders do not live with their fathers, there are a lot more in single parent households, and in fact that has, I will say a little bit about some data we have from the asset assessment profile, the assessment tool that we have developed has given us some data about children who are going through the youth justice system, and I think 30 or 40 percent of them do not live with a father or any kind of male person in their house and that may be an important part of their delinquency. And it is obviously part of the rationale for mentoring programmes, to try to fix up young people with role models, particularly boys with men who can act as a good role model for them.

The drugs and cognitive behavioral programmes have been particularly slow at starting, and have not had many referrals. By referrals I mean not many children have been sent to these projects, and we don't know quite why that is. And there have also been methodology problems, what I mean by that is the projects have not been very clear about what exactly it is they are trying to do. There is an issue with drugs projects, because I think I said the other day that use of cannabis and marijuana is fairly wide-spread amongst our population and a lot of young people do not really see it as a problem. It is against the law, but it is not the most serious. Obviously it is serious if it involves graduation to other drugs, but what exactly you do with children who have got this problem, it is not entirely clear. So these projects have, of all the projects these are the ones that have struggled the most.

The bail support and supervision programmes, which is the largest single group, they have seemed to have been quite successful because there has been a fall in the number of children remanded into custody by the courts, and that is almost certainly because there are now in every area just about these schemes to provide support, so the court can say, instead of having to choose whether to give someone bail, conditional release or remand to an institution, they have a middle way, they can say you have bail, but you are under the supervision of this project, some of the projects have surveillance with the electronic bracelets, some of them just have very intensive surveillance by project workers. But the fall in custodial remands could be to do with the reduction in delay, I talked about speeding up the system. Well if you speed the system up, which we have, that reduces the time that young people are on remand, so the population comes down that way. So if you do want to reduce the number of people in institutions, one good way of doing it is to speed things up, because you just have less time to do it, rather than create projects. So we are still working out why it is that the

numbers have come down, and what role specifically these projects have had.

The estimate is that 3% of young offenders commit 25% of the crimes that are committed by this age group. There are very high reconviction rates from custody, so there was a need for a targeted programme providing surveillance so that the public were confident but also providing intensive supervision because these are often very damaged children with a lot of problems. So for entry into the intensive supervision and surveillance programme, you have to have committed at least four crimes, you have to have had four convictions to qualify, and your most recent one has to be a serious one, so it is really trying target those youngsters who would be going into the institutions, to try and prevent the kind of net widening, the kind of, what happens sometimes when you create an alternative, you don't replace the prison, you supplement the community. This is trying to say, prison is not working for these boys, and it is mostly boys, let's try and do something different. And they are just starting, the first ones are starting on the first of July, so we will have some results by next year as to how well these are going.

I have talked about the projects and the programmes that the Youth Justice Board has created and funded. I want to turn now to some other measures that the Board has introduced, what I have called practice tools, things that are supposed to help people who are actually doing the work with young offenders face-to-face, to do that more effectively. And I want to talk first about the assessment tool, ASSET. It is 12 pages of basic assessment form, and then 4 pages additional for high-risk juveniles, where there has been an identification of a risk of violence. And then 3 pages at the end that the young person themselves complete. When we developed this, this ASSET was developed by Oxford University, and when they produced the first draft it was 30 pages long and all of the members of the youth offending teams said, no way, we are not going to fill in 30 pages for every young person that comes into the system, so it is reduced.

It has three roles, there are three purposes for this assessment. First of all, it is an opportunity when a child, when a young person first comes into the system, first commits an offence for an initial assessment of the needs that they have, and the risks that they provide. The second use or purpose is to track progress through the system. Obviously most young offenders may have one or two crimes and then they stop offending, but there are some who continue. Now we hope that all of these changes will mean that number will be reduced, but there are obviously some young people who continue to commit crimes, and what this form provides is an opportunity to see how their needs and risks change over time, and whether the interventions, whether the programmes, whether the case work, has any impact. And thirdly, it provides a source of data, of information about young people coming through the system. So every form is sent to the Youth Justice Board, not with the names, it is anonymous data without names, but the Youth Justice Board wants to collect the data, the information to build up a picture of the needs and risks presented by young offenders in order to argue for more resources with other parts of government. If, for example, there has been some research on 500 ASSET forms completed in 40 youth offending team areas and it found, for example, only 40% of the young people had been living with their father. So 60% had not been living with their father, that was the statistic I

was trying to remember before. 15% had no school place, and emotional and mental health create frequent problems. Well, when be build up the picture about the school problem, we can take this to the Ministry of Education and say, look, there is a very serious problem here, 15% of these children are not having any school place, we need to develop some more policy to deal with that. So three roles, initial assessment, progress through the system, and then building up a picture.

What the form does, it goes through different sections. It starts of with a section on the criminal and care history of the young person, and then covers their offending behavior, their living arrangements, their family and personal relationships, education, the kind of neighborhood they live in, the kind of lifestyle they have, their health, whether there is any substance misuse, what their perception of themselves is, and of other people, what their attitudes are, how they think and behave, what their motivation to change is like, what positive factors there are. Which I think is very important, because it is very easy in these exercises simply to list problems, problems, problems, problems. But I think, certainly I believe, that it is important to look as well at the strengths and competencies and potential that young people have. And again this a part of what is distinctive about the youth system, we are saying, these are young people, they have yet to fully develop so let's look at what could be developed and what is positive. We look at indicators of vulnerability, and indicators that the children might present a serious risk, because obviously this is an important way of trying to predict if there are some very serious, there are a small number of very dangerous young people, and it is perhaps a way of doing that.

Now under each of those sections there is a rating, a score, the person filling in the form is invited to make a score as to how likely, what is the impact that section has on their likely further offending. The idea at the end of the document, there is space to describe the planned interventions, and how those meet all of these problems. Because another of the problems with assessment in the past has been, you have a very detailed assessment, and then you don't actually do anything, you have not got the tools to be able to meet all of these needs. So there is a section to say how the planned programme of supervision, of intervention, whether it is mentoring or restorative justice, or parenting, how it is going to link into all of these problems. There is a shorter version of this asset which is done at the remand stage, and a shorter one as well is being developed for the final warning. I said that the final warning stage of proceedings is a lot of young people and it has to be done quickly, and people, practitioners have said that this is too much to do then, so we are producing a shorter version.

The evaluation which I mentioned that has been undertaken of ASSET has been quite encouraging. It found that it is used on 80% of young offenders when they first enter the system, and of those 80%, in nine out of ten cases the whole form is completed, which is good. And on the whole, practitioners have accepted this tool, and I say that because there are some people who are resistant to tools like this because they say, well, I am a professional social worker or probation officer, I do not need this list of boxes to tick, it is not a good way of doing it. There are some people who say that. Some professionals say they have been doing this for 20 years and they do not need this. But the idea is this is not a substitute for professional judgement, it

is an aid, an assistance to professional judgement, and if that message is given then people are more likely to embrace it.

Two problem areas that the evaluation showed, first of all, the section about the risks posed by young people has not been filled in very well. Some of the professionals have misunderstood that and they have thought it was about risks to the child, not risks by the child. And the other thing is although the idea is that the ASSETs completed at the start of an intervention and at the end to see whether there has been any change, it is less well completed at the end. So that is an area we have to work on at the Youth Justice Board to get practitioners to fill this in at the end. One of the problems may be that youth offending teams do not like to fill it in at the end in case it shows that the work they have done has not been successful. There is one specific problem which has been mentioned to me, which is to do with drugs. If you start to work with a young offender, and you say to them, maybe I have not met you before, and I say to you, have you got any problem with drugs, they'll say no, no, no. I work with you, I get to know you, I visit your family, I talk to you about why you're in trouble. Three months later they trust me, I trust them, I'm filling the form in, and I say do you have a problem with drugs, they may say well, yes, actually I do. So it looks like they started with no drug problem, and finished with a drug problem, which is not good, so we need to find a way around that sort of thing. So we need to get people to do more work at the end of the measures.

Next after ASSET, I just want to mention that the Youth Justice Board has produced a lot of other guidance, a lot of documentation about various aspects of how to work in the youth justice system. There is a list in the full paper, and again, if people would like copies they can let me know and I can arrange that when I get back to England. I want to mention just two or three of the pieces of guidance or tools that have been made available. We have done a lot of work about reducing delay because of the importance that's been attached to that. I do not think that will be particularly interesting to many of you because it is very specific to the system in our country. But we have, as well as ASSET, we are working on two specific assessment tools. One, to try and assess whether a case is suitable for restorative justice, whether the attitude of the young person, and the kind of crime, and the attitude of the victim make it the kind of case that should go for a restorative justice approach. And the second is an assessment tool for parents. Is this a parent who should go on a parenting programme, do they need help with their parenting skills or not, so it's a specific tool because the basic asset does not have a lot about parenting on it. We have as well, at the Youth Justice Board, produced a parenting video for use by projects that are working with parents. It is a 25, 30 minute video with scenes of conflicts within families that trigger discussion. So you play a little of the video, a child comes back late at night, and they are two hours past their curfew and there is a flaming row between the mother and the child, and then the video stops and you have a discussion with the parents about how to handle that. Or the mother finds some cannabis under the young person's bed, or some strong alcohol, how do they handle that situation. So very practical to try to help parents. I did some years ago, in fact, I myself went on a parenting course, I was not ordered by the courts, I was a volunteer because I wanted to see what this was like. It was very interesting, this was about five years ago, and we used

another video, and it was a very good way of getting people to think about different ways of communication, because communication is the key I think.

The final piece of guidance that I want to mention has been the most difficult one to produce. And it sounds a very boring subject, and it is information sharing. And the reason it is difficult is that we have a data protection law in the U.K., which means that if someone has some information about an individual that they get in the course of their work they can't just give that information around to everybody else, that is a protection for individuals. I don't know if other countries have these laws or not. Although the Crime and Disorder Act tried to say that in cases of crimes, then it is okay to share information between agencies, it is still quite complicated and some agencies, some organizations do no like to share information so much about individuals. I give you an example, a social worker is visiting a boy, a social worker in the youth offending team, he has a boy under his supervision, and he finds out that the boy's older brother is involved in drugs, does he tell the police at the youth offending team, has he got to do that or not? These are difficult practice issues that have developed. There is also a question about information about the victims, how, whether that should be transferred amongst the different agencies. So it is a technical question, but it shows that the multi-disciplinary work, the work between agencies, is quite difficult in practice. There are some problem areas that need to be overcome, and the Youth Justice Board is trying to do that.

Finally on this, the Youth Justice Board had promoted training, there is a five-day basic training course which is aimed at youth offending team members who have not previously experienced the youth justice system, so people from education and health who have been brought in to youth offending teams, because most of the social workers, and police, and probation officers already have some experience in this area from their own professional training. So it is more to get the new members of the youth offending teams involved. The Youth Justice Board has promoted training as well for ASSETs and some restorative justice training, and is currently working on the development of on-the-job training for unqualified staff. There is a recognition that there are a lot of people who are maybe not professionally qualified, who have a lot to offer young people working on these projects, and so on, but there is not currently a system for training them, and we are in the process of establishing something like that. One thing I should mention, the basic five-day training has been held both for youth offending team members and staff in detention facilities, they have done this jointly, and that may sound very sensible. That was a big step forward for us, because in the past, people who worked in detention, and people who worked in the community were in very separate kind of, separate lives, and separate training and separate everything, and we are really trying to bring them together on the basis that they are working with the same boys and girls, this new detention and training order is about a joint approach to planning, to treatment, to work. We have to get people to work together and do training together much more.

I want to say a little bit about setting performance targets, because, this sounds a rather boring subject, but it is, an important part of the function of the Youth Justice Board has been to raise performance, to raise the quality of the services available locally. The targets are

the things that it is saying it will do. For example, we are saying that by April next year, ASSET will be completed in all cases where a youngster gets a community sentence and a custodial sentence. That is the target, under a target to cross the range of the Board's interest.

I mentioned at the beginning that the Youth Justice Board had some ability to provide funding for youth offending teams. Most of the funding is local, but there is some central top up funding, and we can make that funding available on the condition that the local youth offending teams meet their targets. At the Youth Justice Board we can't go around completing ASSET forms, we need the people in the youth offending teams to do it. But we can say to them, we will give you some more funding if you need more people to do it, but you must meet these targets to do it. How will we know whether those targets are met? Well there are various ways in which we monitor the performance of the local services. Every year each youth offending team, or each area of the country has to produce a youth justice plan, which describes the arrangements for the steering group who is on the top level, and who is on the youth offending team, how many staff, from what agencies, what is the budget, what other services are available to young offenders, what are the numbers of young offenders going through the system, to make an analysis of whether the arrangements in a local area meet the need properly. And each year we grade the plans depending on how good they are. So grade 1 is a commended, excellent plan, so that's fine, down to grade 4 which is sorry, that is not good enough, try again. I think this year there were only three or four that were in grade 4 out of 154 or so, most of the youth justice plans are quite good. But that is just them writing down what they want us to see, they may be making it up. So we have another way of monitoring, and that is through what are called quarterly returns. Every three months the youth offending teams have to send information to the Youth Justice Board about the numbers of young people going through the system in their area, and what happens to them, whether they get final warnings, if they get a final warning, if they get some measure, some intervention to try and help the youngster stay out of trouble, how many reports are written, how many supervision orders, how many detention and training orders and so on. Although people could make that up, there will be a way eventually of seeing whether that tallies with centrally-held information, so that is quite a good system, and it is a way of assessing whether some of these targets are being met. And thirdly, there is an element, or there will be an element of independent scrutiny of the system. The detention facilities are inspected by an independent inspector of prisons, an inspector of social services, the youth offending teams, the Youth Justice Board is at the moment finalizing the right way to do inspections of these services. So we haven't yet got in place a process of independent inspection of the youth offending teams but we will do it over the next few months.

When that process of inspection is in place, one of the things that the inspectors will look at is how well youth offending teams meet what are called national standards. We have had national standards for the supervision of offenders in the community since 1992 in England and Wales, and I think you have some from Singapore that have been distributed, and I haven't had a chance to read them but I suspect they are in some respects similar. In England they set out

central expectations by government departments of how individual cases should be supervised by probation officers and social workers. So there are national standards, but this is not just for juveniles, they have been for initially for adults and juveniles, so they form a kind of benchmark against which you can inspect and assess performance. They were revised first in 1995, and when the Youth Justice Board came on the scene in 1998, you'll remember that has a statutory role of advising about standards.

They came into operation in April last year, although there are two caveats, there are two kinds of conditions. One, they are very demanding standards in terms of what they expect, and basically what they said are, expectation that members of the youth offending teams should do things within particular time scales. They should see an offender within a day of an order being made, there should be a minimum level of contact between a supervisor and somebody of an order, so that if a young offender does not comply with an order then they are given a warning and then maybe another warning, but if they fail to comply a third time then they are taken back to court for breach proceedings, that is the sort of level of specificity. And the youth offending teams said we do not have the resources now to be able to meet these standards. So the Youth Justice Court has a target, you will see that in the list of targets, that by 2004 they will be operating according to these standards. If they can get there quicker, great, but there is a recognition from the center of government that you can't just ask people to do more and more without building up the resources, the numbers of staff in youth offending teams and so on.

So what the standards cover are preventive work, work with young people following arrest, one of the functions in our country, if a young person is arrested, then they cannot be interviewed unless they are with a parent or an adult, some other adult that is called an "appropriate adult", and it is for the youth offending teams to provide appropriate adults if parents refuse to come, or cannot be found, there has to be a scheme by which another independent person can come and act as an appropriate adult. There is a standard on assessment which is obviously about using the ASSET tool, there is a standard on work with the victims of crime, pre-court interventions, court work and remands, court-ordered intervention, detention and training orders, and the supervision of grave offenders. So that is an important tool really for ensuring that the actual work between individual youth offending team members and individual young offenders is done effectively, and quickly, and intensively.

Finally, I want to just talk for ten or fifteen minutes about what we now call the secure estates, but I suppose what I mean is all of the places where people under 18 can be locked up in England and Wales. There are on any one day just under 3000 young people under 18 locked up on remand and under sentence. I mentioned on Tuesday, conditions in the prison establishments are very, or have been historically very poor. There was this report in 1996 that was a very serious criticism of these. Basically there are three kinds of institutions for young offenders, closed institutions.

First of all, what are called young offender institutions, which are run by the prison service, so they are basically prison establishments, 80% of under 18s who are locked up are locked up in young

offender institutions. There are 13 establishments now that take juveniles under 18. In some of these the whole institution is for under 18s, in others it is a part of an institution that is made over for under 18s and the other part usually takes 18 to 21 year olds, but there is no mixing, so it is a separate establishment effectively. These are quite large institutions, so the biggest one now takes about 350 boys living in units of about 40. So that's the prison part of the estate. I mentioned that conditions are poor. There is a programme of trying to improve things but it is a slow business improving, because there has been a lot of neglect of these establishments.

The second set of establishments are what are called local authority secure units. I suppose these are like children's homes, but they are locked children's homes. So they are very much smaller, and the regimes, the quality of life in a secure unit is very much better, very much higher, the staffing levels are very much better. They are run by social services departments of local authorities, so they are social workers who are running them rather than prison officers. But you will not be surprised that they are very much more expensive than prisons, maybe up to six times the cost to keep a child in a secure unit.

The third set of institutions are called secure training centers, and currently there are three, and they are run by private companies, and they provide about 150 places. I should have said the local authority secure units provide about 350 beds, 350 places. The secure training centers about 150. These secure training centers were very controversial because they represented a new ability for courts to send children as young as 12 directly to a secure establishment, and they were controversial because they were run by private companies. Two are run by a company called Group 4, which is a security company. The third is run by another organization called Securicor, which is another security company, who run other adult prisons in the U.K. and in other countries, including I think South Africa, or they are going to, I think, run an establishment in South Africa, Group 4.

The idea that people should make profit out of locking up 12-year-olds was a controversial political idea. I have to say that they had a very sticky start, the first of these secure training centers had a lot of difficulties, when it first started there was a riot at the establishment, and a lot of staff left and they had a very hard time but they have worked quite hard to improve conditions and the latest reports by the inspectors show that they have made a lot of improvements. And although I used to be not in favor of private companies doing this work personally, I have visited recently one of these establishments and it is very good quality care of children, probably better in some respects than the local authority units. So the secure training centers and the local authority units take the younger children. We have an arrangement that children under 15 do not go to the prison establishments, and some of the children who are 15 and 16 who are particularly vulnerable would also go to these smaller local authority or secure training establishments.

One of the particular problems in our system is finding suitable accommodation for the girls who need to be locked up, and there are currently about 70 girls who are locked up in prison establishments and the Youth Justice Board has made a commitment to get those girls out of prison establishments and into either

local authority units or secure training centers.

So what are we doing to improve the estate? Well the way the system now works is that the Youth Justice Board at the center basically has a contract with the prison service and the local authorities and the secure training center providers. And in that contract there are service level agreements, there are agreements about the level of service that is going to be provided, the outcomes, the outputs, what will have to happen. For these organizations to get the money from the Youth Justice Board, they have to ensure that children have 30 hours of education, that they are out of their cell for 12 hours at least every day, and so on and so forth. So there are sets of specifications that are put in place, and in order to check whether those things are actually done, the Youth Justice Board has monitors, actual people, there isn't one in every establishment, they cover a group of establishments, but they go and they check whether what is in the contract is being provided. So the specifications are quite thorough, they cover what an establishment must provide, they cover standards of health and hygiene, they require the provider to get engaged with the assessment process, and review the progress of youngsters, they specify how many visits are allowed, there must be a complaints procedure, there must be a suicide prevention system and so on. The biggest weakness, I think, is the education and training that is available in the prison service establishments is not of a very high quality. The prison service has failed so far to meet all of the elements in the contract, and they had to pay some money back to the Youth Justice Board because they failed to meet, so it is like a contractual relationship. The idea is that having this central quality is a way of raising performance by making these requirements.

Obviously the Youth Justice Board is limited by the fact that there are only a certain number of locked establishments in the country. It is not really a market. We cannot easily say, well, if you do not perform to these standards we will not send the children here we will send them there, because there isn't a "there" to send them to. So we are in the process of commissioning some new establishments, some new secure training centers, which will in a way diversify the market and enable children to be sent to better quality establishments. So there is a programme of commissioning new establishments. Most of these, well in fact they are all being created through something called the private finance initiative. So a private company finances, designs, constructs and manages the new unit and then receives its money when it starts to take young people. They get paid on a per day or per week basis depending on the numbers of children that they have. But I think most of the contracts are designed that they borrow the money to build the place, and then recoup the cost through the cost that they charge the Youth Justice Board for looking after the children, that is the method that we have.

One of the other problems with the secure estates is that the establishments are not in the right places. So we have a lot of young offenders in London, which is in the capital, biggest city, but we do not have enough places. We have one rather bad establishment to the west of London, and there is really nothing else. So some children from London have to be based a long way from home. One of the targets that the Youth Justice Board has is to ensure that as many children as possible are places within 50 miles of home, so within 80 kilometers of home, which is

still quite a long way if you want to maintain contact with family, and schooling and all of that.

The third thing we're doing to try and improve the estates is to research and disseminate best practice. There are few effective programmes for changing the behavior of young offenders in custody. In the young offender institutions there are some programmes that have originally been developed for adults that are being used with juveniles. In the secure training centers and local authority units they tend to adopt what they call a whole system approach, or a positive parenting approach, in which the idea is to try and influence the young people on a day-to-day basis through every kind of interaction that the staff have. It is in psychology terms pro-social modeling. So the way in which I, as a member of staff, talk to you, as another member of staff, in front of the child, that should be how we want that child to be, to be relating to people. So you should be courteous, you should not shout, you should not lose your temper, you should be reasonable, you should negotiate. All of these things, if you go to a prison establishment that is not always how things are in our country. There is a lot of shouting, and so the idea is that throughout the whole system you are trying to model good behavior.

In addition, you need specific programmes, because some of these children have very serious problems with their anger management, they cannot control their temper, or they have problems with alcohol, drugs. So we are trying to introduce some new programmes, we are also about to produce some guidance on rewards and incentives for young people in these establishments to try and encourage good behavior, because there has been a problem, the introduction of the detention and training order which I mentioned has removed the right of governors of prisons to add additional days, if a young person in a prison behaves very badly you used to be able to add time, say you get an extra week. It is possible for the period in custody to be extended but that is if you have failed to cooperate with the plan for preventing offending. So the idea is when you go into custody a plan is drawn up between the secure establishment and the youth offending team, and if the youngster does very well he can be released early, and if he does very badly on that then he can be required to stay longer. What has happened in some places is some boys who have been about to be released, because they have done well, they know they are going, they smash up their room the night before they go, and there is very little that can be done at that stage. So there is a programme of rewards and incentives. We already have in prison establishments a system of incentives and earned privileges, and basically there are three standards of, you have a basic regime when you first arrive, and if you behave well you can end up with a television in your cell, and the ability to wear your own clothes, and so on.

This sector, as I said, is inspected very thoroughly and it is very right that there is an independent inspection. If you are taking the liberty away from children or young people then it is essential that somebody is coming to check that this is okay. We have had historically very powerful inspectors of prisons who have had no hesitation in publishing in the newspapers their views about the quality of establishments. So if the Youth Justice Board does not deliver the changes then it will be obvious to everybody, so it is very important that these changes do take place. But it is a big challenge, because there is a lot of work to do.

So finally, in conclusion, the Youth Justice Board is exercising this leadership role, both on community treatment and institutional treatment. What it is trying to bring about is a cultural change within the system. A cultural change to try and encourage more intervention with young people, better quality work, and better performance, so that people can actually measure whether what they are doing is successful. Now it is very early to know whether the Youth Justice Board has been successful. We have been successful in setting up, putting the pieces in place, but whether it is working, I don't know. But it is interesting that in the manifesto of the Labor party before the election which took place two weeks ago, there was a commitment to extend some of the ideas that have been put in place for juveniles to the next age group up, to the 18 to 21 year-olds, because the thinking is that just because somebody reaches 18, they do not overnight turn into a capable, developed, sensible person. They often have the same problems, the same needs, the same difficulties. The approach of the multidisciplinary team, it would perhaps be different disciplines that were involved, but that is seen to be a very promising one, not only for young offenders but for young adults and perhaps some adults as well.

INVOLVING COMMUNITY IN YOUTH JUSTICE

*Rob Allen**, ***

This word "community" is used a lot. We all talk about "the community." We talk about community penalties or community treatment or community sentences or community punishment. We sometimes don't really think what we mean by community. Often we just mean it is the opposite of institutions. So the title of this course is about best practice in institutional and community-based treatment. So it simply means you have institutions and you have the community. It also has another meaning which is really about involving ordinary people, ordinary members of local communities. Not police or social workers or probation officers, but ordinary citizens who do not necessarily have any formal or official role.

Now, in my country, most of the work with young offenders that is done in the community is, in fact, done by professionals who are paid. I talked about the youth offending teams which are made up of police, social workers, probation, health, education. These are people who are paid to do these jobs. They are not really community members in that sense. What I want to talk today about is the experience in the U.K. of involving ordinary people in youth justice in dealing with young offenders.

Before I do that, I want to say a little bit about the involvement of ordinary community members in the criminal justice world—in the wider activities to do with crime—because I think it is important to set it in context. For example, there is, in the United Kingdom, a lot of community interest in the reduction and prevention of crime. And we have a big movement, a bit organization called Neighborhood Watch. I don't know if you have this in your country. Some of you will. Some of you won't. In England it was set up in 1982 and it has grown very rapidly. And it is organized at a street or neighborhood level and it is ordinary citizens who come together and agree that they will watch over their community to see if there is any crime going on, if necessary, to report to the police. They will encourage each other to take care of property—to lock their cars, to make sure they lock their houses and take other kinds of measures. And this is a big movement in the United Kingdom. There are more that 150,000 Neighborhood Watch schemes covering up to 10 million people in the U.K. And there are about 55 million people all together. So they claim that it is the biggest voluntary movement in the United Kingdom: Neighborhood Watch.

There is another important community organization which we have heard a little bit referred to. It is very big in the United Kingdom, called Victim Support. Victim Support was set up about 25 years ago and provides practical advice, help and assistance to victims of crime, to witnesses, their families and their friends. And it also has a role in raising public awareness about issues to do with crime and to promote the rights of victims. There are about 13,000 trained

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volunteers who visit and contact victims of crime. So, a few years ago, where I was living, my house was broken into and things were stolen. And within one day, I had a telephone call from a volunteer who rang up and said, "I understand that you have been burgled, your house has been broken into. Are you feeling alright? Is there anything that I can do to come to help you?" And I said, "No, that was fine. That was okay." But for some people who get very upset and traumatized by crime, it is a very important role. So that is an important community involvement, I think, in the system.

The third kind of involvement I want to mention is what we call in England and Wales "magistrates." Lay Magistrates. A lot of criminal offenses are dealt with not by professional judges, but by lay magistrates who are ordinary members of the community. They have training. But they deal with the vast majority of the less serious crime. It is the first tier of our court system. It's made up effectively of volunteers, magistrates. This is an office that goes back many hundreds of years. In the middle ages, the king used to appoint what he called "justices of the peace," local people to take responsibility for law and order at a local level. We still have this office of magistrates. I think there are about 25 or 26 thousand magistrates up and down the country. And a proportion of those magistrates deal with young offenders. We have a special youth court which is made up of youth court magistrates and they receive additional training to do the work in the youth court.

I want to mention, in this paper, the fact that, in the United Kingdom, we have a large number of voluntary organizations, civil society groups, non-governmental organizations who are working in this field. I think in some countries this civil society sector is well-developed and, in other countries, less well-developed. A lot of these organizations may have their origins with faith groups, with churches, with other kinds of religious motivations. Some of them are charities. many of them do practical work to help prevent crime, to help offenders and so on. So there is a wide range of organizations. An organization I used to work for, for many years, called NACRO, the Nation Association for the Care and Resettlement of Offenders, that was one such voluntary organization. I was paid. I had a paid job with this organization. But the people who had set up the organization were volunteers. The trustees, the directors of the organization were doing it in their own time because they thought it was work that needed to be done. So I just want to say that is the context in which I talk about community involvement because I think, in the United Kingdom, we have a good tradition of volunteering.

There was an article in the Japan Times newspaper on Saturday about volunteering in Japan and how this was beginning to increase, particularly after the earthquake in Kobe 5 or 6 years ago when a lot of people gave up their time and effort to go and help with that disaster. And since then, a lot of private companies allow employees to do some months volunteering work of one kind or another. Now they, in this article, it said that in Japan, 25% of people say that they have done some voluntary work in the previous year. In the United States, it is 50%, in the United Kingdom, about 45%. I do not think these are very meaningful figures because there is no clearly-agreed understanding of what we mean by volunteering. I think that it is important whether, in different countries, there is a culture of community involvement or

whether people say, "Well, it is up to the government to do these things. It is up to the state or it is up to private companies." In England, we call this, I think, the third sector. So you have the government, you have private businesses and you have a third sector, which is civil society groups. My own view is that they are very important for a healthy society to have a healthy sector in which people can involve themselves in the issues that interest them, that they are concerned about. Obviously, dealing with offenders is one such issue.

Turning to the specific question of dealing with offenders, of course, those of you that know about the history of, for example, the probation service, will know that this started as voluntary work. In the United States, a shoemaker in Boston decided one day that it was ridiculous that people were going off to prison, so he said, "I will take somebody home with me and supervise him, look after him, give him a place to live. If he does not behave well, he will go back to the court." And the court said, "Okay." Twenty years later, in England, a printer took home with him, an alcoholic offender and said, "I will look after this man and make sure that he doesn't get into trouble. If necessary, he will go back to court." This is the origin of probation as we know it. So the voluntary involvement, community involvement has a long history. It was very impressive to meet and hear about the system of voluntary probation officers. I think it is one of the very distinctive things about the Japanese system of criminal justice to have so many—50,00 I think—voluntary probation officers doing this important work.

We, in the United Kingdom, do not have that in quite the same way. But we do have a lot of interest at the moment in trying to recruit ordinary members of the community to work with offenders, to befriend them and to try to help them. We call this system "mentoring" or "coaching." I think, in its modern form, it began in the United States. It is interesting because a lot of private companies in business use mentoring, by which they mean junior employees are given a more senior member of staff who looks after them, who helps them to get involved in the organization, to understand how things are going and to further their career. It is the same idea that somebody who has more experience in life is able to help somebody who is young and vulnerable and so on. So there is a lot of mentoring going on in the United Kingdom now.

I want to talk about a programme that the Youth Justice Board has been funding. You'll remember in the last lecture, I talked about the range of projects and programmes that the Youth Justice Board were funding. One of these is a set of mentoring projects. The Youth Justice Board has funded 39 schemes. I will just say a little bit about what the evaluation of these schemes has shown.

It has been shown that most of the offenders who get mentors are minor offenders. They are not the most serious. This is obviously the case because, if I was a member of the community, I would not necessarily want to be a mentor for somebody who had very violent crimes or who had a lot of crimes. It is interesting that 5% of the children who had a mentor, in fact, had 10 or more previous convictions, which is a lot, which means that they are quite persistent, quite chronic offenders. Most of the children were in the age range 13–16. There were about, in these 39 schemes, there have been about 1400 referrals. 1400 cases have been sent to the scheme to say,

"These are children. We want to find mentors for them." And just over 1100 mentors have been recruited from the community. There are 565 active cases. So there are 565 cases going on at the moment. 167 have been completed successfully. 175 have broken down, have not worked out. Now the average time that is set for a mentoring relationship in the UK is one year. Usually a mentor will see a child once a week for a year, period. So when I saw these figures, I was disappointed at the high numbers of breakdowns. But I think, as we have said before, we are sometimes talking about difficult young people.

Some of the issues that have arisen from the evaluation of the mentoring programme. First of all, recruitment. What these projects have found is that it is more difficult to recruit mentors, more difficult to get community involvement as mentors in areas where there are richer people. In the more affluent, in the more prosperous areas, it is more difficult to recruit people. This is very interesting because, later, I will be talking about the referral order, which is a new order in which members of the community are invited to become involved. There it is the other way around, it is easier to get people from the more prosperous areas to become involved in the Youth Offender Panels and less easy to get them involved in mentoring. I think the reason is that the more middle-class, prosperous people, they like to be involved in decision-making, but they do not like to, actually, we say in English, "get their hands dirty" with the actual work. It is easier to make the decisions than it is to put the decisions into practice.

There are some interesting ideas that the projects have used to try to recruit different people, different marketing ideas. For example, they put advertisements in local newspapers. They have put details about the mentoring scheme in the salary slips of local government employees. So, people who work for local government, when they get their money at the end of each month, they get a little slip that says how much they have. Also in there is a little thing saying, "Would you like to be a mentor to a young offender?" So maybe they are in a good mood when they get their money and they think, "Oh, maybe I will pay something back to the community." I don't know. There are talks given to particular groups of people targeted, or particular groups who might be interested—some of these civil society groups and organizations whose members might be interested in doing it. There is use of local radio and local newspapers.

Some of the other issues that have arisen in mentoring in the United Kingdom, this question of police checks. We have, I think, already had some discussion about the extent to which it is a good idea to use people who perhaps have been in trouble themselves to work with young offenders. They can sometimes be very good. If they have been a young offender and have put their lives straight, then they can be very good mentors and very good because young people are more likely to listen to somebody like them who has been in trouble than they are to listen to someone like me who has never been in trouble. But, of course, this is a risk—well, I have not been in serious trouble anyway. There are risks attached to such programmes. Of course, you cannot use people who have had offenses against children, sexual offenses, these kinds of things. So you need to check their records with the police. And I don't know what it is like in your countries. But, in our country, this is a very slow process. So you send some names off to the police and maybe some

months later they will say, "no" or "yes." In the meantime, when they have had their salary and they have said "Yes, I want to be a mentor" and they are interviewed and then nothing happens for several months because they are being checked and checked and some of them lose interest. They go and do something else. So that is a small practical question. But for community members, if you want to involve them, you have to think about it from their point of view. Sometimes the bureaucracy, the systems that we have to have can get in the way of how the community would want to do things, how ordinary people—they would not always understand.

It is a similar question about the right level of supervision and support to offer mentors. How much should you be checking up on them? If you are a probation officer on the Youth Offending Team who are running the programme, you have your volunteers seeing these children, should you ask them for reports every week? Every month? Every six months? Should you arrange meetings for them? This is a difficult balance because the people like to be able to do the thing that they want to do themselves. Sometimes they might run into difficulties. So you need to find a way which offers them support to do the work properly, but does not over-intervene and allows them to be members of the community. This is a theme which I will return to when I talk about the Youth Offender Panels. There is a danger, when you involve the community, that you want to turn them into professionals because it is easier to deal with professionals than it is community people. So you train them and you support them and you supervise them. And then, suddenly, they are not really like the community that they are supposed to be. They have become more like you. They have become an additional member of the Youth Offending Team. If it is to work, you actually want them to be as they normally are. So getting the balance is very important.

Finally, there is this question of contingent mentoring. In the United States, the research shows that contingent mentoring is the most effective. This means that, if I am a mentor for a boy and I say to him, "Okay, I am going to see you next Saturday and I will take you swimming. But I will only take you swimming if you go to school every day and you do your homework everyday. I ring up the school on Friday and they say, 'Yeah, he has been in school and he has done his homework,' then I will meet you on Saturday and take you swimming." So I ring up on the Friday and they say, "Well you did not come to school on Thursday" or "He did not do his homework," then I have to say, "I'm sorry, we don't go swimming." The idea is that you build in the reward of the mentoring relationship and link it to improved behavior. I think this is quite difficult in practice because mentors want to befriend the young person. They will not always obey the system of contingent mentoring. They will not always obey the rules because they will want to take the boy swimming on Saturday whether he has done his homework or not. So there is a question about that. Also, these are boys, mainly, sometimes girls, but boys who, of course, do not do what they are supposed to do. So I haven't looked in detail, but I suspect some of the breakdowns in the relationships have been because of this, contingent mentoring. The boys have not done what they were supposed to do so the mentor says, "Well, what is the point of continuing?" and he finishes. Well, there is no point in having a perfect contingent mentoring scheme. But no mentor ever

meets any child because they do not do what they are supposed to do. They whole system then fails. So you have to keep this in balance.

Just two more things. The Youth Justice Board is extending the mentoring programme in two specific areas where we think it is important. One is in improving literacy and numeracy—teaching children to read and write and arithmetic and mathematics because the level of basic skills among young offenders is very very low. It is one of the indicators in our country of the likelihood of being a persistent offender is these are children who have not learned to read or write well. They have a reading age, a reading level much lower than they should have. Mentors can help them to improve those basic skills.

The second area we are extending this to is with ethnic minorities. I mentioned that in the United Kingdom there are—not large—but there are, in certain parts of the country, quite large ethnic minority populations from the Caribbean, from South Asia, from other parts of the world. And these are youngsters who have not been treated very well by the criminal justice system. There is over-representation of these groups, particularly Afro-Caribbean boys in prisons. So there is a lot of interest in trying to develop alternatives to custody for these groups. So we are trying to recruit older people from the minority communities to act as mentors for minority youth. That is a big target for the Youth Justice goal.

I want to mention three other areas of community involvement in Youth Justice. The first is what we call "appropriate adults." It is probably true in many of your countries that young people, when they are arrested, cannot be questioned except in the presence of their parents or another adult. Of course, you try to get the parent to come. But sometimes they won't or they can't. Many areas now have recruited panels of people who act as appropriate adults. Their role is to ensure that the young person understands what is going on; and they can intervene. They can say to the police officer "Hang on a minute. I'm not sure he/she understands this. I want to talk to them." This is separate from any legal representation. It is possible to have legal representation in a police station when you're being questioned. But it is not a very high percentage of children who have legal representation at that stage. They have to have an adult with them.

The second thing I want to mention are what we call, rather confusingly, "Boards of Visitors." And these are ordinary members of the community who visit prison establishments in order to check upon the welfare of people in prison and to hear complaints from prisoners. There are 135 boards of visitors, one for each of the prison establishments in England and Wales. I mentioned last time, there are 13 prison establishments that take the juvenile. So each of those will have a panel of Boards of Visitors. Each of the panels has about 15 or 20 people on it. Some of them are local magistrates. Some of them are just local people. They are appointed by the government. They are community members, but they have to apply because they are given wide access to the prison establishments. In fact, I think they are even given keys to be able to go at any time of the day or night to visit or check. It is an important, I think, function of the local community to check upon those people who are detained in those communities. Because, although they are in prison, they are in custody, they are detained, they are still citizens. Their rights have not been taken away. It

is important that there is a mechanism, a means in the local community for ensuring that they are treated carefully and properly. There has recently been a report by the government on the roles of Boards of Visitors. The recommendation is that the name is changed to something like Independent Monitoring Panel to make sure the role of monitoring the conditions and monitoring how people are treated in these establishments is properly communicated. "Boards of Visitors" sounds like they are just visiting, "Hi. How you doing?" and they go away. But it is stronger than that. It is confusing because we separately have something called "prison visitors" who are ordinary people who simply go in and they are simply befriending prisoners who have perhaps not got families. And perhaps they bring them food or they come and talk to them. That is different. Boards of Visitors are a more formal part of the arrangement.

Finally, there are similar kind of visitors for police stations. We have ordinary members of the community who go and can visit police stations to check that people who are detained in police stations are not being badly treated. This does not just apply to juveniles. This is for the whole age range. But I mention that because I used to be, many years ago, I was a lay visitor to police stations. So I used to visit the local police stations to check that people were being detained in accordance with the rules.

So those are the main current ways in which the community can become involved in youth justice in the United Kingdom, I think. I want to turn now to the new development, the new sentence that is currently being tried out in 11 areas of England and Wales, called referral orders. We have borrowed quite heavily from the New Zealand system of Family Group Conferencing in developing this new system. We have also borrowed from the system in Scotland, which is in the north part of the United Kingdom which, as I had explained, has a separate jurisdiction, a separate set of legal systems and they have a more informal way of dealing with young offenders. So we have created a hybrid system, a new system called referral orders. It will work like this. It will be an order that is made by the youth court. It will be mandatory, it will be automatic for cases where young people have no previous conviction. So it is their first appearance, the first time that they are guilty in the youth court. They have to plead guilty. There are three exceptions to this automatic referral order.

First of all, if there is an absolute discharge given—which means that it is such a minor thing it is really a technical breach and nothing at all happens. Or it is so serious that the young person has to immediately go to custodial detention. Or, if the young person has a mental health problem and they can be given a hospital order to be detained in hospital, that very rarely happens. But other than those exceptions, the referral order will be the sentence that is made. It lasts between 3 and 12 months. When the court makes the order, it decides how long the order should last, really depending on how serious the offense is. That is the main consideration. So the more serious ones, 12 months. The less serious ones, 3 months. But it is important to note that it is only for people who plead guilty. So, if you are appearing in the youth court and you say "I didn't do it" and there is a trial and you are found guilty, you cannot then go down this referral order road. The reason is that we think it is important that the young person, from the beginning, accepts that they have done the crime. So it is a

slightly different emphasis from New Zealand where, I think, young people can go back into the Family Group Conference when they have been found guilty, even though they were saying before that they hadn't done it. In our system, you have to say "guilty" from the word "go," from the start.

What the referral order means is that you are required to attend a Youth Offender Panel. So we have created a new tier of decision-making, a new kind of way of determining, a way of deciding how to deal with these young offenders. So the court hands over the case to this new thing, the Youth Offender Panel. And, rather confusingly, we call this in shorthand, the YOP. So we already have the YOT, the Youth Offending Team. And now we have a YOP, the Youth Offending Panel. So it is very confusing for everybody. It is particularly confusing because it is the responsibility of the YOT to set up the YOP. So the Youth Offending Team is responsible for organizing the Youth Offender Panel. They are responsible for recruiting the community members who are going to be on it. They are responsible for organizing the meetings, for training the members, for sending out information, for arranging it. If this was a Family Group Conference, this would be for the Youth Offending Team to do.

Perhaps the most important distinction with the Family Group Conferences is that the community members are perhaps the most important and new part of this system. The idea is that there will be in each Youth Offender Panel two members of the local community, two ordinary people, one of whom is the chair. So the Youth Offender Panel meeting is chaired by an ordinary member of the community. There has to be one other member of the community there. The idea is that the Youth Offending Team recruits a pool, a group of community representatives to act as panel members. The idea is to recruit a broad range of people. There is a minimum age of 18 to be a panel member. But we do want young people. We do want some people who are 19, 20, 21, 22. We don't just want community elders. We want people who are closer in age to the young people they are dealing with because we think that the young people may take more notice of someone closer. Now this is an important cultural question which varies from country to country: how much respect and how much people take account of older people. I'm afraid, in our country, a lot of young people do not take much notice of what older people say or are perhaps more influenced by people closer to them. That is a generalization. I am not a sociologist. But I think it is perhaps an important difference with some systems. I think there is a minimum age for being a voluntary probation officer in Japan which, no? But most of the voluntary probation officers are somewhat older, I think, than probably mentors or community panel members would be in the UK. So they can be as young as 18.

We have said that if you have had a previous minor offense, that will not be a barrier to being a member of the Youth Offender Panel. I was involved in a group which was developing a guidance for how we recruit the community members. I remember I had a big argument with a police officer who wanted to say that nobody with any criminal offenses should be involved in this and I said I thought it was important. I managed to win a little victory. So a previous minor offense does not act as a barrier.

Really, what we are looking for in community members are personal qualities to bring to this work. We want

people who are interested in questions of citizenship and questions of how young people develop. We want people who are on the whole now, of good character although they may have had some trouble in the past. We want people who can communicate well, who can understand well and make good judgements. We want people who have a good temperament, who are not going to lose their temper or shout or anything like that. We want people who are reliable and who will make the commitment because the kind of commitment we are talking about is maybe 2 or 3 hours a week for 40 weeks a year. That is the expectation of a community panel member. So it is quite a heavy commitment to do one or two cases a week 40 weeks of the year. You have to be clear that you're going to be available. If you have a lot of other commitments, you may not be able to do that.

So the community members are the key part of the Youth Offender Panel. Obviously, as in the Family Group Conference, the young person and their parents have to be there. The victim has to be invited to the panel meeting and, as in New Zealand, the young offender and the victim can bring a supporter with them. One of the interesting other difference, I think with the New Zealand scheme, is that there are no lawyers in the Youth Offender Panel. That is not technically true. If the young offender's father happens to be a lawyer, then he is allowed to come. Or you could perhaps bring a lawyer as a supporter, but that is discouraged, really. Because the idea is that we want direct participation by people. Be do not want people to speak through representatives. And there is a bit of an argument in the UK at the moment because the United Kingdom has signed something called the European Convention on Human Rights, which is a big human rights convention which, amongst other things, gives a right to legal representation in judicial proceedings. So you have a right to do that. But the youth justice board and the government are arguing that these are not judicial proceedings. The judicial proceedings is the court that has made the referral order. The Youth Offender Panel meeting is part of the execution of the sentence. It is not proceedings. But there are some people who are arguing that question. So maybe there will be a case to decide this. In a way, if lawyers are allowed into it, it rather defeats the object of having this new panel system because it is supposed to be a very different kind of way of dealing with things.

Finally, the idea is that the Youth Offender Panel should be held within 15 working days of the referral order having been made, which is a very demanding target—very tight, given the importance of the preparation and everything. You'll remember I talked about the government's emphasis on speed, speeding cases through the system. So they did not want to introduce a new measure which brought back delay. This idea that the cases are dealt with quickly is still important. So they have set this target, the expectation is 15 days.

So the aim of the Youth Offender Panel is to agree a contract. I will not talk in detail about how the panel works. But in some respects it is similar to the Family Group Conference methodology. The idea is that, at the end of the meeting, there is a contract that is signed by the young person and the chair of the Youth Offender Panel. That contract should have 2 elements. One is, how is the young offender going to make reparation for what they have done? How are they going to pay back either the victim or the community for the wrong they have done?

The second element is what are we going to do to stop the youngster committing the crime in the future? What sorts of measures are going to be taken? So the contract might say that the young person will do a certain number of hours of unpaid work in the community, community-service kind of placement, plus they will attend special classes designed to help them learn how to control their temper or about helping them to reduce and give up drinking alcohol or to help them with some other aspect of their offending to improve their attendance at school, sessions with their parents to improve relationships at home, a whole range of different sorts of measures to try to deal with the problems that underlie the offending.

Again, I think, two differences from the New Zealand model is that there will be two more meetings of the Youth Offender Panel. There will be a review meeting to see how this is going. This is a contract. So, you signed the contract so you have to do it. So there is a meeting about half way through because the contract will specify by and when this work has to be done. You will remember that the referral order has been set from 3 months up to 12 months. So that provides the length of time within which the contract has to be completed. Then at the end, there will be a meeting reconvened to see how things have been done. If the young person has not completed the contract, then the case can go back to court, and the court can sentence them as though it was the beginning of the process again. So in a way, it is all on the young person to do what has been agreed. If they do complete the contract, then they do not have a criminal record. Their criminal record is taken from the books. So that is an incentive for the young person to do this, so that they will not get a criminal record. It is possible for the young person to ask for a Youth Offender Panel to meet again if they want to change the contract. If they, after a while think that it is unfair or they don't think that it is right or their circumstances—their parents are moving house or there is something going on—and it is possible to vary the terms of the contract with another meeting.

In terms of a model, the Youth Offender Panel is within a kind of shell of the referral order. There is always the threat of going back to the court to deal with the case if the thing doesn't work out. And I think that is because, in Britain, we are a bit nervous of how this will work. This is a new kind of system for us. I personally hope it works very well because I think it is really good. There are some people who are a little skeptical, they do not think it will work and they think that the traditional court system is better. So we are going carefully to see whether it works.

Okay, I'll just quickly say something about the rationale—why, specifically, in Britain we have introduced this. In a way, the reasons for introducing this are similar to the reasons in New Zealand. But I think there are some particular issues in Britain. Part of it is about giving victims more of a say, giving victims the right to have an explanation, to have an apology, to have restitution or reparation. Part of it is about getting an offender to be able to take responsibility, but also to have a chance to give their input, to contribute their ideas. Part of it is for the community to express their concerns and to engage with the problems. So I think, in Britain, we think of the youth justice system as having three components, like a triangle—the offender, the victim and the community. These are the three interests that need to be satisfied properly in a system of juvenile justice.

Now, in principle, some people say the ordinary youth court should be doing these things. We are about to introduce, in Britain, a system for giving victims the opportunity to make a statement through—or at least have their views about the impact of the crime given to a court. So there is a way, in the normal courts, for some victim impact information to get into decision making. If you go to a youth court, the magistrates will ask the young offender what they think. They will normally just grunt. They will normally not say anything. But there is, in principle, the mechanism, the way for the young offender to contribute their thoughts. As I mentioned, magistrates are members of the community. So some people will say, "Well, we already have a system which meets the needs of the offender, the victim and the community well." But when you look at the system of the youth courts closely, you will see that it does not work in that way. What specifically the Youth Offender Panels are providing is a system that is much more direct. You will remember that I talked about one of the government white papers was called "No More Excuses," that the old philosophy was that we were always making excuses for young offenders. Before the Labour government came into power, the Home Secretary, the minister in charge of all this went to sit in a youth court to watch what was going on. He did not like what he saw because the young person was sitting there and the lawyers were doing all of the talking, the professionals. The young person who committed the crime was simply not engaged, not involved. So the idea is to make it more direct. The young person has done the crime, they should be more directly involved in the proceedings. In consequence, it should be more informal to encourage participation because the reality is we are often talking about people who have not had the best education, they are not the best at speaking. If you put them in a very formal setting and say "Speak! Tell us what you think," they would just find it too difficult. They cannot do it. So you need to create an informal setting. You need to have a dynamic setting. By that I mean a kind of forum in which fresh ideas emerge during the proceedings in how to deal with this problem. It isn't often in the court, the social worker or probation officer had written a report saying, "This is what we think should happen to this young person." It is all agreed and it is, as we say in England, a stitch up. It is all kind of agreed by the professionals and then everybody goes off. The idea here is that the actual meeting of the Youth Offender Panel could create some new ideas that had not been thought of before for how to deal with this.

The idea is that a young person is more likely to comply with measures that he/she has had a part in determining, a part in deciding in a discussion than complying with something that has been imposed from on high by a court. So the Youth Offender Panel is not a court sentencing, it is a panel agreeing. And this is a very different kind of mode of decision-making. I think part of that is to do with the kind of people that we hope will become community members. I will talk after the break about the early research on these Youth Offender Panels. One of the community panel members told the researchers, "Magistrates that live in big houses in nice areas and are visualized as being officials, young people can see that we, the community panel members are normal and live in the same areas that they do and experience the same problems." Well, I will tell you that picture is not entirely true because the evidence is that a lot of the community panel members are still middle class, more prosperous, affluent people. But the

idea, and this is an idea that we are struggling with, is to try and make it decision-making by people who are more similar to the offenders. I think that is an important distinction. So those are the four key items I think in our context, in Britain, more direct, more informal, more dynamic and more problem-solving. Those are differences from the youth court system which the panel will replace.

I mentioned that we are testing pilot schemes in eleven areas of England and Wales. The pilot started last summer. There has been one evaluation report produced earlier this year. The plan is that the referral order and youth offender panels will be introduced across the country from next April. So April 2002 will be the national implementation, the national rolling-out of the programme. So already all of the areas in preparation for next April are beginning to think about the questions of recruiting the members of the community and so on.

So what is the early experience of these pilot schemes? Well, first of all, on this question of recruitment and representation of the panel members, the evaluation has found that, because there was a big rush to get enough community members ready, they have not worried so much about whether the panel members are representative of the community. Ideally, you would have people who were representing the bigger community. But, in practice, they have been so worried that they would not have enough community members to run the panels, they have not worried so much about the quality, the representative nature of the people. As I said, there has been more difficulty in recruiting people from poorer backgrounds. Most of the community panel members are women rather than men. I will come back to talk about some issues, at the end, to do with this.

Second thing is that a training programme for community panel members was developed by the Youth Justice Board. We asked a university to produce a training manual for community members. And it was for the local Youth Offending Teams to do the training of the community members. The training is six days, which has taken place at weekends. So over six weeks, the community members came to a training course. That is quite a lot of training, I think. Some people say it's too much. This question of whether we are too worried about community members just being themselves, so we want to train them into little professionals. In the pilot schemes, the training course is also acted as the way of selecting out people who are not suitable. The system will be different when the programme is national because there will be a process of interviewing the people who want to become panel members, to see if people are suitable. But, in the pilot areas, because time was short, people were invited to come on the training. And if, during the training course, they behaved in a way that suggested that they were not very suitable, then is was suggested that perhaps they should do something else with their volunteering. Their community involvement could be some other kind of activity, but not with young offenders. One of the problems with the training has been that it has raised expectations of the community members, which have not always been fulfilled in practice. So there are two specific issues that I will talk about later. One about the kind of information that is made available to them in the meetings, and the second is about the attendance of victims.

It is interesting, the researchers ask the community members why they wanted to do this because it is quite a big commitment to give up 2–3 hours a week

for 40 weeks a year. Some of the community members said it was their own experiences as a young person. They had not necessarily been in trouble, but perhaps they had some difficult times as a teenager and they wanted to try and help. Some people said they were worried about the crime problem in their area and they wanted to do something about it. Some people said it was related to a job that they had previously done. Perhaps they had previously been a probation officer. Some people said it was a way of getting some experience because it might allow them to do a job in the future in this kind of area. So those were the main kind of motivations, the main reasons why people wanted to do this.

The positives of what the community panel members said were that they did feel that it was important work that they were doing. One or two of them said that it was the most important thing that they had ever done in their lives and they were very excited by it. They felt that they were valued and that they were well-supported by the Youth Offending Team. In the panel meetings, they were on the whole impressed by the contributions that the parents had made in the sessions. I think they had expected the parents to maybe be a problem. But they had been very impressed with how concerned the parents had been and the kind of care that the parents on the whole were taking of the young people.

The disappointments—this question about information. The evaluators found that they were disappointed about the level of information they got before the panel meeting. And I want to come back to this question in a minute because I think it is quite important when we're talking about community involvement, how much information they should have about the individuals. They were disappointed that the number of victims was small. And they were disappointed that the kind of things that they could put in the contract, the kind of activities, the kind of programmes were a smaller number than they wanted. They were disappointed at the range of programmes and the breadth of programmes. So they would be in the panel meeting and they would talk to the young person and maybe the victim and the parents. And they would think, "What this boy (or girl) needs is a programme which would help them find work on a Saturday morning" or "improve their skills in this way" or "will occupy them after school on Tuesdays" or "will get them involved in soccer because they are very interested in that." They were disappointed that there weren't these things there. They could say "This is what we want," and the Youth Offending Team would say, "Well, I'm sorry, we do not have the ability to do all of these things." Sometimes they might see that there was a special problem, that they needed a course on drugs to help them become more aware about drugs or to have some special treatment. These programmes aren't there. I think that was an overwhelming finding, that the community members were disappointed in that.

Now, from my point of view, I think that it is important to try to turn that disappointment into action because it is no good the community members just saying "Oh, there are not enough facilities. There are not enough activities. There are not enough things for these young people to do." They must try to exercise influence to increase those things—whether that is influence through their personal efforts or their personal contacts (through their families or friends) or whether it is through lobbying politicians to spend more money on these areas or asking for more

resources or more programmes. But it would be no good if you just had the community members sitting there complaining, "Oh there is not enough things for young people in the area." In a way, that is what the youth court magistrates already do. They make those complaints. But the idea of having the community members is to engage them in the problem and to say, "This is your responsibility as members of the community, as representatives of the community, these young people who are committing offenses, we need to sort that out as a community. So we need to be looking at ways to improve the range of things. So, hopefully, it will create a kind of dynamic, a process in which there is greater investment, a greater number of things available for young people to do.

So the early evidence from about 300 panels, less than half were managed to be held within the 15 days of the referral order being made, which is not surprising, I think. This is a new system and I think 15 days is too short to do all the preparation that is required to run a good panel. Two-thirds took place after 5pm. I put that statistic down because it shows that there is some flexibility about the timing of these meetings. The idea, if you are going to involve the community in any kinds of activities, you have to take account of the demands. It is no good if the Youth Offending Team likes to have the meeting at 10 o'clock in the morning. People have jobs. So a lot of the meetings are in the evenings. Some at the weekend. I think, if you are going to involve ordinary people, you have to take account of ordinary people's lives. And that is the reality. Half last more than 40 minutes. And some of them may last 2 or 3 hours. They don't last as long as the New Zealand conferences on the whole. Some of them only last half an hour. We are talking here about 1st time offenders, so there may be a theft from a shop or something like this. So it is the first time someone has stolen a shirt or something like this. There is not necessarily a lot to do in that kind of case. So some of them are quite short. Some of them which are more complicated obviously last longer. The most worrying, from my point of view, statistic is that victims attend in only 10% of cases. So in about 30 or so panels out of these 300, victims came, which is very low. Much too low. I have been asking for some more detailed research on why it is that the victims have not wanted to come. I have already talked about the question of speed and the importance attached to doing things quickly. But, as you will see, as I said, only half of the panels were held within 15 days. So it is not simply a question of speed. I think it is a question of skill. There is not the skill yet in our country to be able to talk to victims in a way which encourages them to become involved without pressuring them to become involved. It is very important, of course, not to put pressure on a victim. "You must come to this panel. It is your duty to come to this panel." That is wrong. That would be wrong. They have not done anything wrong themselves. They have been the victims at this point. But, if you just say, "Well we got this project. Come if you want," they'll say, "No, I don't think I will." So you have to find a way of, I think, interviewing and talking to them so that they will think, "Yes, this is something that I could get something out of. And maybe it is a part of my responsibility as a community member. I don't really want to do it, but I think..." At the moment, we do not have the experience or skills to do that very well. And we are trying to build that up and trying to identify what training is needed in this whole question of dealing with victims in a way which encourages them to get involved in restorative processes.

What is good news is that contracts are agreed in almost all cases. So in 99% of cases, the contract is agreed in the panel meeting, which is good.

I want to just end by talking about some of the emerging issues, some of which are specific to this question of Youth Offender Panels, but some of these issues have a broader importance when you are talking about involving communities in Youth Justice or indeed Criminal Justice. The first question is a specific one and it is one that has come up in the conference and training already. It is this question of what we call "proportionality." As I said, there is not a lawyer in the Youth Offender Panel. One of the functions of the lawyer in the New Zealand conference is to ensure that the contract or the agreement in New Zealand is proportional, is fair, is not too heavy in terms of the young person but is not too light in terms of what they have done. So, in New Zealand, as I understand it, that function is the function of the lawyer or the Youth Advocate. So they can say "Hang on a minute, this is too much." We don't have that. All we have as a safeguard is the fact that it is an agreement. So, if the young person doesn't like it, they don't have to sign it. They can say, "No I would prefer to go to court." Because if an agreement is not reached and a contract is not signed, then the case goes back to the youth court. And the young person might say, "I don't like to have to do all this work, I would prefer to go to the youth court." And if they went back to the youth court, they may just get a fine. They may get a small sentence effectively than what comes out of the panel. The fact is that 99% of cases do end in a contract being signed. Some people may say, "well, there is pressure put on the young person in these." What you are talking about, and I have heard of children's rights lawyer talk about this and say "this is a terrible system because you have one child and you have a room full of adults. And there is nobody there for that child." You cannot rely on the parent to be there for that child because sometimes the parent is the most critical of the child of everybody. So this is not fair to the child. Now, one of the possibilities would be to change to system to produce some kind of safeguard. In Scotland, where they have a similar kind of system, they do have somebody called a "safeguarder" who safeguards, who protects the rights of the child. But, at the moment, we don't have that. So that is an issue that has come up.

There's also another side to this. I mentioned that the referral order itself can be for as short as 3 months and as long as 12 months. But that is not a very wide range because these are dealing with all cases of 1st time offenders, 1st time court appearances. Now that could be riding a bicycle without lights, it could be very minor offense like this. Or it could be a very serious offense. Now, in the most serious, the court can send the person to custody, to detention. But, on the whole, youth court does not like to send, particularly 1st time, offenders to detention. So we have a wide range of offenses but not such a wide range of penalties. So 3 months to 12 months is not a huge range. So there is then the question, "Should the contract of the Youth Offender Panel be related to the seriousness of the crime?" Well, you would think that is—possibly that should be. But the law says the contract is about two things. It is about making reparation and you could say "Well, the more serious the crime, the greater the reparation needs to be." So, yes, there is some proportionality there. But it is also about preventing offending. What is needed to prevent this young person from

committing a crime again? Sometimes that would be related to the seriousness of the crime. But sometimes not. It is a different question of what you need to do to prevent the person. Now the difficulty with all this proportionality is if panels start to get into these discussions, somebody says, "Ah, I know what we need to help us with this! We need a lawyer in here to help us decide these difficult questions about proportionality." Lawyers are the people we don't want in the panels because we want the direct participation. So this is emerging as an issue in the panels—how much should the community members, the chair of the panel be concerned about this question of proportionality. or should they say "Well the proportionality question has been dealt with by the court. The court has said 3 months, 6 months, 9 months, 12 months. So now we forget about proportionality. We concentrate on repairing the harm preventing offending." That is my view. But there are other people who have different kinds of views in this. So this is an emerging issue.

The second specific issue is this victim attendance question. And I talked about this already. We do need to get the numbers higher. There will be some offenses for which there is no real victim. And one of the questions that is important in restorative justice and important in the whole victim-offender area is what to do when the victim is a shop or an organization rather than an individual person. And in these cases, in my country we are talking about quite a lot of cases where people have stolen things from shops. That is quite a common offense by young people. We call it "shoplifting" or "shop theft." Now, say a boy has gone into Marks & Spencer's, which is an English shop, and taken a shirt—well, he probably wouldn't go to Marks & Spencer's. This is a Marks & Spencer's shirt. He wouldn't want to wear a shirt like this. But he goes to a T-shirt shop and takes a T-shirt with "Adidas," that would be more like it, something like this, and he is caught and a Youth Offender panel is arranged, who comes as the victim? Well, it is difficult to find somebody from the shop who will be prepared to come because they have a shop to run and it is not important for them. They have not really been the victim. Okay, they have lost a shirt. Okay the profits of the company will come down a little bit because of the loss of a shirt. But it is not real individual harm or loss to an individual person. Now, if someone from the shop comes, the security guard or the manager of the shop, what do they say? Do they say, "The profits of my shop have gone down because of your crime?" Because the boy will then say, "I don't really care about the profits of your shop. So what?" And I think there is a real issue about whether restorative justice victim attendance works when you have a corporate victim. It works much better when there is an individual who has really suffered something. Then the whole philosophy comes into play. It is only my view that it can be a bit false to try and get somebody to feel shame and sorrow because of the effect on a security guard in a shop or the manager. So you understand the point I am trying to make. So I am more concerned about victim attendance in the case of individual harm. That is, I think, where we should try to concentrate our efforts. We should not worry so much if the attendance for these cases of the shops or offices is low.

Final emerging issue, specific issue is about the impact on custodial sentencing. You'll remember that I said the youth court, in a serious case, can send somebody straight to detention if

somebody has probably done a serious burglary, broken into somebody's house or set fire to something or hurt somebody seriously, they would probably go into custody immediately. The problem is that the court, in making that decision, only really has two choices. It has referral order or detention. The court has no control over the Youth Offender Panel. The Youth Offender Panel decides what is the contract. So they may not trust that the Youth Offender Panel will come up with a contract that is sufficient to mark the seriousness of the crime. If someone has already had a crime, they cannot go to the referral order. They just get dealt with by the youth court. But then the youth court has available a whole range of sentences that I talked about before: supervision orders and probation orders, attendance sentences. But, strangely, for 1st offenders, there are just 2 things, really. That means that young people may be more likely to go to prison and these places when the referral order comes in than they are now. So that might be a slight problem for the system. It has not been anticipated, but people suddenly realized, after this system was introduced, that this was one of the consequences that might occur. So we need to watch carefully whether that is the case.

Okay, so what are the final emerging issues? Well, I talked about this question of how representative the panels are. One of the panel members told the researchers, "We are basically middle-class panel members dealing with working class communities." So "we are basically prosperous people dealing with poor people." Now, the idea of the youth offender panel is that it should not be like that, that we should be recruiting people from all over society to deal with offenders. How we do that is one of the big challenges for us. And I think it is partly this question of maybe 6 days training for panel members puts off certain people who don't want to give up 6 Saturdays to go and learn to be a panel member. Maybe that is too demanding. Maybe they have not got the confidence to put themselves forward for these kinds of activities. So I think we need to look at all of that. On this question of representativeness, this is a question that does have wider implications. If you are talking about community involvement, you need to consider this whole question of whether the people you are involving properly represent the community. And I'm thinking about men and women, different minority groups, different social classes, a whole way in which society is made up.

Similarly, the second question that I raise here links with the YOT (the Youth Offending Team). One of the community members said, "I ignore the YOT staff and I am determined not to be a puppet on a string." Some community members think that they are just there for "window dressing," as we say in England. They are just there to make the thing look as though it is participation, but really the decision is made by the YOT. And some of the community members are concerned about that. Another said, "I think that we will be able to do the panels without the YOT. In fact, I think it would be easier without them." This is the whole question of, if you do have community involvement, the relationships with the professionals and how that works. Some of the professionals are suspicious of the community members. They do not really trust them to do a good job, they are worried. They see that this is the job that they used to do, being taken away and given to ordinary people. Some of them think, "That's not right. I want to continue to do that." Now I don't think it is possible for the Youth Offender Panel

to operate without the YOT because the Youth Offending Team is preparing all of the meetings, it is recruiting & training the members, it is providing the information.

I want say a little about this question of the information because I think that, in a way, sums up one of the issues between professionals and the community. I mentioned before that the youth justice orders produced this ASSET assessment tool. When the community members were receiving their training, they had a session about the ASSET tool. And the YOT said, "Whenever a person commits a crime, we fill in this form and find out all about their backgrounds and so on." So when they came to do the panels, they expected that they would get this form about the child, but they don't. They just get a short summary of the information about the case. There have been some practical problems because they did not receive the papers long enough in advance to read them. I think a lot of systems have these problems. That is not to worry so much about because we can sort that out. But I think there is a real issue about how much you tell ordinary people. So say a child has been subject to sexual abuse when they were younger. Is this information that should go to the community panel members? Of course, they sign confidentiality agreements, but still, there are some professionals who worry about this information getting too far out. Of course, you would not give this information to all of the participants in the meeting, the victim. Or should you? And I think there is a real question now over where information should go because, if a victim of a crime understands that the offender has behaved in the way they behaved because they have had a very bad experience, that is not an excuse, but it might help them to understand why they have been a victim. Is it fair on the child to put all this information to people who are not professionally trained and so on? So I think this whole question of information and safeguards about information is quite a difficult professional and moral question that needs to be looked at.

The third point is safety. One of the panel members said to the evaluators, "It is very nice saying that it is community. But the reality is that some people can retaliate. So I would prefer to do panels outside of my immediate community." By retaliate, what she meant was that she was afraid that an offender who she had seen and dealt with in the panel might recognize her in the street and say, "You are the woman who made me go and do all this community work and I don't do it" and he might take some revenge on her. I think this is an important factor to take into account. It is easy sometimes to talk about the community as though it is a happy place in which everybody gets on very well. But there are conflicts and one needs to take account of the reality of community life. It may be that people who are living very close to the area where the offenders live may not be the best people to do it. I think if panel members are expressing those concerns, they need to be taken account of. They need to be listened to.

And finally, there is a question of extending this system to other offenders. Without a new law, it has to go to Parliament. But it could ask Parliament to agree that the system could be extended beyond 1st time offenders to other kinds of offenders, maybe some offenders who have already committed one crime. So it becomes more like the New Zealand system, more and more the way in which young offenders are dealt with. It also allows the government to change the kinds of offenses. So it might

say that it is not really suitable for offenses like riding a bicycle without lights. It is a waste of resources to have a youth offender panel for a very small crime. Let's find some other way of dealing with that. So that the kind of range of offenders and offenses can be changed. My view is that, if it starts to work well, and to work well we need more victims and we need to know how many of the contracts are properly completed—and it is too early to know how many of these contracts have been completed by the young offender—but if victims come and are satisfied and the contracts are completed, I think it is potentially a good model to be extended throughout the system.

I think that it's very important to finish by saying why I think it's important. It is to do with this whole question of why we should involve the community. As you know, I am involved in a project which is about public attitudes in this area towards offenders and towards crime. What the evidence, in my country is, is that, if you ask people what they think about crime and punishment, they will say "The system is not harsh enough. We need a lot more punishment. Offenders are getting away with it." But, if you give them details of a real case, of a real offender, a real human being who has committed [a crime], when they start to see the details about the backgrounds, where they live, the kinds of circumstances in which they have been brought up, the pressures on them, they start to think and say, "Well maybe punishment is not going to solve this problem." What the Youth Offender Panel does is move people from having an emotional reaction about crime—we all don't like crime and we must stop it—it is not an emotional reaction. It is a practical problem that they have to solve. They are representing the community in solving a problem for that community. When people are solving problems, there is not so much room for emotions because it doesn't help you solve the problem. I think the whole system of criminal justice, particularly for young people, needs to have that injection of practical realism and sense. The Youth Offender Panel is a model for doing that. If it does work, it can help to produce a better system for the young people, for the victims and for the communities where they live. Thank you very much.

A PREVENTION SCIENCE FRAMEWORK AIMED AT DELINQUENCY

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For over ten years the U.S. has had the unfortunate and dubious distinction of being a leader in terms of having the highest rates of serious violent crime in comparison to other industrialized nations. It is one of the most violent countries by a factor of four. A census of U.S. prisons showed that there were 1,284,894 people incarcerated at the end of 1999 in our correctional system. The incarceration rate has more than tripled since 1980. Between 1990 and mid-year 1999, the incarcerated population grew an average 5.7% annually. This increase, in part, reflects changes in policies that have sought to reinforce punitive measures. Some states have passed legislation such as the "Three Strikes" effort that stipulates that anyone who commits three felonies will be automatically sentenced to life in prison. Projections suggest that the U.S. prison population will only continue to grow and industries involving prison construction and management are burgeoning.

Are solutions such as "Three Strikes" effective? Greenwood and others at the Rand Corporation (1996) did an analysis of the cost savings associated with different prevention approaches (pre- and post-natal home visits, parent training, graduation incentives, intensive supervision of adjudicated delinquents) and the "Three Strikes" law in California. They compared the costs of each intervention and examined the millions of dollars that would be averted by the reduction in serious crimes. Costs associated with "Three Strikes" are $5.5 billion a year in California and are expected to reduce serious crime by about 21%. Reductions in crime are expected to be less with the other preventive approaches, 15% for graduation incentives and 10% for other approaches, however because of their lower cost—approximately $1 billion annually for graduation incentives and parent training, this study suggested that for one-fifth of the investment—graduation initiatives and parent training can reduce as much crime as the "Three Strikes" initiative. In addition to graduation incentives and parenting training, another preventive strategy, intensive supervision of adjudicated delinquents, also compares favorably in cost effectiveness with the "Three Strikes" law. It's important to note that the study did not take into account future cost savings that may occur as a result of these preventive efforts.

This is just one illustration that underscores the legitimacy of prevention in the area of crime and delinquency. It's important to note that prevention efforts are not meant to replace treatment and aftercare efforts, but should be viewed as a viable and legitimate component within a continuum of care model. In 1993, the Institute of Medicine convened a number of experts to examine state of prevention science to reduce the risks for mental disorders. This resulted in a hallmark report that described the knowledge base of prevention science and the emergence of a new paradigm (IOM, 1994). Further,

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it specified a new classification scheme for prevention that illustrates different types of prevention strategies to add to our spectrum of care. These three types are universal, selective and indicated prevention. Universal prevention includes those strategies that should benefit the general population. An example of a universal prevention strategy in the area of dental health is the addition of fluoride into drinking water. Selective prevention strategies target populations at higher risk of developing a disorder. A prenatal programme targeting low income mothers who are higher risk for low birthweight infants is an example of a selective programme. Indicated prevention strategies target populations which already demonstrate early or initial symptoms of the disorder. An example of an indicated strategy includes weekly children's group sessions to enhance social skills for aggressive kindergarten boys. Universal strategies reflect the earliest prevention component in the continuum of care model followed by selective strategies. As one moves beyond the next tier of indicated prevention, one moves into case identification and the treatment of a disorder. Beyond treatment, our continuum of care model includes maintenance components which seek rehabilitation and the reduction of relapse. The IOM report reflects the growing attention that is being focused on prevention science and the increased legitimacy that it is earning.

Prevention science draws in principle from a public health model. A public health framework initially defines the problem and then identifies risk and protective factors associated with the problem. Take for example the problem of cardiovascular disease. Extensive research has been conducted to examine the prevalence and incidence of cardiovascular disease within various populations, to determine the age in which rates of the disease increase and to understand how the disease develops. Further, decades of research now have identified risk factors such as a family history of heart disease, smoking, and high levels of cholesterol which are associated with an increased risk of cardiovascular problems. Conversely, a healthy diet and exercise have been shown to be protective factors that buffer the negative effects of risk factors. In addition to defining the problem, a public health framework helps us specify interventions to reduce the identified risk factors and to promote protective factors and lastly, to evaluate our efforts.

It's important to acknowledge that the presence of risk factors does not imply that one will develop the disease rather it suggests an increased "likelihood". Each of us may have personal examples of acquaintances whom have multiple risk factors associated with cardiovascular disease yet these individuals appear to grow old without any apparent incidence of the disease. This underscores the need to understand and investigate protective factors. Protective factors mediate or moderate the negative effects of risk factors.

The public health model can be utilized in the area of delinquency prevention and begin by defining the problem. The National Youth Study by Del Elliot shows that the prevalence of violent offenders at age 12, 13, and 14 is low, 10–15%. The prevalence of violent offenders rises during late adolescence to 25–35% by age 17, and then declines back to the 10–15% level by age 21. This age dependent quadratic trend is common across the late adolescent and young adulthood periods for a variety of delinquent activities. We also know from Moffitt's research from

New Zealand, the U.K. and the U.S. that there are two groups or two types of serious violent offenders. One group begins their violent behavior at ages 15–17 and contributes to the increase in prevalence, but few of these offenders persist in their behavior. On the other hand, another group that begins their violent behavior earlier by age 12 is the most likely to persist in violent behavior, including into adulthood. In terms of general delinquency, we find that among boys, early aggression and shy behavior between ages 4–6 is a significant predictor of later conduct problems and delinquency. Further, we see an escalation of behavior from minor problem behavior at age 7 leads to moderately serious behavior at ages 9–10, serious delinquency by age 12 and initial contact with the juvenile justice system by age 14.

The empirical evidence that describes the problem of delinquency and violence has important implications for prevention. This evidence suggests that there are developmental periods in which the opportunity for preventive efforts is more salient. On the one hand, prevention efforts may seek to target aggressive and shy boys to derail what appears to be a developmental trajectory into delinquency. Another potential target would be delaying the onset of violent behavior in early adolescence to discourage the development of the persistent violent offender.

Over the last two decades, a growing body of research has identified a number of risk factors associated with delinquency, and other adolescent problem behaviors. In order for a trait to be identified by our criteria, there must be published evidence that a factor is *consistently related* to the problem behavior across multiple studies and that the relationship be demonstrated *longitudinally*. Specifically the study must have measured the risk factor at one point in time and measured the adolescent problem at a later point. This has resulted in a compilation of risk factors associated not only with delinquency and youth violence, but other adolescent problem behaviors such as drug use, school drop-out and teenage pregnancy (see for example Hawkins, Catalano, & Miller, 1992). What's notable is that there is significant overlap in risk factors across problem outcomes.

Risk factors reside in multiple domains ranging from community level, school, family and individual and peer. The community environment in which a child develops can affect their chances of developing a problem through contextual factors such as:

- Firearm and drug availability
- Community laws and norms
- Community disorganization
- Media portrayals of violence
- Transition and mobility
- Low neighborhood attachment
- Economic deprivation

Firearm availability and firearm homicide have increased together since the late 1950s. Laws regulating the sale of firearms have had small effects on violent crime that may diminish after the law has been in effect for multiple years. In addition, laws that include penalties for using a firearm in the commission of a crime have also been related to reductions in the amount of violent crime involving firearms. A number of studies suggest that the small and sometimes diminishing effect of firearm laws is due to two factors, the availability of firearms from other jurisdictions without legal prohibitions on sales or illegal access, and community norms that include a lack of

proactive monitoring or enforcement of laws.

Neighborhoods with high population density, low levels of attachment to neighborhood, lack of natural surveillance of public places, and high rates of adult crime have high rates of juvenile crime. It's suggested that neighborhood disorganization contribute to deterioration in the ability of socializing units such as churches, schools and families to pass on positive values to children.

There has been a lot of research on the impact of media violence on boys and girls. Leonard Eron and others have shown that short and long-term increases in violence result from media exposure to violence. The strongest evidence is available for boys.

Rates of problem behavior including delinquency, drug use, and dropout increase among adolescents following school and residential changes. Even normal transitions between elementary and middle and middle and high school are followed by increased rates of problem behavior. Further, children in communities characterized by frequent moves and frequent nonscheduled school changes are at higher risk for delinquency, drug use, and school dropout.

Children from extremely economically deprived environments are at four times higher risk of the problem behaviors. In the violence area, children from areas characterized by poverty, poor living conditions, and high unemployment are at increased risk of becoming violent in adolescence and young adulthood. While we don't know the mechanism specifically for violence in poor urban areas, it may be due to exposure to multiple factors including poverty and poor living conditions, racism and lack of opportunity, that lead to youth developing a fatalistic outlook. Under these conditions, deadly forces may be more likely to be employed to solve problems or settle arguments.

Factors expressed in the school environment include:

- Aggressive behavior
- Achievement
- Commitment to school

There is consistent evidence that identifies boys who are aggressive from about age 5 as being at higher risk for problem behaviors. Additionally, boys with hyperactivity or shyness along with aggressiveness are at an even more elevated risk for delinquency, drug abuse, and violence. Both boys and girls who get involved in antisocial behavior in early adolescence, including school misbehavior, truancy, skipping classes, getting into fights, or involved in delinquent acts are at higher risk for serious frequent involvement in all problem behaviors in adolescence.

Academic failure as a risk factor begins to be operative in middle to late elementary school, and applies to all problem behaviors. It doesn't seem to be lack of academic ability but rather the experience of failure itself that is predictive of adolescent problem behavior. These are the youngsters who feel that school is not important and do not care for school.

Experiences in the family that begin to be salient early in development can also increase the chances of delinquency. These include:

- Family history of criminality

- Family management problems
- Family conflict
- Family involvement and favorable attitudes toward crime and drug use

Growing up in a family in which parents or siblings have a history of the problem behavior puts a child at risk for that specific problem behavior.

Additionally, children in families with poor management are at higher risk of problem behavior. There are three important characteristics of good family management or good management in general:

1. clear expectations and rationale for behavior—parents have to know what they want and let their child know why;
2. good monitoring and supervision of behavior—if know what you want, watch and see if you get it; and,
3. consistent recognition and consequences—if you see it recognize it and celebrate it, and if you don't see it or if it's not done up to standards, apply moderate consistent consequences. On the other hand, inconsistent discipline and excessively harsh discipline have been associated with higher risk.

Children raised in families characterized by conflict between caregivers or caregiver-child conflict are at increased risk of problem outcomes. Children exposed to parental violence in or outside the home or whose parents condone violent activity are at increased risk of developing aggressive behavior in childhood and violent behavior in adolescence and young adulthood.

Lastly, there are several factors that reside at the peer and individual domain which have been shown to be predictive of delinquency and other problem outcomes. These include:

- Alienation and rebelliousness
- Friends who engage in the problem behavior
- Favorable attitudes
- Early initiation in the problem behavior
- Constitutional factors such as impulsiveness and sensation seeking

Children who feel they are marginalized or outside of conventional society are at higher risk for problem behaviors. Additionally, rebelliousness is currently being examined as a risk factor for violence.

Association with problem peers is a strong and proximate predictor of problem behavior. Even children who grow up without other risk factors but associate with those who use drugs, are delinquent, are violent, are dropouts, are pregnant are at a higher risk of the specific problem behavior. However, the good news is that those who grow up with fewer risk factors aren't as likely to associate with these types of peers during adolescence, since individuals are typically found in the company of peers with similar behaviors and attitudes.

Favorable attitudes towards the specific behavior enhance the risk of developing that behavior. Additionally, several researchers have found that those who get involved in these behaviors early in life are at higher risk for the frequent occurrences of the specific behavior. Lee Robins and colleagues found that those who tried drugs before age 15 almost doubled their risk of drug abuse compared to those who first tried drugs after 19.

Lastly, constitutional factors due to biological or physiological factors (such as low autonomic nervous system response, Fetal Alcohol Syndrome, prenatal abnormalities or brain trauma) are often indicated by a behavior such as sensation-seeking or low impulse control, and increase the risk of problem behaviors.

Research continues to be conducted to update our knowledge and discovery of other risk factors. Research continues to investigate the extent to which risk factors are salient across, for example, different ethnic and cultural groups or gender. Additionally, research is being conducted to better understand the mechanisms through which the effect of risk on to the problem outcome manifests.

Turning now to protective factors, much of what has been discovered regarding protective factors is derived through research conducted with children exposed to multiple risk factors. Researchers noted that many of these children were able to avoid later problems despite high exposure to risk. Researchers wanted to investigate what keeps children who are exposed to multiple risk factors, protected and motivated to develop healthy lifestyles and not become involved in adolescent problem behaviors. Seminal work has been conducted by Rutter and Werner, and more recently Resnick and Blum, to understand the concept of protective factors. Similar to the criteria used to identify risk factors, their findings have been derived from multiple, longitudinal studies. It's critical to acknowledge that protective factors are not the reverse or opposite of risk factors. Rather these are unique factors that mediate or moderate the effects of risk on to the individual.

Protective factors derived from the empirical literature include supportive relationships and attachment to prosocial adults and environmental reinforcements of appropriate coping strategies. At the individual level, a resilient temperament, accurate processing of cues, appropriate problem solving and sense of self-efficacy have been shown to act as protective mechanisms against risk.

One theoretical framework that incorporates the mechanisms of protective factors is the Social Development Strategy (SDS) (Catalano & Hawkins, 1996). The SDS is a guide for how families, schools, communities and peer groups can build protective environments for children. The SDS posits that by providing prosocial opportunities for involvement, skills for involvement and rewards or recognition for involvement, a child will increase his or her attachment to the corresponding positive socializing unit such as the family or classroom. Bonding to a prosocial entity creates a social control mechanism that discourages behaviors which go against the beliefs of the socializing units. Additionally, healthy standards and clear beliefs increase the likelihood that the child will develop healthy behavior.

There is a great deal of empirical evidence regarding risk and protective factors associated with adolescent problem behaviors that can be applied within the public health framework. We know that risk and protective factors exist in multiple domains ranging from the individual and peer to the larger environmental context of the school, neighborhood, and community. Many common risk factors predict diverse behavior problems. Additionally, research suggests that the more risk factors present, the greater the risk, and the

greater the likelihood of problem behaviors. Further, risk factors are important or salient at different points in development. This suggests that a developmental continuum of prevention programmes from prenatal through adolescence would be appropriate. We know that protective factors reduce the effects of exposure to risk. The greater the level of protection, the less likelihood of problem behaviors. It is important to involve each socialization institution in enhancing protection as children mature from family, school, and through community.

In summary, communities and programme providers would be well served to develop a logic model that utilizes the public health framework. A logic model becomes a road map to specify the distal target of our efforts, in this instance, the reduction in juvenile delinquency. Additionally, it specifies the proximal targets for our intervention efforts, the risk factors that we seek to reduce and the protective factors that will be enhanced. By focusing on these proximal factors, the logic model guides us to select appropriate preventive intervention programmes which will target initially the proximal targets and in the long run prevent delinquency.

It's clear from the increasing levels of incarceration and high rates of violent crime in the U.S. that simply focusing on the treatment and rehabilitation end of the continuum of care spectrum is insufficient. Borrowing from the field of public health, prevention science as a paradigm has come of age. There now exists a significant body of research that identifies risk and protective factors associated with delinquency and other problem behaviors among adolescents. These factors provide us with modifiable targets for preventive interventions that compliment treatment, as well as in some cases, these preventive efforts provide both a cost savings and greater efficiency in preventing negative life course trajectories.

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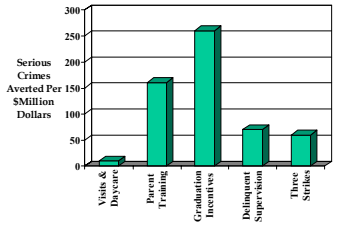
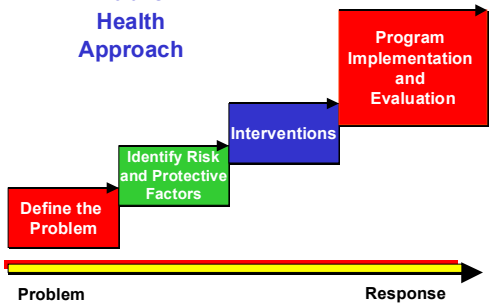
APPENDIX

Cost-Effectiveness of Early Interventions Compares Favorably with that of Three Strikes



Public Health Approach



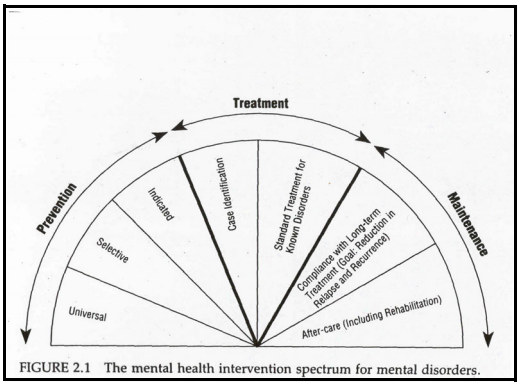


FIGURE 2.1 The mental health intervention spectrum for mental disorders.

Define the Problem

- What is it's prevalence?
- When does it begin?
- How does the problem develop?

Types of Prevention

- Universal
  - Example – Fluoride water treatment
- Selective
  - High risk children
- Indicated
  - Children with initial symptoms

Violent Offenders

- 12-14 years 10-15%
- Age 17 25-35%
- Age 21 10-15%

Pattern of Delinquency

- Age 4-6 Aggressiveness & shy/withdrawn
- Age 7 Minor Problem Behavior
- Age 9-10 Moderately Serious Behavior
- Age 12 Serious Delinquency
- Age 14 First Contact with Court

Risk Factors Reside in Multiple Domains

- Community
- School
- Family
- Individual / Peer

Risk Factors for Heart Disease

- Example: Family history of heart disease
- Increase likelihood that disease will develop
- Risk factors are *associated* with heart disease
- Not 100% guarantee

What are Protective Factors?

- Buffer the effects of risk exposure
- Demonstrate results in multiple studies
- Demonstrate results in longitudinal studies

Research Base to Identify Risk Factors for Delinquency

- Multiple, longitudinal studies have identified *risk* and *protective* factors that predict delinquency, substance abuse, youth violence, dropout and risky sexual behaviors.

Adolescent Problem Behaviors

Risk Factors	Substance Abuse	Delinquency	Teen Pregnancy	School Drop-Out	Violence
Community					
Availability of Drugs	▯				▯
Availability of Firearms		▯			▯
Community Laws and Norms Favorable Toward Drug Use, Firearms, and Crime	▯	▯			▯
Media Portrayals of Violence					▯
Transitions and Mobility	▯	▯		▯	
Low Neighborhood Attachment and Community Disorganization	▯	▯			▯
Extreme Economic Deprivation	▯	▯	▯	▯	▯

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Adolescent Problem Behaviors

Risk Factors	Substance Abuse	Delinquency	Teen Pregnancy	School Drop-Out	Violence
School					
Early and Persistent Antisocial Behavior	■	■	■	■	■
Academic Failure Beginning in Late Elementary School	■	■	■	■	■
Lack of Commitment to School	■	■	■	■	■

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Protective Factors

- Family
  - –Supportive relationships
  - –Attachment to prosocial adults
- Environmental
  - –Reinforce and support coping

Adolescent Problem Behaviors

Risk Factors	Substance Abuse	Delinquency	Teen Pregnancy	School Drop-Out	Violence
Family					
Family History of the Problem Behavior	■	■	■	■	■
Family Management Problems	■	■	■	■	■
Family Conflict	■	■	■	■	■
Favorable Parental Attitudes and Involvement in the Problem Behavior	■	■			■

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Protective Factors

- Individual
  - –Resilient temperment
  - –Accurate processing of cues
  - –Good problem solving
  - –Sense of self-efficacy

Adolescent Problem Behaviors

Risk Factors	Substance Abuse	Delinquency	Teen Pregnancy	School Drop-Out	Violence
Individual/Peer					
Alienation and Rebelliousness	■	■		■	
Friends Who Engage in the Problem Behavior	■	■	■	■	■
Favorable Attitudes Toward the Problem Behavior	■	■	■	■	
Early Initiation of the Problem Behavior	■	■	■	■	■
Constitutional Factors	■	■			■

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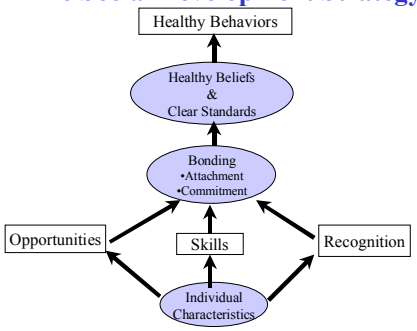
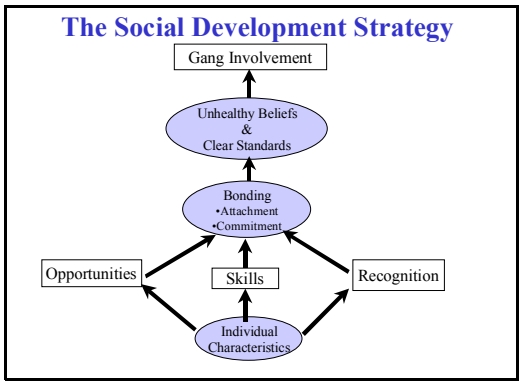
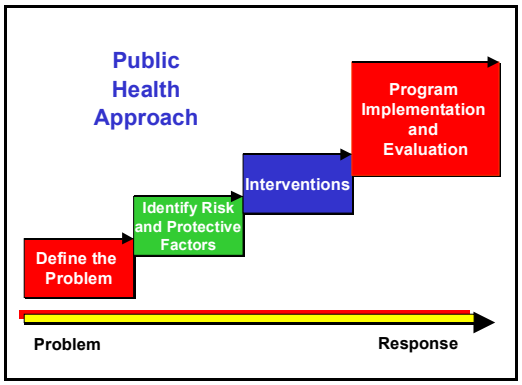
The Social Development Strategy

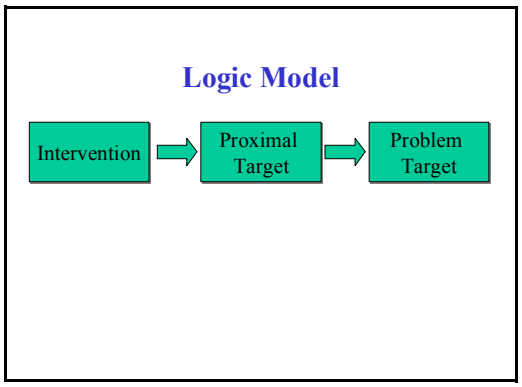






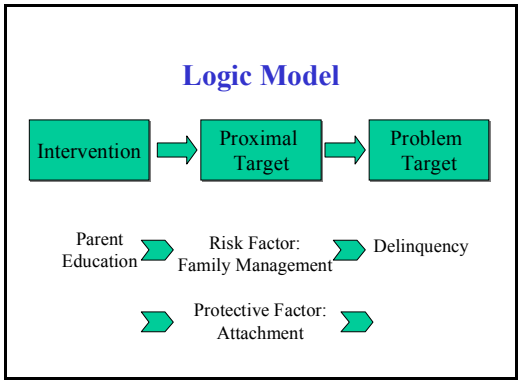
Generalizations About Risk and Protective Factors

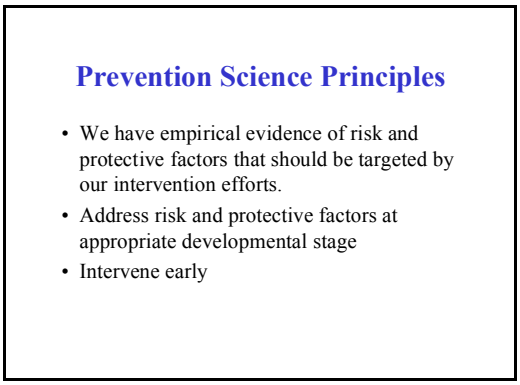
- Risk and protective factors are found in multiple domains
- The more risk factors present, the greater the likelihood of problem behaviors
- Protective factors reduce the effects of exposure to risk



Generalizations Continued

- Common risk and protective factors predict diverse behavior problems
- Risk and protective factors show much consistency in effects across different groups
- Risk and protective factors should be used to target preventive action




Prevention Science Principles
• We have empirical evidence of risk and protective factors that should be targeted by our intervention efforts.
• Address risk and protective factors at appropriate developmental stage
• Intervene early

PREVENTION SCIENCE PRINCIPLES FOR INTERVENTION

*Tracy W. Harachi, M.S.W., Ph.D.**

There is growing consensus that a risk reduction and protective factor enhancement approach is the most promising approach across a number of fields. Interventions that seek to *both* reduce risk and enhance protection in multiple socializing domains will likely be more effective towards achieving our goal of supporting the healthy development of children. The National Academy of Sciences, the Institute of Medicine, and several U.S. federal governmental agencies including the Departments of Education and Justice, Office of Juvenile Justice and Delinquency Prevention, Centers for Substance Abuse Prevention and Mental Health Services, and the Centers for Disease Control have adopted and supported a risk and protective focused approach to promotion and prevention.

Today, many promotion and prevention interventions that reduce risk and enhance protection have demonstrated effects in interrupting the processes that produce adolescent problem behaviors (including violence, crime and substance use), as well as promoting positive development (academic success, social and emotional competence). This is a significant increase from the early 1970's when a review was conducted on behalf of the Office of Juvenile Justice and Delinquency Prevention of all existing delinquency prevention programmes with strong evaluation designs that were sufficiently rigorous and demonstrated effectiveness. Of nine programmes with strong evaluation, only one showed positive results.

In delinquency prevention, many alternative programmes were tried in the early 70's, in which youth were removed from their urban environment and given a rural or wilderness challenge type of experience; for example, a programme called National Intervention Programme Using Minibikes (NIPUM) which consisted of motorcycle riding in the desert. What we know from the evaluation of these programmes is that involvement alone did not appear to reduce delinquency. While many of these experiences were attractive to adolescents and staff, especially inner-city adolescents, most of the early programmes made no effort to change the basic criminal environment the children were exposed to on a daily basis. Further, often these experiences had little applicability to children's lives when they returned from these outings.

Research has provided us with a set of prevention principles from which to operate when considering intervention options to optimize effectiveness. These principles include the following:

- Preventive interventions should focus both on reducing risk and enhancing protection.
- Preventive interventions should target individuals exposed to higher levels of risk.
- Address risk and protective factors at developmentally appropriate stages and whenever possible, intervene early.

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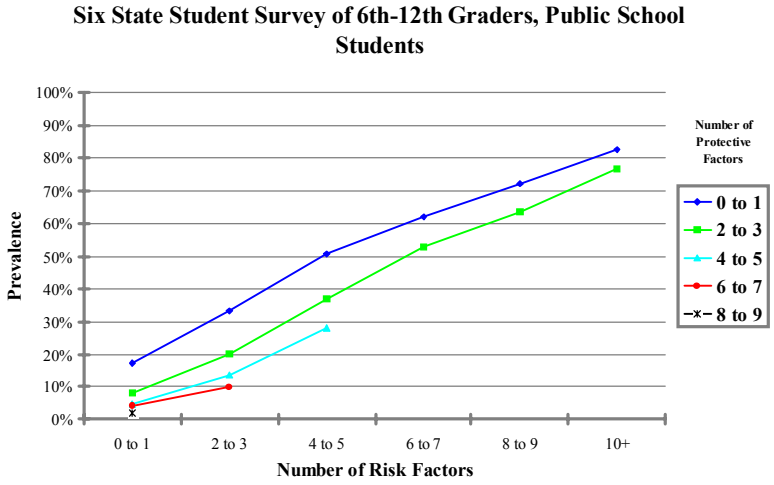
- Use data to select priority risk and protective factors in designated communities.
- Select preventive interventions that have empirically demonstrated effectiveness to target the prioritized risk and protective factors.

The first principle emphasizes that prevention strategies should focus on reducing risk factors and enhancing protective factors in order to maximize effectiveness. Both an individual's level of risk and level of protection make a difference. Research has shown that high levels of protection are not likely to be found in high risk environments. As such and given likely limited resources, another principle suggests it is essential to target individuals exposed to the highest levels of risk and the lowest levels of protection. It's likely that these individuals will be clustered; hence identifying community areas exposed to high levels of risk and low levels of protection becomes critical.

In order to provide maximum strength of intervention, another principle suggests that interventions should be chosen which address risk and protective factors at appropriate developmental stages. Some risk factors affect children early in life. These should be addressed early and new risk factors that are salient later in life should be addressed as children mature. The earlier we intervene the greater the likelihood that we will be able to change risk factors and patterns of behavior. If we wait until family management problems produce an abused or neglected child we may have waited too long to prevent a lot of damage. Therefore, we need to create a developmental continuum of prevention with programmes appropriately placed to reduce risks associated with each developmental period.

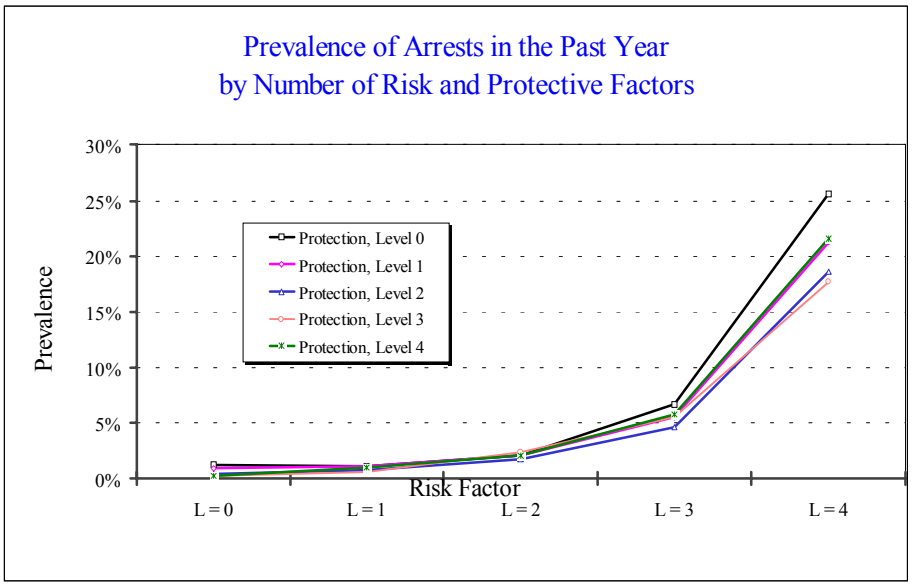
Let's look at data produced from our work with six states in the Diffusion Project (NIDA funding, PI: Hawkins). School children in this study represent a statewide sample and have responded to survey questions on risk and protective factors and problem behaviors. Figure 1 examines the prevalence of thirty day alcohol use by the number of risk and protective factors reported by the youth. As the number of risk factors increase, the general trend for alcohol use also increases. Additionally, as the number of protective factors increases prevalence of use lowers. Figure 2 examines the prevalence of arrests in the past year also by number of risk and protective factors. A similar pattern is portrayed with the prevalence of arrests in the past year highest for those youths with the lowest level of protection and highest number of risk factors.

Prevalence of 30 Day Alcohol Use by Number of Risk and Protective Factors



Relationship Between Risk and Protection

- The more risk factors the greater the prevalence of alcohol use.
- Black line (top line) is the group with no protective factors.
- Red line (bottom line) has the most, 6–7 protective factors.
- The more protective factors— the negative effects of risk go down.



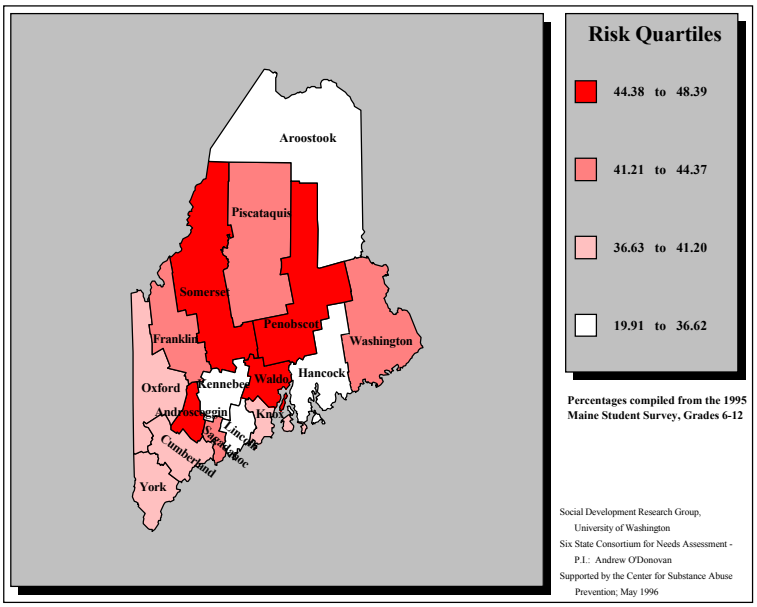
Relationship Between Risk and Protection

- Similar relationship for arrests in past year.
- The difference between 1 and 3 risk factors doesn't seem so strong.
- Having 4 or more risk factors seems to reach a critical level where protection is more important.

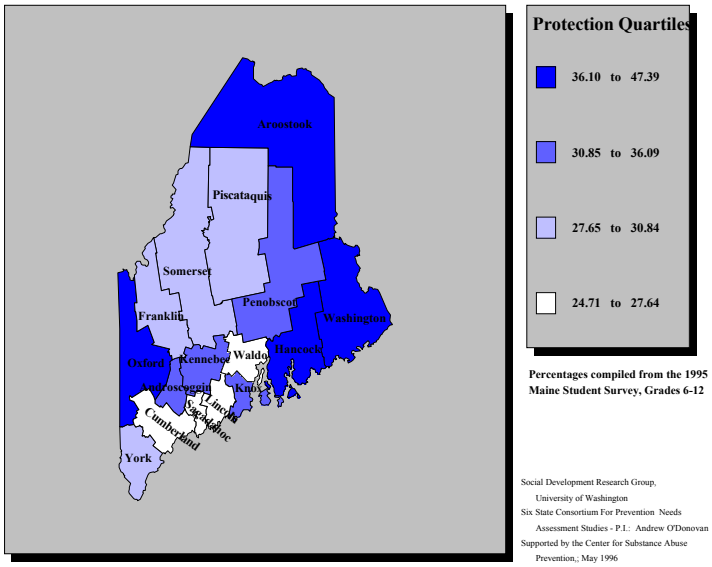
These data illustrate both the need to focus on risk and protection, as well as highlight the impact of greater exposure.

The following figures also from the Diffusion Project illustrate the principle that risk and protection can be identified in geographic clusters. Information such as this can help determine geographic priorities in terms of identifying areas of greatest need.

Maine Student Risk Factor Profile

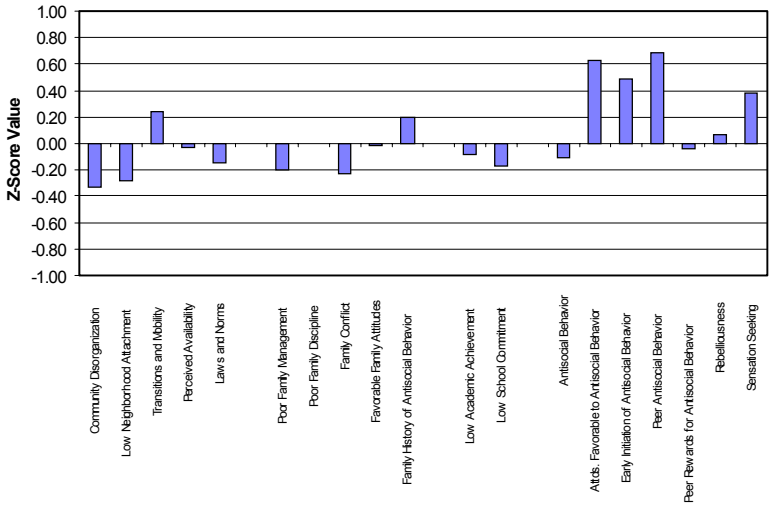


Maine Student Protective Factor Profile



While these figures illustrate areas of need, they do little to help *diagnose* the individual risk and protective factors that should be targeted. Information is needed to determine which factors are at higher levels and therefore should be the focus of our intervention efforts. Let's take for example two neighborhood risk profiles. The first neighborhood "A" has a unique risk factor profile. For this neighborhood, peer antisocial behavior and attitudes favorable to antisocial behavior appear to be the risk factors at higher levels as reported by youth in this community. This is followed by early antisocial behavior and sensation seeking behavior.

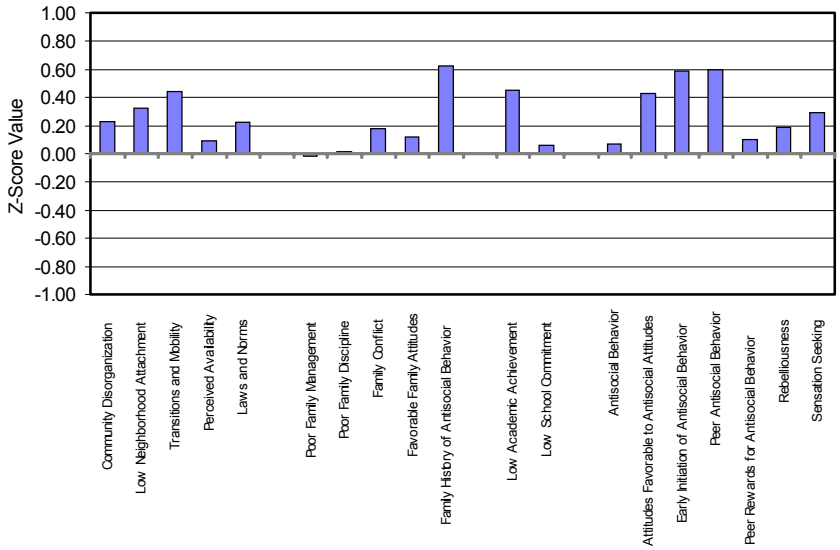
Risk Factor Profile, Neighborhood A



Priorities for Neighborhood A

(i) Peer Antisocial Behavior
(ii) Attitudes Favorable to Antisocial Behavior
(iii) Early Antisocial Behavior
(iv) Sensation Seeking Behavior

Risk Factor Profile, Neighborhood B



Priorities for Neighborhood B

(i) Family History of Antisocial Behavior
(ii) Early Initiation of Antisocial Behavior
(iii) Antisocial Peers
(iv) Low Academic Achievement
(v) Transitions and Mobility

Contrast the risk profile of neighborhood "A" to the risk profile for neighborhood "B". For this neighborhood, a family history of antisocial behavior is reported as a higher level of risk by youth in this community. This is followed by early initiation of antisocial behavior and involvement with antisocial peers. Further, youth in Neighborhood "A" report that low academic achievement and high transitions and mobility are the next more frequent risks. On the other hand, poor family management including poor family discipline appear to be relatively low risks in this neighborhood.

Using the information from the neighborhood risk profiles, we would develop distinctly different logic models to specify both our targeted risk factors and chosen interventions. In neighborhood "A", we would prioritize peers who engage in antisocial behavior as our proximal target. Consequently, we might choose an intervention such as parent education and training to reduce negative peer associations. In contrast for neighborhood "B", family history of antisocial behavior is the priority proximal target and therefore we might choose an intervention such as prenatal and infancy home based services to address this factor. It's critical to note that the selection of priority risk factors does not mean that other factors are not important. Rather prioritization helps with targeting programming to areas most in need.

One of the last prevention principles suggests that using programmes with demonstrated effects in well-controlled studies increases the likelihood that the programme will be positively evaluated and reduce the priority risk factors and enhance priority protective factors. It is particularly important to use evidence based programmes to increase the chances of successful risk reduction and protection enhancement.

Multiple U.S. federal agencies now require communities to utilize empirically supported programmes when spending governmental block grant funds. For example, the U.S. Department of Education requires communities to select a programme from its list of approved programmes when utilizing funds from the Safe and Drug Free Communities Act. Other organizations such as the Office of Juvenile Justice and Delinquency Prevention have published the "Blue Prints Programme" which highlights programmes that have demonstrated effectiveness. Another example is the Center for Mental Health Services that has a listing for promising violence prevention programmes. While the criteria to demonstrate effectiveness varies across agencies, these programmes are required to affect a change in either a proximal risk factor or protective factor or a change with the target problem behavior. Additionally, the results must be derived from studies that have either an experimental or quasi-experimental design.

The accountability of where public dollars are being spent has significantly increased. Encouraging communities to implement programmes that have demonstrated effectiveness increases the likelihood that money will be spent on programmes which will reach the intended goal of reducing adolescent problem behaviors such as delinquency. Therefore more and more agencies are adopting this type of empirically supported menu-driven approach to intervention selection. The challenge to prevention scientists and community programmes is to ensure that research be conducted to provide the needed empirical support for promising programmes. More over, prevention science offers a set of principles that can assist communities in allocating resources towards maximizing it's prevention efforts.

PARTICIPANTS' PAPERS

INSTITUTIONAL TREATMENT AND MANAGEMENT OF ORGANIZATIONS FOR JUVENILE OFFENDERS IN MALAYSIA

*Teh Guan Bee**

I. INTRODUCTION

This country report confines its scope to two challenges: institutional treatment and management of organizations of juvenile offenders. The institutional treatment programme we have today in Malaysia was only introduced after the Second World War. It has been shaped by many factors, including British colonial involvement, the teachings of Islam and distinctive geographical and population characteristics.

The infrastructure for the treatment of juvenile delinquents, as with social development in Malaysia, is closely linked to British colonial involvement in the region prior to independence in 1957. Many practices and some legislation governing the care and control of juveniles still date from this era of British colonial rule. This is most clearly evident in the Juvenile Courts Act 1947 which is still operational today. However, new comprehensive children's legislation will be introduced in Malaysia for the new millennium.

The Juvenile Courts Act 1947 was introduced essentially to prevent and to salvage children and adolescent who would have otherwise taken to a life of crime. Later in 1950, the Juvenile Court Ordinance (The Places of Detention Rules) was also introduced. Another Act, The Children and Young Persons Act, 1947 was intended to protect and prevent child abuse and neglect. The Adoption Ordinance 1952 and the Registration of Adoption, 1953 was intended to safeguard the rights and status of children.

All these Acts were introduced in response to the social upheavals brought about by the Second World War. In a transition from a traditional society to an industrial one, the communities in Malaysia (Malays, Chinese, Indians and others) experienced a disruption to their traditional balance, so these Acts came into being.

The Juvenile Court Act 1947 provides the legal and administrative infrastructure for the arrest, detention, trial and treatment of juvenile offenders. In the treatment of juvenile offenders, the concept 'child friendly' is given the priority where the well being of the inmate is of utmost importance. This is in line with the seventh strategic objective of Malaysian Vision 2020 where it seeks to establish "a fully caring society and a caring culture".

II. TREATMENT OF JUVENILE OFFENDERS IN MALAYSIA

In Malaysia, the treatment of juvenile offenders is placed under the preview of the Social Welfare Department, as it considers that the delinquents are a symptom of maladjustment. As such, a more humanistic approach is being used to deal with the delinquent behaviour. Based on this understanding, social work approach towards helping in the

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rehabilitation of the juvenile is by means of processes such as family centred case work, counselling, group work and community. The salient aspect of this approach is the inculcation of life skills that include coping skills and vocational skills for their ultimate social reintegration into society.

The programme as discussed earlier is supported by both legislative and administrative infrastructure to provide compulsory treatment. The treatment modalities contained in this programme have treatment facilities both within the community and in institutions. The process of treatment and rehabilitation of juvenile delinquents is shown in appendix A.

A. Treatment Within the Community

Community treatment for offenders has a positive effect on juveniles. The Probation Order given by the courts allows the Probation Officers or the Social Welfare Officers to carry out treatment and rehabilitation in the open. The Probation Officer, who is assigned the supervision of the case, works with the juvenile, his family and his immediate environment. There are instances where the Probation Officer has to work separately with the juvenile and his family because of strained relationships. While the juvenile temporarily resides in the hostel, the Probation Officer works hard to improve their relationship. Other case work efforts involved reinstating the juvenile back to school if possible, arranging for medical treatment, for training facilities and placing in employment, or enabling the juvenile to engage in some income-generating projects. While in the hostel, the juvenile is allowed to continue his formal education in a normal outside school.

Members of the public are encouraged to be involved by providing training facilities. They play a vital role in juvenile crime control apart from providing jobs and on-job skill training. Besides, they also contribute efforts in inculcating social, moral values and working habits in young offenders.

Under the Juvenile Courts Act 1947, and The Constitutions and Duties Regulations 1976, Juvenile Welfare Committees in all district levels have been appointed by the Minister to work with the Probation Officers. In this respect, probation orders are given priorities. The Juvenile Welfare Committees are entrusted with the responsibilities to guide and organize recreational, educational, medical, psychiatric and mental health facilities for the juvenile and the family as a whole. Besides, the juvenile is also encouraged to channel their energies with constructive and wholesome activities such as camping, jungle tracking and mountain climbing.

Service Clubs such as Lion Clubs, Rotary Clubs, and many others come forward to sponsor such programmes. The community awareness in promoting the concept of a "Caring Society" is important. With concerted efforts, the conditions of the family and the juvenile are assured of his rights and dignity of being part of the community. Recognizing the importance of non-institutional measures, the "adoption" scheme is a vehicle to encourage the participation by voluntary organizations and individuals in the community. The members of the Juvenile Welfare Committee who are normally well-known and well-respected members of the Community take in one or two juveniles into their supervision. The Juveniles will then be introduced to the residents associations, neighbourhood

committees and religious bodies so that they will be under better supervision giving the Probation Officer more time for other complicated cases which require professional case work and counseling sessions. In this manner, the juvenile feels more accepted in the community with easy accessible and regular contacts with the neighbours and people who care. The rate of success is encouraging.

B. Institutional Treatment

In Malaysia, the system generally encourages treatment within the community. Institutional treatment is to be considered as a last resort. In addition to this, there are further protective provisions regarding institutionalizing a juvenile. They are:

- A child under the age of 10 years shall not be sent to an Approved School.
- A child under the age of 10 years cannot be made to reside in a Probation Hostel.
- An offender below the age of 14 years cannot be sent to a Henry Gurney School.

The institutional treatment for juveniles consists of two modalities in Malaysia. One being a closed institution or advanced Approved School, that is under the administration and management of the Prison department; and the second, an open institution or Approved School that is under the Department of Social Welfare.

Juveniles who have committed more serious crimes or those who have not made good in other modalities of treatment are normally admitted to the advanced Approved School for treatment under more rigid security. Even though under different departments, the treatment is geared towards preparing the juvenile from the very instant he steps into the school for his ultimate reintegration to society.

The juveniles in the Approved Schools are subjected to rules and regulations in a structured environment. Daily routines are strictly adhered to. Nonetheless, child rights and treatment under the Child Right Convention is implemented carefully and monitored. This is also in line with the Malaysian concept of "Child Friendly" and "Caring Society."

Therefore, punishments in any form, are only given by the head of institution, strictly in accordance to the Approved School Rules. A record for all punishments is properly maintained for inspection. Corporal punishments are the last form of punishment when other forms of punishment are just as effective.

1. Sekolah Tunas Bakti (STB)

This institution is an Approved School for the detention and rehabilitation of:

(i) Juveniles who are involved in crime.
(ii) Juveniles who are beyond parental control.

The Approved Schools are run on an open institutional concept maintaining as far as possible full access to the community at large. The School in reality is one component of the treatment continuum.

Referrals to STB are made under section 26 through 33 of the Juvenile Court Act 1947 and result in Court Orders placing boys as young as 10 in Approved School training for a mandatory period of 3 years.

A Juvenile is a person who has attained the age of criminal responsibility prescribed in section 82 of the Penal Code

and is under the age of eighteen according to the Juvenile Court Act 1947.

There are eight Approved Schools throughout Malaysia. Six in Peninsular Malaysia, one in Sarawak and one in Sabah. Out of these eight schools, six are for boys and two for girls.

The objective for these Approved Schools is to provide the juvenile offenders with education that is geared towards positive attitudes and character building, promoting and improving their capacities so that they can be reintegrated back into society as well as live a more independent and beneficial life.The programmes in these Schools are geared towards preparing the juvenile from the very instant he steps into the school for his ultimate return to his family and society.

2. Admission

Admission to the Approved School is by Court Order.

3. Period of Rehabilitation

Rehabilitation in this institution is for a period of 3 years. However, a resident may be released on licence before the expiry of his/her rehabilitation period by the Board of Visitors subject to his/her progress but not earlier than 12 months from the date of admission.

4. Administration

The administration of the Approved School is guided by the Juvenile Courts Act 1947 and Approved School Regulation 1981.

5. Services

Care and Protection

The training and treatment in institutions are also directed towards the provision of adequate care and protection. Eighty five percent of the institutional staff are full-time staff. The head of the institution is a professionally trained personnel with a team of social workers. Under the Approved School Rules, every inmate has to be supplied the following components:

(i) *Facilities/Accommodation*

These juveniles are held in semi secure facilities designed to look less like prisons and more like high schools. Their living environment is designed to meet their needs. They live together in the dormitory where they have to learn to live together.

STB facilities include administrative buildings, dormitories, workshops for vocational training, classes for academic studies, a dining hall, a bakery, an indoor hall and a seminar room. STB is also equipped with other facilities like a library, computer room, gymnasium, sick bay, TV room, washing area and surau for prayers. With all these facilities, the individual treatment, education both vocational and academic, and daily needs of the juvenile offenders are more than met.

(ii) *Food*

Adequate basic need such as food is provided. Juveniles are served 6 meals daily—breakfast, morning tea break, lunch, evening tea break, dinner and supper. Every inmate should be provided by the administration at the usual hour with food of nutritious value, based on scales recommended by the Ministry of Health. Food served varies from day to day according to the menu prepared by the staff and approved by the Director-General of Social Welfare Malaysia. The daily menu rotates every six months so as to provide a

varied type of balanced and nutritious food to promote physical and mental development. This is a necessary requirement to be met.

(iii) *Clothing*

Articles such as clothing, shoes and slippers are provided by the administration. The inmates are however allowed to wear their own clothes during their leisure hours, so for those parents who can afford to provide such clothing, they are allowed to do so. These inmates are required to wash and keep their clothes clean as well as to observe personal hygiene. They are required to wash regularly and every once a week the juveniles' bed linen are washed. This is supervised by the House Master (Welfare Assistant) in charge of each dormitory. In some schools, washing machines are provided.

(iv) *Medical Treatment/Care*

Inmates suffering from minor ailments are treated at the sick bay by staff. Those suffering from serious illnesses are taken to hospital for more intensive treatment. For those requiring dental treatment, they are also taken to the government dental clinic for treatment. Medical and Health Units also pay regular visits to the schools to give medical and health services.

(v) *Daily Needs*

Inmates are supplied with necessary items of personal hygiene such as toothbrushes, toothpaste, soap, towels, underwear, and others. Such articles are sometimes supplied by families who can afford to do so.

Every child is given a daily allowance of 50 sen for pocket money by the Government for those not schooling, whereas for those who are schooling, they are given RM1.50 for pocket money. This money can be used to buy necessities such as the above or they can request to use the money to buy their favourite food stuff. Most of them go for fast food like Kentucky Fried Chicken.

Counselling and Guidance

The inmates are given counseling and guidance to overcome their emotional and psychological problems. Towards this end, the Principal and the Social Welfare Assistants regularly held individual and group counseling sessions and case conferences. Counselling is a very important component as it provides an opportunity for the juveniles to express their feelings openly with the goal of resolving personal issues and problems. This will help them to solve specific problems as well as to discontinue inappropriate, damaging, destructive or dangerous behaviour.

The focus of these counseling sessions is to enable the juvenile to overcome their emotional and psychological problems as well as to develop coping skills and life skills to function effectively in society. As these inmates require care and supervision 24 hours daily, each dormitory is put under the care of a House Master (Welfare Assistant) to offer more personalized care, social counseling and moral training.

Academic Studies

(i) *Inside Institutions*

The educational programmes include education and training, inside and outside the institution. Inmates who are still schooling are allowed to continue their formal education. Formal education is provided in the

institution till the primary and secondary level.

Inmates who are school dropouts and have not attained the educational level which allow them to attend normal schools outside are required to attend educational classes which are specially arranged for them to acquire sufficient literacy. For those illiterate inmates, they are taught based on the 3M curriculum in order to at least learn how to read, write and count. With these basic skills, it is hoped that they can at least acquire a training programme based on their educational level. Juveniles who cannot attend the normal school but have good potential are given correspondence courses and tuition within the institution.

Education is an important component of rehabilitation in the institution. It is clear that education is obligatory for all juvenile inmates by taking into consideration their different levels.

(ii) *Outside Institutions*

Inmates are allowed to attend normal schools during the day, outside their institution. Inmates who are eligible for upper secondary education are encouraged to do so. For those inmates who are interested in learning how to use the computer, they are taught so.

Religious/Moral education

Religious instructions and facilities are provided for all inmates irrespective of color, race and religious observance and persuasions. Muslims are escorted to prayers in mosques. For these Muslims, a special religious teacher is employed part-time to instruct them in their religious classes while non-Muslims are taken to temples and churches for weekly prayers. Voluntary religious groups also give them religious and moral education within the institution from time to time.

Vocational Training

Vocational Training is another important component of rehabilitation. Taking into consideration that many of the juvenile offenders are school dropouts, the training programme drawn up for each inmate must be appropriate to their educational standard. The ability and preference of each inmate is also given due consideration for the type of employment likely to be available. Vocational training is provided with the hope that after their release from the institution, they will be able to secure employment based on the skills acquired by them.

Vocational training (for Boys) in different skills are as follows:

- Carpentry/wood carving/cane furniture and work
- Motor mechanics
- Welding
- Electrical wiring
- Handcraft
- Compressing bricks and brick laying
- Bread/cake making
- Plumbing
- Agriculture/Animal rearing

Vocational training (for Girls) in different skills are as follows:

- Domestic work/cooking
- Tailoring
- Embroidery
- Handcraft
- Catering

Institutions have embarked on the idea of inviting private companies to assist and participate in the training programmes to upgrade the standard to a

marketable level not only standard of products but also the quality of training and skills which are in demand in the private sectors. The private sector is also encouraged to establish jointly in the factory situation for the on-the-job training and ultimately to absorb them into employment. This joint venture programme is known as Smart Partnership and has been carried out in many of these Approved schools. Under this smart partnership, inmates under training are paid a daily allowance of RM15 to 20. So far, this joint venture involved skills like carpentry, motor mechanics and bread/cake making.

Sports and Recreation

Inmates should be employed in outdoor work with at least one hour of suitable physical exercise in the open air daily. If they wish, they may play sports such as soccer, basketball, takraw, volleyball, table tennis, netball and badminton. There are football fields, a volleyball court, a badminton court, a sepak takraw court, a basketball court as well as a closed gym. They may also play indoor games like carom and chess. Sporting contests are sometimes organized between the juveniles in other states or other representatives of normal schools. Thus, they get an opportunity to be in contact with the outside world.

Recreational and cultural activities also include playing musical instruments and traditional musical instruments like the kompang, participating in brass bands and learning cultural dances. Besides that, juveniles may watch TV programmes and videos in the evening and at night as well as during the weekends and holidays. They may also listen to the radio till the time they should go to bed. They can read books, newspapers and magazines in their library and also borrow books from the library.

These recreational and cultural activities are provided for the benefit of the mental and physical health of the inmates. Inmates are encouraged to participate in the various forms of recreation to maintain good health, to utilize their leisure time and to cultivate good relationships among themselves.

Privileges

Inmates are occasionally taken for picnics, camping trips and visits outside. They are also allowed, under necessary supervision, to communicate with their family and reputable friends at regular intervals both by correspondence and by receiving visits.

Discipline

Discipline is encouraged through a system of rewards and privileges. Desirable behaviour is encouraged through a book system which is tied up with rewards and privileges. This system focuses on specific behaviour modification through deprival of privileges. It has its positive element as it provides facilities to earn back lost privileges within a shorter period of time through the performance of some task job. The forms of rewards and privileges tied up with the system are pocket money, home-leave, outings, film shows, visits, early release, etc.

Board of Visitors

Each Approved school has a Board of Visitors, which comprises of not less than seven Members who are appointed by the Honourable Minister of National Unity and Social Development. The Board of Visitors is responsible for:

- Providing assistance towards the resident's rehabilitation programme

- Guaranteeing smooth and efficient management.
- Making recommendations on the management of the institution to the authorities.

Follow-up Supervision

A juvenile who has been released from the Approved School is placed under the supervision of the Probation Officer for one year. A juvenile who has been released on licence is placed on licence by the Probation Officer until the period of the order expires.

C. Case Management System

Juvenile delinquency refers to the behaviour of non-adults which violates the rules and regulations set by the government or society. Juvenile delinquency globally has been a serious problem and the concern of all. The nature and magnitude of juvenile delinquency differs from place to place. The root causes are many and diverse.

Case studies reveal that the main contributing reasons are the consequences of economic, social, cultural and moral problems leading to the breakdown of families, poverty, domestic violence, polygamy, a degeneration of values and civility.

In Malaysia, juvenile delinquency is closely associated with poor family attachment and failings. The inclination towards juvenile crime often arises from factors at home. Poor parenting behaviour, lack of love and care as well as violence in the family are among the main reasons why children resort to crime. Having unsatisfactory relationships as well as having grown up in these neglected and poor environments, children are driven into delinquency problems. Deviant behaviour is often the result of an unstable and unloving home life.

Delinquency violence is often linked to lack of parental supervision, parental rejection, lack of parental involvement and poor disciplinary practices. Child abuse or neglect, poor marital relations, parental absence and large family size are also among the factors that turn juveniles towards anti-social activities and eventually, crime. Juvenile crime is also attributed to lack of positive interactions with parents or others and inconsistent discipline as well as inadequate or inconsistent parenting skills.

A similar trend is found in Malaysian Society. It is evident the family plays a significant role in shaping the juvenile delinquents. The majority of our juvenile delinquents come from broken homes and are either illiterate or school dropouts. As such the methods of treatment and management of these juveniles can be fully understood only against the background of these important factors influencing them. Needless to say that in particular, the national crime picture and the national value system and that the economic structure and social system of our society play an important part in formulating policies, legal guidelines for the treatment and management of these juvenile delinquents.

In the implementation of the law, in accordance with the national legal system, the well being of the juveniles from their early childhood and cultural background should be the focus of any preventive and treatment programmes. The rapid increase of juvenile delinquency saw the introduction of some forms of legal system including penal laws. The system must ensure positive correlation and responsibilities, which

help the development of young offenders with specific roles for the family and society. It is imperative for the system to strike a balance between the protection of the child and protection of society. The system has to devise innovative approaches to uphold the rights of children in conflict with the laws without undermining their needs. In this respect, the most significant legislation in this country was the enactment of the Juvenile Courts Act in 1947 and the Rules of the Approved School, which defined minimum standards for the treatment and rehabilitation in institutions.

1. Juvenile Courts Act 1947

This Act categorizes juveniles into Children and Young Persons. A "child" means a person under the age of fourteen whereas a "young person" means a person who has attained the age of fourteen years and is under the age of eighteen. Under the Juvenile Courts Act, a juvenile charged for an offence appears before a Juvenile Court where a Juvenile Court judge would preside. The age in question for the court to impose judgement is the age at the time of the offence.

Juvenile offenders are handled and treated separately from the adults. The detention of minors with adult suspects is in contravention of the Juvenile Courts Act 1947, which clearly prescribes the manner in which minors are arrested, detained and tried. Under the law, juveniles are recognized as being different from adults and as such are accorded different treatment.

A juvenile who is arrested can be detained for up to 24 hours and thereafter a court remand order is required. This is provided for under the Criminal Procedure Code. He has to be detained away from the adult suspect in a police station or remand home or hostel. The Act also states that while under detention, a juvenile must be prevented from associating with an adult offender and if a girl offender must be under the care of a woman. The detention awaiting trial is restricted to a minimum period of time so that the case will be disposed as early as possible.

Immediately after his arrest, the police must inform a Probation Officer and parents or guardian of the arrest. Offenses of a lighter nature are given bail or bailed by the parents or guardian who will ensure the juvenile offender's presence in court. More serious offences or those where parents are not found are remanded in the Remand Homes or Probation Hostels.

2. Constitution of Juvenile Court

A juvenile can only be tried in a Juvenile Court, which is very different in composition and procedure from other courts. It is presided over by a Juvenile court judge who is assisted by two advisers, one of whom is usually a woman. These advisers advise the magistrate in the selection of the treatment programmes suitable for the juvenile. It is not an open court and comprises only of court officials, parties to the cases, parents/guardians, lawyers and witnesses. Newspaper reporters are allowed to be present with permission granted by the Magistrate. However, they cannot reveal the name, addresses or school or any particulars that may lead to the identification of the juvenile. Procedure in the trial also differs from the trial of an adult. The Court has to explain the charge to the juvenile in simple language and ask him whether he understands and admits the facts of the case presented. If he does not, witnesses will be called and the juvenile may question the witness.

He may also choose to make a statement instead of questioning the witness. The court will then ask questions. If the offence is proved, the court shall obtain a probation report to enable it to make a decision in the best interest of the juvenile. A juvenile cannot be sentenced to death by the Juvenile court. A young person who is jailed will not be allowed to associate with adult prisoners. Instead, he will be sent to an advanced approved school or suitably dealt with in other ways in society.

3. Manner of disposal of Cases

There are several dispositional options provided under the law to deal with juvenile offenders:

- To admonish and discharge the offender;
- To discharge the offender upon his entering into a bond to be of good behaviour and to comply with such an order as may be imposed;
- To commit the offender to the care of a relative or other fit person;
- To order his parents or guardian to execute a bond to exercise proper care and guardianship;
- Without making any other order, or in addition to an order under paragraph (c) or (d), make a probation order
- To order the offender to pay a fine, compensation or costs
- To order the offender to be sent to an approved school or Henry Gurney school (advanced approved school); and where the offender is a young person and the offence is punishable with imprisonment, the court may impose upon him any terms of imprisonment which could be awarded by a Sessions court, or if the court considers that its powers are adequate, commit him to the High Court for sentence. It is evident that the general trend in the court orders is to allow the offender a second chance to correct himself/herself.

4. Probation Order

The Probation Order has the same effect as the suspended sentence for adults. The placement of the juvenile under the supervision of the Probation officer is an effective and alternative treatment to institutional treatment. The offender will be told and explained to in simple language the effect of the order and that if he fails to comply with the order and its conditions or commits another offence, he shall be liable to be dealt with for the original offence as well as for the other offence thereafter. A Probation Order could be made for a minimum of one year to a maximum of three years. Under certain circumstances, should the home environment not be conducive, the court can order the offender to reside for a period of twelve (12) months in a Probation Hostel for close monitoring of his behaviour and conduct

This approach involves his family and its environment. The family as the principal unit for transmission of values for social, moral and educational growth, should be regarded as the important agent of change for the offender. Since juvenile delinquency is viewed primarily as an offshoot of the breakdown of the family, therefore strong emphasis is placed on supporting and strengthening the family unit as a preventive device. At the same time the relationship of the police, the courts and probation officers are deemed crucial in working towards the same goal. The probation supervisee is brought back to the courts for review from time to time. The Probation report with detailed information pertaining to his behaviour and conduct is discussed. The duration of the probation supervision can be shortened if his behaviour is found

to have improved and justified for such revocation of the original order.

5. Client Management System (CMS)

The juveniles admitted to the approved schools are subjected to specific rules and regulations under the Approved School Regulation 1981 as mentioned earlier. Besides that, the Department of Social Welfare has also drawn up some guidelines in a system known as Client Management System (CMS). CMS is used by the staff in the Approved School to help and guide them in the management of the inmates from the day they step into the school till the day of release. This is especially useful for those new and inexperienced staff.

Information and guidelines are provided on every aspect involving the management of the juvenile offender in the institution. Aspects such as registration of the inmate, the forms to be filled, medical check-ups for inmates, briefing on rules and regulations, basic necessities to be provided, etc. are drawn up carefully, keeping in mind the well being of the juvenile offender. CMS provides detailed information and instructions on the procedure of each and every aspect mentioned above. CMS also stresses on the duties of each and every officer. It has provision for the time frame of each task given to the staff for the management of each new case right from the first day the inmate steps into the school till his last day in the institution.

6. Behaviour Modification

The discipline of the Approved School is maintained by a system of reward, privileges and punishments. This system encompasses the fabric of behaviour modification using rewards to reinforce good behaviour and 'punish' undisciplined behaviour within a progressive grading system. It creates a conducive atmosphere and positive change. Every inmate's behaviour is observed by the staff and recorded. Misbehaviour and undisciplined conduct receives some sort of punishment. The punishment in the form of forfeiture of privileges such as pocket money, deprivation of shopping, outing, home leave, etc. The most effective action is when points or marks are deducted for every misdemeanour or misconduct, preventing him from climbing up the ladder of grading from lower to higher grade. The juvenile depends solely on his grade for home leave and early release. This system, however, has its positive element to provide facilities allowing him to earn back lost privileges through the performance of some tasks. The system creates an atmosphere of competitive growth and positive check on misconduct. It is one of the most effective measurements of treatment programmes in institutions.

7. Behavioural Assessment

Initial behavioural assessment is conducted by observing the juvenile's conduct and personality during the period of one month orientation after the admission. The house parents counselors maintain and intensify rapport and confidence with the juvenile concerned. During the orientation, all behaviour, interests, weaknesses and strengths of the juvenile are recorded. At the end of the month, detailed records are produced for discussion for the purpose of planning training programmes for the juvenile.

The juvenile will then be placed in a workshop of choice in which he shows keen interest and potential. Simultaneously, the House parents and other Welfare assistants following the plan of action, continue to work with the juvenile to correct his weaknesses and encourage positive social development. At

this stage, the focus is on juvenile-worker centred relationships where the House parents are fully involved and participate in the juvenile's programme to ensure the success of the treatment plan.

Skill and behavioural assessments in respect of his behaviour, personality, attainment of education and vocational skills are conducted at regular quarterly intervals. Assessment and progress reports are forwarded to the probation officer for the information of the parents as to what transpired in the institution. In return, the probation officer submits a report to the institution regarding his home environment, parental response, employment and future plan.

It is evident that management of the juvenile in the institution is geared towards preparing the juvenile from the very instant he steps into the school for his ultimate return to his family and society. While the school works with the juvenile, the probation officer works with his family to bring about sufficient changes in his home environment for the juvenile's ultimate return. Throughout the juvenile's stay in the institution, a two-way feedback is maintained between the school and the probation officer.

8. Release

Release is arranged after the probation officer who has been working with the family has provided a full report on the suitability of the juvenile's home condition and a suitable occupation has been arranged for him. A juvenile can be released on licence or on conditional discharge before his original period of committal expires. During this period, he can be recalled to the school, if he is not performing well outside, to complete the full period of his order and if necessary, his period of stay is extended by another six months. In addition to this, there is a mandatory period of a year's after-care. During the licence and after-care period, the probation officer effects supervision over the dischargee and assists him to adjust to his environment.

With the concerted efforts of the probation officer and the School, it is hoped that once released, the juvenile is more then ready to be reintegrated back into society and to lead a more independent and beneficial life.

D. Case File/Record System

On the admission of the juvenile offender on his/her first day, the Welfare Assistant in-charge has to open a new personal file for the detainee. This personal file on the detainee contains the following information on the detainee:

- Personal particulars of the detainee
- Court Order
- Probation Report
- Charge Sheet
- Medical Report (to show detainee is fit for traveling)
- Parents' Written consent for Medical treatment.

This file is kept in the Administrative office and is maintained by the officer in-charge of the case.

A Record System is available to record the following:

- Admission of inmates
- Daily attendance book
- Log Book for Duty Officers
- Personal belongings and valuables of the inmates
- A Record to record punishments meted to them
- A Record to record Merit and Demerit Points

- A Daily Record for each teacher teaching different academic and vocational skills.
- A Monthly Report made by each teacher of academic and vocational skills.
- A Record of fire drills conducted by the staff

In keeping with the government's effort to establish an E-Government, all the STB are equipped with computers. The Social Welfare Department is in the process of setting up a database system in all the STB to keep and compile information on juvenile offenders. Some STB have set up a record system for these juvenile offenders in their institutions.

III. MANAGEMENT OF ORGANIZATIONS ON INSTITUTIONAL TREATMENT

A. Strategic Utilization Of Limited Financial Resources And Maximizing Cost

The continual development of residential care and control of juvenile offenders in Malaysia is closely linked to the available financial resources for management of these institutions. The allocation of resources to fund the infrastructural development and operations of the system is fundamental, but in a fast developing country like Malaysia where its government is faced with a multitude of other just as compelling priorities, sometimes it may not be adequately addressed. The financial costs associated with residential care of these juvenile offenders are high.

In this respect, besides the Government Agency, different actors such as local NGOs, communal groups and volunteers also have a vital role to play in providing various forms of assistance. Parents or guardians of juvenile inmates who can afford it, are also required to contribute a certain amount of money through the Court Order. This amount may be small, about RM50 to RM100 that is depending on the income of the family but it may in a way help to make the family more accountable.

Normally, an institution consists of 35–40 staff, including both temporary and permanent staff to supervise about 150 to 200 inmates. As these inmates require care and supervision 24 hours a day, sometimes it may be difficult to offer more personalized care, social counseling and moral training as the staff are responsible not only for the care and counseling of the inmates but must also handle all administrative matters relating to the institution. Hence, the inmates are trained to help in the maintenance of the institution. Chores may include duties like gardening, cutting the grass, helping in the kitchen and maintaining the cleanliness of the school. By training them to be self-proficient, at the same time they also help to reduce the costs of maintaining the institution.

In some Approved Schools such as STB Taiping, the inmates are trained in the skill of making bread and cakes. Besides learning a skill, the bread they make is used to feed the other inmates in the institution as well as the inmates of the Old Folks' Home, another Welfare Institution. At the same time, this also helps to generate income from the sales of bread and buns to the public. The inmates learn to be self-sufficient as well as to minimize the cost of maintaining the institution.

Active participation is also practised at the lower management level in the

institutions through The Board Of Visitors. These gazetted board members are usually individuals of respectable standing and influence in the local society, professionals and experienced retired government officials. This board is usually very active in getting funds from the public through fund raising activities such as Jogathon, Food Fair, etc. Local NGOs like the Lion Club, Rotary Club etc., also play a part by donating some money or basic necessities for the use of the inmates.

B. Staff Training

Since all the Approved Schools are under the jurisdiction of the Social Welfare Department, the well-being and the best interests of the juvenile offender in the institution are of utmost importance. This is in line with the government's concept of a caring society. Hence, staff training is very important in this aspect.

Sixty percent (60%) of the staff in these institutions are Social Welfare Officers so their training is mostly on social work and counseling. The Social Welfare Department's own Institute is available to train its own staff at the Federal level. At the State level, there is a also a Training Unit each to assist in the training of staff in aspects such as admission and supervision procedures. Sometimes in-house training is provided in the institution itself.

The increasing nature and magnitude of juvenile delinquency require more specialized treatment and counseling. There is a need to have experienced and trained counselors to see to their different needs. In order to overcome this problem, more counselors should be trained. In this respect, the Social Welfare Department has taken steps to collaborate with a local university in its efforts to train its staff in diploma counseling. However, it is scarce for any staff posted to the institutions, to have an opportunity to go for training overseas.

C. Managing Public Relations and Obtaining Public Trust

Many in Malaysia have a misconception and negative attitude towards juvenile delinquents. In its efforts to bring these juvenile offenders back into the fold of society after their release, the staff in the institutions have to correct this misconception. At the same time, they must liaise with the public to gain public trust.

In the past, the technical processes of planning, management and implementation of programmes in the institutions were left in the expert hands of its staff. These processes were considered and regarded as out of bounds to members of the public, but today such trends are changing. It is not uncommon now for the government agency to seek assistance from the public. One such example is the collaboration of the institution and private sector in its training programmes for the inmates, whereby through a smart partnership programme, the vocational skills of the inmates are upgraded. With this joint effort between the two, the inmate can upgrade his skills as well as to prepare himself for a reintegration into society. Besides, it is hoped that with the training, Malaysia can achieve its dream and objective of obtaining more trained skilled workers in the future. However, the actual exercise of planning, managing and implementing is still in the hands of the government servants.

Community support and participation in the rehabilitative efforts is also drawn through the Juvenile Welfare Committees at district levels. These

committees comprise members of the public who assist Probation Officers in supervising juveniles, finding them employment, arranging training facilities and most of all making them feel accepted into the community. The whole programme involves providing the juvenile not only with coping skills but also a stress-reduced environment to cope with.

The Department also has programmes for establishing more Probation Hostels amidst housing schemes in preference for long institutionalised treatment. This is in line with both its concept of a caring and child friendly society. In the case of the family of the juvenile offenders, help in the form of various financial aids from schemes administered by the department is also provided. With these efforts geared towards the well being of the juvenile offender, it is hoped that public trust is obtained.

Another effort to gain public trust is through the Client's Charter (as shown in Appendix B) for the Approved School. Through the Client's Charter, it is hoped that responsible and fully committed staff will help to improve the services provided to the inmates. This will help to make them more accountable to the public. With the improvement in quality, public trust is obtained.

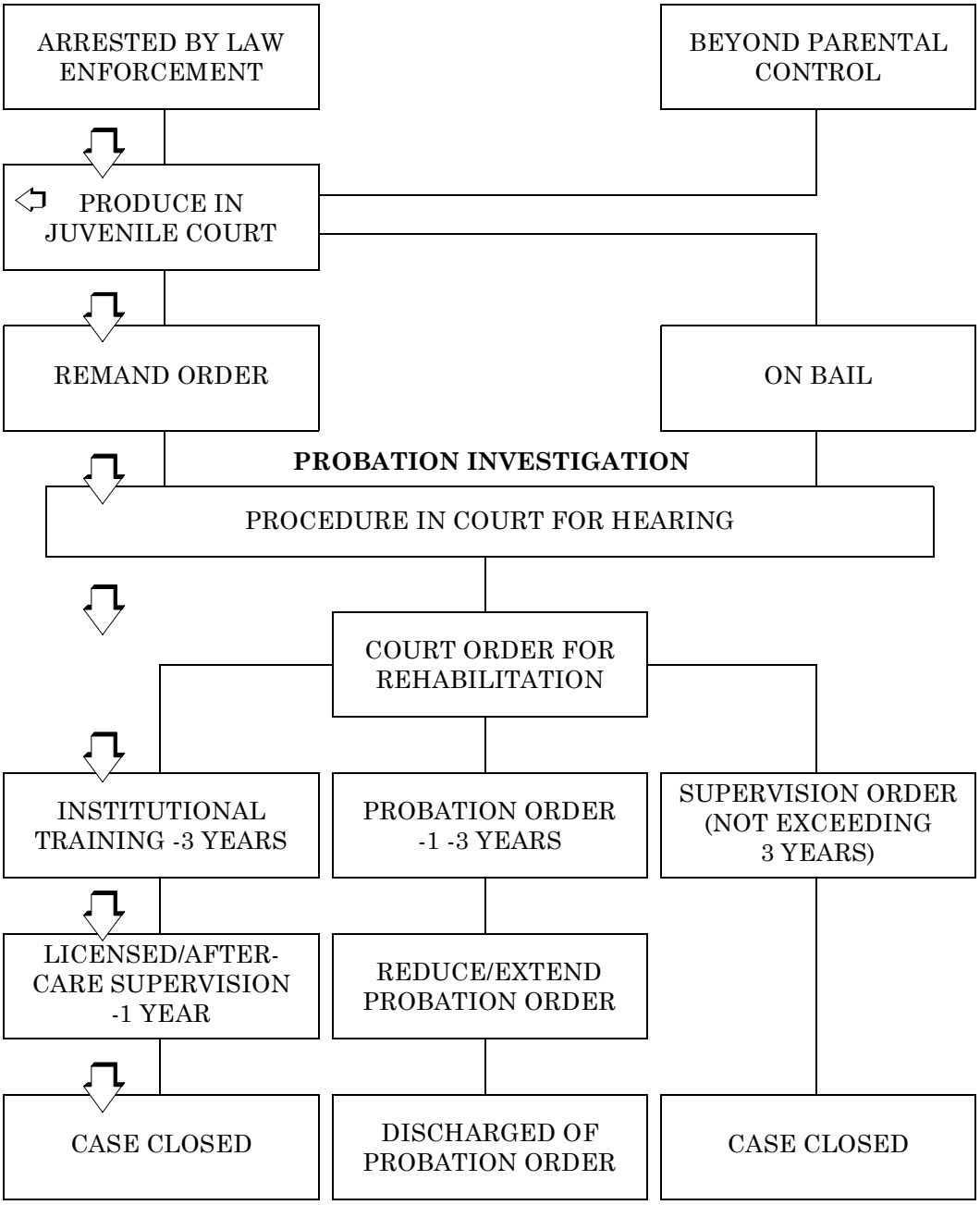
The institution also tries to mobilize the expertise and resources of NGOs. Its close rapport with the NGOs would inevitably help them in terms of resource mobilization. The volunteers from international welfare-orientated NGOs such as the World Health Organization (WHO) and Japanese Overseas Cooperation Volunteers (JOCV) have resulted in the running of several social projects such as the Community Based Rehabilitation Programmes throughout the country. This has helped to improve tremendously the quality of professional input in the institutions involved. In terms of financial aid or grants, through their international parent bodies, local NGOs could hold seminars and conferences on social issues. These seminars and conferences have also helped to sustain family participation in the care, education and control of their children.

IV. CONCLUSION

In summary, an attempt has been made to review the practice in the institutional treatment of juvenile offenders as well as the management of organizations providing institutional treatment to the juvenile offenders as practised in Malaysia. Specific mention has been made to programmes carried out in institutional treatment of the juvenile offenders in the Approved Schools (STB). Reference was also made to practices used in the care and control of juvenile inmates referred to the residential Approved Schools by a Juvenile Court system that still reflects the influence of British colonial traditions. Mention was made to the New Bill which is expected to be implemented sometime in the near future. Finally, issues relating to the management of organizations providing institutional treatment to the Juvenile offenders were also highlighted for the ongoing development of juveniles in Malaysia for the 21st Century. It is hoped these issues will contribute to ongoing professional and social policy debates as the nation enters the new millennium and as efforts are made to translate Vision 2020 into reality for all Malaysia's children.

Appendix A

PROCESS OF TREATMENT AND REHABILITATION FOR JUVENILE DELINQUENTS



Appendix B

CLIENT'S CHARTER
(For Approved School)

We are committed to provide services of quality at all times to inmates under our care by:

- Giving care, protection, guidance, counseling and service for the well being of the inmates.
- Strengthening the image and identity of each inmate
- Ensuring the physical and mental development and growth of each individual under its care in a comfortable, safe and harmonious environment.
- Carrying out beneficial and motivational activities.
- Providing academic studies and vocational training in keeping with their potentials and age as well as providing adequate guidance and facilities.
- Providing religious and moral education as well as facilities in accordance to their own religion and beliefs.
- Helping to facilitate job opportunities for inmates as well as adequate support
- Providing balanced diet, medical and dental services as well as basic necessities
- Being ready to help inmates in times of emergency and difficulties
- Concentrating on good moral values and conduct.
- Ensuring the confidentiality of inmates
- Striving and facilitating a closer relationship and rapport among the inmates themselves as well as inmates and family/staff.
- Providing facilities and a safe environment for the care and protection of the inmates
- Encouraging self-discipline
- Advocating a healthy lifestyle.

OPERATIONAL ISSUES IN INSTITUTIONAL TREATMENT AND COMMUNITY-BASED TREATMENT METHODS FOR JUVENILE OFFENDERS IN SRI LANKA

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I. INTRODUCTION

At this time, where great attention is paid regarding children, the time is ripe for the implementation of rehabilitation programmes needed for juveniles who have gone astray. Sri Lanka is a developing country in the Asian region and the reason for the increase in the number of children who get used to wrong deeds & behaviour is due to their involvement in various difficulties which is a problematic situation.

In the legislative enactments, the meaning for "child" is illustrated in many ways. There is some confusion in Sri Lankan Law as to the definition of a "child". Different laws define a "child" differently.

- The penal code specifies crimes relating to children of the ages of 8, 10, 12, 14, 16, 18.
- The Children and Young Persons Ordinance defines a "child" as a person under 14 years of age, and a "Young Person" as a person between the ages of 14 and16 (below 16 years—Juveniles)
- Under the Employment Women, Young persons and Children Ordinance, a "child" means a person under 14 years of age, and a "young person" means a person who is over 14 years but is under 18 years of age.
- According to the children's charter of Sri Lanka a child means any person under the age of 18.
- In Sri Lanka, several Institutes/ Departments are formed to mediate and take decisions regarding children, where necessary.
  - Courts
  - Department of probation and childcare services
  - Police Department
  - Prison Department
  - Labour Department

A. Juvenile Offenders

The initial steps with a juvenile offender are taken by the Police, the relevant reports are supplied by the Department of Probation and Childcare services. Decisions are taken by the courts and rehabilitation activities are provided by the Department of Probation and Childcare Services. The prison department takes decisions for children whom imprisonment is necessary and where child labour is concerned the Department of Labour offers their services. Due to the 13th amendment of the Constitution, the function of the Probation and Childcare services came under the Provincial Councils. The Law Courts, Police, Labour Department and Prison Department are under the Central Government. Institutional rehabilitation and community based rehabilitation of children are directly under the Provincial Department of Probation and Childcare

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Services. For this reason Institutes are formed on a Provincial basis.

There are four remand homes (separating the males from females) where the children are kept separating them from the adult offenders until they are produced in court.

B. The Objectives of this Report

I would like to discuss the following:

- The lawful oaths pertaining to children in Sri Lanka.
- The present state of the institutional rehabilitation activities.
- The organizing structure and usage of resources of the institutes connected to institutional rehabilitation.
- Problems and issues encountered in the above activities.
- How to implement community based treatment processes to child offenders in Sri Lanka and the institutions connected thereto.
- Problems and issues in that process.

C. The Aims of the Institutional Rehabilitation Activities

The aims of the institutional rehabilitation activities are as follows:

- Mental development of children
- Increase development of professional training opportunities
- Moulding towards good qualities
- To make an individual acceptable to society

Although experienced staff are required for this purpose the dearth of such staff is a main problem. Another problem is that the increase in the number of children is not parallel to the number of institutes. The children who cannot be rehabilitated by the community based system and those others who cannot be rehabilitated in the home environment due to the gravity of the commitment are directed to institutional training. Children not interested in education show voluntary interest in the professional training units. It should be stated that the main objectives of this institutional rehabilitation training are to train the child offender to a suitable and profitable profession, thereby contribute towards the development of the country. Due to economic deficiency in Sri Lanka the contribution from the family unit, towards family based rehabilitation is less, and as a state, such institutes are maintained with limited financial & human resources. It could be emphasized that the activity of rehabilitation is not an easy task.

II. THE LAW

In this chapter we will consider the law that is applicable to juvenile offenders. The Children's Charter, Sri Lanka's version of the CRC, will not be discussed because it lacks binding authority upon the judiciary.

A. The Children and Young Persons Ordinance (CYPO)

The CYPO. No. 48 of 1939 (as amended) continues to function as the basic law dealing with children.

- It provides for the establishment of juvenile courts; located separately from others in a different building or room, to be presided over by a Magistrate to the hearing of cases involving "juvenile offenders". The proceedings of such courts are not open to the general public.
- To protect the privacy of the child, the CYPO prohibits the publication of reports of any proceedings before a juvenile court, or proceedings involving a child in any other court.

- The CYPO established categories of different "offenders",
  (i) "Child"—a person who is under the age of 14 years.
  (ii) "Young person"—attain the age of 14 but not 16.
  (iii) "Youthful person"—reach the age of 16 but not 22 years.
- The CYPO specially deals with the detention of the arrestee who comes under the category of "Young Persons". They are required to be kept separated from adults in police stations and courts.
- The CYPO stipulates several requirements in relation to the proceedings involving children in the juvenile court;
  (i) The court should explain matters to the child in simple language.
  (ii) If the offence is an indictable one under the Penal code, the court shall ask the child whether he wishes to be tried by it or a higher court.
  (iii) The children should be informed that they have the right to consult with their parents or guardians before making the decision.
- The CYPO spells out the punishments and sanctions which can be imposed upon children who face judicial proceedings under its provisions.

A "child" cannot be imprisoned, while "young persons" can be imprisoned only if the court certifies that they are so "unruly" or "depraved" that they cannot be institutionalized.

Alternatives to imprisonment

(i) An offender under the age of 16—could be sent to a remand home (detained to produce at the Courts) for a period not exceeding one month
(ii) An offender between the age of 12–16—could be committed to a certified school for a period of 3 years.

B. The Penal Code

The Penal Code of 1883 was amended by the Penal Code (Amendment) Act No: 22 of 1995 which came into force in October 1995. It is the basic (main) legal document which describes the punishment and sanctions for offences. The amendments introduced several new sections relating to offences committed by children (minimum age of criminal responsibility is 8 years).

These are:

- Obscene publications relating to children for the purpose of adoption and custodial rape of girls under the age of 16.
- Cruelty to children (covers ill treatment, neglect, etc.)
- Sexual exploitation of children.

C. Probation of Offenders Ordinance No: 42 of 1944 (Amended in 1947, 1948)

On the matter of probation of "offenders", this ordinance is applied. It is used as the community based treatment method. This ordinance applies to amend the law relating to the release of offenders on probation and to the supervision of such offenders, and to provide for the establishment and administration of a Probation Service.

D. Youthful Offender (Training Schools) Ordinance. No: 28 of 1939 (amended in 1943, 1944)

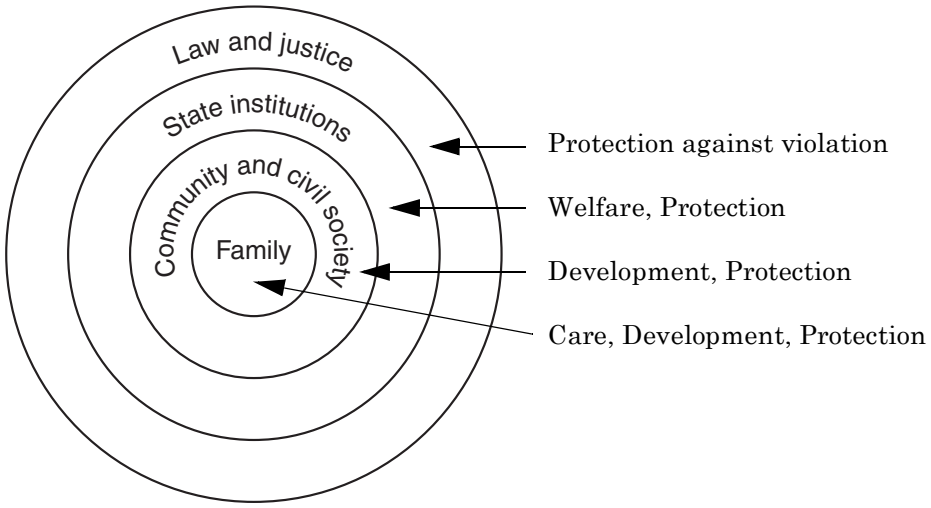
This ordinance makes provisions for the establishment of training schools, for the detention, training and reformation of youthful offenders and for purposes connected therewith. Youthful offenders between ages of 16–22 who have been convicted of certain offences and have previous convictions or have violated probation orders.

In terms of judicial proceedings there are two statutes which are important, the Code of Criminal Procedure No: 15 of 1979 (as amended), and the Evidence Ordinance No: 14 1895 (as amended.)

It is of course important to remember that the 1978 Constitution of Sri Lanka accords specific rights which children can enjoy in common with other citizens or other persons.

III. TREATMENT OF JUVENILE OFFENDERS

The institutional treatment and the community based treatment processes are interconnected in the proceedings of rehabilitation of juvenile offenders.



The responsibility of the family unit is to provide care and protection to the children and develop them mentally and physically.

The subject of trial and treatment of juvenile offenders as distinct from adult offenders was first considered in Sri Lanka in the 1920 s. The juvenile justice administration was first introduced in 1939 with the enactment of the Children and Young Persons Ordinance (CYPO) and the Youthful offenders 'Training School' Ordinance (TSYO.)

The CYPO Provides for the establishment at Juvenile Courts, the supervision of juvenile offenders and the protection of children and young persons.

The TSYO Provides for the establishment of training schools for youthful offenders for their detention, training and rehabilitation.

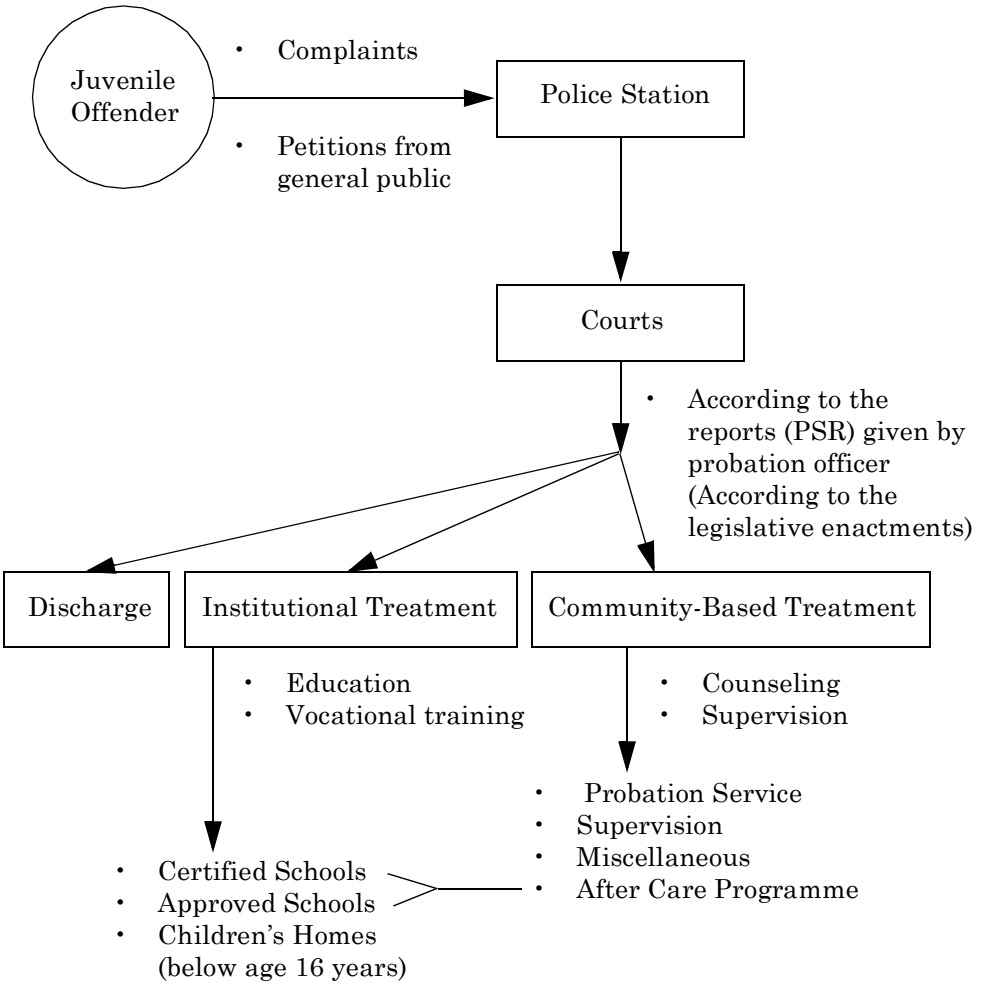
Juvenile justice administration laws have never been subject to any amendments since their enactment nearly 60 years ago and the need for their review to suit current circumstances has received the attention of the relevant authorities.

In 1997, the Law Commission of Sri Lanka has identified the following

general areas as requiring consideration for change:

a. Terms used to define categories of juveniles.
b. To ensure the segregation of juveniles from adult detainees at all stages of the legal process.
c. The classification and conditions of places of detention of juveniles.
d. Protection for juveniles involved in the legal process.
e. The need to develop community based treatment for the treatment of juveniles in conflict with the law.

Legal Process for Treatment of Juvenile Offenders



IV. INSTITUTIONAL TREATMENT OF JUVENILE OFFENDERS IN SRI LANKA

There are a number of state agencies which are required to play main roles in the workings of the legal process in respect of juveniles:

- The Courts.
- The Department of Probation and Child Care Services (DPCCS).
- The Provincial Departments of Probation and Child Care Services (PDPCCS).
- The Police Department.
- The Prison Department.
- The Labour Department.

Institutional treatment of juvenile offenders is implemented mainly by the Provincial Department of Probation and Child Care Services.

Under both the CYPO and the Probation of Offenders Ordinance, the Department of Probation and Child Care Services effectively became the lead state agency for the protection, care and rehabilitation of children in need of care and protection and the children who came into conflict with the law.

The devolution of powers to the Provincial Councils from the 13th amendment of the constitution and the enactment of the Provincial Council Act No. 42 of 1987 meant that the Provincial Departments of Probation and Child Care Services started functioning as the main agencies for unprotected children. The PDPCCS function under the supervision of the Provincial Commissioners of the PCCS.

A. Institutional Arrangements

There are three categories of state institutions which deal with children who are involved in the legal process.

- Remand Homes
- Detention Homes
- Certified Schools

The Government provided improved institutional care facilities for those who were placed in Remand Homes, Detention Homes and Correctional Institutions. Children in the institutions referred to were provided with both formal education and vocational training during their stay in the centers.

1. Children in Remand Homes (below the age of 16 years)

Table 1

Year	No. of children
1994	1995
1996	1997
1998	1110
1654	1379
1652	1711

There are 3 Remand Homes which are maintained for boys and only one Remand Home for girls.

Boys Remand Homes	2	Western Province
	1	North Central Province
Girls Remand Homes	1	Western Province

Source: The Department of Probation and Child Care Services

2. Children in Detention Centers

There is only one Detention center meant for both boys and girls from 5 to 16 years of age, which is located in the Southern Province.

Table 2

Year	No. of children
1994	1995
1996	1997
1998	1999
2000	138
165	109
95	141
191	260

Source: The Department of Probation and Child Care Services

3. Correctional Institutions

Four certified schools, (one for girls and three for boys), continue to provide correctional services to children referred to them by courts of law. The number of children admitted during the relevant period is given in Tables 3, 4, 5, and 6.

Admissions to Certified Schools (year 1995–1999)
(As per race, religion, age and offence committed)

Table 3
Per race

Race*	No. of offenders				
	1995	**1996**	**1997**	**1998**	**1999**
Sinhalese (s)	180	140	153	176	195
Tamil (T)	36	45	38	26	56
Muslim (M)	21	21	20	17	25
Others (O)	13	1	1	–	–
Total	**250**	**207**	**212**	**219**	**276**

*. Population ratio: S (72%), T (20%), M (5%), O (3%)
Population (in 1997): 18,552,000

Table 4
Per religion

Religion	No. of offenders				
	1995	**1996**	**1997**	**1998**	**1999**
Buddhism	176	133	152	174	189
Hinduism	35	45	38	26	54
Islam	21	20	3	17	25
Catholic	18	9	19	2	8
Total	**250**	**207**	**212**	**219**	**276**

Table 5
Per age

Age group	No. of offenders				
	1995	**1996**	**1997**	**1998**	**1999**
Between 8–12 years	28	17	4	11	37
Between 12–14 years	91	108	79	62	94
Between 14–16 years	107	58	86	115	112
Over 16 years	24	24	43	31	33
Total	**250**	**207**	**212**	**219**	**276**

Table 6
Per offence committed

Offence	No. of offenders				
	1995	**1996**	**1997**	**1998**	**1999**
1. House breaking and theft	88	108	130	84	85
2. Disobedient to parents	49	34	19	49	33
3. Usage of alcohol/drugs and marketing	1	5	3	13	15
4. Care and protection	1	52	33	44	92
5. Suicide	–	–	–	–	–
6. Others	21	8	27	29	51
Total	**250**	**207**	**212**	**219**	**276**

4. Children Confined in Remand Homes

Since children remanded through Courts are confined for a short period, the training programmes in these Institutes are also short. To develop the juveniles' religious and general knowledge, educational programmes and slight vocational training are given. Special staff are available for that purpose.

5. Certified Schools

The four certified schools in Sri Lanka came into being several years back.

Table 7

Certified Schools	Year established	No. of children (year 2000)
1. Makola (Boys)	1959	125
2. Hikkaduwa (Boys)	1951	135
3. Keppettipola (Boys)	1961	60
4. Ranmuthugala (Girls)	1961	160

A child offender in the age group of 12–16 who commits an offence is directed by the Courts to these Certified Schools where activities are conducted for rehabilitation.

The main object is to give a systematic vocational training to the children admitted to Certified Schools. In all Certified Schools, training is provided in motor mechanics, metal work, carpentry, electrical work, sewing, agriculture and TV/radio repairs, etc.

Children who show enthusiasm in education are admitted to surrounding government schools, with all facilities provided.

B. Case Management System

1. Reporting, Maintaining Case Files, Progressing Reviews

Individual case files are maintained for juvenile offenders admitted to the Institutes. The system of maintenance of those files is as follows:

(i) Filing of court order relevant to the offender
(ii) Obtaining the Social Report from the probation officer
(iii) To discover the child's skills, by that report and discussing it with the child
(iv) Directing children to educational and vocational training, accordingly
(v) Study the child's behaviour daily and make entries in the files. (The house master, in charge of the children, records the health and mental condition of the children)
(vi) Every two months a case committee is held, for which the following participate:
- Provincial Commissioner of Probation and Child Care
- Probation Officers
- Principal of the Certified School
- House Masters
- Juvenile Offenders.

(vii) Submission of monthly detailed report of relevant institute to the Provincial Commissioner by the Principal of Certified Schools.
- Number of children
- Children who left after completing vocational training and those who escaped.
- Other problems.

2. Functions of the Case Committee
- Discuss child's progress.
- Discuss child's short-comings and problems, and find solutions.
- Decisions to be taken regarding children who could be released prior to the prescribed period.
- Decisions to be taken as regards donation of equipment to children who have successfully completed the vocational training.
- Make inquiries of the progress after the After Care Programme.

3. After Care Programme

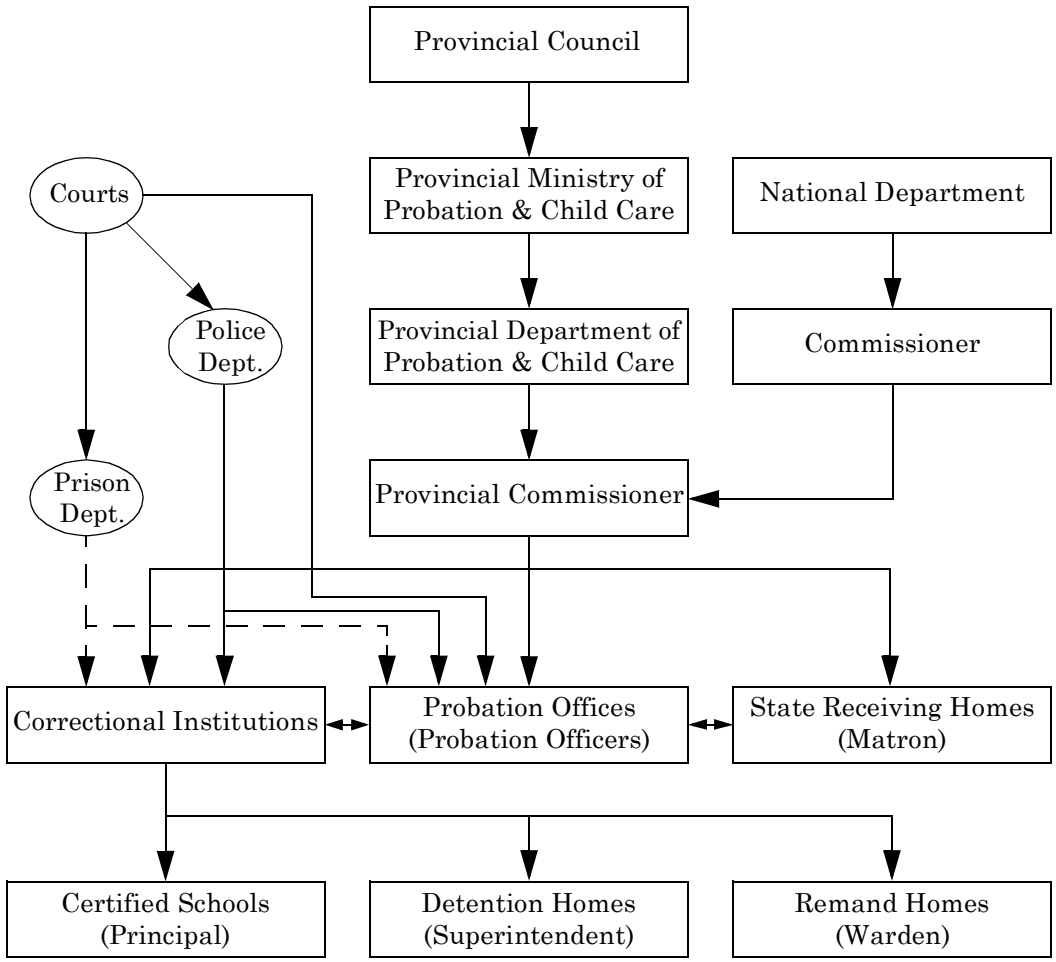
Supervision in the home environment of children who have completed the vocational training and education is the aim. This is performed by the probation officers. Here, inquiries are made of the employment engaged in by the children who have completed vocational training and counseling is given to them and their guardians. The probation officer has to arrange a suitable homely atmosphere and also provide a place of work for juveniles before being sent out from the Institute.

Apart from the foregoing vocational training for the children, excursions, parties/functions, New Year festivals, Vesaks, Christmas, Parents' days etc. are celebrated. Exhibitions are held to display children's creations so as to give the general public an idea of the Institute and it's activities.

V. MANAGEMENT OF ORGANIZATIONS

A. Organizational Structure

The Organizational Structure of the Department of Probation and Child Care Services and it's officers can be displayed as follows:



Since this was decentralized to the Provincial Council the activities are organized in accordance with the supervision and direction of the Provincial Commissioner. The Principal is the head of the Correctional Institution. The management of the other Staff is under him/her. The staff work according to a shift basis—day and night service is performed.

Each Officer's duties are briefly given below:

- Principal—Supervision of the Institute and administration.
- House Masters—Maintenance of "subject files" and study children's progress.
- Vocational Instructors—Provide vocational training to children.
- Graduate Teacher—Conduct classes and counseling for literally weak children.
- Overseers—Safeguard children and provide their needs, directing 'Units'
- Matrons—Preparation of diet charts and supply food accordingly and maintaining records.
- Cooks—Preparation of food.
- Watchers—Provide security to the Institute and children.
- Labourer—Cleaning up the Institute.

Although Officers are categorized as above, the shortage of required staff is the main handicap.

B. Financial Resources

The required financial allocation to these Institutes is provided by the relevant Provincial Councils. Since Provincial Councils function in various ways the financial allocation varies.

The financial allocation to the Keppetipola Certified School in Uva Province is substantial. Although financial allocation is made according to the prepared estimates towards the children's welfare which is not a problem, the financial allocation for the general maintenance work of the Institutes is insufficient (telephone, electricity, water supply and staff payments). The smooth functioning of the Institutes is therefore a problem.

C. Staff Training

Special training is provided for the Institutional Staff in the fields given below:

(i) Legislative enactments
(ii) Counseling methods.
(iii) Care and protection of juveniles.
(iv) Maintenance of case files.
(v) Planning children's programme.
(vi) Knowledge in vocational training.
(vii) Office management and public relations.

While in-service/on-the-job training is practiced, short-term training programmes (syllabuses) are specially used. Facilities are provided for six months training programme for abused children with activities for rehabilitation.

VI. PROBLEMS AND ISSUES IN INSTITUTIONAL TREATMENT METHODS

When the Institutional treatment method is adopted this department is mainly confronted with numerous problems.

A. Shortage of Institutes

In Sri Lanka, the number of institutes available for the treatment of juvenile offenders amounts to four. Of these, three are for male and one is for female children. Since the yearly intake is about 300, providing them with hostel and building facilities is a problem. Since only one institute is allocated for girls, the number of children admitted to the institute is far in excess of the facilities' capacity. In the Ranmuthugala (Girls') Certified School, the facilities available are for sixty children only. Now 160 are housed there.

B. Children not Accepted by Guardians after Rehabilitation

Although children, after institutional rehabilitation, should join their family unit, in many instances, it is not possible.

The reasons are:

(i) In such family units, the financial stability is low. (Inability to provide required facilities to children)
(ii) Parents are separated and the family environment is detested and unsuitable for children.
(iii) Children within family units whose mothers are abroad are not rightfully provided protection and welfare.
(iv) Children detest their home environment due to father's addiction to liquor and cruelty.
(v) Absence of guardian to accept children, (street urchins, and orphans)

In the above instances we are faced with immense problems.

Since no Institutions are available in Sri Lanka to re-admit such children, they are provided with employment opportunities and the Probation Department has to supervise (guide) them for a lengthy period. With the limited number of Officers it is very difficult to perform such tasks/services.

C. Financial Constraints

Financial constraints are revealed in a myriad of ways;

- from unfilled staff positions to the deterioration of the physical plant.
- from difficulties of obtaining raw materials for the vocational training classes at the Certified Schools.
- to problems in transport because of the unavailability of vehicles.

D. Staffing

There are two aspects to the staffing issues:

- unfilled positions
- the inadequacy of the qualifications of those who hold appointments

E. Congestion

The children's institutions accommodate far greater numbers than those for which they were designed. This creates a host of problems, ranging from the obvious logistical problems of providing for the accommodation out of congestion.

VII. COMMUNITY BASED TREATMENT METHODS

The aim is to rehabilitate the juvenile offenders in a residential atmosphere and society. For this, the Department of Probation and Child Care Services adopts some key methods:

(i) Probation Service
(ii) Supervision Orders
(iii) After-care Programme

For this, Probation of Offenders Ordinance, Children and Young Persons' Ordinance and legislative enactments are adopted. These services are performed by probation officers. These supervision activities are conducted by a Court order.

Juvenile offenders committed to the probation services are supervised for three years, and children on a court order are supervised for 1 or 2 years and for a maximum period of 3 years. During these periods, the concentration of the probation officer is as follows:

(i) To improve the juvenile offenders' behaviour by counseling.

(ii) If the child is at school, send him to school again and provide an opportunity to gain education and later make observations (follow-up action)
(iii) If interest is shown in a career, admit to a Professional Training Institute and have him trained.
Provision of equipment after training and guide him/her to an employment opportunity and later follow-up supervision (later observation).
(iv) By counseling juvenile offenders, their parents and relatives makes the family environment a pleasant one.

A. When Adopting Community-Based Treatment Method (C.B.T.)

a. Maintaining individual case files for juvenile offenders.
b. If a school-going child, afford follow-up action and supervision by going to his home and school.
c. If employed, meet the employer at the work place and discuss.
d. Counseling
e. Continue supervision without a break (during the prescribed period and later generally)

Probation officers pay special attention to these matters.

Community-Based Treatment for Children on Court Order (Uva Province only) [Year 2000]

Table 8

Province	Probation Office	No. of Officers	No. of Juvenile Offenders (CBT)
Uva	Badulla	3	45
	Bandarawela	2	42
	Monaragala	2	58

Taking into consideration these figures it is evident that among the duties, the performance of these activities by the probation officer is not easy.

B. Problems and Issues in C.B.T. Method

When adopting C.B.T. method, facts to be considered mainly are the problems arising therefrom which can be described as follows:

1. Shortage of Efficient and Trained Staff

Since Sri Lanka is a multi-national/ racial/religious country, it is necessary to design programmes so that all nationalities could be represented. But, the number of officers who could handle duties in several languages are very few. Therefore, for this purpose strong dedication and interest is called for, but scarcity of such staff is a problem.

2. Limited Public Participation

After committing an offence, the child is branded by the Society as an offender. The removal of such an impression from society is not easy. Therefore, the provision of employment opportunities, re-admission to school, and gaining public confidence is rather difficult. However, as far as possible, probation officers act as mediators and solve this problem.

3. Family Environment in Unpleasant State

In families where parents are separated and in families where mothers are abroad, due to the disruptive atmosphere within family units, refining child offenders is difficult. In such instances counseling and mediation enable us to solve this problem to a certain extent.

4. Inadequate Attention from Courts Towards C.B.T. Method

Mostly court orders are given to child offenders to confine them to institutes. Although the probation officers who understand the importance of C.B. and furnish reports for that purpose, children's confinement in institutions under court order has been a problem.

VIII. RECOMMENDATIONS

Today, it is very essential that juvenile offenders are rehabilitated. For reasons such as carelessness of elders, breakdown within family units, mental disorder and want of guidance, children get involved in various activities and thereby the number of offenders increases. Therefore, when performing institutional training or Community Based Treatment, the practical problems arising therefrom have to be sorted out before putting it into operation.

For that purpose the following recommendations can be given:

1. Recruitment of a trained and dedicated staff.
2. Provide them with further training.
3. In order to provide the necessary facilities to children, the state and voluntary organizations should contribute.
4. Provision of suitable salary scales, office facilities, housing facilities and transport facilities to the staff. (To ensure job satisfaction)
5. To re-scrutinize court activities.
6. To revise the legislative enactments to suit the present times.
7. To gain more public participation, their attitudes have to be changed. Therefore, awareness has to be instilled.
8. Provision of the necessary financial allocation by the state.
9. Co-ordination with relevant organizations [court, police, probation department, prisons department].
10. Implementation of policy formulation and planning considering the present necessities.
11. Familiarize with advanced methods such as data collection, preparation (data) and assessment (valuation) of progress.
12. While conducting various pieces of research, a study has to be made to revise and improve rehabilitation methods according to the changing social conditions.

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JUVENILE JUSTICE SYSTEM IN THAILAND

*Duangporn Ukris**

I. BEST PRACTICE IN THE INSTITUTIONAL TREATMENT OF JUVENILE OFFENDERS

A. Development of Model Treatment Programme Provided Separately from Adult Offenders

1. Introduction

Juvenile delinquency refers to the behavior of non-adults which violates the rules and regulations set by the government or society. Today juvenile delinquency is a major problem in both developed and developing countries.

As a result of the growth in science and technology, industrialization, urbanization and the intensive flow of information, Thailand right now is facing a transition in values. The existence of the value transition can be marked by the diminishing of traditional values, the emergence of new values such as changing family patterns and lifestyles, and the lessening of community social controls. Along with this growth and changes, the number, rate and spread of juvenile delinquency, especially drug abuse among children and teenagers is apparently increasing. As per the statistics complied and published by the Central Observation and Protection Center, the Ministry of Justice during 1996–2000.

Juvenile Justice System

Juvenile justice is a system distinct from the adult system and it has been created by legislation; the Act Instituting Juvenile Courts, B.E.2494 (1951) and the Juvenile Procedure Act, B.E.2494 (1951). As a result, the Central Juvenile Court and the Central Observation and Protection Center were established by virtue of the Act in 1952. For the eleven years that followed the Acts were amended to extend to the juvenile courts' jurisdiction and to bring speedy trials in criminal cases in the interests of the child or young person.

Recently, the Act instituting the juvenile and family court and its procedures relating to juvenile and family cases of 1991 superseded all 13 juvenile court laws and amendments. The new Act has extended the court jurisdiction to cover all family matters as provided by the family law, the civil and commercial code. In criminal proceedings and the welfare of juveniles, the law has clearly defined and revised certain provisions to protect the rights of children and young persons.

Organizations

The Juvenile and Family Court (JFC) is a constituent of the organized judiciary of Thailand. It is a specialized court of the first instance within the meaning of the constitutional Court of the Justice. At present, there are 10 Juvenile and Family Courts and 24 Juvenile and Family Sections in provincial Courts. All juvenile and Family Courts have similar comprehensive structures. They consist of two separate but coordinating parts; judiciary and administration. The Court is staffed by career judges and associate

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judges (lay judges). A quorum consists of associate judges.

The administration is divided into:

1. Office of the Courts' registrar
2. The Observation and Protection Center (OPC)

The Observation and Protection Center (OPC)

The OPC was established to serve the JFC before the trial of juveniles and family affairs cases and after the adjudication of juvenile cases, moreover to carry out other activities according to the orders of the court as well as to correct and rehabilitate juveniles to be good citizens.

Professional personnel include probation officers, social workers, psychologists, physicians, psychiatrists, etc. There are 34 centers throughout the country.

In 1993, His Majesty the King was graciously pleased to proclaim that the new Constitution B.E.2540 (1997) had been enacted. Under this Constitution, all courts of justice became independent. Consequently, the constitution for the organization of the courts of justice of 2540 (1997) governs all courts of justice which are separated from the Ministry of Justice and a new organizational structure and administration was set up. The OPC still remains under the office of the Permanent Secretary, Ministry of Justice.

2. Juvenile Case Procedure

An overview of the juvenile justice system and juvenile case procedure in Thailand shall be described in pursuance of the juvenile law and criminal procedure.

Pre-adjudication process

Under the criminal procedure code any injured person may file a complaint to the police against a child or young person. When a child or young person is alleged to have committed an act against the law, his case shall be commenced and investigated by an inquiry police officer, as required by ordinary criminal cases but the handing of a juvenile offender is more informal and lenient.

A competent inquiry police officer, who is assigned to a case, has the power to conduct an investigation within his territorial jurisdiction:

- where an offence has actually been committed,
- is alleged or believed to have been committed; and
- the offender is residing or has been arrested within his territorial jurisdiction.

(i) *Arrest*

In principle, a child shall not be arrested for an offence unless a flagrant offence or an injured person identified and insisted on the arrest or a warrant of arrest is made in pursuance of the criminal procedure code. After apprehension, the police officer in charge of the case or who keeps the child or young person in custody is required by law to notify the Director of the OPC, his parents, guardians or a person with whom he is residing.

(ii) *Investigation*

The officer shall conduct an initial inquiry and is required to complete this within 24 hours from the time a child or young person has arrived at his office. He will then refer him to the OPC. Further inquiry, if needed may proceed under the law.

(iii) *Detention and Provisional Release on Bail*

In general, a child or young person may be detained during investigation at the police station or in a remand home of the Observation and Protection Center (OPC). The Director of the OPC may, if he thinks fit, keep him in custody. Under the law, a request for provision release on bail of the arrestee shall be made to the custodial authorities as the case may be.

(iv) *The OPC is empowered and vested by law to perform the main functions as follows;*

a. Preparing a social investigation report concerning a child or young person such as historical background, family, occupation, education, character, crime motive and other social data.
b. Preparing a report on both physical and mental examination.
c. Preparing an observation report in the case of a child or young person who has been detained in a remand home.

A social investigation report is required in every case, except pre-hearing investigation which is not necessary in trivial cases. In the process a probation officer who is in charge of the case will deliver an investigation report to the police within 18 days. The officer, usually, will conclude his case in 6 days, then forward an inquiry file attached with the report to the public prosecutor who has discretionary power to decide in pursuance of the procedural law whether to enter or drop the change.

The Director of the OPC will submit the report together with his routine recommendation on causes of delinquency to the JFC.

(v) *Prosecution and Deferred Prosecution*

If the public prosecutor decides to institute prosecution, he has to enter a charge in the JFC within 30 days from the day in which a child or young person has been arrested. In case of necessity when the charge against the offender cannot be filed within the mentioned period, the police officer or public prosecutor who is responsible for the case shall apply by motion to the court for deferment.

In case of a grave offence where the minimum imprisonment is 5 years or over, the court may, if it thinks' fit, grant longer deferment.

(vi) *Trial*

The JFC procedure will be informed and simplified for the interest of a child or young person. The judge in charge of the case may call the accused for questioning or explain the proceedings in order to assist him. The trial is held in private. The persons present at the trial are the accused, parents, guardians, legal advisory, witness, prosecutor, members of the court and other persons permitted by the court. Photographs, reports on facts presented at the inquiring proceedings are not to be released to the public. An attorney shall not be appointed in the juvenile court, except a legal advisor. If the child or young person has no legal advisor, the court shall appoint one for him if it considers it desirable.

(vii) *Adjudication*

After the trial is completed, prior to a judgment or an order being given, the court will hear the report and opinion of the Director of the OPC, including his recommendation for measures to be taken.

The JFC always takes the following measures;

1. Admonish the child or young person and then discharge.
2. Discharge parents or guardian with probation order.
3. Place under the care of person or organization the court thinks desirable.
   a. Suspended judgment with probation order.
   b. Suspended judgment without probation order.
4. Commit into juvenile institution.
5. Substitute imprisonment to commit into juvenile institution order.
6. Suspension of judgment with probation order
7. Fine
8. Imprisonment

B. Designing a Case Management System to Provide Individualized Treatment

Treatment and rehabilitation for juvenile delinquents in Thailand are administered by the OPC. There are 2 treatment programmes for as follows;

1. Non-institutional treatment
2. Institutional treatment

1. Non-institutional treatment

Probation service. Probation is used by the JFC to place an offender at liberty under the supervision of a probation officer for a period prescribed the court. Probation is commonly used on first offender committing an offence of relatively minor nature.

The following conditions prescribed by the court under the supervision of the probation officer are as follows:

1. Forbidding the child or young person to enter any place or locality which might corrupt him.
2. Forbidding the child or young person to leave his residence at night time except in case of necessity.
3. Forbidding the child or young person to associate with any person who is deemed undesirable by the court.
4. Forbidding the child or young person to do any act which might corrupt him.
5. Order the child or young person to present himself from time to time to the court or probation officer or social worker who was assigned by the Director of the OPC.
6. Order the child or young person to take up education or carry on any substantial occupation.

A probation officer provides supervision and personal guidance to probationers through regular home visits and interviews them during the probation period, and exercises his/her professional skill and knowledge of local resources to meet the needs of the probationer and, where necessary, that of their family members for financial assistance, employment, etc. The probation supervision is brought back to the courts for review from time to time. The probation report with detailed information pertaining to the probationer's behavior is considered to see how he/she has improved and whether there are reasons for revocation of the original order.

The Ministry of Justice and the Probation Division of the OPC operates a volunteer scheme for probationers which aims at providing greater community involvement in the rehabilitation of offenders as from 1995. Under this scheme, selected volunteers provide probationers with personal and moral support and help them develop meaningful hobbies, habits, cultivate

healthy pursuits, find jobs and provide tuition for them.

The volunteer, however, will not take over the role of the probation officer who is dealing with the legal aspect of duties and solving the behavioral problems of the probationer. The volunteer is expected to assist a probationer in activities which require no professional skills.

Suitably recruited volunteers will be given a training and orientation course conducted by the OPC and Department of Probation, Ministry of Justice before they are considered ready for service. Based on the probation cases, probation officers may select a suitable volunteer from the pool of unmatched volunteers to assist a probationer. Once a case is matched, it is the duty of the probation officer to regularly contact the volunteer to keep track of the progress of service and to review its effectiveness on the probationers.

2. Institutional Treatment

A training school is a juvenile institution receiving juveniles committed by the JFC for protective and innovative measures in lieu of a penal sanction. Juvenile institutions set up in the OPC are divided into 3 types;

1. The Training School (There are 22 training schools for males and females in the whole country)
2. The Vocational Training School (There is 1 school.)
3. The Therapeutic Community Center (There is 1 center.)

Training School

These schools take juveniles through the order of the JFC, where it appears to the court that other means of rehabilitating them has failed. It should also be noted that these juveniles are not in any sense seriously demoralized. The objective of a juvenile training school is to facilitate readjustment to society and to promote sound growth through disciplined communal life, academic and vocational training, counseling and living guidance.

At present, there are 12 training schools for boys and 10 for girls throughout the country. Since juveniles are committed to the training schools in order to receive reformative treatment and are still at the stage of character formation, educational programmes are conducted. The school programme aims to develop adjustment skills and life skills of inmates through regular guidance, vocational training, education, moral and religious instruction and recreational activities. While most of these activities help instill specific disciplines in them, general discipline is encouraged through a system of granting or revoking rewards and privileges. The rewards and privileges used include home visits, pre-release among others, participation in special activities, etc.

At the beginning of their stay, stress is placed upon developing the social skills required to maintain good human relations with other inmates. In the pre-release period guidance is provided to help juveniles prepare for return to outside social life after release. Juveniles are given the opportunity to return to society as well as to adjust themselves to their families and society. This training school provides various programmes for juveniles, they must choose the course that they prefer and for which they have enough skill, except juveniles who did not finish compulsory school who have to study until they finish. Programmes of these schools are as follows:

(i) *Academic education.*

Juveniles will be placed at a level relative to their previous academic history prior to their admission. The curriculum of educational programmes and standard of education are under supervision and controlled by the Non-Formal Education Department, Ministry of Education.

(ii) *Vocational training.*

Vocational training is provided in training schools so as to enhance employment opportunities. Each training school arranges different vocational courses depending on the employment market and resources in that area. Juveniles are encouraged to qualify for official licenses and certificates. These cover a wide range of craft and technical subjects including printing, carpentry, welding, air-condition repairing, electricity, automobile repairing, hair-cutting, ceramics, music training, agriculture, dress making, women's handicrafts, cookery, etc. An inmate who has passed the examination of hair-dressing will be given a certificate, issued by the Ministry of Education, and an inmate who passes their welding examination will be given a certificate issued by King Mongkut's Institute of Technology, North Bangkok.

(iii) *Treatment service*

These services are provided by social workers and psychologists in order to develop juveniles' ability to function effectively with peers and family and to change juveniles' behavior and personality. These services include advice, guidance, psychological tests, group activities, etc. which are employed based on the needs and problems presented by juveniles. Moreover, the social workers will provide social services to all inmates who get into difficulties and need services during their training in the training school.

(iv) *Spiritual and religious services*

Spiritual and religious services include the development of moral and spiritual values. Advising shall be helpful in aiding the solution of individual and family problems. Army moral instructors and volunteers from outside impart social values and moral instruction.

(v) *Medical services*

Medical services provide comprehensive health care education, health care ranging from routine physical examination by nurses and screening procedures to diagnosis, treatment and follow up of illnesses and other medical problems.

(vi) *Sports, recreation and athletics.*

Offer the juveniles the opportunity to engage in constructive activities, to establish peer relationships and to develop the discipline necessary to improve a skill or gain respect for good physical health. Games and sports are held daily to provide fun and recreation, promote interaction, encourage the proper use of leisure, compliance with rules and develop a spirit of group participation.

Regarding the evaluation of the treatment programme, the social worker, the instructor and housemaster will evaluate the result of the treatment. An inmate whose treatment is satisfactory will be given certain rewards such as home visits, or pre-release, or release in a short-term sentence or be able to participate in special activities, or outings, etc. Juveniles may be released sooner depending on the evaluation of the treatment. On the other hand, juveniles will be released at the end of a certain

period even if the result of his treatment is not satisfactory.

The conduct of a juvenile staying in the training school is evaluated by means of ascertaining his behavior under seven general criteria, which are as follows:

1. Performance at training school, study, vocational training, work
2. Personal appearance
3. Language
4. Behavior
5. Respect for authority
6. Care of property
7. Co-operation

The Director of the OPC is powered to send an incorrigible juvenile who is a source of danger to other juveniles for detention in prison.

(vii) *Parole*

A juvenile offender who has been conditionally released on parole from the Training School by the decree of the JFC. The term of parole supervision is usually up to the remaining term of his or her sentence with early discharge in case of serving the period of training for one-quarter and good behavior.

Screening of inmates for release on parole is under the conditions as follows:

- Good result of treatment and rehabilitation
- Good home condition
- The JFC makes the decision to release a juvenile on parole.

Supervision of parole process is the same as the process of supervision of probationer.

(viii)*Aftercare service*

Aftercare plays an important role in the social reintegration of release from the Training School, the Vocational Training School and the Drug Addiction Treatment Center. It is duty of the Social Work Sub-division, the OPC to do such things as are necessary to ascertain the *modus vivendi* of juveniles released from institutions with a view to assisting them, in so far as may be possible. Aftercare commences soon after an inmate is admitted and includes individual casework aimed at building a solid foundation of confidence and friendship between the inmate, the family and the social worker. The social worker provides solid support to both the inmate and his or her family and those under statutory supervision (probation and parole) overcome obstacles to their rehabilitation.

Regarding the aftercare services, such services are for the released inmates or their families who are confronted with problems. In such a case, the social worker will take care of juveniles and their families and give advice on how they solve problems and what kinds of services will be provided such as bus-fares, scholarships, job placements, basic amenities and personal utilities, etc.

However, the existing juvenile institutions for juvenile delinquency especially in Bangkok cannot afford effective treatment and rehabilitation systems due to inadequacy of buildings and scarcity of equipment and lack the capacity to administer and operate the programmes, to the effect that contents of treatment and rehabilitation become degraded and insufficient.

Under the above mentioned aggravated circumstances in 1991, the Central Juvenile and Family Court, the Ministry of justice, endeavoring to attain more efficient rehabilitation of problem youths, made a plan to newly construct a

Vocational Training School to help unlawful youth return to society in Nakorn-prathom Province near Bangkok area by a request to the Government of Japan for the grant of aid for the project. The objective of this project is to construct a model vocational training school functioning as an innovated model school along with its implementation of progressive innovative treatment and rehabilitation, and is expected to enhance and strengthen the functions and systems of juvenile corrections of Thailand. Under this request, the government of Japan approved this project by granting aid and technical assistance. The construction of this project was started on February 17, 1994 and completed on March 31, 1995. The Vocational Training School was open on January 15, 1996. This school has served 910 trainees from 1996–2001.

Thailand, has a remarkable situation of drug abuse among children and teenagers and it is increasing year by year. The Central Juvenile and Family Court is endeavoring to attain more efficient treatment and rehabilitation for drug addicts by the establishment of the Drug Addict Treatment Center and the Drug Rehabilitation Center in Bangkok as pilot projects. These Centers were started on June 8, 1994.

In 1994, the Ayudthaya Therapeutic Community Center was opened to serve juvenile drug addicts as well.

In 2001, the Drug Addict Treatment Center and the Drug Rehabilitation Center which were to be used as pilot projects were closed after a follow up and evaluation of ineffective treatment and rehabilitation. At present, only the Ayudthaya Therapeutic Community Center still remains.

Other major topics such as the development of model treatment programmes for juveniles and drug addicts as well as designing a case management system for individual treatment in the Vocational Training School and the Ayudthaya Therapeutic Community Center, will be explained next.

The Vocational Training School

The capacity of the school is for 200 persons. The salient features of the Vocational Training School (VTS) emphasize positive working attitudes of juveniles as well as helping juveniles to acquire working skills, arrangements for juveniles to undergo a test of the Trade Standard Testing Committee, the Ministry of Labour and Social Welfare. They conduct effective treatment and operate 8 vocational training courses. The capacity of the school is 200 persons per year.

(i) *Enrollment*

Due to the reasons that the VTS has limited capacity, the new system of treatment correction and rehabilitation is just introduced in order to get the most qualified outcome. It is not possible for every vocational training course to enroll juveniles at the same time, so the enrollment schedule and number of juveniles are fixed. Each vocational course enrolls 13 juveniles twice a year for 7 courses, except for the construction vehicle operation course which enrolls 18 juveniles once a year and the school provides 8 vocational training courses as follows:

- There are 1-year courses (1,216 hours) in machining, automobile maintenance, printing, welding and sheet metal, woodwork, electric wiring and air-condition repairing

- There is a 6-month course (608 hours) in construction vehicle operation.

(ii) *Selection System*

In Thailand we don't have a classification system to enroll juveniles to the VTS. We set up a selection system in order to select juveniles under the selection conditions prescribed as follows:

1. Male
2. Aged 14 through to 18 (until 24 years if specially admitted by case)
3. Juveniles who are not afflicted with any great physical or mental disorder
4. Duration of training is 6 months or more for the construction vehicle operation course and 1 year for other vocational courses.
5. Juveniles can read and write.
6. Juveniles who have appropriate skills for vocational training and interests in vocational training.

The Selection Committee from the OPC selects and screens a juvenile's requirements for training in the VTS form under the enrollment of the VTS schedule.

The committee will review that form and recommend juveniles for selection. The Superintendent will make the selection decision.

(iii) *Dormitory Placement*

We arrange the dormitory for juveniles as follows:

- Introductory stage: dormitory 1–2 for new admissions
- Intermediate stage: dormitory 4–5 for juvenile grades 3 and 2
- Pre-release stage: dormitory 3 for 1-month release.

(iv) *Individual Treatment Plan*

The VTS will be divided into 3 stages for the treatment of juveniles as follows:

1. Introductory stage: 1 month.
2. Intermediate stage: 10 months for 1-year course and 4 months for 6-month course.
3. Pre-release stage: 1 month.

Introductory Stage (1 month)

The introductory stage is 1 month prior to the opening of the vocational training course. The stage has the following procedure:

- Admission

After juveniles are sent to the VTS, they have to register and have a photo taken, their body checked, take a shower, get their uniform and necessary items, have a physical examination and have a brief introduction regarding the basic rules of the VTS.

- Orientation

Orientation starts on the 2nd day of arrival at the VTS by a housemaster, vocational instructor, social worker, psychologist, nurse, librarian, and chief of security. The main themes of orientation are rules, regulation, training system, activities, and services. In order to reduce tension, motivate juveniles to improve behavior and encourage the responsibility to abide by the VTS' s regulations.

- Treatment Programme

Self-supporting work

For new admissions, juveniles are assigned to self-supporting work such as cleaning the cafeteria, washing dishes, cleaning floors of the dormitory and agriculture work. In order to encourage juveniles to devote themselves, to give them the opportunity to learn about their basic responsibilities and work with others.

Medical services

A physical and mental check up service is provided to every juvenile, including knowledge about health education, prevention of communicative diseases, basic health care, treatment health promotion which is conducted through morning exercise and sport. Responsible staff are physical instructors, nurses, etc.

Vocational training

At this stage juveniles will study basic security in workshop and hygiene provided by instructors in charge of each vocational course.

- Evaluation and Upgrading

Evaluation

All juveniles sent to the VTS are instantly categorized in grade 4. Conditions, privileges and services for juveniles in grade 4 are assigned to do self-supporting work and get permission for parents to visit once a month. The result of performance, conduct, adjustment, group activities are used to evaluate juveniles.

Upgrading

After 1 month, the committee shall hold a meeting to make a consideration as to whether to upgrade juveniles to grade 3.

Intermediate Stage (10 months)

This stage takes 10 months and is divided into the 2 following courses:

1. Basic course, 7 months
2. Advanced course, 3 months

During the intermediate stage juveniles learn about relevant advanced techniques and practice to improve their skills. Aside from vocational training, juveniles are required to attend academic class in order to widen their academic knowledge and undergo corrective treatment and rehabilitative programmes as mentioned in individual plans.

- Treatment Programme

Self-supporting work

At this stage juveniles are assigned to have self-supporting work the same as at the introductory stage

Medical services

This programme is available on many topics to enhance knowledge of juveniles about health protection, for example, the prevention of AIDS, prevention of drug abuse, sex education, unity promotion, sports promotion, etc. Physical instructors and social workers are responsible for these programmes.

As for sick juveniles, nurses will take care of them. For severe cases, they are sent for treatment at hospitals by security guards.

Sports, recreation and athletics

Offer the juveniles the opportunity to develop the discipline necessary to improve skills or gain good physical health. Sports are held daily to provide recreation, promote interaction, encourage proper use of leisure, compliance with rules and develop a spirit of group participation.

Academic education

Academic education consists of 3 levels as follows:

1. Compulsory (6-month course)
2. Junior high school (1-year course)
3. Senior high school (1 and a half years)

This course is started for only half a day every Saturday and instructors from the branch Center of Non-Formal Education, Ministry of Education conduct this course. Moreover every juvenile has to do self-study in the dormitory at night

time under the supervision of the housemaster.

Vocational training

The basic course consists of theories and basic practice. The training period for the basic course is 7 months.

The advanced course consists of techniques, practice for improving juveniles' skills, providing working experiences. The training period for the advanced course is 3 months. After completion of this course the skill standard testing of the Department of Skill Development, Ministry of Labour and Social Welfare will be provided.

Rehabilitation programme

At this stage, the rehabilitation programme is done in accordance with an individual plan. This programme can be done through an individual or group process, such as case/group guidance, individual counseling, role playing, role lettering etc., depending upon a juveniles' problems in individual plans. Responsible staff are social workers, psychologists and housemasters.

Special activities by volunteers or other organizations

The VTS cooperates with other organizations and volunteers outside to arrange projects of activities such as camping projects, job placement programmes, short course vocational training, giving lectures, walk rally activities, etc.

- Evaluation and Upgrading

Evaluation

For this stage, we evaluate juveniles 2 times:

1. From grade 3 to grade 2:
   juveniles are in grade 3 for 3 months before being considered for upgrade to grade 2. The conditions, privileges and services for juveniles in grade 3 allow them to do self-supporting work and get permission for parental visits and write letters to their parents 2 times a month. They can attend some of the activities organized by the VTS or volunteers outside.
2. From grade 2 to grade 1:
   juveniles are in grade 2 for 4 months before being considered for upgrade to grade 1. The conditions, privileges and services for juveniles in grade 2 allow permission to visit and write letters to their parents 3 times a month and join observation tours and other activities

The results of progressive vocational training, academic education and the improving of their attitudes towards life and performances are used to evaluate juveniles.

Upgrading

At this stage, juveniles are in grade 3, and after 3 months the committee shall hold a meeting to make a consideration to upgrade juveniles to grade 2.

After 4 months, the committee shall hold a meeting again to consider upgrading juveniles to grade 1.

Pre-release stage

The pre-release stage takes 1 month before the release date. Its procedure is as follows:

- Treatment Programme

Self-supporting work

Juveniles are assigned to have self-supporting work, only laundry work at this stage.

Medical services

This is the last check up on juveniles' health by nurses and doctors before release.

Academic education

The academic education course will be completed at the pre-release stage.

Vocational Training

At this stage, in order to provide juveniles with more opportunity to gain professional experience, juveniles who have satisfactory training results can go out for job training and, for those who are allowed, training outside they can practice within the VTS set up.

- Rehabilitation programme

Preparation for release

For this stage the objective is to provide more experiences about vocational training and social skills. Juveniles were required to attend special activities. Many topics of lectures provided from lecturers outside or observation tours to significant places, factories, and education institutions or to be volunteers of social services, etc.

Besides preparing juveniles, guidance for their families is necessary too. The main idea is to guide parents about juveniles' jobs, education, services available in society, including the proper care of juveniles.

- Evaluation and Upgrading

At this stage juveniles are in grade 1. Conditions, privileges and services for juveniles in grade 1 allow them to go back and spend a night stay at home during weekends. They can join every activity. The juveniles are entitled to pre-release and after care services. Moreover, the last month before their release date, twenty juveniles in dormitory 3 will get special privileges by staying without security guards. The juveniles feel more free.

- Release

Release divided into 2 types;

1. Release without parole is applied to juveniles with the following qualifications; a juvenile has completed the vocational course, shown progress in evaluation results and is upgraded to grade 1.
   For juveniles who complete these qualifications, the VTS will immediately send their release report to the court for consideration for release without condition.

2. Release under parole is applied to juveniles who have completed the vocational training course but the results of evaluation are unsatisfactory and their grade lower than grade 1. Their release report will sent to the court for consideration for release with conditions.

- Aftercare services

Social Work Sub-division, the OPC will take care of released juveniles who are confronted with problems by giving advice, providing many kinds of services such as job placements, aftercare hostels, foster parents, basic amenities and personal utilities, schools or vocational schools for juveniles, scholarships, etc.

Follow up after release; the VTS will start to follow up 1 month after juveniles are released from the VTS by questionnaire. Follow up is continued for 1 year after juveniles are released.

The Drug Addict Treatment Center

The Drug Addict Treatment Center will receive drug dependents who were sentenced by the Juvenile and Family Court.

- The objectives of the center

1. To assist the juvenile to gain insights into their behavior, attitudes and redirect counterproductive behavior patterns and anti-social attitudes into more positive and constructive ones, furthermore, to change the juveniles to be responsible persons.
2. To enhance the juveniles coping capabilities, trust of others and improved self-image.
3. To rehabilitate and assist the juveniles to change themselves to be good citizens and return them to society free from drugs.

- The aims of the compulsory treatment and rehabilitation programme are as follows:

1. Restoration of physical health
2. Uprooting psychological and emotional dependence on drugs.
3. Juvenile treatment and rehabilitation by applying the therapeutic community models and techniques.

- Treatment and rehabilitation programme

The therapeutic Community Model and techniques have been applied through treatment and rehabilitation programmes in the Drug Addict Treatment Center. These programmes are divided into 3 stages as follows:

Rehabilitation Stage

This stage is to root out psychological and emotional dependence on drugs and restore physical health. Furthermore, family therapy is employed based on the need and problems presented by juveniles. The participation of parents and family in the rehabilitation process is encouraged.

Treatment Stage

This stage is to assist the juveniles to gain insights into their behavior and attitudes, and redirect counterproductive behavior patterns and anti-social attitudes into more positive and constructive ones and enhance the juveniles coping capabilities, trust of others and improved self-image. Individual and group counseling is conducted on a regular basis throughout the period of treatment. This work programme is aimed to improve the juvenile's personality and encourage good work habits, establish self-confidence as well as a sense of responsibility. At the same time, in order to implement treatment and rehabilitation programmes more effectively, the Drug Addict Treatment Center has applied therapeutic community models and techniques through treatment and rehabilitation programmes, such as the therapeutic community's philosophy, unwritten philosophy, basic (who you are? what you do?) rules and regulations, chains of command for staff and residents, cardinal rules (no physical violence, no use of drugs, no sexual contact), basic house rules, rules of the house (morning meetings, encounter groups, seminars, house meetings, general meetings, static groups, hair cuts, confrontation, peer confrontation)

Re-entry Stage

This stage is for juvenile's rehabilitation and assistance in order to return and adjust themselves into society by freedom from drugs. This center will arrange and provide the following re-entry activities:

Preparation for release

Juveniles will be prepared one month before release, this duty is under the responsibility of the social worker, nurse and housemaster who will provide general knowledge to make juveniles prepare themselves for release. Besides, juveniles are

required to attend special activities outside the center. Parent meetings will provide for guiding parents on how to look after the released juveniles.

After care services

This center plays an important role in the social reintegration and discharge from the center. The social worker on after care duty will provide solid support to both juveniles and their families and others who may assist juveniles' rehabilitation.

Follow up and evaluation

A follow up will be started after juveniles have been released from this center for 1–3 months by home visiting, telephone calling, and questionnaires sent to released juveniles and their parents. Social workers on follow up duty will use this information for solving the juveniles' problems or providing social work services for them to adjust themselves to society free from drugs.

C. Establishing a Case File/Record System and Linking it to an Offender Database and Statistical Compilation System

In Thailand, the OPC has just started to develop a computer programme for a juvenile database 2000. This database is separated into 6 parts as follows:

1. Part 1 remand home
2. Part 2 criminal investigation
3. Part 3 supervision
4. Part 4 guardian supervision
5. Part 5 family affairs
6. Part 6 training school

At present, this database is being tested and improved.

II. BEST PRACTICE IN THE MANAGEMENT OF ORGANIZATIONS PROVIDING INSTITUTIONAL TREATMENT TO JUVENILE OFFENDERS

A. Strategic Utilization of Limited Financial Resources and Maximizing Cost-effectiveness

Every year the OPC receives a limited fiscal budget. It's not enough for organizational management to provide institutional treatment for juvenile offenders.

The OPC provided a budget to the VTS 2 times per year (6 months per time) for management and administration of the VTS. For special projects the VTS gets a special budget, which is separate from the fiscal budget.

In my opinion, the fiscal budget provided by the government is limited in its ability to develop the VTS. Strategic utilization of limited financial resources and maximizing cost-effectiveness of the VTS is as follows

1. Set up priority for works and projects.
2. Set up criteria for works and budgets.
3. Distribute each budget for the priority of works and projects, respectively.
4. Emergency works or projects will be especially considered by the VTS committee and special expenditure will be paid by the VTS foundation.

B. Staff Training: Designing Training Systems and Curricula to Enhance Skills and Integrity

The OPC don't have staff training course institutions. For staff training the OPC provides 3 types as follows:

1. The curriculum that is conducted by personnel, the sub-division which is

changed year by year depending on the budget
2. Sending staff to attend outside courses.
3. Request for training by each staff.

In Thailand we don't have specially designed training systems and special curriculums especially for the enhancement of integrity.

C. Managing Public Relations and Obtaining Public Trust in Correctional Services

The OPC and the VTS maintain good public relations by keeping good cooperation and collaboration from GOs and NGOs. Those GOs and NGOs provide many kinds of activities for juveniles during institutional treatment and after release.

III. CONCLUSION

Some lessons are to be drawn from the before-mentioned Thai experiences in the development of institutional treatment for juvenile offenders. First, the basic defects in the non-institutional treatment and institutional treatment systems, whether potential or not, such as the lack of intensity in the continuance of protective and innovative measures or the lack of diversity in treatment and rehabilitation terms and programmes are crucial to the effective management and administration of juvenile treatment systems. This kind of defect cannot be rectified by an effort of a single school or center, however hard it might try. It needs concerted action of all schools or centers and related agencies throughout the country following the model systems approach.

Second, development can be undertaken on management and administrative matters to some extent within the basic framework of the developmental systems. Although the new model system may make a school or center more effective, the new model systems alone might not produce expected results unless and otherwise all schools or centers and related agencies are determined to affect the necessary following.

Third, development needs some experimental attempt to verify the direction of development, sufficient preparation particularly in terms of complete understanding among staff of all schools or centers and related agencies and, of course, courage in their decision to carry them out.

However, the above-mentioned development is certainly not a panacea for juvenile problems. It will be a help, but it should anticipate well planned, better cooperated and coordinated measures with the wider participation of all schools or centers and related agencies throughout the country so as to meet all juvenile institutions' development systems.

For development of a model treatment programme of the VTS and the Ayudthaya Therapeutic Community Center, though they have the mechanism and synergy for continuous efforts in juvenile treatment and rehabilitation from the moment of enrollment in the school or center until discharge, there are also impediments to the desired gold. Implementation of the treatment, rehabilitation, and aftercare programmes are greatly affected due to a lack of technical knowledge, and the increasing number of juvenile drug addicts in contrast to the shortage of social workers, psychologists and others who are involved in treatment rehabilitation and aftercare. Due to the shortage of qualified

officers and the restriction of resources, the quality of treatment, rehabilitation and aftercare services are impaired and this places a heavier demand on qualified professional personnel.

In recognizing professional specialization as the basic requirement for social workers, psychologists, and other concerned officers, whether in the institutional treatment or community-based treatment programmes, there is a need to put more emphasis on careful recruitment and training of staff and also to update their technical knowledge and technical know-how through research and development.

REFERENCE

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Appendix 1

The Number of Juveniles Sent to the Observation amnd Protection Center
1996–2000

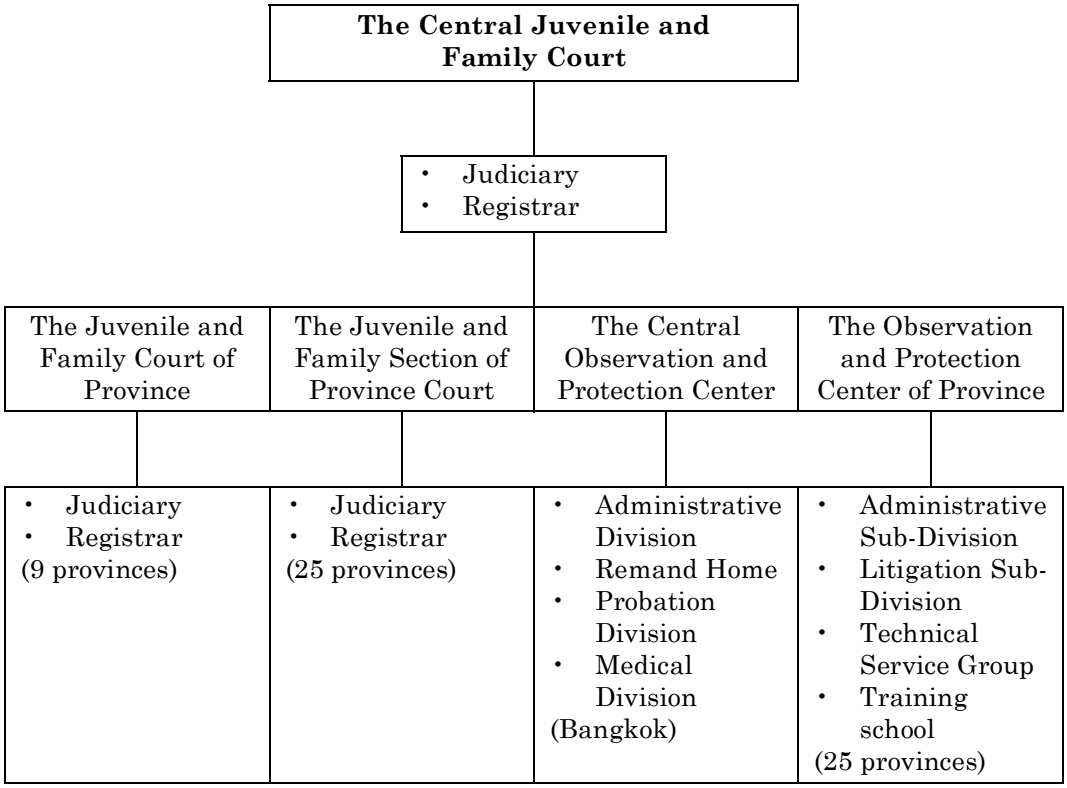
	No. of offenders				
	1996	**1997**	**1998**	**1999**	**2000**
Male	21,382	27,906	35,181	33,934	32,270
Female	2,209	2,762	3,291	3,454	3,169
Total	**23,591**	**30,668**	**38,472**	**37,388**	**35,439**

Juveniles Cases Classified by Types of Offences
1996–2000

Type of offence	No. of offenders				
	1996	**1997**	**1998**	**1999**	**2000**
Offence against property	6,277	7,782	9,196	8,325	8,090
Homicide and other violent offence	1,396	1,985	1,919	2,304	1,946
Sex related offence	823	964	947	1,004	961
Offence relating to public peace and security	314	288	203	218	111
Offence relating to drug abuse, gambling, counter-feiting, carrying firearms, etc.	14,781	19,649	26,207	25,537	24,331
Total	**23,591**	**30,668**	**38,472**	**37,388**	**35,439**

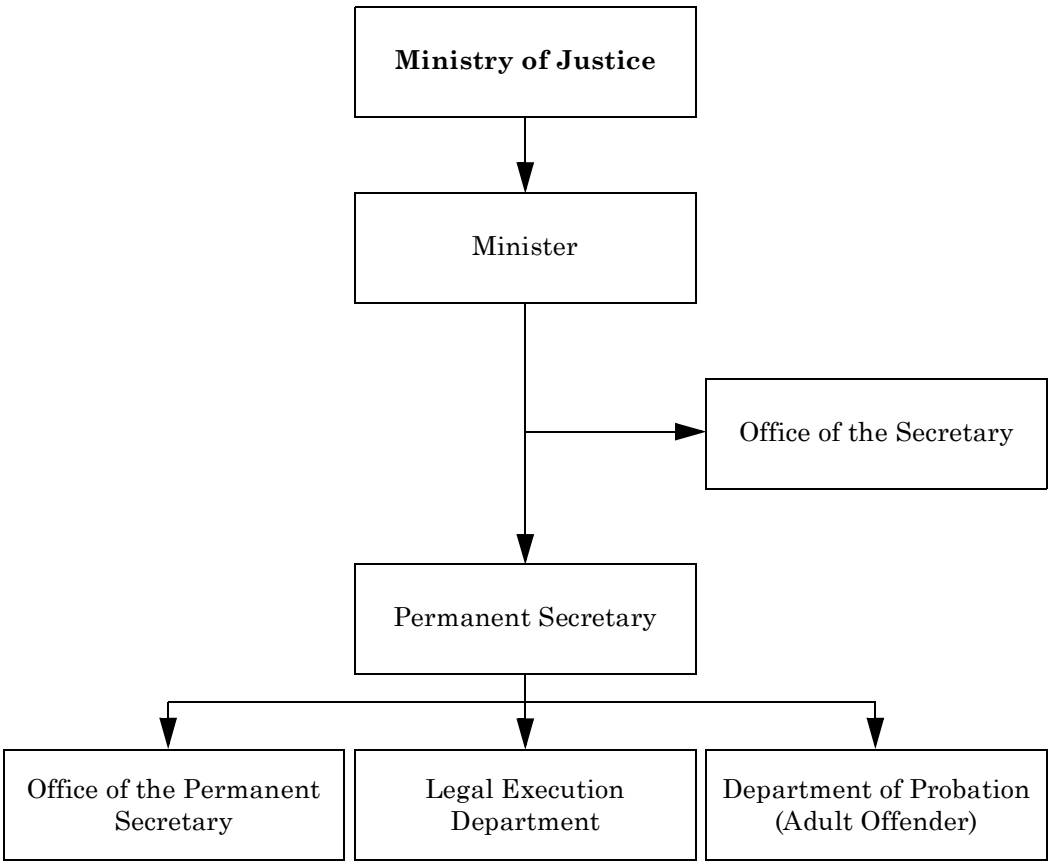
Appendix 2

Organization Chart of the Juvenile and Family Court and the Observation and Protection Center



Appendix 3

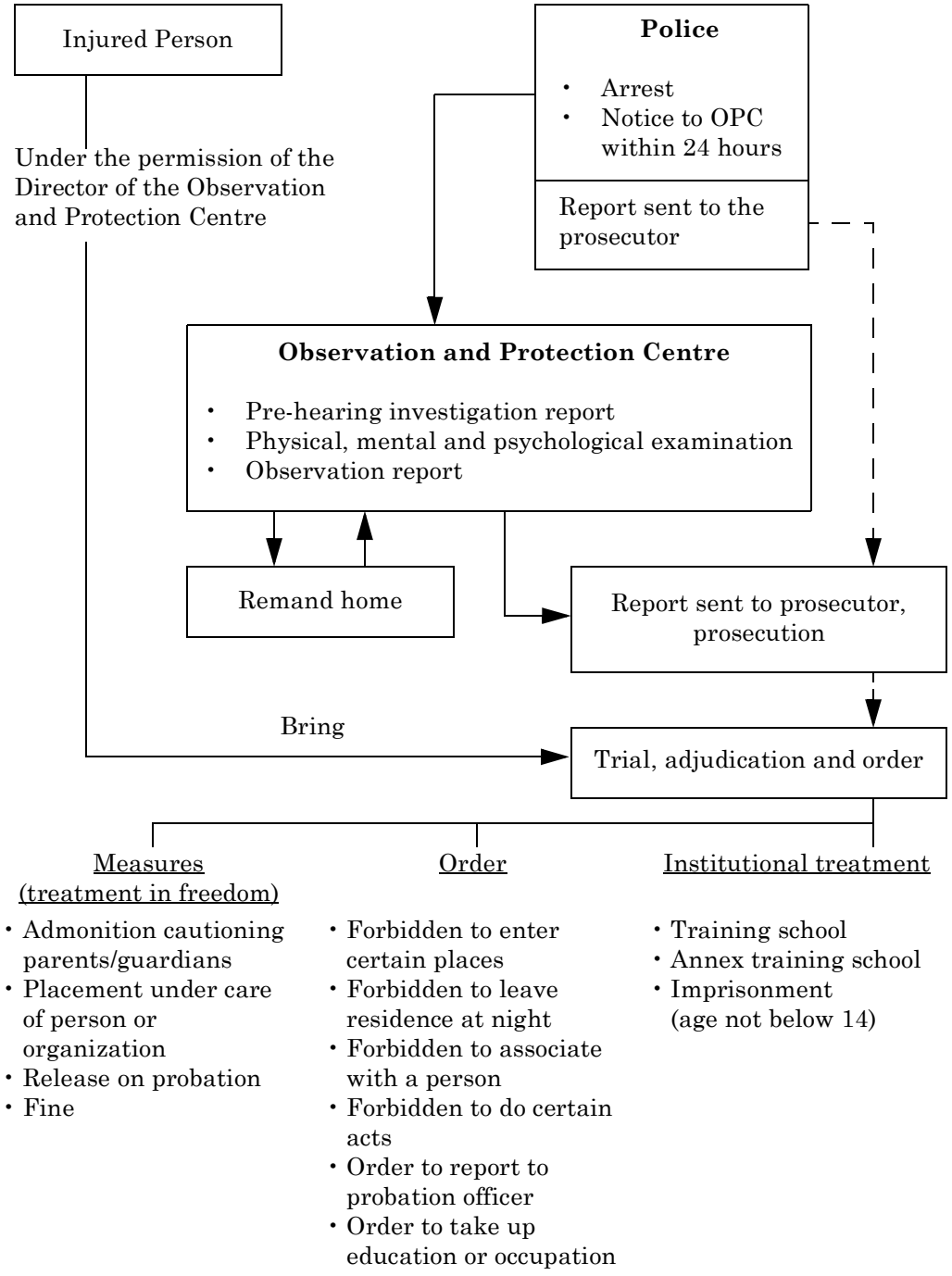
Structure of Ministry of Justice
(after separation from Court)



- General Affairs Div.
- Personnel Div.
- Finance Div.
- Design and Construction Div.
- Policy and Planning Div.
- Computer center
- Justice Planning Institute
- Internal Auditing Unit
- The Central Observation and Protection Center
- The Provincial Observation and Protection Center

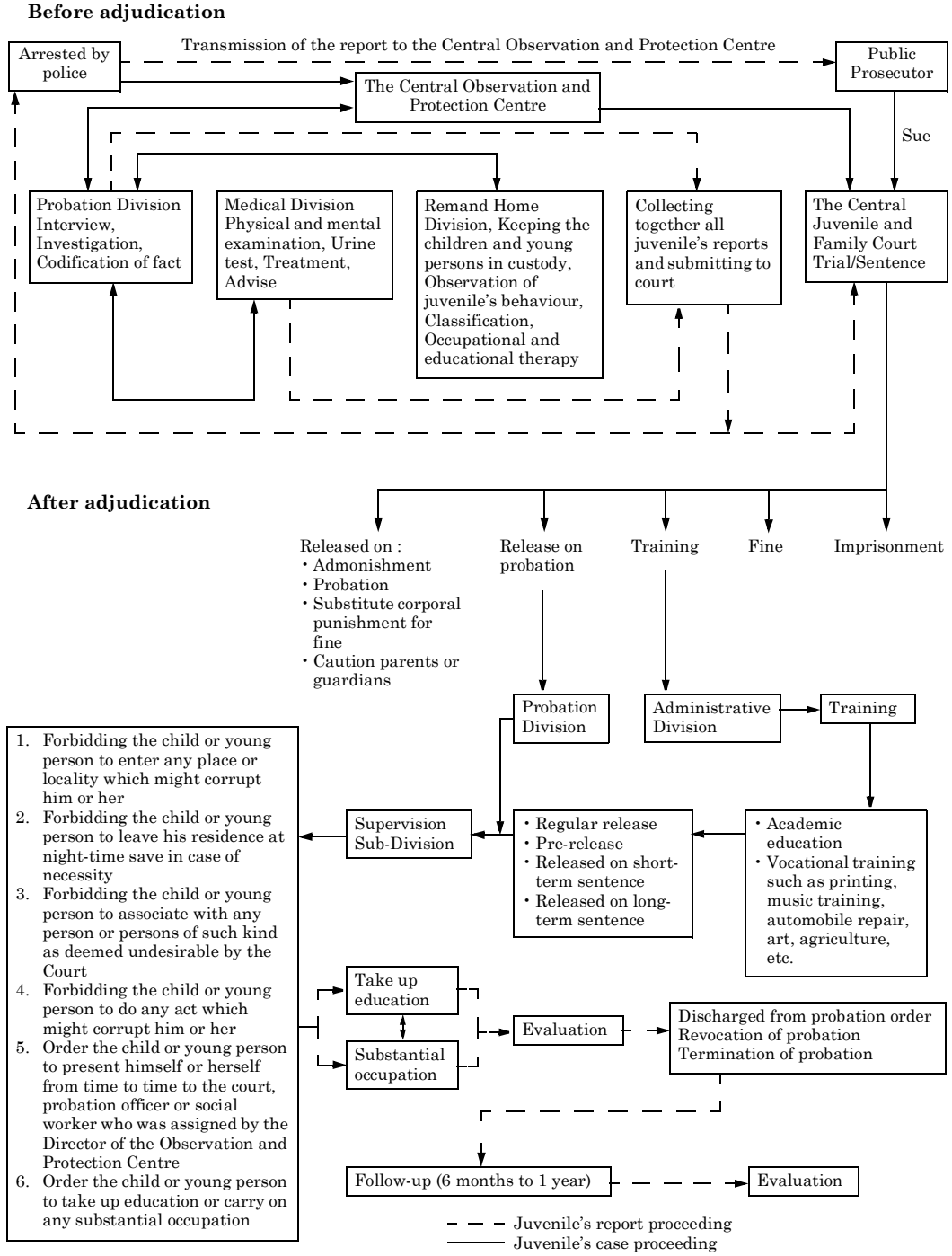
Appendix 4

Juvenile Case Proceedings



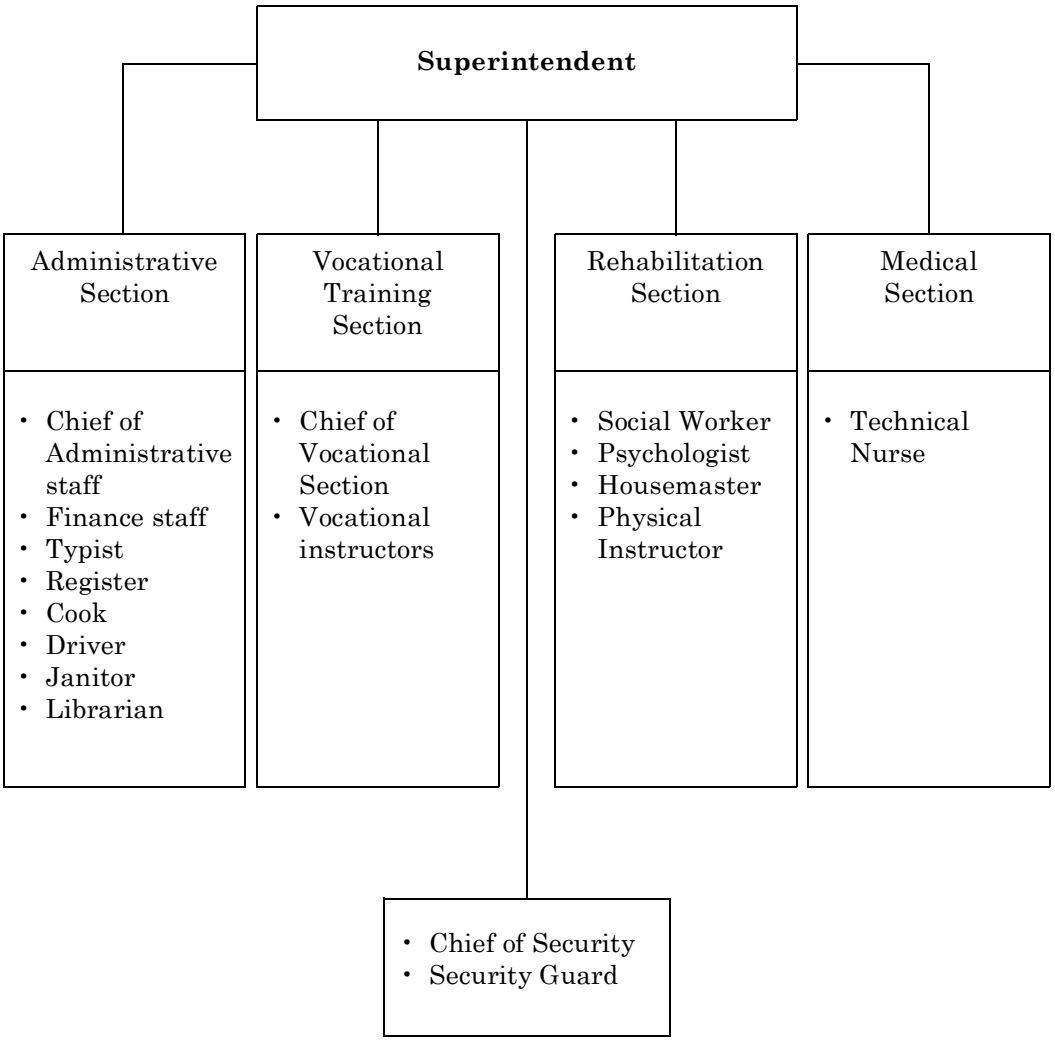
Appendix 5

Chart of Juvenile Cases Proceedings and Treatment Process



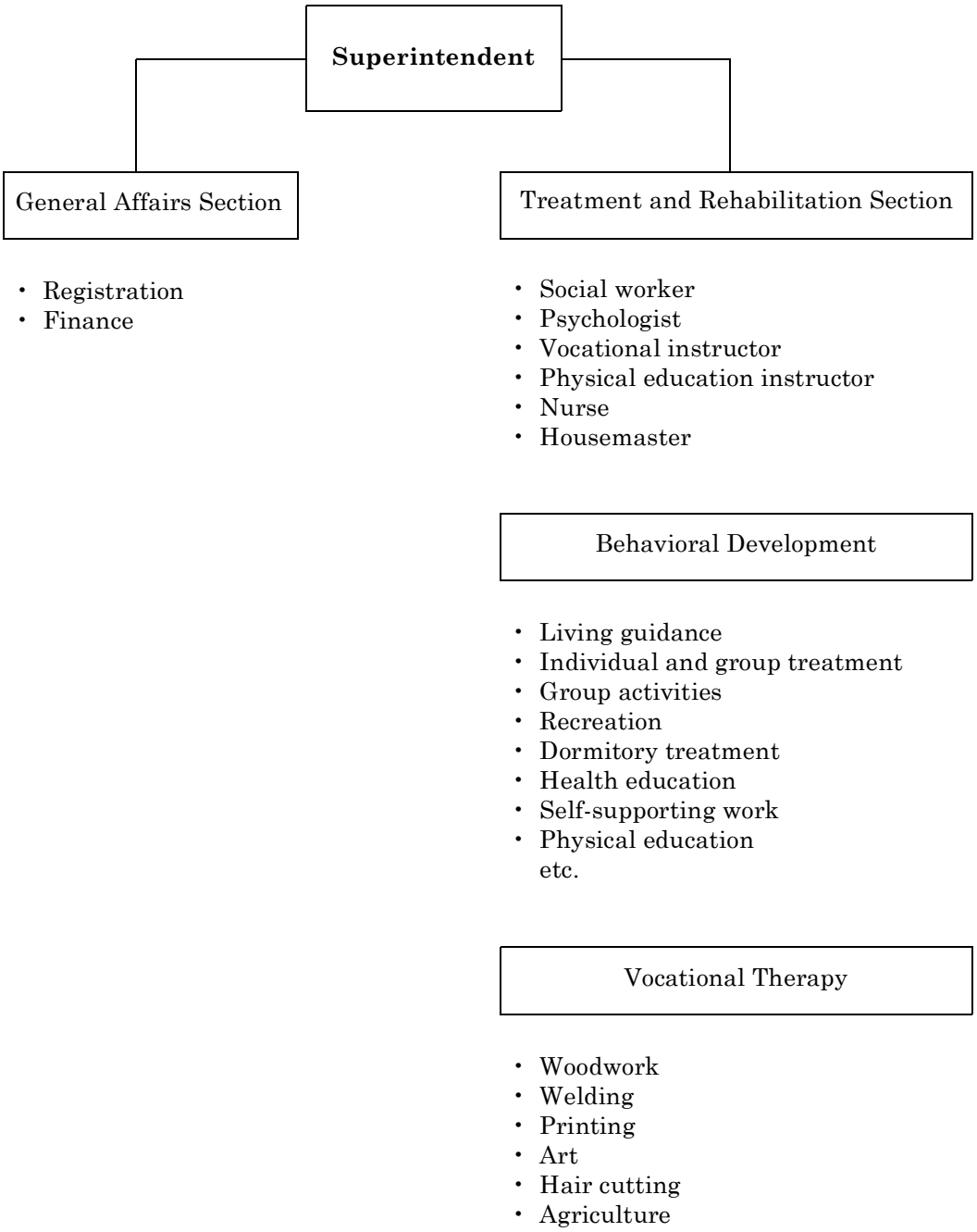
Appendix 6

Organization Chart of the Vocational Training School



Appendix 7

Organization Chart of the Drug Addict Treatment Center



Appendix 8

Expenses of the Juvenile and Family Court and the Observation and Protection Center

Year	1998		1999		2000	
	Government budget	Others	Government budget	Others	Government budget	Others
Salary	278,166,600		301,924,674.16		216,208,169.15	
Salary for temporary staff		14,339,138.19		15,291,969.64	10,383,479.43	4,101,521.88
Expenses on materials	118,334,500	34,785,597.93	121,842,760.86	28,162,375.55	131,846,255.35	10,052,803.73
Public Utilities	13,277,000	10,289,243.07	10,657,611.10	10,780,094.05	17,894,943.02	2,531,140.71
Construction	12,970,000	7,945,874.10	116,302,198.00	3,163,774.85	50,346,612.54	1,801,031.50
Support budget	540,200		319,800.00			
Others	2,151,500		938,769.00		18,332,410.29	
Total	425,439,800	67,359,853.29	551,985,813.12	57,398,214.09	445,011,869.50	18,486,497.82
	492,799,653.29		609,384,027.21		463,498,367.30	

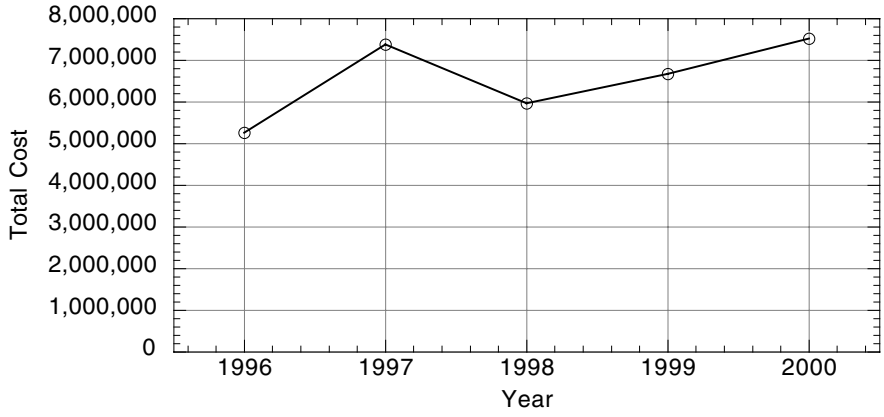
40 bahts = 1$US

Appendix 9

Expenses of the Sirindhorn Vocational Training School

Categories	1996	1997	1998	1999	2000
Government officer salary	1,435,920.00	2,206,320.00	2,119,870.00	2,443,170.00	2,270,290.00
Permanent employees	169,200.00	739,540.00	1,051,690.00	1,472,180.00	1,561,820.00
Temporary employees	1,682,400.00	1,722,000.00	336,360.00	113,220.00	223,550.00
Overtime	26,500.00	122,400.00	18,000.00	4,500.00	38,600.00
Other allowances					
Per diem, accommodation, transportation	1,636.00			4,403.00	
Vehicle repairs	15,871.00	7,367.16	18,765.00	37,150.20	18,618.00
Repair and maintenance	6,801.00	70,900.17	38,005.83	161,486.52	218,024.19
Service expenses	2,975.00		15,552.83		35,000.00
Office supplies	31,405.28	15,093.95	1,401.00	3,315.00	779.00
Fuel, lubricant and gas	150,407.12	164,190.93	245,588.84	195,229.75	245,401.44
Household and kitchen materials	31,005.00	7,180.50	3,737.22	17,595.50	26,945.22
Science and medical materials	570.00				
Education materials	10,801.00	55,073.67		17,876.15	19,509.42
Juvenile uniforms	135,718.00	160,470.00	19,790.00	23,700.00	9,765.00
Juvenile food	594,000.00	848,306.00	1,016,568.00	1,191,263.00	924,180.00
Sport materials			1,352.50	1,939.00	5,000.00
Supplies and materials for training COV	2,600.00	17,175.00	43,090.25	57,119.20	71,936.90
Supplies and materials for training machinery	4,421.80	1,051,00	15,621.00	832.00	27,033.46
Supplies and materials for training automobile maintenance	36,613.21	4,727.00	8,601.00	5,313.80	33,288.25
Supplies and materials for training printing	4,695.00	12,208.10	22,974.17	7,115.28	12,478.50
Supplies and materials for training sheet metal and welding	4,244.00	15,583.70	29,385.96	29,805.69	20,542.62
Supplies and materials for training woodwork	41,318.00	8,980.00	36,966.50	30,199.15	22,609.13
Supplies and materials for training electric wiring	2,230.00	57,797.55	10,473.00	13,754.00	31,326.74
Supplies and materials for training air condition repairing			18,657.30	15,371.60	19,632.07
Electricity expenses	717,006.24	803,884.28	749,485.67	613,177.11	1,025,532.60
Telephone expenses	129,782.00	80,756.00	60,824.83	46,712.62	71,745.21
Postal service	4,806.00	5,242.00	4,882.00	5,348.69	5,898.75
Juvenile rehabilitation activities	3,093.28	113,654.00	17,106.10	56,049.50	
Newspapers				3,919.00	3,904.00
Expressway					2,590.00
Visitor catering				46,181.00	36,234.28
Agriculture			30,654.00	33,290.50	20,241.00
Project Code 900-03					263,952.91
Project Code 900-05					214,505.25
Others	11,546.00	143,541.00	27,386.25	21,369.25	33,300.00
Total	5,257,564.93	7,383,442.01	5,962,789.25	6,672,586.51	7,514,233.94

Expenses of the Sirindhorn Vocational Training School (From 1996–2000)



REPORTS OF THE COURSE

GROUP 1

BEST PRACTICES IN DELINQUENCY PREVENTION

Chairperson	Mr. Fernando Rabello Mendes Filho	(Brazil)
Co-Chairperson	Mr. Shousuke Kuwabara	(Japan)
Rapporteur	Mr. Ambati Siva Narayana	(India)
Co-Rapporteur	Mr. Takahito Shimada	(Japan)
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I. INTRODUCTION

Juvenile delinquency is a pressing issue in developing countries where many children are on the verge of starting a criminal way of life. In those countries, resources for the treatment of juvenile delinquents are sometimes too limited to reintegrate them back into society. Offender institutions are often overcrowded and community-based treatment is yet to be provided. Therefore, delinquency prevention, saving children before they come in contact with law, is extraordinarily important. The growth of a younger population aggravates the situation because these countries are not equipped with sufficient national economic and social capacity to bring up the children in non-criminogenic environment.

The United Nations has taken its lead in its support for the prevention of delinquency. For example, Article 37(b) of the Convention of the Rights of the Child states that, "the arrest, detention or imprisonment of a child shall be... used only as a measure of last resort." Also, Rule 1.3 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") says that, "sufficient attention shall be given to positive measures that involve the full mobilization of all possible resources, including the family, volunteers and other community groups, as well as schools and other community institutions, for the purpose of promoting the well-being of the juvenile, with a view to reducing the need for intervention under the law." Further, the United Nations Guidelines for the Prevention of Juvenile Delinquency ("The Riyadh Guidelines"), wholly devoted to delinquency prevention, stress prevention of juvenile delinquency as an essential part of crime prevention in society (in its Guideline 1), the

responsibility of society to ensure the harmonious development of adolescents (in its Guideline 2), child-centered orientation (in its Guideline 3), the well-being of young persons from their early childhood (in its Guideline 4), progressive delinquency prevention policies (in its Guideline 5) and the avoidance of utilization of the formal agencies of social control (in its Guideline 6). At the turn of the century, the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders adopted "the Vienna Declaration." In Paragraphs 24 and 25, the importance of prevention is again emphasized.

In these few decades, developed countries, such as the United Kingdom, France, Sweden, the Netherlands, Canada and the USA have developed good practices in the field of prevention facing the failure of their penal systems to stop the high tide of crime. Based upon experiences accumulated in these countries, crime prevention has gradually been conceptualized into three types: situational prevention, community prevention and developmental prevention (Tonry and Farringron, 1995). However, situational prevention, which is an effort to reduce the opportunity of crime, for example, by locking doors, installing alarms, and purchasing dogs and so on, have only short-lived effects. Also, community prevention which is an effort to reduce crime by organizing a watchful community provides only a partial solution.

In contrast, developmental prevention has been shown to be effective, especially in terms of cost-effectiveness. One of the most well-known results of the evaluation research of developmental prevention programme showed that every dollar invested in the programme resulted in a saving of seven dollars in cost such as payment to crime victims, in welfare benefits as well as costs to the criminal justice system (Schweinhart, et. al., 1993). In any case, the delinquency prevention approaches are known for high returns especially culled from its beneficial effects on youth's well being (e.g. health, academic performance, employment and reproductive behavior) (cf. International Centre for the Prevention of Crime, 1997;1999).

Developmental prevention is based on what is called the risk factor prevention paradigm (Farrington, 2000a), which aims to identify risk factors for offending and implement prevention methods designed to counteract them. In addition, protective factors are identified and enhanced. Programmes are chosen and implemented to target these factors arranged along the developmental trajectory.

Among the comprehensive delinquency prevention frameworks developed upon the risk factor prevention paradigm, the "Communities That Care (CTC)" model developed by a research team of the University of Washington (Seattle, U. S. A.) stands out. The model is evidence-based and systematic: the choice of interventions depends on empirical evidence about what are the important risk and protective factors in a particular community and on empirical evidence about "What works". The CTC model has principally two attractions as a model to be applied to developing countries.

First, it is quite flexible and applicable to various situations because it does not argue for any particular programmes, but allows programmes to be selected according to the needs and resources of each particular community. As a result, the CTC model has been the most widely replicated strategy of this kind: it has

been implemented in more than one hundred communities in the U. S. A. Further, it is being implemented in several sites in England. Scotland, The Netherlands and Australia are joining them in near future. A similar model is applied even in an African country (i.e., the Ivory Coast) by the International Centre for the Prevention of Crime in Montreal, which also testifies to the wide applicability of this model in developing countries.

Second, it is the delinquency prevention framework most prepared to be disseminated because it has been officially disseminated by the Office of Juvenile Justice and Delinquency Prevention of the U. S. Department of Justice (Catalano et. al., 1998) and, in the process, the training package and the method of technical assistance has become now standardized.

However, this model is not without problems. First, as is the same as other delinquency prevention models, it may stigmatize at risk children. However, because the CTC model strongly emphasizes protective factors, it is more attractive to communities than tackling risk factors. Also, since the CTC stresses community mobilization, it avoids stigmatization by focusing upon high-risk areas instead of high-risk children (Farrington, 2000b).

Second, the overall effectiveness of the CTC model has not yet been demonstrated. Precisely because the CTC advocates for multiple component interventions, it is difficult to figure out the elements of the package which are more or less effective (Farrington, 2000b). Nonetheless, the Seattle team has already demonstrated the effectiveness of its component programme. Their school intervention programme known as the Seattle Social Development Project showed that teacher training in classroom management, interactive teaching, and cooperative learning given to elementary school children led to an almost 20% decrease of lifetime violent delinquent behavior at age 18 (Hawkins, J. D., Catalano, R. F., Kosterman, R., Abbot, R. D., and Hill, K. G. (1999) cited in McCord, Widom and Crowell (2001) and Washington State Institute for Public Policy (1999)).

The basic concept of delinquency prevention is simple. We have to save children before they fall off the cliff by setting up inexpensive fences rather than treat wounded children after they fall off the cliff by establishing expensive hospitals. This philosophy should and can be applied to developing countries although risk/protective factors may be different depending on the situations of each country and also the strategies to tackle these factors may be different depending on the available resources in each country.

We hope that this report will be beneficial to all readers working toward the reduction of delinquency and the well-being of children in many parts of the world.

II. DESIGNING A MODEL

A. Delinquency Prevention Framework

We designed a model framework of delinquency prevention based on the risk factor prevention paradigm, relying on the CTC model. The ideas of the paradigm itself are applicable to any context because it simply advocates for the choice of programmes upon identified risk/protective factors. However, it requires some modification in its

practical application, depending on social/economic conditions. In the remaining part of this report, we will examine its applicability from every aspect.

The CTC model is an overarching model linking preventive efforts targeting risk/protective factors found at multiple levels of society: individual, family, school and community (refer to Guideline 11 of the Riyadh Guidelines which emphasizes the importance of socialization by family, school, community and mass media).

Risk factors are precursors associated with delinquency, and protective factors are those which protect the children from the negative effects of risk factors. Accordingly, this multi-domain nature of risk/protective factors calls for collaborative multi-agency approach to delinquency prevention. According to Dr. Harachi, visiting expert to the 118th UNAFEI International Training Course, the principles of prevention in this model are:

a. Preventive interventions should focus both on reducing risk and enhancing protection;
b. Preventive interventions should target individuals exposed to higher levels of risk, lower levels of protective factors;
c. Address risk and protective factors at developmentally appropriate stages and whenever possible, intervene early;
d. Use data to select priority risk and protective factors in designated communities.

Risk/protective factors in each society should be carefully identified because social/economic situations differ from country to country.

Another knowledge base of this approach is effectiveness of component programmes/policies to address risk/protective factors. In short, the CTC model provides a framework in which risk/protective factors are systematically targeted by programmes/policies with known efficacy (see Table 1). Participant countries in this group carry out similar programmes in respective countries (Table 2). However, the efficacy of those programmes is yet to be examined scientifically.

Actual strategies which are effective in respective countries may be different depending upon their social/economic conditions. For example, governmental services are sometimes inadequate in developing countries to meet basic human needs. Accordingly, basic social services (e.g., health, education and employment programmes) often provided by non-governmental organizations may carry more importance.

B. Putting the Delinquency Prevention Framework into Practice

1. Delinquency Prevention Process

The prevention of delinquency is carried out through the following steps.

Step 1	Mobilization of the key leaders
Step 2	Assessment of the prevalence of risk, protection and problem behaviors in the community
Step 3	Prioritization of risk factors and protective factors for preventive action
Step 4	Selection of tested interventions to address priority risk and protective factors
Step 5	Effective implementation of tested interventions

Step 6 Monitoring changes in targeted risk and protective factors and problem behaviors

Step 7 Adjustment or modification of interventions as indicated by performance monitoring data.

2. Actors in Delinquency Prevention

As is pointed out, delinquency preventive action cannot be effective without adopting a multi-disciplinary collaborative approach. In the same spirit, Guideline 9(g) of the Riyadh Guidelines states that comprehensive prevention plans should include:

> *"Close interdisciplinary co-operation between national, state, provincial and local governments, with the involvement of the private representative citizens of the community to be served, and labors, child-care, health education, social, law enforcement and judicial agencies in taking concerted action to prevent juvenile delinquency and youth crime."*

The CTC model can be initiated locally without a national level system. However, following the lead of the Riyadh Guidelines which emphasize the importance of comprehensive prevention plans at every level of Government (see also Paragraph 24 of the Vienna Declaration), this three-level structure is suggested as a model.

There are three main actors in the prevention of delinquency: the national board, the community board and programme implementers. The national board is responsible for carrying out Step 1 of the delinquency prevention process.

Before the national board is formed, the key leaders at the national level (e.g. presidents, prime ministers, ministers, permanent secretaries, police commissioners, directors of influential NGOs, etc.) should be activated. It has been often the case in many countries that the process was initiated by non-governmental organizations interested in children's rights or individuals committed to the causes for delinquency prevention. They have been often successful in changing the political will to assign top priority to delinquency prevention. The importance of technical assistance given by the United Nations related organizations and interested non-governmental organizations should be emphasized in this regard.

The community board is in charge of carrying out steps 2–4, 6 and 7 in each community. Programme implementers carry out Step 5 (programme implementation) under the direction/ support of the community board.

1. National Board (Step 1)

The national board is responsible for mobilizing and coordinating local delinquency prevention initiatives in the country. The board is ideally a coalition of multiple governmental agencies in charge of areas relating to delinquency prevention such as criminal justice, social welfare, health services, education, and community services. The national board may have representatives from nongovernmental agencies and other influential organizations as their members. An excellent example of the national board is the Youth Justice Board of England and Wales which is in charge of juvenile justice policy making. Participating countries have similar structures such as Inter-Ministerial Committee, National Narcotic Coordination Board, Central Welfare Committee and the Youth Development Promotion Council (see Table 3), but the

function of the national boards in those countries is substantively limited compared to that of the Youth Justice Board.

2. Community Board (Steps 2–4, 6 and 7)

The principal actor is the community board which is responsible for putting delinquency prevention framework into practice under the guidance and with the support of the national board. The community board consists of people who collaborate together such as principals of the local schools, active parents, Lions/ Rotary members, programme manager of local social service agency, local probation officer, local police chief and local public health nurse. The board is often coordinated by juvenile justice officials such as probation officers/social workers. In some developing countries where governmental resources are relatively limited, non-governmental organizations should be invited to play vital roles in this multidisciplinary collaborative board. Examples of organizations in our participating countries which are expected to act as community boards are found in Table 4. They include Social Welfare Activities Group, District Child Welfare Committee, Municipal Wards, and Crime Prevention Conference.

Assessment (Steps 2 and 3)

One of the key jobs of the community board is to conduct a risk and protective factors assessment as well as resources in their community. The board may create a task force or sub-committee to be responsible for assessment. In short, the community board will gather data on three areas: risk factors, protective factors, and delinquent behaviors. An example of making a community profile is shown in Appendices 1 and 2. The assessment system shown in the appendices needs not be followed by community board members in developing countries where statistical technical assistance is not readily available. The basic idea here is that the collection of some form of data is recommended before prioritizing factors. As to resource assessment, the community board will examine existing programmes or services, capabilities, funding, etc. in the community.

After the data is collected, the community board will analyze it to find priority risk and protective factors to be intervened. At the same time, based on the results of resource assessment, the board will look for the gap between factors to be intervened and the current provision of services. For example, there may exist programmes only serving limited people or no programmes focusing specific priority factors.

Selection of Strategies (Step 4)

Next, the community board then matches prioritized factors with effective programmes to fill the gap, taking the resource constraints in mind. A list linking risk factors and effective programmes like Table 5 will aid the identification of the promising programmes. Selected interventions are expected to decrease delinquency, by working upon risk-protective factors which in turn are expected to influence delinquency.

Monitoring/Evaluation (Steps 6 and 7)

Monitoring or process evaluation is important to ensure that the programmes are implemented as planned. The community board usually asks service providers to send performance reports regularly while they are encouraged to carry out direct observation by themselves.

Evaluation or outcome evaluation looks at the change in risk/protective factors

and delinquency utilizing the pre-post design. Depending on the result of evaluation, programmes should be modified accordingly.

3. Programme Implementers (Step 5)

Direct service providers implement programmes under the guidance of the community board. The providers include criminal justice professionals, nurses, school teachers, social workers, drug therapists, sports organizations, citizen volunteers etc. The community board may also implement programmes by themselves.

Programmes are designed to target specific (sometimes multiple) risk/protective factors. In general, the law enforcement agencies are better at targeting community risk factors such as the availability of drugs and firearms while social service agencies are better at targeting family/individual risk factors (see Table 1). Bearing this complementary relationship in mind, the U. S. Department of Justice started the Weed and Seed Programme in which law enforcement and social services agencies are working together at neighborhood level.

In any case, the synergetic relationships among strategies should be strengthened by the development of interdependence among different strategies. Examples are found in Japan such as its community policing (e.g. Koban system) and overlapping networks of volunteers organized by different governmental agencies (e.g. probation, welfare and police).

Also, the use of restorative justice approaches as delinquency prevention programmes may be promising. For example, social workers can use family group conferencing to resolve child protection cases and school teachers can use family group conferencing to stop bullying. The use of restorative justice programmes is expected to encourage community members to own the task of delinquency prevention. That is, restorative justice programmes may strengthen the community ties fundamental to the prevention of delinquency.

III. OPERATIONAL ISSUES

A. Training

In the previous section, a three-level structure was proposed which will enable a country to prevent delinquency efficiently. Accordingly, the training needs of persons engaging in delinquency prevention are different depending on the level s/he belongs to (see Guidelines 9(i) and 58 of the Riyadh Guidelines). Consequently, the following discussion is divided into the training of national board members, of community board members and of programme implementers. Appendix 3 gives general topics to be covered in their training.

1. National Board Members/Key Leaders

The members of the national board are key leaders in the country, who have large discretionary power over the distribution of budgets. Therefore, they need to be informed of and recognize the importance of delinquency prevention to their country. Key leaders need to be provided with the overview of the risk-focused prevention framework and learn the need to support and finance programme implementation of risk and protective factors. The length of training can be as short as 1 or 2 hours.

In case that prevention initiatives are not yet on the national agenda and are

initiated locally at the community level, key leaders of the community should go through the same type of training.

2. Community Board Members/ Prevention Team

At community level, community boards should be formed which will be a key instrument to get delinquency prevention into motion. If not formalized, a community board can be replaced by a team of persons interested in working together to reduce delinquency in the community, which is termed a prevention team.

They have to go through the same overall prevention framework training that the national board members receive. However, because community board members are not as busy as national board members, these topics can be covered in more depth.

After being provided with general ideas on risk-focused prevention framework, board members should learn how to be a team to confirm group rules and assign roles and responsibilities. Next, the board members should learn general rationale for risk and protective factor assessment and resource assessment since the main task of the community board is to develop comprehensive delinquency prevention plans that reflect their own unique risk reduction needs. The length of this training may be 3 days.

After receiving this training, the community board needs to form a sub-committee or task force which will be in charge of risk and protective factor assessment and resource assessment of the community. The members of the task force should learn the detailed process of assessment. The length of training can be 2 days, but the follow-up training is required. An additional technical assistance on a case-by-case basis by experts will be also useful. Training focused on the specific problem in each community will be more advisable.

3. Programme Implementers

Programme implementers are direct service providers who need to be trained in specific programme areas such as prenatal, pre-school, school, family and community programmes. The community board can implement programmes directly, but usually need to find others who implement programmes in the community such as a social agencies or the local schools. An example of training of programme implementers in the U. S. is found in Table 6 while those of other countries are described in Table 7. Programmes implementers thus trained can be utilized as valuable resources for community-based treatment of offenders.

B. Reducing Costs and Finding New Resources

It is needless to say that enough funds and resources are prerequisites to implement the programmes. This is why Guideline 45 of the Riyadh Guidelines requests that the government agencies should provide sufficient funds and other resources for the effective delivery of services to benefit young persons.

At present, it is not realistic to discuss how to reduce costs of delinquency prevention because resources used for prevention efforts are quite limited even in developed countries. Prevention needs to be allocated more resources by identifying new funds/resources, which are currently used for other purposes. With the understanding that prevention is the necessary and rewarding investment to reduce costs to be incurred in future, more assistance can be afforded to preventive efforts as long as delinquency prevention programmes are

shown to be acceptable, budgetable and cost-effective.

The assistance can be broadly categorized into monetary assistance (i.e., funding) and the provision of free services (i.e., volunteers). The discussion concerning the former is divided according to the levels of funding sources, namely, national/international or community. Examples of suggested measures are found in Table 8.

1. Provision of Funding

National/International Level Funding Sources

Not only governmental agencies but also non-governmental (especially, international) organizations will be partners. The list of promising donors is found in Appendix 4. Long-term funding which may last 5 or 10 years will be only available from governmental sources. Therefore, prevention experts should be equipped with the capacity to persuade and report to those governmental funding agencies. Private donors may be more favorable to fund pilot projects/ programmes than governmental agencies. In any case, the efficient use of the allocated money is a precondition to get continuous funding.

Community Level Funding Sources

Local businesses sometimes sponsor delinquency prevention projects to heighten their image as well as to reduce crime (e.g. shoplifting in the shopping mall) in the community. Also, business circles such as Lion's clubs and Rotary clubs can be prospective benefactors.

Individual Level Funding Sources

Even mutual assistance at individual levels can be facilitated if the coordinating structure is introduced. For example, many foster parents programmes run by NGOs to assist children of poor families are in place. Philanthropic acts of good hearted individuals should be acknowledged accordingly. Charity shows or bazaars soliciting donations from local residents are other alternatives. Donations from individuals should be encouraged by introducing special incentive schemes.

2. Provision of Free Services from Private Sectors

Local media such as radio or TV stations can be good partners. For example, they can offer a spot for an NGO/governmental agency which looks after parents of children who are unable to know their parent's address.

Also, local individuals such as small business owners and recreation leaders who are willing to work with juveniles may be useful as direct service providers. The former can provide employment opportunities for at high risk youth while the latter can offer constructive leisure time activities. Volunteers can be attracted even on a national basis if their contribution is recognized, for example, by a royal family.

3. Sharing of Services of Governmental Sectors

The collaborative/multidisciplinary approach is a key to delinquency prevention and if governmental agencies can work together, the outcome will be fruitful. For example, the local school can ask community health services and the police to hold a seminar on drugs for their students. Probation officers can contribute to such programmes by providing their expertise. Social workers can help street children without jobs if the public vocational training scheme run by the labor administration opens its doors to these children.

IV. ACCOUNTABLITY AND EVALUATION

A. Evaluation

Evaluation serves two purposes. First, it gives information necessary to refine and improve practices as Guideline 48 of the Riyadh Guidelines states. Second, it tells whether the objectives are realized besides ensuring accountability. In any sense, procedures of evaluation should be planned at the initial stages of planning and the resources to be used for evaluation should be reserved. The Guideline 9(d) of the Riyadh Guidelines states that strategies need to be continuously monitored and carefully evaluated in the course of implementation.

Corresponding to these two purposes of evaluation, there are two types of evaluation: outcome evaluation and process evaluation. Outcome evaluation, conducted at the community board level, is a periodical repetition of risk/protective factor assessment including the reassessment of delinquent and other problem behaviors. Process evaluation, conducted at the programme implementer level, is a carefully designed monitoring of the programme implementation process while it is in progress. Examples of outcome and process evaluation are found in Table 9.

As Table 10 illustrates, results of outcome and process evaluation should be reported to overseeing bodies. The overseeing body may review the results if necessary.

1. Outcome Evaluation

The outcome evaluation is reassessment of delinquent and other problem behaviors, and risk and protective factors against their target/ pre-test scores. This is a task of the community board.

Comparison against the target scores indicates whether the targets are achieved or not. Usually, target scores are set by using average risk/protective factor scores of the communities in the same area as a benchmark. However, if no comparison communities are available, target scores are established simply as an outcome of agreement of the community board members after the initial assessment. When the target score is attained, another risk/protective factor will be targeted by selecting a new programme/policy to influence it.

Comparison of the post-test score (i.e., scores at the reassessment) against the pre-test score (i.e., scores at the initial assessment) reveals whether progress is being made on the targeted/non-targeted factors. When no substantial progress is made on a targeted factor, current strategy needs to be refined or another strategy needs to be adopted to target another factor. When a factor not targeted by the current strategy is found to become more complicated than the targeted factor itself, the alternative is to take path of reprioritization of factors.

The interval of (re)assessment depends on the total length of the intervention and the cost of reassessment. In any case, outcome evaluation should take place not only at the end of the project but also regularly during the implementation process.

The result of the outcome evaluation, especially change in delinquent behavior as a consequence of the strategy, should be reported to the national board. The result should be provided to programme implementers also to review the effectiveness of their efforts.

The community board may establish an evaluation task force/sub-committee to carry out outcome evaluation. There are two ways in organizing the evaluation task force: internal and external. Internal evaluation refers to evaluation carried out by community board members themselves. External evaluation refers to evaluation conducted by an outside body, such as the national board or a research associate. The former is usually less costly and more likely to engage community board members in solving problems arising from implementation processes. The latter is usually more objective and sophisticated because it often allows the use of expertise of outside specialists.

2. Process Evaluation

Process evaluation is conducted to monitor programme implementation while it is in progress, to maintain its integrity. The data collection for process evaluation should be built in as a part of programme implementation (e.g., service record keeping system). Process evaluation is directed at questions such as the following:

a. Whether the programme is reaching the appropriate target population;
b. Whether the delivered services is consistent with designed specification and;
c. Whether the programme has been provided with sufficient funds/ resources.

Thus, process evaluation involves identifying faults and deficiencies in programme implementation, which prevents programme implementers from delivering the intended services to the target population. Surveys of programme participants and community members should be conducted to learn whether the programme reaches the target population. A data collection scheme unique to individual programmes should be developed because the specific content of the service differs from programme to programme.

The results of process evaluation should be reported to the community board. The community board may also report the results to the national board, if necessary.

B. Information Provision to Stakeholders

The community board should remain accountable to stakeholders by providing them with relevant information. The information carefully prepared and timely communicated, taking their needs and interests into consideration, will bring continuous and stable support to the community board activities. Guideline 61 of the Riyadh Guidelines emphasizes the importance of information exchange at national, regional and international level.

1. National Board/Key Leaders

National board/key leaders should be furnished with results of both process and outcome evaluation. Particularly, the report should point out possible congruence with other governmental policies/programmes so that further collaboration can be pursued.

2. Funding Sources

Funding sources should be informed of results of both process and outcome evaluations. Particularly, they are expected to appreciate the result of cost-effectiveness/cost-benefit evaluation since they are interested in more efficient allocation of their budget.

3. Taxpayers/Philanthropists

Taxpayers/philanthropists are supporters of funding sources and

funding sources are obliged to justify to their supporters the allocation of their budget to delinquency prevention. Even though funding sources are primarily responsible for the information provision to their constituents, efforts of respective community boards to inform people in other communities should be appreciated because the reduction of delinquency in any area will enhance nationwide support for delinquency prevention.

4. Community Members

Local residents of the community where the delinquency prevention project is being carried out are entitled to be informed of what is happening in their community. They include not only potential participants to the programme and potential service providers. The number of persons who have participated in programmes and the change in the crime trends will be interesting to them.

5. Programme Targets

Programme participants such as juveniles and parents who are exposed to the strategy should be informed of the purpose and effects (including side effects) of preventive programmes. Appropriate words need to be used while explaining the programmes offered to the programme participants without causing any stigma. For example, the title of the programme delivered to at high risk families/youths should be framed positively, not to imply anything related to crime reduction. In the same vein, the impact of community projects on crime should be publicized as one of the range of impacts on health, education and social well-being.

6. Service Providers

While service providers themselves are responsible to report to the community board, they should be counted as one of the stakeholders, especially when they are volunteers and other citizens who voluntarily commit themselves to the project. They need to be informed of their contribution to the entire project.

C. Communication Strategies

Communication strategies should be carefully selected because different types of communication strategies have different merits and demerits (see Table 11 for model communication strategies).

1. Types of Communication Strategies

Delinquency prevention cannot be carried out without good communication strategies. Roughly speaking, there are four types of communication strategies: mass media (TV, radio and newspaper), in-house materials (e.g. newsletters, posters, pamphlets, billboards, videos, etc.) prepared by delinquency prevention bodies, and meetings/gatherings (e.g. seminars and events with entertainment), web pages and personal communication.

Mass Media

The Riyadh Guidelines 40 to 44 explicate the role to be played by mass media in juvenile delinquency prevention.

Mass media is good at disseminating information to a large number of people at relatively low cost although the quality and quantity of information has to be compromised. Their influence is so strong that their way of reporting delinquency can greatly affect public attitudes toward delinquency prevention. The effectiveness of media depends on the situation of the country, especially the diffusion ratio of these media. The role of mass media will be limited when the target groups cannot afford to access it.

In addition, the high costs involved have to be considered; in some countries the broadcasting under the government

can be mobilized with ease. In others, the broadcasting is more difficult and costly. In case the mass media is hard to use although there is a need to reach the largest number of people in the nation, government agencies such as tax collection, army, postal service and police can be mobilized.

In-House Materials

In-house materials can carry more information of better quality with focused recipients in mind. Technical materials are relatively costly and take time to prepare. Because of their cost restraints, they are used to disseminate information to local residents or people involved in delinquency prevention activities.

Newsletters locally produced by agencies such as community boards, schools or Kobans are vital to sensitize the local residents.

Meetings/Gatherings

Meetings/gatherings such as seminars and entertainment events (especially those inviting movie stars and athletes; contests; awarding ceremonies; and traditional entertainment such as puppet shows) are good at involving participants by direct communication. However, they are relatively too costly to reach the public in general and are usually utilized to communicate with local residents on delinquency prevention activities.

Web Pages

Web pages on the Internet have the same merit as in-house materials because they can carry information of good quantity while maintaining the possibility of reaching a wider audience. The technology is fairly new and needs some time to be widely used in developing countries.

Personal Communication

Verbal communication is still important, especially in local settings because people hardly trust others without face-to-face interaction. Delinquency prevention activities call for a high degree of commitment from participants and local service providers and definitely need to be supported by personal communication.

2. Purposes of Communication Strategies

Communication strategies should be carefully selected depending upon the purpose of communication. There are basically four purposes of communication: resource mobilization, involvement of target population, dissemination of information to people engaging in delinquency prevention and attitudinal change of community.

Resource Mobilization

A delinquency prevention project requires sizable monetary and human resources. Especially in developing countries where resources are limited, communication to activate potential donors and service providers are essential. Sometimes, local residents themselves are asked to take actions such as forming self-help groups or building local schools. The mobilization of resources is usually carried out by jointly using multiple strategies including national and local mass media, distribution of in-house materials, meetings/gatherings and web pages. Furthermore, resources for communication (e.g. media) themselves should be marshaled to work for the project. In the U.K., journalists and media that have made responsible and positive reporting of youth crime (policy) are awarded by the Youth Justice Board.

Involvement of Target Population

The project should reach and motivate its potential beneficiaries because participation in delinquency prevention programmes is voluntary. Without being motivated, the programme will not be able to attract its target population.

To reach target population, local mass media, distribution of in-house materials and meetings/gatherings are jointly used. However, the importance of personal communication cannot be emphasized in the recruitment of participants. For example, to recruit parents into school programmes, school social workers who have direct contact with students have played a key role in CTC projects.

Dissemination of Information to People Engaging in Delinquency Prevention

People directly involved in delinquency prevention should be kept informed of policies and other practical information. Because their number is limited and they need more detailed information than the general public, more costly and focused communication tools such as in-house materials, seminars and web pages are more likely to be used. Communicating with these people can be considered as a form of training.

Community Attitude Change

The success of community projects depends on the perception of community members regarding delinquency and other problem behaviors. If the community members have permissive perceptions of drug use, it is difficult to reduce drug abuse among local juveniles. Also, favorable attitudes toward the project should be fermented so that community members may be willing to cooperate with its activities. Mass media, distribution of in-house materials and meetings/gatherings are jointly used to change community attitudes.

V. CONCLUSION

Delinquency prevention has been a global endeavor for decades, and it is still to be a critical challenge worldwide. In this report, we have strived to explore the best practices in delinquency prevention, which was primarily adopted from a leading model called the CTC model developed by the Social Development Research Group of the University of Washington (U.S.A). Needless to say, this paper revealed that more consideration needs to be taken when the model is applied in developing countries.

Referring to the Riyadh Guidelines, we developed a delinquency prevention framework which emphasizes risk/protective factors at multiple levels of society: individual, family, school, community and nation. It is strongly advised that these factors in each society should be carefully identified based on their own situation. To put the framework into practice, we suggested a model delinquency prevention process consisting of 7 steps supported by collaborative structure. We also discussed how to make component programme/policies addressing the risk/protective factors as effective as possible.

It is also highlighted that the training needs of people engaged in delinquency prevention differ depending upon the roles they play, and general training topics were given as a reference so that they can be modified.

We also showed concern for the importance of evaluation of component programmes as well as delinquency prevention projects as a whole. We may establish a task force in charge of evaluation. Both process evaluation and outcome evaluation should be implemented. In the meantime, the

importance of the information provision to stakeholders was also stressed in order to ensure accountability.

Considering the overall situation of developing countries, we stressed the importance of finding new resources rather than that of reducing costs, especially for pilot project/programme. However, the prudent cost-effective budget plan is also essential to administer the delinquency prevention process.

To reiterate, the basic principles of delinquency prevention are:

- *To assess risk/protective factors and devise strategies to reduce risk factors and enhance protective factors in multiple domains (e.g. individual, family, school and community);*
- *To design intervention strategies along the developmental stages, starting with pregnant mothers, infants, preschoolers, school children and adolescents in order to facilitate successful socialization;*
- *To develop cooperation between national, state, provincial and local organizations;*
- *To facilitate the collaboration of governmental and non-governmental agencies;*
- *To consolidate efforts of multidisciplinary organizations ranging from health services, education, labor, child-care, welfare to law enforcement; and*
- *To vitalize the main actors of socialization, namely, family, school and community.*

We do hope the principles of delinquency prevention we mentioned above are utilized in their application. Risk and protective factors vary in different societies. It is strongly advised that our model shall be tested and developed to suit the situations of different societies.

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Table 1
Prevention Strategies to Target Risk Factors

	Risk Factors	Programmes and Policies	Age
Community Domain	**Availability of Drugs**	Community/School Policies	all
	Availability of Firearms	Community/School Policies	all
	Community Laws and Norms Favorable Toward Drug Use, Firearms, and Crime	Classroom Curricula for Social Competence	6–14
		Community Mobilization	all
		Community/School Policies	all
		Policing Strategies	all
	Media Portrayals of Violence	Media Policies	all
	Transitions and Mobility	Organizational Change in Schools	6–18
	Low Neighborhood Attachment and Community Disorganization	Community Mobilization	all
		Policing Strategies	all
		Organizational Change in Schools	all
		Classroom Curricula for Social Competence	11–14
	Extreme Economic Deprivation	Prenatal and Infancy Programmes	prenatal–3
		Youth Employment with Education	all
School Domain	**Academic Failure**	Classroom Organization, Management and Instructional Strategies	6–18
		Classroom Curricula for Social Competence Promotion	6–14
		School Behavior Management Strategies	6–14
		Youth Employment with Education	15–21
	Lack of Commitment to School	Early Childhood Education	3–5
		Organizational Changes in Schools	6–18
		Classroom Organization, Management and Instructional Strategies	6–18
		School Behavior Management Strategies	6–14
		Mentoring with Contingent Reinforcement	11–18
		Youth Employment with Education	15–21
	Early and Persistent Antisocial Behavior	Early Childhood Education	3–5
		Parent Training	prenatal–10
		Family Therapy	6–18
		Classroom Organization, Management and Instructional Strategies	6–18
		Classroom Curricula for Social Competence Promotion	6–14
		School Behavior Management Strategies	6–14
		After-school Recreation Programmes	6–10
		Mentoring with Contingent Reinforcement	11–18
	Academic Failure Beginning in Late Elementary School	Prenatal/Infancy Programmes	prenatal–10
		Early Childhood Education	3–5
		Parent Training	prenatal–10
		Organizational Change in Schools	6–18

Table 1 (continued)
Prevention Strategies to Target Risk Factors

	Risk Factors	Programmes and Policies	Age
Family Domain	**Family History of the Problem Behavior**	Prenatal/Infancy Programmes	prenatal–2
	Family Management Problems	Prenatal/Infancy Programmes	prenatal–2
		Early Childhood Education	3–5
		Parent Training	prenatal–14
		Family Therapy	6–14
	Family Conflict	Marital Therapy	prenatal
		Prenatal/Infancy Programmes	prenatal–2
		Parent Training	prenatal–14
		Family Therapy	6–14
	Favorable Parental Attitudes and Involvement in the Problem Behavior	Prenatal/Infancy Programmes	prenatal–2
		Parent Training	prenatal–14
		Community/School Policies	all
Individual/Peer Domain	**Rebelliousness**	Family Therapy	6–14
		Classroom Curricula for Social Competence Promotion	6–14
		School Behavior Management Strategies	6–14
		After-school Recreation	6–10
		Mentoring with Contingent Reinforcement	11–18
		Youth Employment with Education	15–18
	Friends Who Engage in Problem Behavior	Parent Training	6–14
		Classroom Curricula for Social Competence Promotion	6–14
		After-school Recreation	6–14
		Mentoring with Contingent Reinforcement	11–18
	Favorable Attitudes Toward Problem Behavior	Classroom Curricula for Social Competence Promotion	6–14
		Community/School Policies	all
	Early Initiation of the Problem Behavior	Parent Training	6–14
		Classroom Organization Management and Instructional Strategy	6–10
		Classroom Curricula for Social Competence	6–14
		Community/School Policies	all
	Constitutional Factors	Prenatal/Infancy Programmes	prenatal–2

Source: Dr. Harachi's handout at the UNAFEI 118th International Training Course

Table 2
Strategies for Juvenile Crime Prevention at the Developmental Stage

Developmental stage	National Level		Community Level		School Level	Family Level	Individual Level
Prenatal	Comprehensive Social Management	Family Planning	Establish Special foundation for support financial issues Community Policing	Public Health Nursing System		Parental Programme	Parents Support
Infant Pre-school				Child Care Guidance		Mother Health Care	Periodical Health Check
Pre-adolescent, School		Law Awareness Campaign Campaign against Child Labor Campaign against Sexual Abuse Campaign against Violation of Child Rights Campaign of Helping Street Children		Child Guidance Center Control of after School Hours	Moral Education Guarantee for Education	Income Support	Special Education
Adolescent, School, Youth				Club Activities Clean up Campaign Vocational Training Regulation of Movies and Books etc. Working Juvenile Center	Prevention of Teen Pregnancy Programme Drug Education Club Activities Anti-Dropout Counter-measures	Family Mental Support	Guidance or Counseling

Table 3
Examples of National Boards

Name	Members	Function
Inter-Ministerial Committee	Vice Ministers of 10 or more ministries such as justice, public security, education, civil affairs, health and so on. State councilor acts as the president.	Promote crime prevention and rehabilitation of offenders. All related agencies work under its leadership.
The National Narcotic Coordination Board (inter-ministerial board)	Ministries of Justice and Human Rights, Home Affairs, Health, Social Affairs, Religious Affairs, and Information, State Ministry for Women's Role, police department, statistic central bureau and NGOs.	Promote prevention of the juvenile delinquency, drug abuse and drug trafficking.
Central Child Welfare Committee	Prime minister, ministers, social workers, medical practitioners, child psychologists, teachers, etc.	Protect children's rights, promote children's welfare and raise awareness of juvenile crime prevention.
The Youth Development Promotion Council	Bureau chiefs of more than 10 related ministries such as justice, police, education science, etc.	Promote measures related to youth development and prevention of delinquency. Coordinate works of related government offices.

Table 4
Examples of Community Boards

Name	Members	Level	Function
Social Welfare Activities Group	Community leader, religious leader, youth leader, retired professionals, businessmen, teachers, etc.	District	Discuss and solve various social issues in the district.
District Child Welfare Committee	District officers, social workers, local elected representative, child psychologist and representative of related NGOs, etc.	District	Protect children's rights, promote the children's welfare and raise awareness of juvenile crime prevention.
Municipal Wards in towns or villages	Town or village president members, councilor, village development officers, etc.	Neighborhood or Community	Implement, monitor and evaluate various development and poverty-alleviation programmes, child/ women's health and nutritional education issues.
Crime Prevention Conference	Local police chief, local post master, mayor, president of neighborhood association. etc.	City	Discuss crime issues in the district, promote crime prevention and exchange information.

Table 5
Sample of Risk Factors and Protective Factors

Risk Factors

Community Risk Factors
Availability of Drugs (Substance Abuse)
Availability of Firearms (Delinquency and Violence)
Media Portrayal of Violence (Violence)
Transitions and Mobility (Substance Abuse, Delinquency, and School Dropout)
Low Neighborhood Attachment and Community Disorganization (Substance Abuse, Delinquency, and Violence)
Extreme Economic Deprivation (Substance Abuse, Delinquency, Violence, Teen Pregnancy, and School Dropout)
Family Risk Factors
Family History of the Problem Behavior (Substance Abuse, Delinquency, Teen Pregnancy, and School Dropout)
Family Management Problems (Substance Abuse, Delinquency, Violence, Teen Pregnancy, and School Dropout)
Academic Failure Beginning in Elementary School (Substance Abuse, Delinquency, Violence, Teen Pregnancy, and School Dropout)
Lack of Commitment to School (Substance Abuse, Delinquency, Teen Pregnancy, and School Dropout)
Individual/Peer Risk Factors
Alienation/Rebelliousness (Substance Abuse, Delinquency, and School Dropout)
Friends Who Engage in the Problem Behavior (Substance Abuse, Delinquency, Violence, Teen Pregnancy, and School Dropout)
Favorable Attitudes Toward the Problem Behavior (Substance Abuse, Delinquency, Teen Pregnancy, and School Dropout)
Early Initiation of the Problem Behavior (Substance Abuse, Delinquency, Violence, Teen Pregnancy, and School Dropout)
Constitutional Factors (Substance Abuse, Delinquency, and Violence)

Protective Factors

Individual characteristics
Bonding
Commitment
Healthy beliefs and clear standards

Source: Dr. Harachi's handout at the UNAFEI 118th International Training Course

Table 6
List of Training of Programme Implementers in the U.S.A.

	Prenatal Programme	Pre-school Programme	Family Programmes	School Programmes	Community Programmes
Target Persons	Visiting nurse programme Targets pregnant low income mothers	Parents and children who are pre-schoolers focused on good family management	Parents and school aged children focused on school readiness	Teachers	Big brothers and sisters Young children
Purpose of Training	Increase prenatal Infant health Imposed maternal care behavior	Learn curriculum	Learn curriculum	Improve classroom management teachings	Increase skills of big brothers and sisters
Duration of training	1 week	2~3 days and coaching follow-up	2~3 days and coaching follow-up	3 days and coaching follow-up	2 days and follow-up support
Subjects	Goal setting with mothers How to increase mother and child attachment through positive responsiveness How to teach good health habits How to build a positive relationship with the mother How to teach positive coping skills to counter depression How to recruit mothers into the programme	Skills to set clear rules and expectations Appropriate discipline practices Ways to increase positive reinforcement for good behavior How to recruit parents into the programme	Skills to set clear rules and expectations Managing television watching Helping with homework Ways to increase positive reinforcement for good behavior	Skills to set clear rules and expectations in the classroom Strategies to reduce time in which children have nothing to do in the class Skill to reinforce good behavior Skills to increase student participation in the class	How to develop a relationship with a young child How to set limits with the young child How to monitor behavior of the child and to recognize good behavior

Source: Dr. Harachi's contribution to the UNAFEI 118th International Training Course

Table 7
List of Training of Programme Implementers in Participating Countries

Programme	Trainees	Purpose of Training	Duration	Subjects
Training & Education Programme for Social Workers	Social workers	To improve their knowledge and skill in preventing delinquency and drug abuse	5 to 7days	Law and regulation concerning delinquency and drug Technical guidelines of preventing juvenile delinquency Technical guidelines of rehabilitating juvenile delinquents Guide for cooperation/ coordination
Hope Project	Local related government officers and community leaders	To implement this project effectively	1 week	Overview of whole strategy of the programme Administrative knowledge Financial issues
Thousands of School & Millions of People	Principals and teachers of schools	Make school management more effectively and smoothly	1 to 2 days	Overview of whole strategy of the programme Schooling arrangement Supplementary law knowledge
Youth Offending Teams	YOT members [mostly already trained as social workers or probation officers]	To train YOT managers how to manage a multi-disciplinary team and about effective practice	Part-time for 1 year	Management budgeting/ planning Managing performance/ target setting What works in reducing crime How to monitor/evaluate
Connexions	Personal advisers to at risk young people	To train newly recruited personal advisers to engage with disaffected young people and set team into education, training or employment	Not sure	Working with young people Responsibility of different departments/agencies The criminal justice and welfare systems
Adolescents	Teachers, medical professors, and art educators	Prepare staff to work with adolescents on such issues as teen pregnancy and drug abuse	1 month	How to speak to adolescents How to help adolescents solve problems concerning family relationships, drug abuse and sex

Table 7 (continued)
List of Training of Programme Implementers in Participating Countries

Programme	Trainees	Purpose of Training	Duration	Subjects
Street Kids Programme	Social workers and psychologists	Equip community people so that they can cooperate with the police	2 months	How to speak to kids How to speak to families How to use arts to work with children
Mentoring	Members of the Tokyo Family Court Student Volunteer Club	To educate volunteer students so that they can befriend with and mentor juveniles		
Convergent Community Action	Community leaders, Institutional workers	Expand various processes for community development awareness in community board leaders		
Protection Of Girls Trafficking/ Street Children Programme	Community people, social workers, municipal representatives, ordinary citizens, and students	Equip community people so that they can cooperate with the police		
Comprehensive Health Programme [Covering prenatal, adolescent, infant mothers and early childhood]	Medical officers, health workers, social workers, extension officers, community health workers from NGOs	To educate trainers to learn about skills necessary to educate and bring about changes in attitudes with regard to care of health, nutritional needs, protection of children and parents		
Child Protection Programme	Institutional officers, workers for health, social welfare, child welfare depts., and NGO/ volunteer organizations	To educate trainers to learn about skills necessary to bring about awareness and attitudinal change among parents/community people in child labor, child trafficking, educational needs		

Table 8
Measures to Find New Resources for Delinquency Prevention

Measures Already Taken in the U.K

Name of Programme	Brief Description of the Programme	New Resources Found/Shared	Resource Providers/ Sponsors
Local Crime and Disorder Partnership	Collaboration of a wide range of governmental and non-governmental partners	Services of collaborating organizations	Collaborating governmental and non-governmental agencies
Neighborhood Watch Crime Prevention Awards Scheme	Neighborhood watch	Funding	Insurance companies
Mentoring	Mentoring at risk youth	Volunteers	Volunteers Themselves
Community Mediation Schemes	Resolution neighbor disputes rather than expensive police and court system	Volunteers Trained	Volunteers Themselves

New Ideas to Find New Resources Suggested by Mr. Rob Allen (Visiting Expert)

Name of Programme	Brief Description of the Programme	New Resources Found/Shared	Resource Providers/ Sponsors
Collaboration of Governmental Agencies	Use various governmental services to prevent crime	Health, education, welfare and poverty-reduction services	Other governmental agencies
Local Crime Resolution Programme	Resolve crimes and anti-social behavior without reporting to courts	Local people	Local people themselves
Youth Offender Panel	Making decisions concerning the treatment of juvenile offenders	Community residents	Volunteers themselves
Campaign for Business	Investment in crime reduction as a matter of social responsibility	Funding	Local business and insurance companies
Recreation Programmes	Providing at risk/ delinquent youth with recreation programmes	Programme provision	Youth clubs, sports, societies and churches

Table 8 (continued)
Measures to Find New Resources for Delinquency Prevention

Measures Already Taken in Countries of the Group I Participants

Name of Programme	Brief Description of The Programme	New Resources Found/Shared	Resource Providers/ Sponsors
Solidarity Community	Income generation and provisions of job	Services of governmental agencies Voluntary work of community volunteers	Governmental agencies Volunteers
Drug Abuse Prevention	Education about the causes and consequences of drugs abuse, enhancing of family dialogue and promotion of sports and leisure practice	Funding for human resources training Funding for media mobilization	Business community
Local Crime Control Squads In Partnership with Police	Selected volunteers in urban areas and village leaders in rural areas perform duties as special police officers to maintain good neighborhood watch	Voluntary work by volunteers Donations by non-governmental agencies	Non-governmental agencies Volunteer leaders themselves
Community Policing	Chosen community leaders act as bond between community and police to help resolve small/unimportant issues of crime and criminals in the community; help provide necessary information on terrorists, bad characters, etc.	Voluntary work by volunteers/community leaders	Volunteers/community leaders themselves
After School Club Activities	Physical and cultural club activities for students after school hours	Voluntary work of school teachers Voluntary work of neighbors who are good at those activities	School teachers Neighbors
Community Association	Local community volunteer organization which provide services for local people under the guidance of local governments and police agencies.	Voluntary services by volunteers/community leaders (in security, social, welfare, health services and law awareness campaign)	Volunteers Community leaders
Collaboration of Governmental Agencies	Governmental agencies at national/provincial/local levels collaborate with each other to provide services for crime prevention without additional budget.	Services of other governmental agencies (e.g. education, security and welfare services)	All related governmental agencies which are in charge of education, civil affairs, health, security, etc.
Drug Education by Police Officers	Police officers visit school and offer drug education.	Expertise of police officers Working hours of police officers	Police agencies

Table 8 (continued)
Measures to Find New Resources for Delinquency Prevention

New Ideas to Find New Resources Suggested by Group I Participants

Name of Programme	Brief Description of the Programme	New resources Found/ Shared	Resources Providers/ Sponsors
Collaboration of Governmental Wings/ Agencies	Utilization of various services by government for effective prevention of crime	Funds earmarked to other departments such as health, education, welfare and poverty reduction programmes can be utilized	Other government agencies and sometimes by international agencies for specific prevention programmes
Involvement of Youth (Recreation Programmes) Groups	Youth groups mentor in community schools, taking care of street children to help them settle down rather than allowing them to offend	Voluntary work of youth groups	YMCAs Youth clubs Semi-governmental organs (Yuva Kendras (=youth centers)) Voluntary and non-government bodies
Community Prevention of Delinquency	Staff of offender institution discuss the best delinquency prevention strategies with the community members.	Expertise of institutional staff	Offender institutions

Table 9
Examples of Process and Outcome Evaluations in the U. S. A.

	Process Evaluation	Outcome Evaluation
Prenatal and Infancy Programmes	% of pregnant women receiving prenatal care prior to the third trimester. Availability of prenatal and postpartum educational classes. % of the "At-risk" population served with outreach and follow-through contacts. Content of prenatal and parenting classes to ensure that material on relationship.	95% of pregnant women receive early prenatal care. Less than 7% of infants are born preterm. Less than 25% of couples expecting children report marital distress. Less than 50% of pregnant women use alcohol. Less than 10% of pregnant women use illegal drugs. Establishment of positive parent-child interaction. Low rates of child abuse. 75% or more of children have secure attachment.
Early Childhood Education	Number of hours of contact high-risk children and their parents have with the programme or center. Number of home visits. Number of high-risk children and parents involved. Number of types of parent meeting held and parent attending them. The contents of actual lessons. The contents of interaction between home visitors and parents.	Improvements in children's conduct problem. Increases in children's language skills. Increased clarity and consistency of discipline practices. Increased child self-management skills. Increased family bonding.
Parent Training	Participant's skill, knowledge, attitudes and satisfaction. How often parents actually use the techniques they have learned.	Use of problem-solving and communication skills. Use of behavior reinforcement mechanisms. Positive parent-teacher interaction.
School Organization and Management	Participation in management and governance teams. Number of new programmes initiated or implemented. Levels of parent involvement. Surveys designed to assess teachers' and parents' attitudes toward the school and their role in school management and the educational process.	School records and self-reports of grades, numbers of students kept back in a grade, absenteeism, tardiness, disciplinary referrals, suspensions, and expulsions of students. Survey instruments designed to assess student's levels of bonding to school and teachers and their school behaviors, including drug use.
Instructional Improvement in Schools	Regular observation of the participating teachers.	Standardized achievement test scores. Disciplinary records. Referrals to the school office. Attendance records. Retention at grade level. Dropout rates.

Table 9 (continued)
Examples of Process and Outcome Evaluations in the U. S. A.

	Process Evaluation	Outcome Evaluation
Drug and Alcohol Prevention Curricula	Number of teachers trained and the type of training provided. The extent to which the whole programme was delivered. The integrity of the implementation. How often teachers use the programme or techniques in the classroom. Annual consumer satisfaction evaluations by students and teachers.	The extent to which students acquire and actually use the skills being taught. School records and self-reports of grades, absenteeism, tardiness, and disciplinary referrals.
Community and School Drug Use Policies	Participation of key representative of different sectors of the community. Number of breadth of policies being assessed, revised, or developed. Occurrence of public events focusing on policy. Consistency of school policy enforcement.	Decrease in the number of alcoholic beverage outlets near schools and billboards advertising tobacco or alcohol. Change in patterns of drug use and attitudes toward drug use. Improvements in school attendance, lateness, dropout rates, and student achievement. Number of alcohol-free events. Number of Neighborhood groups working with local police to deter drug selling. Decrease in the alcohol- or drug-related car crashes. Decrease in alcohol sales to minors.

Source: Hawkins et al. (1992), Community That Care, Jossey-Bass Publishers, San Francisco

Table 10
Evaluation Process

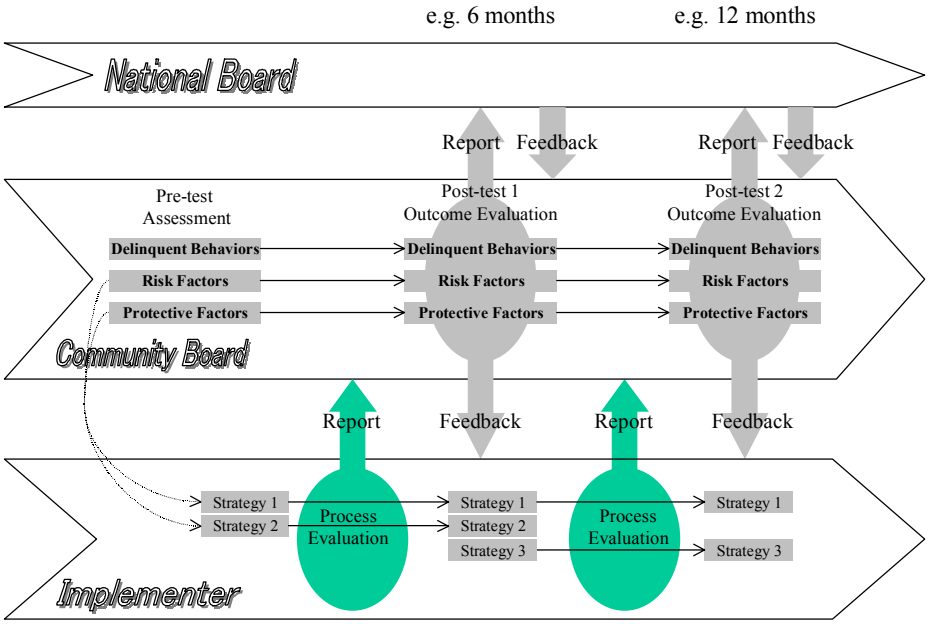


Table 11
Model Communication Strategies

Title	Purpose	Media of Communication	Target Population	Contents
Youth Justice Board News	Inform police, courts, and Youth Offending Teams	Newsletter	Practitioners (e.g. Youth Offending Teams, police, interested public, and key leaders)	Features and News
Referral Order Video	Promote referral order and youth offender panels	Videotapes	Professionals (Youth Offending Team members or potential Youth Offending Teams)	Merits of referral order
Annual Pressed PR awards	Encourage responsible and positive reporting of youth crime policy	Award ceremony at annual convention	National and local media	Award for journalists and media companies
Community Newsletter	Improve the awareness of crime prevention	Newsletter, posters and pamphlet circulation	Local residents	Current situation of crime, measure to prevent crime such as snatching and residential burglary and delinquency prevention activities
School Volunteer Campaign	Recruit parents work as volunteers at school	Local TV, radio and newspaper	Parents and community	Asking for the parent's presence in their children's school, participation to the school tasks, discussing education troubles, etc.
SOS Children	Find lost children	TV, Internet and pamphlets	Local residents	Request for information on lost children with their photos
Drugs Prevention	Prevent the use of drug	TV, radio, newspaper, pamphlets, and seminars by celebrities among juveniles	Lost children	Information on the effect of drug on the family, body and society
National campaign thousands of schools & millions of people	Provide legal knowledge, common sense and informal schooling	National, provincial and local radio, TV and newspaper	Transiting children mainly from rural and remote areas	Request to set up both formal and informal schools. Request for donation and other cooperation to the project.
Law Awareness	Increase awareness, social responsibility and encouragement toward delinquency prevention	Puppet play	Local residents	Religious teaching, general knowledge about penal law and penalty against delinquency

Table 11 (continued)
Model Communication Strategies

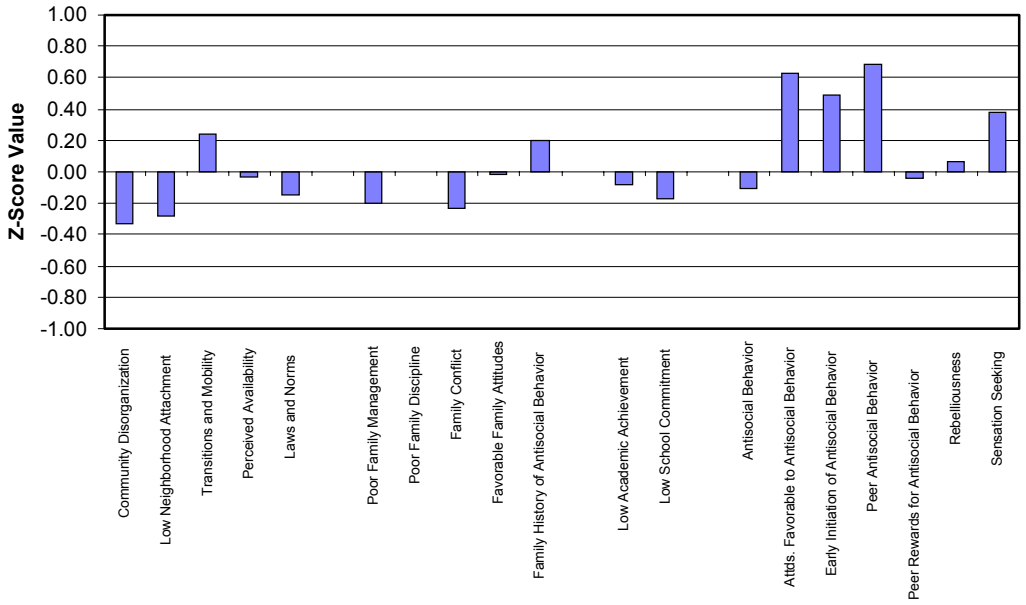
Title	Purpose	Media of Communication	Target Population	Contents
Convergent Community Action	Involve rural residents in child development and protection of children's rights	TV, radio, press, pamphlets, posters and bill boards	Rural residents in poor area	Request to form self-help groups in rural areas. Recruitment of interested individuals in the interest of the child.
Child Programme	Promote public awareness of children's well being	Radio, TV and newspaper	All the public	Programmes help healthy development of children (e.g. education, drama, quiz contest, and poem). Information on child health.

Appendix 1. Example of Community Assessment

1. Collect data on risk/protective factors in the community.
2. Collect data on risk/protective factors in nearby communities.
3. Standardize the scores on risk/protective factors. (The mean will be zero).
4. Summarize the results into a community profile.
5. Analyze the profile and prioritize the risk/protective factors to be targeted.
6. Set the mean of prioritized factors as benchmarks or targets.

Source: Dr. Harachi's handout at the UNAFEI 118th International Training Course

Appendix 2. Example of Community Profile



Source: Dr. Harachi's handout at the UNAFEI 118th International Training Course

Appendix 3. List of Training Topics

1. The importance of prevention
   a. Provide motivation and reason why prevention efforts are needed.
   b. For example, show continuum of care and the need to provide prevention in addition to treatment and maintenance

2. Overview of the Risk Focused Prevention Framework
   a. Explanation of the Public Health Framework
      (i) Problem definition
      (ii) Identification of risk and protective factors
      (iii) Selection of intervention strategies
      (iv) Evaluation

   b. Explain how you can use this framework to focus on delinquency prevention (as well as other adolescent problem behaviors such as drug abuse prevention)
      (i) Define juvenile delinquency prevention
      (ii) Provide the knowledge base for risk and protective factors associated with delinquency
      (iii) Provide the knowledge base of effective prevention strategies to reduce risk factors and enhance protective factors
      (iv) Introduction of other prevention principles
         1. More risk, less protection >> greater likelihood of delinquency
         2. Intervene early
         3. Target interventions at developmentally appropriate areas
         4. Use data to prioritize risk and protective factors
         5. Use interventions with demonstrated effectiveness

3. Need to support and financing of risk and protective factor assessment

4. Need to support and financing of effective interventions

5. Development of Team
   a. Activity to facilitate “getting to know each other”.
   b. Roles and responsibilities of team members
      (i) Designation (how the person will be chosen, length of time they will serve) and responsibilities of the chairperson
      (ii) Designation and responsibilities of secretary
      (iii) Designation and responsibilities of treasurer (if appropriate)
      (iv) Designation of responsibility for training new members
   c. How to encourage equal participation for all members
   d. How decisions of the Team will be made (for example voting majority or consensus)
   e. How to deal with disagreement or conflict on the team

6. General rationale for Risk and Protective Factor Assessment and Resource Assessment
   a. The importance of gathering empirical data for decision making.
   b. Tie information that the Team received in the initial Prevention Framework training to assessments. For example, by conducting an assessment the Team can identify priority risk and protective factors for its community. By conducting a resource assessment, the Team can identify gaps in services in its community.
   c. This training will help the Team create a sub-committee whose responsibility it will be to conduct the assessments. So part of the training will help the Team identify human and financial resources that are needed to complete the assessment tasks.

7. In-Depth training on conducting the Risk and Protective Factor Assessment and Resource Assessment. [This training should be for the Prevention Team's sub-committee which is responsible for the actual implementation of the assessments.]
   a. Identify the topics that should be included in the Risk and Protective Factor Assessment and Resource Assessment
      (i) What are the outcome behaviors that should be assessed, for example, arrest rates, school suspensions, etc.
      (ii) What are the risk factors that should be assessed?
      (iii) What are the protective factors that should be assessed?
   b. Identify methods to collect the Risk and Protective Factor Assessment and Resource Assessment
      (i) For example, self-report survey by students
   c. Identify questions for each topic.
   d. Identify process for collecting the data
      (i) For example, distribute a survey to students at their school
         1. This method would increase representation of respondents assuming the majority of the target children are still in school
   e. Identify process for tabulating the data
   f. Identify process for creating a report on the data
   g. Identify any potential barriers to conducting the assessment

8. Selection of Intervention Strategies
   a. Review of Prevention Principles
   b. Examination of the process that will be used to select programmes
      (i) How to use information from the Risk and Protective Factor Assessment and Resource Assessment
      (ii) Prioritization of factors
      (iii) Identification of existing programmes that target the priority factors
      (iv) Identification of programmes that are NOT currently existing that could be implemented in the community
      (v) Create a short (and long) term Prevention Plan of which programmes to be recommended for implementation on a specific time schedule
         1. How often should the programme be delivered?

2. What is the goal of how many people will receive the programme each time it is delivered?

c. Identification of partners who will actually implement the selected programme

d. Identification of funding sources to help with programme implementation

9. In-Depth Training to Deliver Specific Programmes [Remember, the Prevention Team may or may NOT be responsible for the actual implementation of a specific programme. It may designate this responsibility, for example, to a social service agency or to the local school]

a. Determine the specific training needs of the selected programme. Here are some examples:

(i) Parent training programme: Workshop leaders will need to be trained in how to deliver the specific curriculum.

(ii) Mentoring programme: Mentors will need to trained on the specific programme, for example, how to build rapport and a relationship with a young person; effective communication; appropriate social skills to teach the young person.

In either example, it's possible to use a "train the trainer" model. For example, a lead counselor can first be trained in a specific parent training programme. Then the lead counselor can be responsible to train others (maybe volunteers) who will be the workshop leaders who deliver the programme.

b. Identify ways to effectively recruit the necessary programme participants

(i) Who is the best person to recruit the target of the intervention, for example, parents of high risk children?

(ii) What are possible barriers to effective recruitment?

10. Evaluation [Here the Prevention Team needs to decide if only the overall framework will be the focus of the evaluation or if individual programmes will also be evaluated]

a. Methodology for evaluating the overall framework.

(i) How often will the Risk and Protective Factor Assessment be conducted; on what time schedule?

(ii) What kind of report will be provided to the Prevention Team regarding the implementation of specific programmes?

(iii) What kind of report will be provided back to the Key Leader Group in terms of the activities and accomplishments of the Prevention Team?

b. Methodology for evaluating individual programmes.

(i) Determine if the specific programmes already has an established pre- and post-test that can be used.

(ii) Identify consultants who can help with creating some type of pre- and post-test if it needs to be created.

(iii) Identify who will be responsible for conducting the programme evaluation.

(iv) Identify financial resources that will help with conducting the programme evaluation.

Source: Dr. Harachi's handout at the UNAFEI 118th International Training Course

Appendix 4.
National/International Level Funding Sources Suggested by the Participants of the UNAFEI 118th International Training Course

Governmental
Probation Services
Child Care Services
Social Services
Social Welfare Services

Non-Governmental
Plan International
World Vision
Redbana (Swedish NGO)
Save the Children Fund
Community Service Organization (UVA)

UNICEF
UNDP
IRDP (Integrated Rural Development Programme)
ABGEP (Area Based Group Equity Programme)

Business/Private
Lion's Club
Rotary Club
Horse Racing Association (and other gambling organizations)
Power Company
Local Businesses

GROUP 2

BEST PRACTICES IN COMMUNITY-BASED TREATMENT OF JUVENILE OFFENDERS

Chairperson	Mr. Amin Ali Ibrahim Inabi	(Palestine)
Co-Chairperson	Ms. Rajapakshage Sunethra Gunawardhana	(Sri Lanka)
Rapporteur	Ms. Phyllis Yolanda Beckles	(Barbados)
Co-Rapporteur	Ms. Yukiko Kudou	(Japan)
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Members	Mr. Martin Tongamp	(Papua New Guinea)
	Mr. Masamichi Noda	(Japan)
	Mr. Hideo Yoshioka	(Japan)
Visiting Experts	Ms. Chomil Kamal	(Singapore)
	Mr. Rob Allen	(United Kingdom)
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Advisers	Prof. Kei Someda	(UNAFEI)
	Prof. Sue Takasu	(UNAFEI)
	Prof. Mikiko Kakihara	(UNAFEI)

I. INTRODUCTION

Globally, the latter half of the last century has found those of us responsible for the care, protection, and rehabilitation of juvenile offenders, faced with phenomenal challenges, *vis-a-vis* an increase in criminal activity as well as the dangerous nature of them. It is recognized that stiffer penalties are not necessarily the required response at this time, despite the public call for such.

Empirical research has shown that stiffer penalties do not reduce crime (Andrews et al.,1990). Research suggests that community-based treatment is a more effective way to meet the best interests of the juvenile and increase community safety (Lipsey and Wilson, 1998).

The Convention on the Rights of the Child indicates that the deprivation of liberty of children should only be used as a measure of last resort, and when used, only for the shortest appropriate duration (Article 37). The group agrees that in considering holistic rehabilitation, community-based treatment is the preferred option, with institutional treatment being a last resort. Institutional treatment is not an economically viable option and the stresses and other disruptive elements which it brings to family life are less desirable.

Several countries—Barbados, Papua New Guinea, South Africa and Sri Lanka to mention a few—still have been unable to comply with the Convention on the Rights of the Child and the Standard Minimum Rules for the Administration of

Juvenile Justice, and with the United Nations Standard Minimum Rules for non-Custodial Measures (The Tokyo Rules). This has been partly a result of economic and political reasons amongst others. Whatever the barriers to full implementation, the group recognizes the need to urgently meet the challenge of decreasing youth crime and supporting the United Nations agreement.

The group agreed that good management systems (individual and organizational) are imperative to promote success from rehabilitative efforts. Staff training and programme development must be on a continuous basis and research to cater to changes in both of the above whenever necessary must be conducted.

The group considered too that the community consists of invaluable resources which can be tapped and utilized to enhance rehabilitative efforts. Success of the goals of prevention of further crime and recidivism demands vibrant public relations endeavours.

II. DESIGNING A MODEL

In deliberating on the preferred model for community-based treatment of offenders, members of group 2 unanimously agreed on the need to identify a few guiding principles. These principles were themselves guided by an appreciation of the multidimensional and complex nature of youth offending and the need to draw on the expertise of a broad base of knowledge in the community, if accurate assessments and appropriate treatments are to be delivered.

A. Principles

The principles underpinning our proposed model of community-based treatment are as follows:

(i) The preferred option, in as many instances as possible, is to divert youth at the pre-court or at the court stage;
(ii) That there should be a Multi-disciplinary Team to work on the best treatment options that will address the needs of the juvenile to help him or her to remain in the community;
(iii) That the Multidisciplinary Team should leverage on the availability of community resources to support the juvenile in conflict with the law;
(iv) That the system should be one of through care for continuity of care and supervision of the juvenile.

The group also discussed how to define a juvenile. The minimum age of criminal responsibility varies from country to country. We have in part concluded that definition should be considered not only by age but by their developmental stage.

B. Multidisciplinary Team

1. <u>The Purpose</u>

The purpose of the Multidisciplinary Team is to assess and decide upon the best interests of the juvenile through the maximum utilization of community resources by drawing on the expert views and opinions of professionals from diverse backgrounds. The overall goal of the team is to identify programmes that decrease criminal behaviour and increase personal responsibility.

The Multidisciplinary Team treats a juvenile consistently in the community-based treatment through all the formal and informal judicial stages. This will include pre-court diversion, court

diversion and court disposition (probation, community order and other types of disposition implemented in the community), as well as following release from correctional institutions (parole, aftercare and so forth). The Multidisciplinary Team provides supervision and support at all of the above-mentioned stages based on the idea of through care.

Figure1 illustrates the model system of community-based treatment and the role and functions of the participants.

2. Composition of the Team

Members of the Multidisciplinary Team may vary based on the needs of the juveniles, the stage of juvenile justice system and diversity of the juvenile justice system and child welfare system in the relevant countries. The probation officer (child welfare officer) ought to be the key personnel in the Multidisciplinary Team throughout community-based treatment. A comprehensive example of the composition of the Multidisciplinary Team could be: Probation Officer, Welfare Officer, Psychologist/Psychiatrist, Social Worker, Guidance Counselor/School Teacher and Religious Worker.

3. Function of the Multidisciplinary Team

The basic function of the Multidisciplinary Team is to collectively assess the juvenile, to devise a treatment plan which meets the best interests of the juvenile, as reflected in the knowledge of a wide range of professionals from relevant areas.

The team plays a central role in the community-based treatment of juveniles in terms of assessment of needs and risks of a juvenile, planning of treatment or programme, monitoring the implementation of supervision and support throughout the juvenile justice system.

4. Role of the Probation Officer

The Probation Officer serves as the care manager of the Multidisciplinary Team reporting to the court the progress of the juvenile.

C. Informal Procedure (Diversion)

All juveniles at a certain age should be diverted to an informal procedure for meeting the needs of care and protection of juveniles. Some juveniles also may be diverted from police, prosecution and the court stage based on the seriousness of their offence.

Various kinds of programmes are administered by the Police, Court, Probation Service, NGOs and the private sector. The Multidisciplinary Team assesses needs and risks of a juvenile and tries to find the available programme which best fits the juvenile's needs.

The group proposes a model of programme designed for informal procedure such as a six-month period programme, with flexibility for early termination for juveniles who show good progress and are not in need of further supervision based on the Singapore system. Flexibility of term is to reward good behaviour and render an opportunity for juveniles to leave the programme early. The key elements to successful completion are regular attendance, punctuality, progress, and deportment and full participation in the activities.

If a juvenile fails to make good on his/her chance given to attend the informal programme, there will be recourse to bring him or her to court.

D. Treatment Programme

1. Types of treatment programmes

Each community has various kinds of treatment programmes. Actually, in our group discussion, many types of programmes were introduced by the participants of the respective countries. There is a range and number of programmes available in the respective countries.

The following are some examples of the programmes. The community resources that provide each of them are parenthesized.

(i) Individual Counseling (NGOs, Clinic, Health Center, Private Psychologist)
(ii) Cognitive Behavioral Therapy ((NGOs, Health Center, Clinic, Private Psychologist)
(iii) Family Therapy ((NGOs, Health Center, Clinic, Private Psychologist)
(iv) Drug Treatment (NGOs, Health Center, Clinic, Private Psychologist)
(v) Literacy Skill Training (NGOs, Public School, Volunteer Probation Officer)
(vi) Vocational Training (NGOs)
(vii) Promotion of Employment (Cooperative Employer, Volunteer Probation Officer [VPO])
(viii) Restorative Programmes such as Victim Offender Mediation, Victim Impact Panel, Family Group Conferencing (NGOs)
(ix) Community Service Work (NGOs)
(x) Adventure/Sports (NGOs, Sports Bodies)
(xi) Mentorship (VPO)
(xii) Supervision (VPO)
(xiii) Fostering (NGOs)

2. What Works?

When selecting a programme, we should consider its effectiveness. That is, we should adopt a programme that has empirical evidence of sufficient effectiveness for the juvenile's rehabilitation.

In this regard, we referred to the meta-analysis on effectiveness of different treatment types by Lipsey and Wilson (1998). According to their findings, the effective types of treatment are individual counseling, interpersonal skills training, behavioral programmes, multiple services, restitution, employment/academic programmes, advocacy/casework and family counseling.

Most of the programmes that we are recommending are consistent with the findings from the meta-analysis. However, adventure/sports, mentorship and fostering are exceptions. These programmes need to be empirically evaluated in the future.

3. What works best for whom?

Although there are many generally effective programmes, none of them work equally well with all juveniles. While for certain juveniles, some treatments work, but they will not work for others, and for a third group, they may even get worse as a result. Therefore, it is crucial to adopt programmes that are empirically related to the juvenile's risks and needs. Such programmes have a stronger likelihood of successful rehabilitation of the juvenile.

We identified the relevancy between risks/needs and programmes, in accordance with Visiting Expert Dr. Leschied. Table1 shows which programmes are likely to target a juvenile's specific risk and need.

It is important to emphasize that this table is not all-inclusive and therefore it should not be applied without due consideration to the complex situations

that most juveniles face. Risk/need factors of juveniles are multidimensional and influence the extent and the type of programmes that should be used.

4. The role of the Multidisciplinary Team at the Court Stage

The Multidisciplinary Team adopts a broad perspective for assessment. The team gathers information from various sources, considers them from all aspects, and identifies a juvenile's risk and need.

Secondly, the team selects a programme that is most clinically relevant to the juvenile's risk and need. The team must have knowledge of the available programmes in the region. In this regard, the team has a strong connection with community resources, and naturally knows what programmes are available. This is one of the greatest advantages of the Multidisciplinary Team.

5. The Legal Framework

These programmes are carried out in a legal framework, namely dispositions such as Probation, Intensive Supervision Probation, Fines/Restitution, and Community Service Orders. The Judge decides upon the disposition in which the treatment programme is expected to most effectively function. Probation officers supervise and manage the programme.

E. Limitations to Implementation

The group agreed on the usefulness of the Multidisciplinary Team for the through care of juvenile delinquency. However, limitations to implementation of the team vary from country to country. The two most common barriers in all of our countries are: attitudes of the judiciary, lack of cooperation and support among ministries/departments, internal departments, divisions and sections of ministries/departments, that are charged with the care of the juvenile.

Especially in developing countries, the lack of training for professionals and human resources as well as geographical and transportation problems also present as difficulties. To overcome these barriers, conscious reform is not only agency related, but should equally involve the community. It is to be hoped that in the near future, implementation of the model will be realized in all countries.

III. OPERATIONAL ISSUES

A. Staff Training

1. Objects

The group discussed the training systems for Probation Officers and others involved in community-based treatment of juvenile offenders as practiced in the UK, Singapore, Japan, Palestine, Barbados, PNG, South Africa, and Sri Lanka.

A model system for community-based rehabilitation of juvenile offenders needs to be supported with a training system that will equip each officer with core competencies to execute proper care and supervision of juveniles according to best practice standards.

To achieve this, it is important therefore that staff be given proper training, instruction and guidance to:

(i) Clarify their responsibilities with regard to the rehabilitation of offenders and to ensure that the offenders' rights as well as that of society's are protected;
(ii) Understanding the vital need to cooperate and coordinate activities with all the other agencies concerned

with the rehabilitation of each juvenile;
(iii) Continually maintain and improve their knowledge and professional capacity by attending relevant in-service and other training programmes.

2. Model Training System

It was noted that the entry point for Probation and other community-based corrections staff vary from country to country. Thus, the Group proposed that a model of in-service training programmes should be competency-based in addressing the training needs of Probation Officers in stages starting from foundation or basic training for Probation Officers to specialized training aimed at helping the worker to achieve higher levels of competency. The training would be designed to foster the development of skills in the 4 major areas of a Probation Officer's core functions, namely:

(i) Collecting information, i.e. interviewing & conducting psychological tests
(ii) Analyzing the information and making an assessment
(iii) Report writing
(iv) Coordination and working with key constituents (elements) of the juvenile justice system including forging effective partnerships with volunteers and other community resources.

3. Mode of Training

From the sharing among participants and Visiting Experts, it was clear that there was merit in a training programme that combines formal learning with group work and experiential learning. The training should also be an opportunity for officers to go back to their jobs to apply the knowledge and skills learned. There should also be a recall after training for officers to return to the training institute or other agency responsible for the training, to reflect on their practice. Also evident was the need for formal training to be supported by mentorship at the workplace to reinforce learning and sharing of best practices.

In some countries, the adoption of a one-to-one supervision policy was felt to be a good mechanism for staff support and development in this very challenging area of work.

Due to the emphasis on a through care concept for the model system of community-based rehabilitation of juvenile offenders, the Group saw merit in the UK system of having staff from both community and institution-based corrections to have their training (or at least part of the training for institution staff) side by side with counterparts working on community-based treatment.

The group also noted the difficulties arising with the designed training model. In some countries (e.g.: Sri Lanka, South Africa, Papua New Guinea), the officers or volunteers serve in undeveloped village areas, and travel long distances to the city, to participate in the training programmes. Due to the poor transportation facilities, communications problems in those areas, the participation may be low, therefore the effectiveness of the training courses will not be at a satisfactory level. However, if we design programmes for implementation in rural areas, finding resource persons (trainers) is also very difficult. In designing training programmes, all these factors must be taken into consideration. Counter-measures will be discussed in section 5.

4. Training Curricula

Basic or Initial Training

The Group proposed the following for the basic or initial training:

(i) Community-based corrections theories and philosophy
(ii) The legal framework of community-based corrections
(iii) The relevant laws, statutes and international human rights instruments, e.g. Convention on the Rights of the Child, Tokyo Rules etc.
(iv) Motivational interviewing
(v) Needs and risk assessment, diagnosis and risk management
(vi) Preparing reports for Court
(vii) Case recording and case management
(viii) Rehabilitation programmes and resources
(ix) Relationship with other elements of the juvenile/criminal justice system, including court work skills, working with other law enforcement agencies, etc.
(x) Skills in forming effective partnerships with VPOs including volunteer support, recognition and development strategies
(xi) Policies and procedures in relation to PO's job description
(xii) Authority, accountability and responsibilities associated with the office practice
(xiii) Skills required to work with clients including special groups within the Probation Service
(xiv) Communication and interpersonal skills
(xv) Code of ethics and professional liability
(xvi) Boundaries or parameters setting; e.g. where Probation Officers can safely say he/she has done his/her best for a juvenile and the responsibility ends there
(xvii) Professional and personal relationships with persons under supervision
(xviii) Relationships with colleagues (peers and subordinates)
(xix) Creation and maintenance of a safe and harassment-free workplace
(xx) Victim's rights
(xxi) Offender's rights and responsibilities

Specialized Training

Besides the generic training at a basic level, the Group also saw the need for further training depending on the area(s) of specialization and specific treatment issues that a community-based corrections staff needs to address beyond his/her early years in Service. Programmes that have demonstrated effectiveness will require personnel to be given proper training and guidance in programme delivery to ensure the integrity of the programmes are preserved. Thus, for staff involved in the delivery of cognitive behavioral programmes, multi-systemic therapy etc., will require specialized training.

Training for Supervisory Staff

The training system should also allow for the gradual phasing in of technically competent Probation Officers to a manager if she/he has been identified as having the capacity and willingness to perform at a higher level.

Such training should cover the expanded role, responsibility and accountability that come with the higher office. Management development programmes, which include financial and human resource management, skills in staff support and development, project management etc. are necessary for supervisory and managerial staff involved in community-based corrections.

For more senior level staff, the training would have to also focus on topics such as performance benchmarking, conducting service audits, developing and evaluating programmes and services for clients, staff and other stakeholders. Policy development and review are also necessary skills for senior staff in probation practice.

In its discussion, the Group also agreed that besides in-service training, there could also be pre-service training programmes aimed at attracting life-experienced personnel from other disciplines to make mid-career switch to probation work. This could provide a solution to some countries facing the challenge of having young and inexperienced officers or finding it difficult to attract and/or retain suitable staff in probation work due to the nature of the job and the often comparatively low remunerations accorded to Probation and other community-based corrections officers.

5. Executive Exchanges

The Group also felt there was room to explore the potential of having executive exchange programmes among probation and other community-based corrections staff to inject dynamism and exchanges of ideas among probation practitioners and managers. Where possible and practical, there should also be a leveraging on the advancement of information and other technology to develop best practices across jurisdictions. Examples cited include:

(i) Video conferencing
(ii) Virtual contacts with experts
(iii) Distance learning to complete a diploma, degree in probation studies, and so forth.

It was observed that, increasingly, countries with the expertise in training, e.g. UK, Canada, US, and Australia are offering distance-learning programmes for this area of specialization.

6. Volunteer Probation Officer (VPOs) Training

Volunteers Probation Officers (VPOs) to be engaged in the rehabilitation of juvenile offenders should be carefully selected and screened to weed out those with serious convictions e.g. sexual offenders, and others whose intentions may not meet the best interests of the rehabilitation of juveniles.

Training for VPOs should at the very least cover:

(i) Active listening and communication skills
(ii) Legal framework of community-based corrections
(iii) Ethics and professional liability

In addition, the training should also briefly cover the core areas of training for Professional Probation Officers (PPOs). It is felt that the extent and depth of coverage of training for VPOs would vary depending on the nature of assistance required of the VPO in each country.

However, no matter the variation, it is important that the role of VPOs *vis-a-vis* that of PPOs be clearly spelt out to ensure role clarity on both parties. This is vital for effective partnerships between PPOs and VPOs to exist.

B. Finding New Resources

The group identified a number of areas in which new resources are needed if the rehabilitation needs of young offenders are to be effectively met, risks properly managed and treatment effectively

organized. The particular needs of offenders include:

(i) Basic Education
(ii) Vocational Training
(iii) Employment
(iv) Accommodation
(v) Health
(vi) Family relationships
(vii) Sports and leisure

The organizational needs of treatment agencies include:

(i) The development and evaluation of effective programmes
(ii) Business planning and organization

The group identified a number of potential sources of help. These include:

(i) Cooperative individuals
(ii) Neighbors and peers
(iii) Schools, public and private
(iv) Academic institutes
(v) Business—the private sector
(vi) NGOs
(vii) Government ministries and departments

Table 2 is a table describing the ways in which these different sources meet the rehabilitation needs of offenders in various countries. The marked boxes show these are currently found in South Africa, Papua New Guinea, Sri Lanka, Barbados, Palestine, the UK, Singapore and Japan.

The organizational needs of agencies can be met by academic institutes, businesses, NGOs and governments.

The following are practical examples of the kind of resources which can be provided by two of the sources;

(i) Examples from Neighborhood/Peers: school equipment, special education classes, vocational training opportunities, work experience, employment to parents, shelter care, Volunteer Probation Officers, community health centers/clinics, sports clubs, local friendly societies, camping trips, pocket money, family counseling and support.
(ii) Examples from NGOs: Out of school programmes, Volunteer Probation Officers, street children education, school aid, special education, staff training, vocational training, equipment and tools, employment opportunities to offenders and parents, shelters for orphans and homeless, medical facilities, health education and clinics, drug prevention and rehabilitation, sports clubs youth associations, confidence building measures, financial help, guidance, counseling and family support, awareness raising regarding problems and solutions.

IV. ACCOUNTABILITY AND EVALUATION

A. Offender Information Management System

1. Guiding Principles for Offender-based Information System

The following guiding principles underpin the Group's proposal for an offender-based information system:

(i) Special consideration should be given to facilitate the active involvement of the "many helping hands". This includes:
   a. Proper support, consultation and training by professional staff;
   b. Adequate and appropriate information sharing with persons to be engaged in formal or

informal supervision and support to young offenders;

c. Developing a mechanism for information sharing and feedback which poses the least administrative burden to community partners.

(ii) It is important that tracking of offenders' performance should be driven primarily by a focus on helping the offender to address risks and needs issues and strengthening the prospect of community-based treatment. Hence, in cases of non-compliance by offenders, appropriate alternative community options should be explored.

(iii) There should be strict rules governing confidentiality of information on offenders and families (exception should only be on a need to know basis).

2. Outline of Case Management System

The starting point of involvement differs somewhat with a few countries having Professional Probation Officers (PPOs) being involved right from the time of arrest and police investigation, while other countries' Probation Services only come in after the defendant has made a guilty plea or is found guilty as charged.

Regardless of the starting point of involvement of the Probation Service, the practice is universal in that the Court requires a pre-disposition report to make the most appropriate determination for a juvenile offender.

There are several possible outcomes:

(i) the juvenile is released with or without condition;
(ii) the juvenile is released with supervision;
(iii) the juvenile is given a community order(s); or
(iv) the juvenile is committed to an institution.

The outcome of the court disposition of each case is registered by the Probation Service even where the juvenile is given a committal order. The Probation Service would then open a case file on each offender.

The case file would have a copy of the pre-sentence report, court order, consent forms (for certain countries), summary sheet etc. It would also include the supervision plan for the offender concerned. If the offender goes to an institution, a second case file is opened by the institution while the Probation Office holds on to its own file for continuation of supervision once the juvenile is released on license or parole after a period of stay in the institution.

It is noted that in most countries, the case reviews are done internally through mechanisms such as checks by senior probation officers, Assistant Directors, Chief Probation Officer, or provisional commissioners and so forth. It was noted that the Singapore system is characterized by a very active involvement of the Juvenile Court which reviews each probation case after 6 months of the date of the probation order. In this system, the PPO puts up a review report which details the progress of the juvenile while on probation and performance in programmes or activities to which the PPO had referred him/her.

Such a system also requires the PPO to provide a status update of the casework intervention undertaken by the PPO or Volunteer Probation Officer (VPO) to address the risks and needs of each offender as spelled out in the supervision

or treatment plan contained in the pre-disposition report.

For all the countries represented in Group 2, there is recourse to bringing a juvenile back to court if he/she breaches his/her probation condition by re-offending or failing to comply with the terms of probation. The outcome may take any or a combination of the following:

(i) continuation of probation after a warning or fine or both;
(ii) variation of the probation conditions (more stringent conditions); or
(iii) revocation of probation.

It was observed that regardless of whether the offender information management system is performed manually or computerized, there is a system of recording actions taken by the PPO (or VPO as the case may be for some countries), the juvenile's response to these actions and the outcome of court action if the violation requires bringing the case back before the court.

It was observed too that in systems which are managed manually, probation officers are required to provide monthly progress reports which are collated by senior officials for workload accounting, other statistical analysis or for evaluation of the impact of programmes or casework intervention on offending behaviour.

More and more countries are going into some form of computerization of data on offenders to enable better operational planning and analysis of the probation outcomes, impact of supervision or treatment plans in an attempt to move towards evidence-based practice.

3. Development of Offender-based Information System

In attempting to develop a model system for community-based treatment of juvenile offenders, the Group is mindful that due consideration has to be given to the development of an offender-based information system; one that starts from risk and needs assessment at the pre-disposition investigation stage. This has to be followed closely by a process of formulating an individualized supervision or treatment plan to address the risks and needs of each juvenile to steer him/her from offending.

In the Group discussion, it was noted that despite slight variations in individual countries' practices, there is a commonality in the framework used for assessing risks and needs. There is also a recognition that risks and needs have to be re-assessed from time to time to factor in the dynamic variables that may impact on a juvenile in rehabilitation.

Risks and Needs Assessment

For many of the participating countries, there exists some form of standardized risk assessment tool which is usually a form or format. During the course, participants were also introduced to the systematic risk assessment instruments used by UK, i.e. ASSET and the Canadian Youth Level of Service Inventory (YLSI). The risk and needs assessment instrument is a vital tool for offender-based information management system. For one thing, it helps with classification of a juvenile in terms of the degree of supervision and level of service he/she needs to strengthen the prospect of successful rehabilitation in the community.

The Group noted from the sharing of practices in each country that the

assessment of risks and needs cover the following areas:

(i) Family, criminal and care history
(ii) Offending behaviour
(iii) Living arrangements
(iv) Family and parental relationships
(v) Education
(vi) Neighborhood
(vii) Life cycle
(viii) Health
(ix) Perceptions of self and others
(x) Attitudes
(xi) Motivation to change
(xii) Positive factors (that can be tapped on to strengthen the community-based treatment)
(xiii) Recommendations

Formulation of an Individualized Care and Treatment Plan

The formulation of an individualized care and treatment plan is based very much on what is uncovered during the pre-disposition social investigation. Additional information that comes to light after this stage should also be considered to ensure the treatment plan is responsive to the changing needs and circumstances of each juvenile.

The care and treatment plan is the description of the objectives of supervision and the activities or casework intervention that will be carried out during the process of supervision. The plan should factor in the following objectives:

1. Risk objectives—which aim to reduce or control the effects of a risk factor or need factor on juvenile's adjustment to the community.
2. Need and support objectives—aimed at addressing care issues to help support the juvenile to complete his community-based treatment successfully. This would include measures and help by the Probation Officer and/or the Volunteer Probation Officer (whether directly or through other agencies) to increase the protective factors that would prevent the juvenile from future offending or breaching his court order.
3. Punitive objectives—designed to impose some form of penalty or restrictions, to symbolize the community's claim that criminal behaviour is not acceptable).
4. Management objectives—designed to maintain effective supervision for the cases and this includes items such as regular reporting to the Probation Officer (or Volunteer Probation Officer), keeping a job, leading an honest and industrious life, maintaining a suitable living situation, keeping away from criminal associates, staying away from undesirable places like gambling establishments, etc.).

4. Development of Forms for Individual Files

The table below depicts the data capture on offenders at the various stages of entry into the system:

Stage	Information Gathered
Reception of Case	Name, date of birth, age, sex, offence information, family information, address, contact number etc.

Stage	Information Gathered
Disposition of Court	Pre-sentence report Basic information Court order Risk and needs assessment Recommended care and treatment plan
Supervision or Treatment Stage	Date, time and other contact details; office contacts, home visits, employment community work, attitude, conduct and performance at community work; etc. Evaluation of community-based treatment Risks and needs assessment and subsequent re-assessments if there are any changes in dynamic factors Supervisor's modification and evaluation Records of case discussions/conferences Details of warning or any court action taken during supervision and outcome of the court review/action. Monthly progress reports

It is worth noting that the model system proposed is one that emphasizes the active engagement of community resources in the informal and formal supervision and support to juvenile offenders. It therefore follows that the offender-based information system must be designed to allow for appropriate and timely sharing of information and feedback between VPOs, schools, NGOs, faith-based organizations, sports and recreational bodies, employers etc. This is necessary for effective and integrated management of juvenile offenders in the community.

It is also important that the method of feedback or reporting of progress updates on each case between the various agents of supervision and support be done in ways that facilitate effective partnerships between Probation Officers and the "many helping hands" engaged in the rehabilitation process.

The flow of information on offenders in integrated case management system is shown in Figure 2.

B. Public Relations: Gaining Public Confidence

1. Overview

In general, the public is reluctant to accept offenders in their community. However, social support is vital to reintegrate juveniles into the community. Furthermore, the community has a lot of resources that contribute to prevent recidivism. Social support, including financial assistance and technical aid, is precisely essential for community-based treatment.

In fact, there is a mutual relationship between social support and successful rehabilitation of a juvenile delinquent. That is, social support enhances the effectiveness of community-based treatment programmes; on the other hand, successful rehabilitation of offenders brings public confidence to the community-based treatment system.

Therefore, strategies to address public concerns, promote public support, form partnerships and build confidence by courts and probation services have to be formulated. The strategies must be based on scientific evaluation. Juvenile justice has to provide the public with empirical evidence that community-based treatment programmes are effective to reform a juvenile delinquent and to secure the community against crime.

In this regard, recently, some empirical research has been conducted in North America. The finding of research indicates that for juvenile delinquents several community-based treatment programmes such as cognitive behavioral, skill-oriented, and multi systemic treatment result in positive effects.

This kind of research should be designed in respective countries. When the research confirms the effectiveness of programmes, it gives the community empirical evidence that juvenile justice is accountable to the community.

2. How to Gain Public Confidence

As noted above, in order to gain and enhance the public confidence, promotion of community involvement is of paramount importance. In general, the Probation Service coordinates various agencies and groups and plays a major role in the promotion of rehabilitation. Then, we mainly discussed the strategies for this target. Some examples of them are as follows.

(i) *Public Participation in the Juvenile Justice System*

It is useful to obtain public understanding about community-based treatment, set up consultative committee and involve the public. The committee considers the public's opinion about the planning and evaluation of treatment programmes. Juvenile justice should be managed not only by authorized specialists but also by the public. This contributes to raising community awareness.

(ii) *Volunteers in community-based treatment programmes*

In several countries, Volunteer Probation Officers (VPOs) complement the work of Professional Probation Officers. VPOs assist a juvenile to rehabilitate as a mentor in the community. They also play an important role to promote crime prevention and mobilize social resources. Through these activities, they show the public how a juvenile can rehabilitate themselves in the community.

BBS (Big Brother and Big Sisters) in Japan act as a confidant of a juvenile and play the similar role to a VPO in the community.

It is also worth asking ex-offenders and their parents to assist the juvenile's reintegration into the community. They can become a good advocate for a juvenile in obtaining employment, as well as being a good model of reform.

(iii) *Avoiding stigmatization*

When a juvenile is given the opportunity of education such as vocational training and literacy education, it is desirable to use

institutions that are not traditionally associated with offenders. Otherwise, stigmatization is likely to become the obstacle to obtaining social understanding.

(iv) *Providing services to the community*

Many juveniles are regarded as useless to the community due to their past misconduct. Hence, measures to regain the trust of the public are essential. Community service work is a good example of regaining the public's trust. If the planner or practitioner of treatment programmes can grasp the needs of the community in advance and devise a programme that meets them, completion of community service work can provide visible and tangible evidence that juveniles can become contributing members of the community.

It is also important that the Probation Service provides the community with some resources such as counseling. The Probation Service should also be recognized by the community as a useful organization.

(v) *Providing security to the community*

Public safety is very important in gaining social confidence. It is important to not mislead the public regarding guarantees of the effectiveness of community-based treatment, but it is hoped that the realistic education will provide the basis of the community's support for treatment.

Some countries have developed strict measures such as Home Confinement, electronic Monitoring, and Intensive Supervision. In combining these measures with community-based treatment programmes, there is an increased likelihood of successfully treating a high-risk juvenile in the community.

(vi) *Public Relations*

Mass media often report juvenile crime so sensationally that the public lose their confidence in juvenile justice. Therefore, giving objective information to both mass media and the public is crucial.

Information about the effect and efficiency of community-based treatment based on scientific research is one of the most important elements. Usually these findings are provided only in technical journals or books for specialists; moreover, they use difficult technical terms. Such information should be translated into more user-friendly terms and provided in more accessible ways. That is, information about juvenile justice should be popularized through publishing, videos, TV programmes, web sites, and so on. Information and examples about how to live without violence should be provided to the public through the materials such as posters, newspapers and brochures. This information will help children to understand the differences that exist between their values and real life values.

The mass media can provide the community with media education resources for youth, violence prevention programmes, parent workshops, and volunteer staff training. Thus, mass media is one of the most useful resources for public relations.

Governmental sectors that organize and promote the above-mentioned activities should involve mass media with them.

Crime Prevention Awareness Campaigns and Street Drama are also useful. The governmental sector can appoint celebrities to a number of these campaign activities.

C. Summary

An offender-based information system is a vital step in the move towards best practices in community-based treatment of juvenile offenders. It allows for:

(i) A systematic assessment of the risks and needs of each juvenile and the extent to which these needs are met through a comprehensive and integrated management of juvenile offenders on community-based treatment;
(ii) Objective benchmarking of progress made by each offender;
(iii) Analysis of the impact of treatment programmes and other casework intervention by Probation Officers, volunteers and other agencies working in partnership to achieve successful outcomes for the juvenile. This will enable a more effective and efficient use of resources to target high completion and low recidivism among juveniles on community-based treatment.

While the Group recognises the importance of an effective and efficiently managed offender-based information system in effective case management in the interests of the juvenile, we are mindful that there should be a high premium on confidentiality of all information on offenders and families. To this end, there has to be a clear policy on destruction of juvenile records and judicious use of such information outside the framework of supervision.

Programmes to gain public confidence in community-based treatment for juveniles should be geared towards providing communities with the understanding that community-based treatment is not about addressing emotions, but rather to apply practical measures in the effective rehabilitation of these juveniles within their communities, to the benefit of the community at large.

The goal of community safety is best achieved through the delivery of effective community-based intervention as expressed through a well-managed case management system.

Public relations is all about communicating to the public (in ways they can understand and appreciate) what they need to know to dispel unnecessary fears about community safety issues, effective treatment methods in reforming juvenile offenders while they are allowed to remain in the community.

V. CONCLUSION

Having examined all the risk factors and conducted needs assessments, this model has been designed as the one which is practicable to all participating countries. Although some countries may find some aspects impractical to implement immediately, the wish is for a system that is as similar as possible in design and which will be implemented in the not too distant future.

Successful response to this model depends on the unveiling and gallant public relation efforts of practitioners. There is no reason why any and all avenues should be spared. We are cognizant of the fact that consistent vigilance for changes of the mood and attitudes of the community will be necessary. However a keen eye must be kept for any new or additional resources which might manifest from time to time.

Continuity of community based rehabilitative treatment also means continuous research and evaluation of

programmes that can inform practitioners. While we appreciate that resources are scarce, we must ensure that what resources are available are being appropriately distributed to those youth most in need.

Above all, staff training must be given a high priority if professionals are to be equipped to provide effective service.

Finally, we cannot emphasize too strongly that the needs of the youth are complex and require the input and support of many community professionals. We have advanced the concept of the Multidisciplinary Team, which we feel is the best vehicle to support such evidence-based practice.

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Figure 1
Model System of Community-Based Treatment

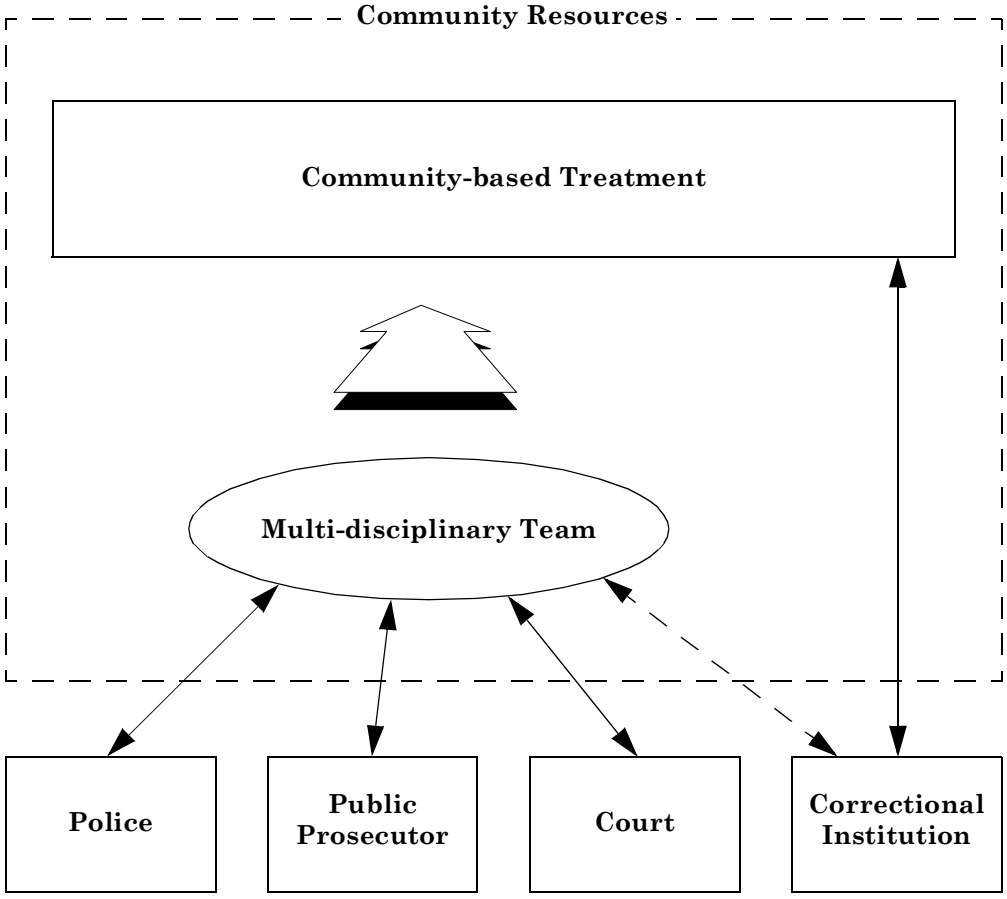

Figure 2
Integrated Case Management System

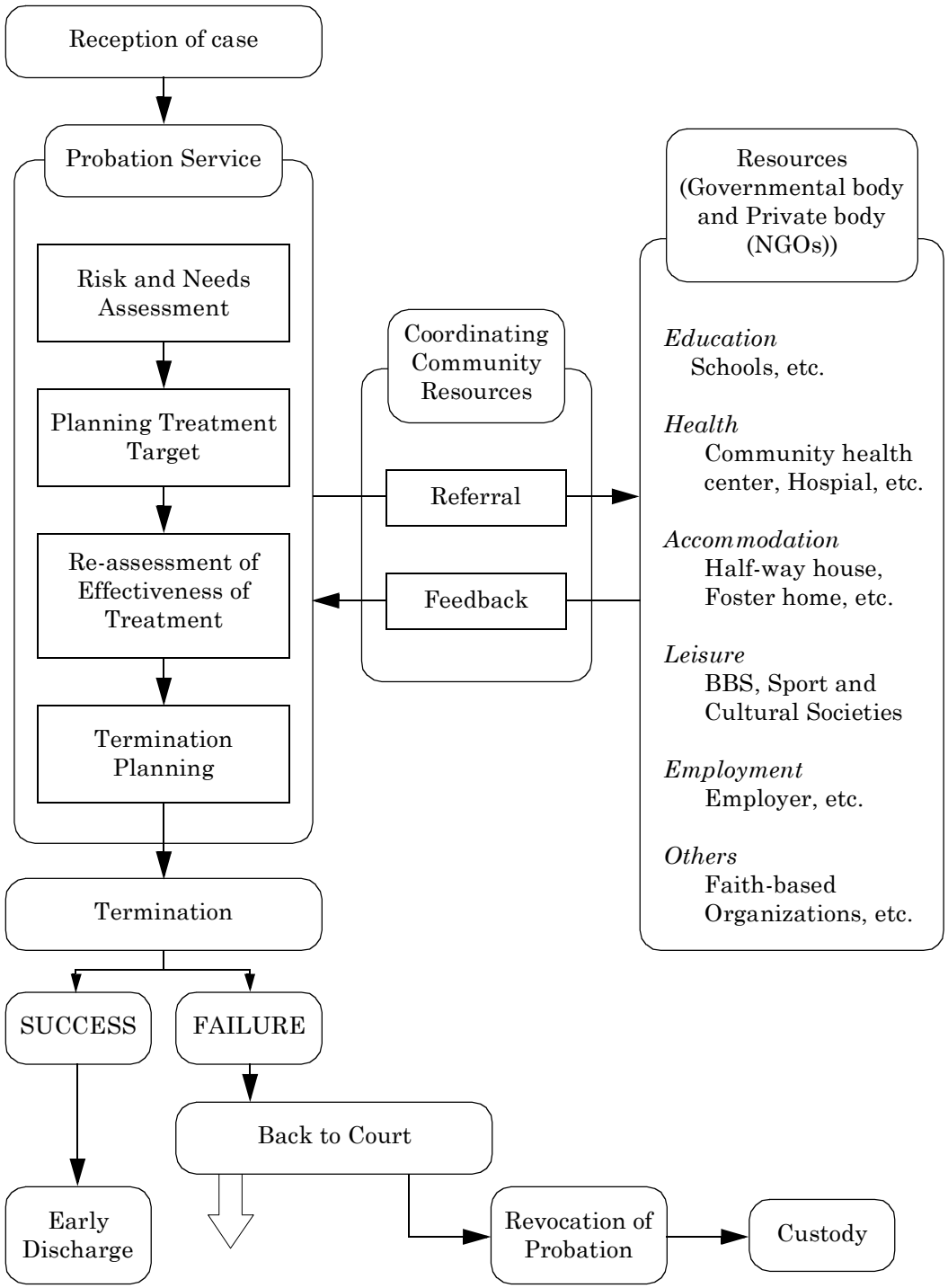

Table 1
Treatment Programme in the Context of Risks and Needs

			Programme					
			Individual Counseling	Cognitive Behavioral Counseling	Family Counseling	Drug Treatment	Literacy Skill Training	Vocational Training
Risk/Need	Family	Family relationships			✔			
		Inadequate Supervision			✔			
	School	Disruptive Behavior	✔	✔				
		Low Achievement					✔	✔
		Truancy					✔	✔
	Employment	Unemployment					✔	✔
	Peers	Delinquent Group	✔	✔				
		Few Positive Friend	✔	✔				
	Drug	Substance Use		✔		✔		
	Leisure	Making Better Use of Time						
	Individual	Resiliency						
		Self Esteem	✔					
		Attention Deficit					✔	
		Antisocial attitude	✔	✔				

			Programme					
			Promotion of Employment	Restoring Programmes	Community Service Work	Adventure/ Sports	Mentorship	Fostering
Risk/Need	Family	Family relationships						
		Inadequate Supervision						
	School	Disruptive Behavior						
		Low Achievement	✔					
		Truancy					✔	
	Employment	Unemployment	✔					
	Peers	Delinquent Group				✔		✔
		Few Positive Friend				✔		
	Drug	Substance Use			✔			
	Leisure	Making Better Use of Time			✔	✔		
	Individual	Resiliency		✔			✔	
		Self Esteem				✔		
		Attention Deficit					✔	
		Antisocial attitude			✔			

Table 2
Rehabilitation Needs and Resources

Needs	Resources						
	Cooperative Individuals	**Neighbors Peers**	**Schools Public & Private**	**Academic Institutes**	**Business: Private Sector**	**NGOs**	**Government Ministries & Departments**
Basic Education	✔		✔			✔	✔
Vocational Training	✔		✔			✔	✔
Employment	✔				✔	✔	
Accommodation	✔					✔	
Health	✔	✔			✔	✔	✔
Family Relationships	✔			✔			
Sports/Leisure	✔	✔					✔

"✔" means that the resources are currently used in participant's countries.

GROUP 3

BEST PRACTICES IN THE INSTITUTIONAL TREATMENT OF JUVENILE OFFENDERS

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I. INTRODUCTION

The task of the group was to explore best practices to overcome the challenges facing organizations in relation to the treatment of juvenile offenders. The group was made of individuals from a number of professions, including Prison Officers from Bangladesh, Fiji and Pakistan; Social Welfare Officers from Thailand and Malaysia, and two Psychologists and a Public Prosecutor from Japan.

Our group's assignment was to discuss and prepare a report on the following main and sub topics:

Main Topic	Sub-Topic
1. Designing a Model System	Development of Model System Geared at Through Care • Framework for Individualized Treatment: Case Management System • Effective Programmes/Interventions
2. Operational Issues	Staff Training • Development of Training System/ Curricula Efficient Management • Reducing Costs • Finding New Resources

Main Topic	Sub-Topic
3. Accountability and Evaluation	Offender Information Management System • Development of Offender-Based Information System • Development of Forms of Individual Files Public Relations • Gaining Public Confidence

II. DESIGNING A MODEL SYSTEM

A. Development of Model System Geared at Through Care

The group discussions covered a wide range of issues including the rehabilitation, re-socialization, and reintegration of juveniles offenders. It was determined that positive results by providing such services and treatments can be achieved in an institution.

It was also agreed that all children requiring institutional care and treatment should be assessed, observed and classified before having an individual treatment plan developed. To affect this process the skills of a variety of specialists such as psychologists, psychiatrists, social workers, doctors, teachers and sociologists are required.

During our discussion common problems were identified across the participating countries. These were:

- Overcrowding in institutions
- Non availability of technical and professional staff such as, psychologists, sociologists and social case workers, etc.
- Non existent or non-functional parole staff
- Non-existent juvenile/family courts, classification and juvenile training schools.

The group agreed that the principles expressed in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice "The Beijing Rules" (especially numbers 26, 27, 28, 29 and 30); the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (especially rule nos. 17–80), should govern the development of the model system.

1. Framework for Individualized Treatment

It was agreed that there should be institutions with 4 distinct functions.

- Juvenile Classification Home (JCH)
- Juvenile Training School (JTS)
- Juvenile Medical Training School (JMTS)
- Juvenile Prison (JP)

It was also agreed that each country needed an institution such as a Minor Children Re-socialization Centre. This institution should be run by the social welfare department and aimed at preventing the behaviour of juveniles progressing to offending.

(i) *Juvenile Classification Homes (JCH)*

According to the Beijing Rules 13, detention in an institution should be used as the last resort and for the shortest possible time. The development of a Juvenile Classification Home is seen as

one way of achieving the aims of these rules.

The following criteria are proposed to govern these Homes:

- The length of stay in the juvenile classification home is as prescribed by the juvenile laws in each country.
- Boys and girls are accommodated in separate sections of the home.
- Dormitory placement is assigned by; age, personal history, previous history of confinement and personality of the young person.
- The method of classification should be based on the needs and strengths of the juvenile. This information is gathered through a variety of methods including: interviews, analysis of care history and psychological tests to assess intelligence and character. Diagnosis is considered from the results of clinical psychology and psychiatry, medical examination, behavioural observation, analysis of personal history and life environment, case conference and treatment. Various types of psychotherapy, counselling, and behavioural observations are used to examine problems. The results of this classification form the basis for developing the treatment plans and determining the type of institute where the juvenile should be placed.

(ii) *Juvenile Training Schools (JTS)*

According to Beijing Rule 26 the objective of institutional treatment is to provide care, protection, education and vocational skill, with a view to assisting the juvenile to assume a socially constructive role in society.

Juveniles in institutions must receive care, protection and all necessary social, educational, vocational, psychological, medical and physical programmes and services. Adult and young offenders, males and females, should be detained separately. The parents or guardians of juveniles must have the right of access to their children; this can be achieved through phone calls, letters and visits to the institution. Co-operation between organizations is particularly important in enhancing the quality of institutional treatment and training. Our group considered that Juvenile Training Schools should meet the following criteria:

- Institutions should be divided into 2 types, depending on the duration of treatment; short-term institutions and long-term institutions.
  - Short-term institutions will provide the basic course and rehabilitation for juveniles who are assessed as having a low level of delinquent tendencies, and as being able to be rehabilitated with intensive training.
  - Long-term institutions will provide for those who are assessed as having relatively advanced delinquent tendencies and, as being difficult to re-socialise in a shorter period of time.
- Individual treatment plans should be developed according to individual needs.
- Methods of treatment should be flexible and specified according to rehabilitative needs of each juvenile.
- Maintaining close contact between the correctional institution and community organization should encourage the re-socialization process.
- Major methods of treatment are as follows; admission, orientation, dormitory placement, living guidance, academic education, vocational

training, moral education, treatment, medical care, sport/physical education/recreation, dormitory activities, special activities/annual activities/festivals/camping/club activities, extra curricular (e.g. Lecture by volunteers), progressive grade system, and community services.

(iii) *Juvenile Medical Training Schools (JMTS)*

In our discussion around the model of Juvenile Medical Training Schools, we considered the United Nations Rules for The Protection of Juveniles Deprived of their Liberty, rules numbered 49–55. A juvenile who is suffering from mental and/or physical illness should be treated in a specialized institution under independent medical management. It is also important to ensure that the juveniles continue to receive mental and physical health care after their release from the institution.

Juvenile Medical Training Schools should be established for juveniles who are physically or mentally diseased and need medical and psychological treatment. Methods of treatment are as follows; medical care, mental care, academic education, occupational therapy, social skills training, sport, recreation, special activity and community services.

(iv) *Juvenile Prisons (JP)*

Our group agreed that imprisonment could serve as a small, though important part of the whole process of treating juveniles. While there is a general belief that imprisonment should be utilized as a last resort, there will always be juveniles for whom this kind of alternative cannot be avoided. At this juncture, the group unanimously supported that correctional philosophy for the treatment of juveniles at this stage must be geared toward reforming and rehabilitating the juveniles.

The inmates of juvenile prisons are those classified as having advanced criminal tendency (recidivists, re-offenders, hardened criminals, age wised separation), and are not suffering from any serious physical and mental conditions which need intensive medical care.

Basic treatment programmes in the juvenile prison will include intensive treatment, vocational training, academic education, rehabilitation, re-socialization, discipline, prison labour and security.

(v) *Minor Children Re-Socialization Centers*

All group members generally agreed that a Minor Children Re-Socialization Center should be available for uncontrollable juveniles. These juveniles will demonstrate the following characteristics: disrespect, mischievousness and misbehavior, homelessness, and juveniles who need guidance and supervision. The major method of treatment are as follows; care, control, parental love, affection and respect, guidance and academic education.

The services provided to the juveniles in the Centre will help them to gain a changed outlook towards a more constructive purpose in life and enrich their sense of respect and confidence to steer them away from crime.

The Minor Children Re-Socialization Center should be under the control of the social welfare organization in each country, and not part of the juvenile justice system. It is mentioned in this report as a valuable home for preventing the behaviour of juveniles from progressing into offending.

2. Case Management System

To implement the function of the Case Management System, our group considered that we should apply a set of concepts.

These concepts indicate that the following principles should be applied to Case Management:

- Risk differentiation provides intensive treatment for the higher risk group.
- Intervention efforts must be targeted towards criminogenic needs (dynamic risk factors).
- Clarify the treatment goals and objectives along with most effective treatment model in proper sequence (Individual Treatment Plan).
- Multimodal treatment programme works better than those used in isolation (Treatment should address all of the needs).
- Responsivity Principle: Treatment should be matched with learner's style and staff's teaching style.
- Utilize skills orientation and cognitive behaviour treatment.
- Intervention should be comprehensive and of sufficient duration. Continuity of care must be secured for treatment integrity.
- The same people deliver all treatment for the same group of programmes.
- Monitor the progress of evaluation and monitor the programme effectiveness in term of recidivism (outcome evaluation).

The group agreed that all juveniles referred to an institution should have Individualized Treatment Plans (ITP) rather than receiving stereotypical group treatment, however this does not prevent group work with juveniles. Programmes should be designed for the individual, not for the ease of management within the institution.

The treatment plan offered should be periodically reviewed and adjusted to meet changes in the juvenile's behaviour. The following is the case management process that will be used.

(i) *Assessment and Classification*

In order to implement effective treatment, we have to understand the problems of juveniles. So we should investigate underlying problems and criminogenic factors in the juvenile. The main functions of assessment belong to Juvenile Classification Homes. However, classification functions are also necessary for juvenile training schools, juvenile medical training schools and juvenile prisons to make effective ITPs. Major elements of assessment are as follows:

a. Psychological interview and testing
b. Behavioral observation
c. Physical/mental examination

Clinical assessment is often conducted by special experts (e.g., psychologists, psychiatrists, social workers, instructors, doctors, etc.). In addition to such clinical assessment, the utilization of standardized assessment tools would enhance the identification of risks and strengths of inmates exactly (e.g., ASSET, LSI-R, etc.).

Objective and systematic assessments enable us to precisely classify various types of delinquents into relatively homogeneous subgroups of juveniles in terms of criminogenic risks and required programmes. Selection of the most appropriate institution and the most appropriate treatment course together with successive reclassification to assess the juveniles' progresses and changes in

risks and needs would lead to further enhancements of offender-rehabilitation.

(ii) *Individualized Treatment Plans (ITP)*

The individualized treatment plan is the description of the goals to be sought for the juvenile and the activities to be carried out at the institution. At the same time, it is necessary for juvenile institutions to understand each juveniles background and the information and recommendations from the family court and JCH. By integrating information from all these sources, juvenile institutions can develop the juveniles ITP. The process is as follows:

a. Set individualized treatment goals
b. Set sub-goals at each stage (e.g., orientation stage, intermediate stage, pre-release stage)
c. Make educational targets and measures

At the same time, we have to consider the scheduled treatment period and prioritise strategies depending on inmates' needs and the nature of criminality.

(iii) *Programme Implementation*

The group discussed and agreed to divide the stages of treatment in juvenile institutions into 3 stages; i.e., orientation stage, intermediate stage and pre-release stage. The objectives in each stage are set to solve problems or needs of individual juveniles by following an individualized treatment plan. The following are the descriptions of programme implementation at each stage.

a. Orientation stage programmes: the objective of this stage is to help the juvenile recognize their own problems that led to delinquency, and the need to carry out tasks designed in the juvenile training school with positive attitudes and to reflect the relationship with the family. Staff of the institution are responsible for designing individual treatment plans during this stage. Programmes provided at this stage include orientation, interviewing, introspective meditation, essay writing, individual counselling, role lettering and parent meetings.
b. Intermediate stage programmes: the objectives of this stage are divided into 2 parts; the first part is aimed at developing the young persons emotional control so they do not get upset when facing a problem, and to help them to recognize the value of work, to carry out daily tasks patiently and to recall past behaviour in the family and understand how they were wrong. The second part is aimed at teaching the young person to be considerate of the feelings and standpoints of others, to participate actively in vocational training and acquire reliable working attitudes and to understand the way of family and the roles of persons in it. Intermediate programmes include such programmes as individual and group counselling, introspective meditation, daily keeping, role-lettering, role-playing, group discussion, aggression replacement training methods, positive peer culture methods, family visits, academic examination, vocational examination, and case conference with significant persons who would assist rehabilitation after juveniles are released.
c. Pre-release stage programmes: the objective of this stage is to sympathize with other inmates, to cooperate with them voluntarily, to develop a concrete plan of post-release life firmly founded on work, to

communicate closely with family members and maintain good relationships. The pre-release programmes include individual and group counselling, essay writing, career development, social skill training, family counselling, overnight stay with parents, home visit and continuing case conference with parole officers or VPOs who would assist rehabilitation after release.

(iv) *Monitoring (Evaluation, Feedback, Improvement of ITP)*

Monitoring and evaluation of treatment processes are very important for individualized treatment plans. By monitoring changes and progress after programmes, educational targets and measures can be adjusted flexibly toward further improvement of the juvenile. If a juvenile does not achieve their individualized goals at the intermediate stage, juvenile institutions may need to provide more intensive programmes in order for the juvenile to achieve their goals.

Our group considered the methods to evaluate the progress/improvement of juveniles and agreed to devise the following methods:

a. Interviewing: the purpose of interviewing is for the evaluation of attitudinal changes of each juvenile and to give guidance to support the juvenile in improving behaviour.
b. Essay: specific tasks for essay writing will be provided for the juvenile depending on juvenile's problems or needs. The essay writing is intended to improve juvenile thinking and developing an understanding of themselves through writing.
c. Diary keeping: the objective of diary keeping for evaluation is to understand the juveniles thinking, feelings, attitudes and problems as well as his/her self-monitoring.
d. Academic and vocational examination: in order to re-socialize and rehabilitate the inmates, improvements made through academic and vocational training should be measured.
e. Behavioral observation: in order to understand the real attitudes, thinking and feelings of the juvenile, staff have to observe how juveniles behave in the dormitory, whether juveniles have good relationship with others or not, how juveniles have changed their attitudes, thinking and feelings. Behavioral observation is undertaken in various situations.
f. Evaluation after group activity: juvenile delinquents are not usually good at maintaining constructive interpersonal relationship. Their relationships are often damaged by violence, selfishness, and antisocial activities. In juvenile institutions, we should establish group discussion, problem-focused programmes (Drug Abuse, Familial Problems, Sexual Abuse, etc.) and role-taking activities in dormitories.
g. Evaluation after parents visit: a lot of juvenile delinquents have poor relationships with their parents and guardians. In order to improve the relationship with them, the staff have to make approaches to the juveniles, parents and guardians by interviewing them individually and implementing family counselling. Staff then need to evaluate any change in the juveniles' attitudes after family visits to determine whether there is any improvement in the relationship with the family member.

3. Effective Programmes/Interventions

(i) *To utilize group-based treatment method specialized for juveniles*

Juveniles often have antisocial, self-centred and harmful attitudes. If staff in juvenile institutions don't control the juveniles external environment, they cannot implement programmes effectively. If staff don't control and understand the relationship between different groups of individuals, the more antisocial juveniles will adversely effect the other juveniles. On the other hand, in order to equip the juveniles with social skills, the staff need to teach and model pro-social behaviour for juveniles. This will include developing good relationships with each other not only individually but also collectively. From these points of view, we should utilize group approaches.

a. The Positive Peer Culture
According to the available materials, youth can learn to help each other in group sessions. They can learn to do this through regular meetings and various programmes. Through meetings, discussions, activities and effective programmes such as Positive Peer Culture (PPC), peer groups can develop better moral judgment and social skills such as learning to express complaints and feelings constructively, caring for one another, keeping out of fights, responding constructively to failure, etc. Hence, these attempts to help one another will be strengthened.

The peer-helping approach is also evident in the experience of the Japanese in its rehabilitative programmes of Juvenile Training Schools, where group work and group sessions have brought about positive results. Group work can be effective, it is therefore suggested that Group work activities and programmes where juveniles learn to help one another should be carried out.

b. Aggression Replacement Training (ART)
Aggression Replacement Training (ART) method is a multimodal psycho-educational intervention which has been developed and evaluated in response to the behavior deficit perspective, such as negotiating differences, dealing appropriately with accusations, and responding effectively to failure, teasing, rejection or anger. The intervention of this method has the following three components; i.e., skill streaming, anger control training (ACT) and moral education.

The effectiveness of ART programmes from efficacy evaluations demonstrate a significant decrease in aggressive incidences. It is an impact intervention to promote skills acquisition and performance, improve anger control, decrease the frequency of acting out behaviors and increase the frequency of constructive, prosocial behaviors.

(ii) *Aftercare Programme*

During the group discussion the issue of maintaining changes in the juvenile following their release from the institution was considered very important. It was agreed that most countries have two forms of release from institutions:

a. Released finally, on the expiry of sentence
b. Released conditionally, when some part of his/her sentence is yet to finish.

In the first case the released juvenile, soon before his/her release is given some

sort of guidance and knowledge focussing on their adjustment into the community.

In the second case, planning for the conditionally released juvenile should be undertaken by the agency responsible for resocialization and reintegration of the offender in the society. The agency (parole officer) will be responsible for the care and adjustment of the juvenile in the community with constant liaison (feedback) to the institution from which the juvenile was released. The parole officer will access social welfare, education and health institutions in order to get specialized services for the juvenile like education, job placement, recreation, individual counselling etc. These efforts will be helpful in achieving the objective of through care for juveniles.

III. OPERATIONAL ISSUSES

A. Staff Training

1. Development of Training System/ Curricula

The effective and efficient working of staff in any organization or institution depends on the knowledge, motivation and expertise of the staff. This can be enhanced by providing orientation, knowledge and skills, in the shape of training to every member of the staff. This should be viewed as a continuing process and as one of the key factors in maintaining the motivation of the correctional staff working with young offenders. Similarly this can be considered as a stepping stone for any promotion for staff once they have acquired the necessary knowledge, skills and competence.

(i) *U. N. Standard Rules for Training*

The following standard rules are framed by the United Nations for equipping the staff with most appropriate and up to date training. In the Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), Rule No.22.1 and rules No.81 and 85 of United Nations rules for the Protection of Juveniles Deprived of their Liberty deal with training of the staff.

(ii) *General Situation*

Most of the countries have their own training system and curricula being delivered by the Training Centres, Training Institutions or Academies and these institutions are responsible for providing training skills and knowledge for offender treatment, proposing suitable treatment plans and implementation of those plans and programmes.

While the importance of training and furthering knowledge is important in any field of life, some of the underdeveloped or developing countries do not have their own staff training system. After induction to some posting, the official sometimes receives OJT (On the Job Training) under the supervision of experienced staff. He/ she does not usually study the relevant laws and rules and this can lead to problems.

It is proposed that in such countries where opportunities for staff training are absent, assistance may be sought from the nearby developed countries and request for help in this regard may be made to the UN and its affiliated agencies like UNAFEI.

(iii) *Enhancement of Knowledge*

There is a continuous need to establish and develop new strategies for modern treatment. Therefore staff should be provided with opportunities to attend seminars, conferences and be offered training and scholarships for international training to update their

knowledge and enhance their skills in the proper treatment of juvenile offenders.

It was unanimously agreed that soon after induction to any position everybody should receive basic orientation training. This should include the standard operating procedures of the institutions, programmes and services, the basic psychology of working with offenders and their characteristics, legal procedures, etc.

After completion of basic orientation, the staff should be placed in OJT. New recruits should be placed under the close supervision of experienced staff for a certain period of time to enable them to become acquainted with the functions and carry out such functions effectively by putting into practice what they have learned during training. On the completion of the specific period they should be evaluated with regard to their performance in order to determine their strengths and areas for further development.

Follow up or refresher training should also be provided to all staff involved in the treatment and rehabilitation of offenders to further enrich their knowledge and enhance their skills in working with offenders. Performance evaluation will be one of the bases in considering the possible content of the training. Current techniques and methodology in the treatment of offenders should be taken into consideration and the curriculum should be revised, taking into consideration the changing needs brought about by practice, experience and research.

The faculty responsible for delivering training should be selected with great care. They should be practice focused and transferred from juvenile institutions to staff training institutes and vice versa, in this way they can learn about gaps, if any, between theory and practical work.

(iv) *Training Needs*

Training should be provided as per needs of the staff in the institution. As the staff training institutions are providing training to all positions (junior, middle and senior ranks) it should be target or goal oriented. Every post should be provided training as per his/her job requirements and needs, because of variation in nature of duties. Training subjects and materials should be standardized, yet delivered in a flexible way.

(v) *Proposals for Cost Reduction in the Field of Training*

Some of the measures to be adopted can help in cost reduction of the staff training institutions, such as one or two staff members from the juvenile institution being selected and provided comprehensive training to make them master trainers (Training the Trainer). These trainers can provide training to the whole of the juvenile institution staff as well as nearby juvenile institutions. In other words without sending 30 or 40 people to the training institution, they can be provided training at their institution where they can carry out their official duties as well as can receive training without leaving their place of posting.

Distant learning programmes can also be offered such as correspondence, CAI (Computer Assisted Instruction), videos, training brochures and kit etc. The main training division or academy can provide training instructions and education, through the above-mentioned programmes.

(vi) *Development of Training Curricula*

It is proposed that some curricula, which are suitable to member countries but flexible according to needs, is to be designed. This can then be remodelled, redesigned or restructured as per changing needs. The model designed is given in chart 1 and table 1.

In chart 1, it has been shown that after induction in the correctional service, everybody should receive training for the phase, which we call "BASE". In the "BASE" course essential subjects, basic laws, rules, case studies, etc. are to be given. The more advanced information/ knowledge should be given according to the needs and requirements of the job and similarly specialized training is to be provided to the experienced staff according to the demands and responsibilities of the posts. The performance of each participant can be evaluated periodically by reviewing their performance through exams/assessments and evaluations as given in the chart under the heading "MONITOR". At the same time the training records are maintained so that their participation in advanced or refresher courses, will be monitored and assessed to determine what further subject and expertise is to be provided. This idea is based on the theory of RPL (Recognized Prior Learning).

The group proposed the following curricula for the training of the juvenile staff as given in table 1. It has been agreed that everybody who joins the correctional service for the juveniles should undergo some basic training in the subjects like basic behavioral sciences (e.g., child psychology, correctional sociology, etc.), criminology, child welfare and case study etc. so that they learn about the different needs and treatment.

B. Efficient Management

1. Reducing Cost

Due to economic depression the world over, most countries are striving hard to achieve their targets of development by using minimum resources and achieving best results in the management of juvenile institutions. The following steps are proposed which will be helpful in reducing the cost.

(i) A lot of the allocated budget for each institution is consumed in the payment of salaries of the staff. It is agreed that to reduce cost, it is necessary that some clerical nature jobs should be replaced by the introduction of I.T. (Information Technology). The I.T. will not only help in reducing cost but will also provide a more rapid and confidential service. Similarly some of the jobs may be restructured in such a way that one person may be assigned some of the tasks at one time. In other words two tasks are to be carried out by one person. At the same time advanced systems of close circuit TV monitor should be introduced, replacing the old system of watch and ward staff. The computerized system should be interlinked between the juvenile institutions, for cost effectiveness and to avoid delays in acquiring up to date knowledge.

(ii) Another step that can be taken is changing the structure of the juvenile institution. The juvenile courts, juvenile classification homes, juvenile training schools, juvenile medical training schools and educational set up (both formal and vocational) could be set up on the same campus with separate blocks (like in Bangladesh). The whole of the establishment can have one

kitchen and the same senior, middle management and professional staff. The lower level supervisory staff can be different for each block. The juvenile medical training school will provide treatment to all sick inmates. With the introduction of juvenile courts in the same campus, we can avoid transportation cost as well as security problems. The educational set up for juveniles may be run by NGOs under the supervision of education department. The books, writing materials for the juvenile may be provided by the NGOs. Similarly book foundations and publishers may be involved in establishing a well-stocked library in the campus.

If it is not applicable in some countries because of established structure, the vocational and formal education can be given in shift systems, with less number of staff. For example group A receiving formal education in the morning will go to vocational training in the evening and group B, in the morning receive vocational training and formal education in the evening. This will help in reducing the manpower costs. Changes in layout of educational set up will be useful to save manpower costs.

(iii) The proposed treatment plan should not be generalized to save costs. It is necessary for every programme to be designed according to the individual needs and suitability of the juvenile, so that limited resources can be allocated and utilized effectively.

(iv) The primary objective of juvenile institutions is to provide the juveniles with education and training to build their confidence and strengths so that after their release they do not re-offend. For this it is necessary that in addition to formal education they must be provided with vocational education. They should be taught some skills, so that after their release they can adopt the same or similar trade or career in society. The skill that he/she has acquired in the institute can also be used as a source of income by the juvenile but it should always be treated as a secondary objective to avoid stigmatization of child labor because the juvenile institutions are not the commercial organization. In acquiring the skills, the products/ crafts made by juveniles can be sold out in the market. Similarly the vegetables, fodders and crops, cultivated at the land of institution can also be used as a source of income. At the same time if baking and cooking skills are provided in the institution, it will also be helpful in re-socialization and re-integration of the offender after his/her release. Moreover the juveniles can consume the food which they have prepared in acquiring the skill, and it can also be sold out in the community to generate an income.

2. Finding New Resources

To meet the expenses of treatment programmes, rehabilitative activities as well as betterment and welfare of the juveniles, we have to search for new resources, from within the community in addition to relying on the government for implementation of such programmes. In every community there are a large number of NGOs, private companies, manufacturers and philanthropists who are willing to extend every support for the welfare of juveniles because they are the hope and future of tomorrow. These resources can be utilized in different areas after proper planning and mobilization. The expenses of the institution will obviously be cut down if shared by above-

mentioned organizations/persons. The following are some of the areas, which are identified as areas where the services could be utilized. In table 2, target areas, focal needs, available resources and effect are given. For example, if we identify the need of imparting formal education as well as vocational training, we can involve NGOs, private manufactures, private companies like publishers, printers etc. and education department in helping the juvenile institutions for imparting education, extending expertise, with provision of course books, writing material, books for the library of the institution. The services of the trained teaching staff, trade masters as well as raw material, are also provided by NGOs, manufacturers, etc. By the involvement of the community in the areas of human, material and monetary resources in different projects of juvenile institution, we will be able to reduce manpower as well as material cost. The details of target areas and focal needs, etc. are given in table 2.

IV. ACCOUNTABILITY AND EVALUATION

A. Offender Information Management System

Our group considered a wide range of issues around the development of Offender Information Management Systems. We agreed that developing information management systems are important for planning, policy and practice development, as well as for reporting on the work of the institution at both the case individual (juvenile) and system (institution) level.

It was acknowledged that many of the participating countries did not have the technology or finance available to introduce computerised systems, however it was agreed that all countries needed to be working towards developing such systems to help facilitate and improve the management of juveniles and institutions. A suggested cost effective strategy for developing a computerised system is for countries to work together in developing the system, with each country contributing either financially or with technological expertise.

One of the key advantages of a computerised system was seen as having the potential to provide ready access to "Best Practices in Institutional Treatment of Juvenile Offenders". Realising this potential could address many issues identified in the Operational Issues section of this paper, particularly staff development and training. The system should be designed to gather and disseminate information on best practice for the treatment and management of juvenile offenders. Professional staff would be able to use the system as a source of ideas, practical advice and support.

A computerised system would also provide a ready link to the Internet for the latest research about the treatment of young offenders as well as on line training courses for professional development of staff.

It was also considered important that the system should be developed to promote best practice at a system, or institute management level. This will enable the institutions to monitor the effectiveness of their overall programme as well as managing and reporting on key strategies.

B. Development of Offender-Based Information System (OBIS)

A diagrammatic representation of OBIS is attached in chart 2. The

information to be contained in OBIS is described as follows;

1. Individual case management

A system of individual case management is necessary for the use by professionals working in the institution to develop and monitor Individualized Treatment Plan (ITP).

Before developing ITP, an assessment must be made of the individual young persons "needs" and "strengths" (Refer rule number 12 and 49 of the United Nations Rules for Protection of Juveniles Deprived of their Liberty). While treatment within institutions will usually focus on the needs and strengths of the individual, it is important to work closely with our community partners who will focus their work on the needs and strengths of the young persons' family and within the community that the young persons will return to on their release from the institution. This process will ensure effective after care for the young person.

In order to develop the ITP, information must be gathered on each individual young person, their family background, case history, and offending history as well as information on the young person's needs and strengths. The information gathered will provide a comprehensive picture of the young person's situation and will be used to develop the ITP.

A wide variety of staff may be necessary to develop, implement and monitor the ITP. These will include for example educators, vocational instructors, counsellors, social workers, psychiatrists and psychologists (Refer to Rule 81 of the United Nations Rules for Protection of Juveniles Deprived of their Liberty).

The individual case management section of the OBIS is used to enter the result of the individual young persons assessment, their treatment plan and to monitor the effectiveness of the plan.

In addition to monitoring the cases at the individual level, information will be collated to provide information on the effectiveness of the programmes across all individual young people. In this way there is a continual cycle of evaluation of the effectiveness of programmes, and information gathered will be used to develop and improve the programme.

2. System level management

System level management is necessary for managers and administrators of the institutions to ensure the efficient and effective management of the institutions. We have called this part of OBIS, "Institutional Management".

The institutional management system will have a number of key components. These will include:

(i) *Admission register*

Information entered here will include the elements necessary to comply with international conventions as well as individual countries legal and policy requirements. They will include for example; the young persons date of committal, and date of discharge from the institution (Refer to Rule 20 of the United Nations Rules for Protection of Juveniles Deprived of their Liberty), as well as examination by physician on admission to the institution (Refer to Rule 12 of the United Nations Rules for Protection of Juveniles Deprived of their Liberty).

(ii) *Daily activity register*

Information entered here will assist in the day-to-day management of the institution and requirements will vary

among the different countries. Such information will include records of all major activities or events in the institution, for example, visitors to the institutions, number of young people in the institution and movements of young people to and from the institution.

(iii) *Security and emergency management plans*

The system will be used to record and monitor the institutions comprehensive security and emergency management plans. These plans will include procedures to be put to place to manage a security or emergency crisis, as well as the location of, and monitoring of the maintenance of security equipment. (Refer to Rules 32 & 33 of the United Nations Rules for Protection of Juveniles Deprived of their Liberty).

(iv) *Human resource management*

This will include all information required for efficient and effective staff management. The following records will be included:

- Staff rosters
- Timesheets, sick leave, annual leave, length of service, etc.
- Training records for all staff
- Performance and development plans for all staff

(v) *Public relations management*

The public relations strategy will also be entered onto the system. This will include full details of the information that formed the strategy, the strategy itself, as well as providing for monitoring of the strategy.

Reports that are relevant to the Public Relations Strategy such as overall effectiveness of the programme will be obtained from both the Individual Case Management and Institutional Management parts of OBIS.

C. Development of Forms for Individual Files

In order to effectively manage the information to be entered on to the Individual Case Management section of OBIS it is important to develop a form that will capture consistent data elements. In this way everyone who undertakes assessments will gather the same elements, although the actual information gathered will be different for each individual young person.

The form developed by our group for this purpose has been adapted from ASSET (Assessment tool by the Youth Justice Board [UK]). Table 3 (Assessment Information) contains the elements and content of the form to be used to gather the relevant information.

D. Public Relations—Gaining Public Confidence

One of the most important issues for public relations in correctional institutions is that of gaining public confidence. The public are concerned about their safety and the humane treatment of their young people. They are also concerned about the high cost of institutional treatment of young people and require information of the effectiveness of such programmes in preventing re-offending.

In general, the public is unaware of the activities of institutions and often form their views from individual cases that are reported in a sensational way in the media. It is therefore important to explore all avenues of providing information to the public to promote awareness of the work of the institutions. Ensuring that effective programmes are delivered and providing the public

regular reports on the programme outcomes will go a long way in developing public confidence.

We considered that it is necessary for all countries to undertake a consistent and methodical approach to developing a Public Relations Strategy.

1. Developing a Public Relations Strategy

(i) *Getting Started*

Define the problem or issues that relate to public confidence. This will include undertaking research and surveys to find out how confident the public are about the institution.

(ii) *Planning and Developing the Strategy*

Identify the target groups, establish the goals and objectives, identify the benefits to the institution and target groups. Select the techniques to be used to assess progress against the plan.

(iii) *Develop Materials and Activities*

Decide what the key messages are that the institution wants the public to hear. Then plan activities, special events and other promotions that will help communicate the message.

(iv) *Write the Communications Plan*

This must include the issue, goal, objectives, target group, benefits, delivery methods, resources, indicators of success, and assessment methods. Timeframes are then assigned for implementing the strategy. The strategy is then recorded in the Institutional Management section of OBIS.

(v) *Implement the Plan*

Work with community leaders to help ensure the message is at least considered by the people who count.

(vi) *Measure the Results*

As with any strategy it is important to measure its effectiveness. Information gained should be detailed into a comprehensive report for use in developing the next plan.

2. Target and Strategy

Although our group did not have the information available to develop a comprehensive public relations strategy for each country, we identified from our experience, the target groups necessary to gain public confidence. These are:

- The families of the juveniles in the institution.
- The immediate neighbours of the institute.
- The general public.
- The media.

Table 4 identifies our target groups in the community and their areas of concern about juvenile treatment and rehabilitation. It also identifies our strategies.

In order to improve our strategies to gain public confidence, the overall results of public participation and effectiveness of the strategies will be monitored and evaluated. The evaluation will include questionnaires and surveys.

V. CONCLUSION

In the field of Juvenile Justice, the United Nations has played a key role in establishing Standard Practices by preparing international instruments (UN Rules). A number of Member States have undertaken special efforts to administer a Juvenile Justice System in line with these instruments. In the process of these efforts for Juvenile Justice reforms, the need for technical assistance has become evident and led to various activities. This

course at UNAFEI is an example of these activities of conducting a training course focusing upon the treatment of juvenile offenders.

Recently the organisations in charge of the treatment of juveniles in conflict with the law are facing many challenges. In some countries, the treatment system is overwhelmed by the sheer volume of offenders supplied by the criminal justice administration. In some countries, the pressure from society to redefine the most appropriate measures to deal with Juvenile Offenders has intensified, resulting in many legal and administrative changes. Equally, in some countries, the introduction of new technologies, such as information technology is craved, but barred by the tremendous amount of human and monetary resources required. In other countries, the costs of offender treatment is under pressure to be reduced so that offenders and the rest of society get a reasonable share of the national wealth. Considering the above facts, UNAFEI aims through this training course, to come up with strategies to overcome recurrent and newly raised challenges in this area, focussing management of offenders and management of treatment organizations.

We, all members of the group work, serving in the criminal justice administration discussed our countries' situations and shared our experiences to explore the best practices in the institutional treatment of juvenile offenders. Newly emerging ideas such as 'risk management', restorative justice and multi-systemic approaches, which gives impetus to the integration of the various treatment systems at the institutions, have been studied and suggested as an integrative approach in designing a model system.

In the group we exchanged our views concerning the introduction, development and utilization of offender data management systems in each country and agreed that the introduction of an individual case file/record system with a sophisticated database, utilizing information technology will help to study the trends of changing characteristics of juveniles and their crimes.

There is no alternative to training. Although the training of staff has been of perennial concern to correctional treatment providers, many countries have had difficulty in equipping their treatment officers with the knowledge and skills necessary for working with juvenile offenders. Group members discussed in length and designed best practices for training of their officers. The idea in designing the curricula is based on the theory of Recognized Prior Learning (RPL).

Since juvenile criminal justice has changed dramatically in recent years, managing public relations is becoming more and more difficult for the correctional institution officers and gaining public confidence is becoming crucial to the correctional institution services. Keeping in mind the urgency in this regard the group shared their experiences and developed a strategy, linking up with the Offender Based Information System (OBIS) for obtaining feedback through conducting research/ evaluation.

In the end we hope that the proposed model will be practically applicable in every participant's country, of course with some of the modifications keeping in mind the nature, resources and circumstances. At the same time, it will be helpful in achieving a framework for individualized treatment with effective

training programmes and intervention with standardized staff training programmes and OBIS and suggestions for gaining public confidence.

ACKNOWLEDGEMENT

The endeavours and deliberations of all the participants of Group 3, are appreciated and acknowledged as all have contributed a lot through their shared knowledge and experiences to develop this paper as a useful model of "Best Practices in the Institutional Treatment of Juvenile Offenders".

The acknowledgement is also dedicated to the visiting experts to UNAFEI especially Ms. Pamela Phillips whose valuable contribution was an asset to the group discussion. Credit also goes to the distinguished faculty members, particularly Professor Kenji Teramura and Professor Yuichiro Tachi whose knowledge and expertise on the subject of criminal justice have supported and guided the group from the discussion stage to the development of this paper.

We wish to extend our profound gratitude to the Programming Officer for this course Professor Hiroshi Tsutomi and the Director of UNAFEI Mr. Mikinao Kitada for their invaluable contributions during our deliberations. We are also grateful to our interpreters whose expertise and efforts made deliberations possible and successful.

Finally, we want to acknowledge the work of UNAFEI, and offer our sincere thanks for the knowledge gained by participating in this course. This will be invaluable when we return to our respective countries and organisations.

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Chart 1

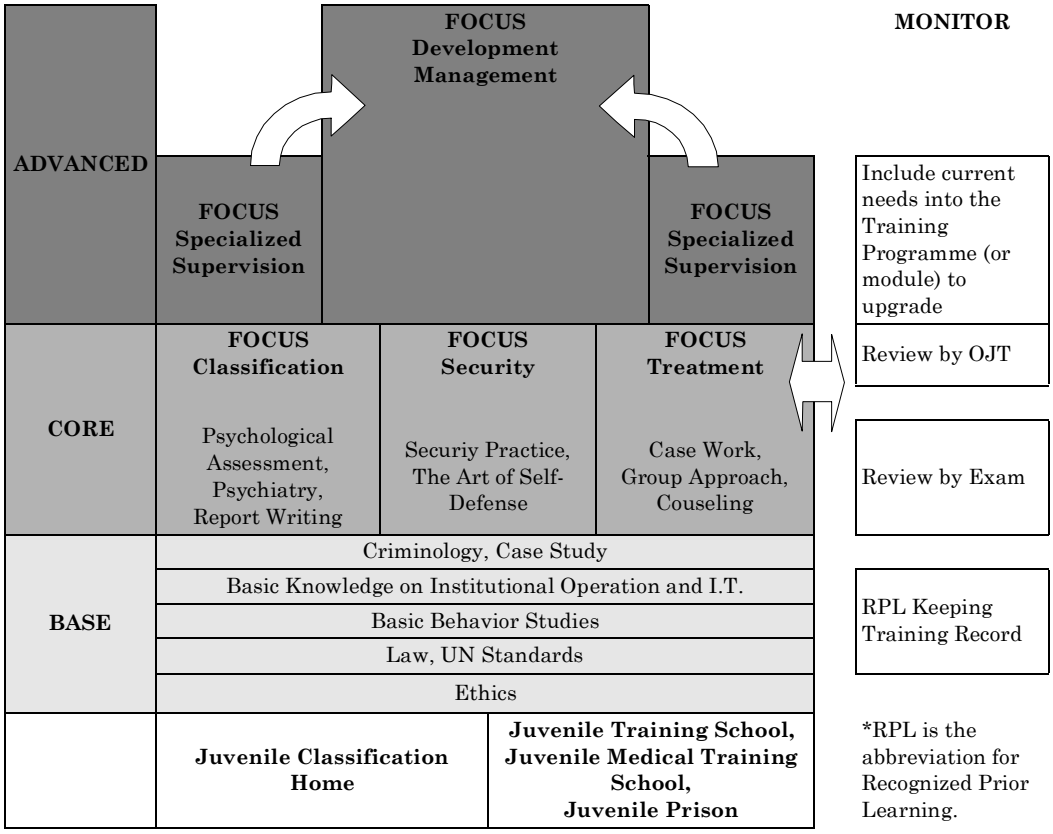
MONITOR
ADVANCED
FOCUS
Development
Management
FOCUS
Specialized
Supervision
FOCUS
Specialized
Supervision
Include current needs into the Training Programme (or module) to upgrade
CORE
FOCUS
Classification
Psychological Assessment, Psychiatry, Report Writing
FOCUS
Security
Securiy Practice, The Art of Self-Defense
FOCUS
Treatment
Case Work, Group Approach, Couseling
Review by OJT
Review by Exam
BASE
Criminology, Case Study
Basic Knowledge on Institutional Operation and I.T.
Basic Behavior Studies
Law, UN Standards
Ethics
RPL Keeping Training Record
Juvenile Classification Home
Juvenile Training School, Juvenile Medical Training School, Juvenile Prison
*RPL is the abbreviation for Recognized Prior Learning.

Chart 2
Offender-Based Information System

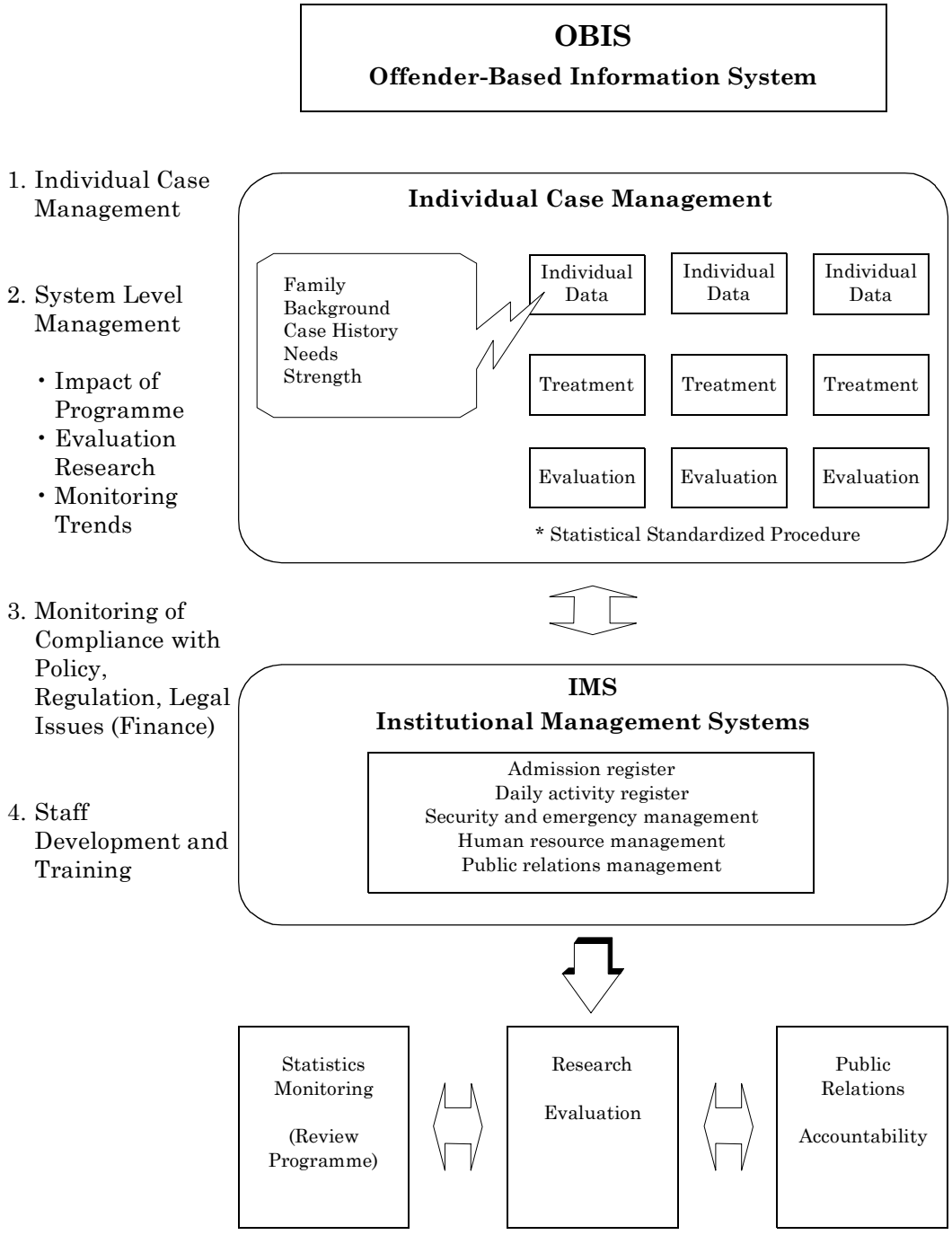

Table 1
Proposed Curricula for the Staff Training

Advanced Course	**Focus** Specialized Supervision	**Focus** Development Management	**Focus** Specialized Supervision
Core Course	**Focus** Classification • Psychological Assessment • Psychiatry • Report Writing • Interview Method • Psychological Test • Classification Practice • Case Study	**Focus** Security • Security Practice • The Art of Self Defense • Physical Training • Crisis Management • Law (The Constitution, Criminal Law, Juvenile Law, Prison Laws and Legislation etc.) • Behavior Sciences	**Focus** Treatment • Case Work • Group Approach • Counselling • Treatment Practice • Protective Detention Practices • Outline of Problem Behavior
Base Course	• Occupation Ethics • Law (The Constitution, Criminal Law, Juvenile Law, Prison Laws and Legislation etc.) • UN Standards • Basics Behavior Sciences (Correctional Psychology, Correctional Pedagogy, Correctional Sociology, Child Psychology) • Child Welfare • Basic Knowledge on Institutional Operation and I.T. (Outline of Correction, Security Practice, The Art of Self-Defense, Information Processing etc.) • Criminology • Case Study		

Table 2
Finding New Resources

Target Area	Focal Need	Available Resources	Effects
Human Resources	Vocational education, Formal Education	NGO/Relevant Company, Governmental Agency	Reduce manpower cost after achieving skill and license, certificate, the chances of rehabilitation and reintegration community care enhanced
	Counselling, Group work, and other Psychological Services	University Internship Programme	Reduce recruitment cost and initial training
	Extra Curricula, Special Activities (camping, study tour, concert, cultural activities)	NGO/Relevant Organization	Reduce the cost incurred on these programmes and it will also help in the personality development of juveniles.
	Medical Services	NGO/Relevant Organization	Reduce recruitment cost as well as initial training cost with high quality service
	Staff Development	UN, other JJS agencies	Reduce recruitment cost as well as initial training cost with high quality service
Material/ Monetary Resources	Facilities and various materials (e.g., clothes, office material, sports goods, new institution)	Official Development Aid, Private companies, NGO	Reduce operational cost and invest budget for more important area
	Cash	Donation, Fund raising campaign Public/Each people/Business Community	Reduce operational cost and invest budget for more important area

Table 3
Form for Assessment Information

	Element	Content
1	Personal Information	Name, Gender, Date of Birth, Address, Number
2	Care History	Probation, JCH, JTS, JP etc.
3	Living Arrangements	Current Living Arrangements
4	Family and Personal Relationship	Family Members and Cares, Family Members (Criminal Activity, Alcohol Abuse, Experience of Abuse etc.)
5	Statutory Education	Regular Truanting, Under-Achievement, Bullying
6	Employment, Training and Further Education	Lack of Qualifications, Skills or Training, Negative Attitude towards Employment
7	Neighbourhood	Rural Area, Metropolitan Area (Crime "hot spot")
8	Lifestyle	Friendships, Reckless Activities
9	Substance Use	Tobacco, Alcohol, Amphetamine, LSD etc.
10	Physical Health	Physical Immaturity / Delayed Development
11	Emotional and Mental Health	Mental Illness, Emotional Psychological Difficulties
12	Perception of Self and Others	Confused Sense of Identities, Lack of Understanding for Other People
13	Thinking and Behaviour	Poor Control of Temper, Aggression, Inappropriate Activities
14	Attitudes to Offending	Lack of Remorse/Understanding of the Effect of Their Behaviour on Victims
15	Motivation to Change	Stop Offending, Co-operate with Others (JCH other agencies)
16	Needs	• Summarize key Needs
17	Strengths	• Summarize key Strengths
18	Progress Record	Result of programme (ITP), priority of programme

Table 4
Public Relations Strategy

Target Group	Their Concern	Strategy
Family of juvenile	Well being of juvenile	• Involve family participation (ex. Family conference)
Neighbours	Escape Noise	• Security • Minimize noise levels • Provide facilities free of charge • Community services
General public	Safe/Secure Humane treatment Lack of information	• Invite public participation - Board of visitors - Spiritual counseling & moral education, etc. • Community services • Dissemination of official information • Internet/website
Media	The right of juvenile The society to know the role of the institution in relation to treatment of juvenile	• Invite media to cover special activities of inmates • New development

Monitor

Evaluate

PART THREE

RESOURCE MATERIAL SERIES
No. 59

Work Product of the 119th International Training Course

"CURRENT SITUATION OF AND COUNTERMEASURES AGAINST TRANSNATIONAL ORGANIZED CRIME"

UNAFEI

VISITING EXPERTS' PAPERS

INTERNATIONAL COOPERATION AGAINST TRANSNATIONAL ORGANIZED CRIME: THE GENERAL DEVELOPMENT

*Matti Joutsen**

I. CRIME: FROM A DOMESTIC TO AN INTERNATIONAL PROBLEM

Before World War II, crime was almost solely a domestic issue. Few persons were concerned with what happened beyond their borders, since this had little effect on day-to-day life. This scenario has now changed fundamentally.

Some of the changes have been due to technology. Faster air service for people and goods means that it is easier to get around, and also easier both for offenders to move from one country to the next, keeping more than one step ahead of the law enforcement authorities, who must respect jurisdictional limits. More sophisticated telecommunications make the planning and directing of crimes possible from a distance, also from abroad. Electronic fund transfer means that the profits from crime can be rapidly moved beyond the reach of national authorities.

Among the political and economic changes have been the establishment of regional trade groupings such as the North American Free Trade Association and the European Union, which are removing barriers to the movement of people, goods, services and capital. The opening of formerly closed economies and disruptions in economic development have contributed to an enormous increase in crime, crime which has had an impact even outside the region. And because of political developments and corruption in many countries around the world, some government officials have shown their willingness to collude with offenders in, for example, terrorism, drug trafficking, money laundering and economic crime.

The social changes have included the impoverishment of people, in particular in developing countries and the countries in transition. Although informal social control still operates effectively in large parts of the developing world, many developing countries have undergone massive rural-urban migration, with the new arrivals in the cities faced with an almost total lack of prospects for education and employment. In many countries, attempts at economic development have failed, leaving a legacy of a growing external debt. War and internal conflict have not only had a disastrous effect on persons caught in their grip, they have increased the number of internally displaced persons and the international flow of refugees. Given the scale of such problems, it is understandable that the criminal justice system in many developing countries is under-resourced and under-trained.

According to one dominant explanation for changes in the structure and level of crime, the routine activity approach, the amount and structure of crime is affected by three factors: the number of suitable targets for crime, the number of likely and motivated offenders, and the absence of capable guardians to prevent would-be

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offenders from committing crime.[1] In all three respects, the potential for crime and for organized crime is expanding worldwide and the technological, political, economic and social changes just referred to have intensified this expansion.

The number of suitable targets for crime has increased. The increase in industrial production and, in many countries, the change from a state economy to a market economy have increased the amount of consumer goods available. Radios, televisions, video recorders, compact disk players, brand-name clothing, cosmetics and other goods are now being produced in greater numbers domestically. These factors increase the number of targets for property crime.

In a somewhat parallel manner, for example the introduction of modern telecommunications and computer systems, the proliferation of private companies, and the wide use of new forms of non-cash payment (such as credit cards) have increased the number of targets for economic crime.

The number of likely and motivated offenders has increased. Throughout the world, millions of people have been willing or unwilling participants in what has been called the "shadow economy" or "underground economy", which grew out of the iron laws of supply and demand. What the legal market could not produce and distribute in sufficient quantities and/or of adequate quality (which in many countries often seemed to be just about anything and everything) the shadow economy sought to supply. This leads, among others, to smuggling, illegal migration, and prostitution.

The borderline between the legitimate economy and the shadow economy is often impossible to draw, and many people received their indoctrination into crime in this way. Where economic times have been bad, the standard of living has dropped, unemployment has spread and inflation has increased. As a result, more and more persons have turned to the shadow economy and to crime as a means of supplementing their income. The reality (and perception) of increased crime has contributed to the readiness to commit crime.

The pool of likely and motivated offenders is also being expanded by the prison system. The prison population in many countries (particularly in the United States, the Caribbean, Central and Eastern European and Central Asia) is quite high, and has been expanding during the 1990s.[2] Conditions in such prisons appear to be very poor by UN standards, and these prisons can thus do little to rehabilitate the offenders. On the contrary, the time spent in prison can provide the prisoners with information on new crime techniques and suitable targets, as well as supply them with willing partners in crime.

The readiness and ability of society to intervene in criminal activity has weakened. The current resources and approach of the criminal justice systems in many countries cannot provide an effective response to the increase in crime. There are shortages in personnel, facilities and equipment. Training and

[1] See in particular Cohen, L. and Felson, M., Social change and crime rate trends: A routine activity approach, *American Sociological Review*, 1979, vol. 44, pp. 588–608, *passim*.

[2] Roy Walmsley, World Prison Population List. Second edition. Home Office Research, Development and Statistics Directorate, Research Findings No, 116, London 2000.

the level of knowledge among practitioners in many cases is woefully inadequate. With the recent economic changes, the relative salary level of criminal justice professionals has often deteriorated, making it difficult to recruit and retain competent individuals. The poor economy also means that criminal justice agencies are often unable to obtain or upgrade their facilities and equipment. For example, many officials in Central and Eastern European countries have sadly noted that they are trying, both figuratively and literally, to use Ladas and Moskvitches to catch criminals who are speeding away in BMWs and Mercedes-Benzes.

The developments reviewed briefly above have contributed to the growth of ordinary crime as well as to the growth and the internationalisation of organized crime. Organized crime as such is not new. For example Italian, Nigerian, Chinese and Japanese organized crime has long roots, and organized criminal groups from these countries have had members or cells even in foreign countries, as well as the international contacts needed to exploit emerging markets for illegal goods (such as drugs, but also illegal firearms, pornography, smuggled alcohol and cigarettes, counterfeit currency, counterfeit goods and stolen goods) as well as for illegal services (such as prostitution, slave labour, loan-sharking, money laundering and illegal immigration). What is new is the degree to which they are prepared to expand their activities internationally, supplementing their traditional criminal areas with new areas, and networking with other criminal organizations.

II. THE EVOLUTION OF INTERNATIONAL CRIMINAL JUSTICE

A. From Strict Territoriality to the Recognition of the Need for International Cooperation

And how has the criminal justice system responded to the growth and internationalisation of crime? As long as crime was defined as (and, in most respects, actually was) a local or at most national issue, criminal law remained almost wholly territorial, concerned only with acts or omissions that had been committed in the territory of the forum state. This was the approach taken in particular by the common law countries: offences committed abroad were not their concern, and their authorities would not tend to be willing to assist the authorities of another State in bringing offenders to justice.[3]

Where formal cooperation in criminal cases is impossible, informal cooperation may arise. This began to emerge in law enforcement during the 1700s and early 1800s, when the major international law enforcement concerns were related to

[3] This attitude was not limited to criminal law, but could also be seen in civil cases. It is true that private international law began to evolve already during the 1200s. This discipline seeks to determine what law should govern a transaction or occurrence that has a connection with two or more jurisdictions. However, international cooperation even in civil cases was almost non-existent up until the 1800s. A person who wanted to summon a person in another country or enforce a civil court judgment in another country often found this to be impossible. It was not until the mid-1800s that growing interest was expressed in international cooperation in civil matters. One of the earliest treaties on service of process for civil cases was signed in 1846 by France and by the Grand Duchy of Baden (later, part of Germany).

piracy, the slave trade, smuggling and cross-border forays by bandits. At that time, the tendency was for States to take unilateral action to make arrests and bring the offenders to justice. This could take the form of blatant incursions into foreign territory (with or without the support of law enforcement colleagues on the other side of the border), such as seizures of suspected pirate or slave-trade ships even when they lay in the territorial waters of a foreign state, or where posses rode across the Rio Grande from the United States to Mexico in pursuit of bank robbers or cattle rustlers.

Such informal and unilateral actions, colourful as they may be, were an unsatisfactory response to a growing problem. Unilateral action could create unnecessary tensions between nations. For the police to be able to work across borders, arrangements had to evolve on three different levels: the political level, the structural level and the practical level.

On the political level[4] (what Benyon calls the macro level), governments must create the legal and political possibilities for international police cooperation. This is the level that deals with the constitution and legislation of the individual countries, and with international agreements. It is the political level that determines the legal issues relating to police operational powers across borders. Countries that had many cases in common gradually began to enter into more formalised arrangements for cooperation, including bilateral treaties. In 1919, Belgium and France even agreed on allowing their respective police forces limited cross-border authority. In its most ambitious form, the political level seeks to unify and harmonise the way in which criminal justice and law enforcement is carried out in two or more countries.

The second level, the structural level (referred to by Benyon as the meso level), deals with operational structures, practices and procedures. It is the structural level that provides the tools for cooperation. These tools include information systems, common data bases, methods of coordination, access to information, and where necessary the establishment of specialist organisations dealing, for example, with counterfeiting or fraud.[5]

One expanding element of international work on the second, structural level consists of training and technical cooperation. Considerable bilateral and multilateral efforts have been made to develop police skills and techniques, through joint training and joint exercises, and through the provision of direction, training and resources. Such assistance is provided not only for altruistic reasons of helping the police in other countries to deal with serious problems, but also for understandable reasons of national interest, such as efforts to stabilise a regime in a neighbouring country, or to assist in preventing and controlling crime that might otherwise spread internationally.

The third level is the practical level (referred to by Benyon as the micro level).

[4] Benyon, John (1997), The Developing System of Police Cooperation in the European Union, in McDonald, William F. (1997) (ed.), Crime and Law Enforcement in the Global Village, Anderson Publishing Company, Cincinnati, pp. 103–121.

[5] As Benyon points out, cooperation on this second level often takes place between different law enforcement organisations even without governmental initiative or parliamentary approval.

It is this level that is concerned with the investigation of specific offences and with the prevention and control of particular forms of crime. Where the specific case at hand has points of contact with a foreign State, the practical steps may involve turning the matter over to private investigators, turning the foreign aspects of the case over in full to the foreign law enforcement body (or bodies), or granting law enforcement authorities the power to act on foreign territory.[6]

Judicial cooperation in criminal matters was even slower in emerging than was cooperation in law enforcement. Once again, it was cooperation in civil matters that evolved first, and in some ways paved the way for cooperation in criminal matters.[7] Extradition and mutual assistance in criminal matters lagged behind. Some work was done on the subject by the League of Nations Committee of Experts for the Progressive Codification of International Law, and a draft convention was prepared in 1928, covering "measures of enquiry", the summoning of witnesses and experts to attend in the requesting State (with immunity from prosecution in respect of earlier conduct), the transfer of persons in custody to appear as witnesses (available only on the basis of reciprocity), and the surrender of exhibits. Assistance could be refused if the relevant offence was not extraditable.[8] The Harvard Draft Convention in 1939 dealt with service of process, obtaining evidence abroad and supply of certain records relating to convictions and to convicted offenders (McClean, ibid.). In respect of extradition, the first multilateral treaty did not emerge until 1933; this was the Convention on Extradition prepared within the framework of the Organization of American States.[9] In respect of mutual assistance in criminal matters, even more years had to pass until a multilateral treaty was drafted: the Convention on Mutual Assistance in Criminal Matters of 1959, prepared within the framework of the Council of Europe.

This is not to say that judicial cooperation did not exist in criminal matters before the 1933 and 1959 treaties. A few bilateral treaties were

[6] Nadelmann notes that today, this third type of cooperation, where law enforcement authorities from two or more countries work directly together on specific cases or types of activities, is increasing. He observes that lower-level officials tend to regard international politics as a hindrance, and that they therefore seek to establish working relationships with foreign colleagues based on a common professional culture and objectives. Ethan A. Nadelmann, in McDonald, op.cit, pp. 107–108.

[7] Many bilateral treaties on the service of process and the taking of evidence abroad were made during the 1800s. At the end of the 1800s, multilateral initiatives emerged. In 1889 and 1890, a Latin American Congress on Private International Law was held in Montevideo. It produced the 1889 Convention on Civil Procedure. Only a few years later, the first permanent intergovernmental structure for progressive unification of the rules of private international law was set up: the Hague Conference on Private Law began regular meetings in 1893. The Hague Conference meets every four years, and brings together official delegations from a wide spectrum of legal systems around the world. It not only develops draft conventions, but follows their implementation and, as needed, updates them. Already in 1894, the Hague Conference produced a draft Convention on Civil Procedure, which was signed one year later. It was this Convention that created the system of central authorities, which supplemented the existing network of consular authorities.

[8] David McClean, International Judicial Assistance, Clarendon, Oxford, 1992, p. 125.

[9] This has subsequently been replaced by the 1981 Inter-American Convention on Extradition.

made already during the 1800s, and in respect of drug trafficking, which has long been the core of transnational organized crime, even multilateral treaties were made at the beginning of the 1900s.[10] The International Opium Convention was completed in 1912, and a second Convention on this subject appeared in 1925. This was followed, in 1931, by the Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs,[11] and in 1953 by the Protocol Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade in, and Use of Opium.

Bringing these multilateral treaties up to the present, the 1961 Single Convention established new mechanisms and obligations. It assigned certain functions to the Commission on Narcotic Drugs and to an International Narcotics Control Board. It also required States to provide annual estimates of drugs used for various purposes, to abide by restrictions on manufacture, production and import, to criminalise the possession, supply and transport of drugs, and make them extraditable offences.

The main drug treaty today is the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which entered into force in 1990. The 1988 Convention calls for criminalisation of a range of criminal offences, including the organisation, management or financing of drug offences, and the laundering of the proceeds (art. 3). If two States have acted in this respect, there should be no problem with the double criminality requirement in extradition. According to article 6, the offences criminalised by the 1988 Convention are by definition extraditable offences, and the convention *itself* can be regarded as providing the necessary legal basis for extradition and mutual assistance. Art. 5 contains provisions on confiscation, art. 7 on

[10] Many countries have long preferred bilateral agreements over multilateral agreements. The advantage of bilateral agreements is that they can be tailored to the specific needs of the two countries in question, and they can be expanded, amended or terminated relatively easily, as required by the situation. Furthermore, the two States will obviously have greater control over the planning, implementation and follow-up of the cooperation.

Multilateral agreements, in turn, require that the States in question commit themselves to certain common rules agreed upon by all the States involved. They are more difficult than bilateral agreements to draft, amend and terminate. The infrastructure that is often required for the implementation of multilateral agreements calls for the investment of resources. At the same time, however, multilateral agreements provide a greater degree of stability to international cooperation. They represent an intention to create lasting institutions based on mutual solidarity and shared responsibilities. Moreover, accession to a multilateral agreement relieves the State of the responsibility for entering into a number of different bilateral agreements, each of which may require different procedures. Finally, the extension of multilateral agreements lessens the possibility that offenders can seek to evade justice by operating in or from, or escaping to, States that are not parties to such agreements. (A list of multilateral treaties on criminal law issues is provided in Bassiouni, M. C., A Draft International Criminal Code and Draft Statute for an International Criminal Tribunal, 1987, pp. 355–475.)

Several countries (in Europe, these include Austria, Finland, Germany and Switzerland) have adopted national legislation on international cooperation, which makes cooperation possible with those countries with which there is no bilateral or multilateral agreement in force.

[11] The 1925 Convention has subsequently been amended many times with protocols.

mutual assistance,[12] art. 8 on the transfer of proceedings, and art. 11 on controlled delivery.

Asides from the topic of drugs, before the United Nations Convention against Transnational Organized Crime (the Palermo Convention) was opened for signature at the end of 2000 there were almost no multilateral treaties that would have defined aspects of organized crime.[13] During the 1970s, in response to a rash of sky-jacking and other hostage-taking, treaties were signed on this topic.[14] In 1980, a Convention was completed on the physical protection of nuclear material, ten years later the Council of Europe completed the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, and in 1996 the Inter-American Convention against Corruption was completed. As this scattered examples show, it has taken a long time for the world to realize the need for agreeing on the rules for international cooperation in responding to transnational organized crime. The Palermo Convention can well be said to represent a significant and welcome change in this respect.

B. Moving On to the Next Stage: The Emergence of International Criminal Policy

Bilateral and multilateral treaties only establish the framework for international cooperation. In many respects, even this framework remains very incomplete. Responding to transnational organized crime requires more than the capacity to extradite fugitives or provide basic mutual legal assistance. During the post-World War II period, countries around the world have shown an increased readiness to go beyond treaties, and seek to agree on a common approach to criminal justice issues—in effect, they are seeking to develop international criminal policy.[15]

One element in this emergence of international criminal policy has been the strengthening of international academic and professional cooperation. The International Penal and Penitentiary Commission was established already in 1846, and began to organize international congresses. The International Association of Penal Law was established in 1924. Many other international academic and professional associations have been established since then.[16] The early work of the United Nations crime prevention and criminal justice programme can be

[12] One notable aspect of the 1988 Convention is that a State Party may not refuse to render mutual legal assistance on the grounds of bank secrecy.

[13] Among the few exceptions are treaties on the slave trade, the trade in women and children, the forgery of currency and terrorism. See Roger Clark (1994), The United Nations Crime Prevention and Criminal Justice Programme. Formulation of Standards and Efforts at Their Implementation. University of Pennsylvania Press 1994, p. 201, fns 10 through 21.

[14] The 1970 Convention for the Suppression of Unlawful Seizure of Aircraft, the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents, and the 1979 International Convention against the Taking of Hostages. In 1988, the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation was completed.

[15] The term "international criminal policy" is used here to refer to the mutual alignment by several countries of their criminal policy. It is not intended to suggest the existence of a supranational body with the authority to establish its own "international criminal policy" independent of the will of sovereign nations.

readily described as being based on a networking of individual academics and professionals, with a focus on research, and gradually also on norms and standards.[17]

Three developments in particular contributed to international alignment of national criminal policy. One, of course, was the practical reality: during the period since the Second World War, cross-border crime has become a practical problem, and countries realised that domestic or unilateral efforts alone were not enough. At the same time, crime was becoming a political issue that forced some countries to reconsider how it should be approached. This was most clearly evident with the case of the United States and its "war on drugs", which focused attention also on the international aspects. The emergence of international terrorism during the 1960s served to enforce this internationalisation of criminal policy.

A second development was the intensifying cooperation among certain neighbouring countries, such as the cooperation among the five Nordic countries (Denmark, Finland, Iceland, Norway and Sweden) and among the three Benelux countries (Belgium, Luxembourg and the Netherlands). The Nordic countries, for example, organized regular meetings among their respective ministers, at which also criminal policy issues were discussed. Cooperation was also close in the drafting of legislation, so close that in 1960, all five countries enacted similar legislation on the extradition of offenders, and in 1963 on the enforcement of sentences. As a result of this and other harmonized legislation, extradition and mutual legal assistance within this group of countries became very simple and effective.

The third and perhaps most important factor leading to the emergence of international criminal policy was the establishment of inter-governmental organisations that provided the framework for the development of such policy. These organisations took various forms.

- the United Nations has already been mentioned. As noted, during its early years the UN crime prevention and criminal justice programme focused more on academic and professional issues. Over the past fifteen years, however, it has become very active in mobilising international cooperation, as shown by the development of several model treaties, and most clearly in the drafting of the United

[16] Among the more widely known such organizations, in addition to the International Association of Penal Law and the International Penal and Penitentiary Foundation, are the Asian Crime Prevention Foundation, the International Criminal Police Organization (Interpol), Amnesty International, Defence for Children International, the Howard League for Penal Reform, the International Association of Juvenile and Family Court Magistrates, the International Commission of Jurists, the International Society for Criminology, the International Society for Social Defence, and Penal Reform International.

[17] Although the delegations at the sessions of the United Nations Committee on Crime Prevention and Control and at the quinquennial Congresses represented Member States, the discussions maintained a strong flavour of intellectual discourse and the exchange of professional experience. It was not until the reform of the structure of the United Nations programme at the beginning of the 1990s that Governments clearly began taking an active interest in the decision-making process. See, for example, Clark (op.cit.), and Manuel Lopez-Rey (1985), A Guide to United Nations Criminal Policy, Cambridge.

Nations Convention against Transnational Organized Crime.[18]

- a second form is represented by the Commonwealth Secretariat (established in 1965), that provides a link among countries that share a similar cultural heritage. Other examples of similar cooperation can be found among the Francophone countries, and between Portugal and Portuguese-speaking African countries.

- a third form is represented by the various intergovernmental organisations for general regional and subregional cooperation, such as the Council of Europe and the European Community (later the European Union), the Economic Community of West African States, the Arab League, the Organisation of African Unity (to be replaced in 2002 by the African Union), the Organisation of American States, and by cooperation among the Southern African countries, and among the Mercosur countries (Argentina, Brazil, Paraguay and Uruguay).

- a fourth form is the organisations that focus on specific issues. These may be interregional, such as the Financial Action Task Force. On the regional level, there are many examples.[19]

The types of cooperation carried out within these structures vary considerably. The main forms include the development of new international agreements, international legal assistance, non-binding recommendations, resolutions and guidelines, and the exchange of information and experience.

Today one can already speak of a problem with a proliferation of actors and agencies in international cooperation in criminal justice: various Government agencies (not always working in harmony even within a country), academics, Interpol, Europol, regional bodies for Africa, Europe and Latin America, the Customs Co-operation Council, the Group of Seven (which established the Financial Action Task Force), the Commonwealth Secretariat, the Organisation of Economic Cooperation and Development, and various bodies with the United Nations. Asides from the practical difficulty of too

[18] Prior to the 1980s, the only significant organized crime issues addressed in the United Nations related to organized crime were trafficking in women, and drugs (see, for example, Lopez-Rey 1985 and Clark 1994). The spread of transnational organized crime, the establishment of the United Nations Commission on Crime Prevention and Criminal Justice, and the model of the 1988 Convention all contributed to the activation of the UN also in this area.

[19] In the Asian and Pacific region, for example, regional cooperation has developed perhaps most strongly among Australia, New Zealand and other South Pacific jurisdictions, for example in the form of the annual Pacific Island Law Offices Meetings. Perhaps the premier recurring theme at these meetings has been law enforcement co-operation and development. Essentially the same group of countries is brought together by the South Pacific Forum on Law Enforcement Cooperation. The heads of government of the South Pacific Forum issued a "Honiara Declaration" in 1992 that dealt with such basic issues as mutual assistance in criminal matters, forfeiture of the proceeds of crime, extradition, the Financial Action Task Force, customs, police and drug issues, and training.
The Asian-African Legal Consultative Committee meets regularly, as does the Asian and Pacific Conferences of Correctional Administrators. The Asian and Pacific Economic Community appears to be taking tentative steps towards including criminal justice-related issues on its agenda.

many meetings, the agencies may end up pursuing different approaches and instruments. Already now, some aspects of existing treaties (especially in relation to the proceeds of crime) are technically difficult for the legislator and the court. Multiplying them could well increase these difficulties.

III. THE DYNAMICS OF INTERNATIONAL COOPERATION IN CRIME PREVENTION AND CRIMINAL JUSTICE

Section II above has outlined some of the historical development of international cooperation in crime prevention and criminal justice. It is time to put some flesh on the bones, and look at how the system works in practice. This will be done by presenting five trends, with special reference to the need to respond to transnational organized crime:

- international cooperation is strengthening with increasing rapidity
- the intensity of international cooperation varies, and we are increasingly seeing the emergence of small groups of "fast track" countries, among which cooperation is developing very rapidly
- international cooperation is becoming formalised and "deeper", with "soft" resolutions and recommendations being increasingly supplemented by treaties and joint decisions
- international cooperation is developing from an ad hoc (thematic) focus on individual offence categories or issues, to a more general international criminal policy
- international cooperation is becoming increasingly politicised.

A. International Cooperation is Strengthening with Increasing Rapidity

The first trend is clear enough: international cooperation has strengthened, and is doing so with increasing rapidity.

This can be seen on a number of levels:

- the increase in arrangements for informal cooperation between individual agencies, including the establishment of formal and informal networks;
- the growing mesh of liaison officers around the world; [20]
- the growing interest in the exchange of information in different fora;
- the increase in the number of international cooperation projects;
- the increase in the number of offenders extradited;

[20] The United States has been the most active in sending out liaison officers and legal attaches. On the European experience with liaison officers, see for example Malcolm Anderson and Monica Den Boer (eds.), Policing Across National Boundaries, London 1994.
The magnitude of this work can be seen for example in the fact that the United States Drug Enforcement Administration alone has some two hundred agents stationed abroad. Another example is that the United States Embassy in Rome has forty persons working full-time on operational cooperation in criminal justice related matters; many of them have a regional mandate.
The five Scandinavian countries have developed a unique form of cooperation: their police authorities have established a joint network of liaison officers in Austria, Cyprus, Germany, Greece, Hungary, Italy, the Netherlands, Pakistan, Poland, Spain, Thailand, Turkey and the United Kingdom. Information collected by these liaison officers is then shared directly with their colleagues back home in all five Scandinavian countries.

- the increase in the number of requests for mutual legal assistance, and so on.

Mere expansion of activity, of course, is no measure of its effectiveness. Much operational cooperation remains frustrating and bureaucratic, with for example requests for assistance often not leading to the desired results. Similarly, much cooperation in institution-building is of doubtful effectiveness for a number of reasons: the projects are poorly planned and implemented, there is needless overlap with other projects, little or no attention is devoted to follow-up, and so on.[21]

Nonetheless, the growth in the amount of activity reflects the growing concern over crime, and the increasing hopes being placed on the capacity of international cooperation to help in providing a suitable response.

B. The Emergence of Groups of "Fast Track" Countries

As a general rule of thumb, the wider the geographical scope, the looser the cooperation in crime prevention and criminal justice.

At one extreme, the United Nations includes some 190 member States, and has traditionally worked on the basis of consensus—something which has proven to be difficult to achieve in respect of such contentious criminal justice issues as the use of capital punishment, the use of mutual evaluation or the establishment of joint investigative teams.

At the other extreme, as already noted, bilateral forms of cooperation have constituted and will doubtless continue to constitute the mainstay of international cooperation in crime prevention and criminal justice.

Somewhere between the globality of the United Nations on one hand and bilateral cooperation on the other is regional cooperation. For example the Council of Europe is a much smaller entity than the United Nations, and has arguably had considerably more impact on the development of the criminal policy of its member States. When established in 1949, it brought together ten Western European countries which—despite the differences between the Germanic, French and common law legal systems and certain other differences in criminal justice—shared fundamental values and goals.

The Council of Europe has been expanding at a rapid rate. From ten original members in 1949, it grew to 21 Member States ten years ago, to 43 Member States today. This expansion has been largely towards the East, with the Russian Federation the most significant new member (January 1996). In joining, the new Member States have implicitly and expressly endorsed the same values and goals.

An even smaller unit, the European Union with its fifteen members at present has also been expanding. Currently, discussions are underway with twelve countries on their applications for membership in the European Union,[22] and the possibility exists that some may

[21] See, for example, Matti Joutsen, International Cooperation. The Development of Crime Prevention and Criminal Justice in Central and Eastern Europe. HEUNI Papers no. 2, Helsinki 1994.

[22] Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia. Negotiations are at an earlier stage with Turkey.

become members in 2003 or 2004. Within the EU, in turn, there are even smaller units of more intensive integration, and again these are expanding. For example, the current parties to what are known as the Schengen accords are Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Spain and Sweden.[23] The Schengen accord countries have agreed among themselves on such highly developed forms of cooperation and hot pursuit across borders, trans-border surveillance (i.e. surveillance carried out by law enforcement officers in the territory of another state) and controlled delivery (following the international delivery of, e.g., narcotics in order to ascertain the source and the destination). Perhaps even more importantly in the electronic age, law enforcement and border authorities in the Schengen countries share certain information systems.

Continuing with the example of the European Union, one of the current fashionable terms is "flexibility" in decision-making. In a speech given in June 2000 in Berlin, Mr. Jacques Chirac, the President of France, suggested that a new "pioneering group", self-evidently led by France and Germany, would henceforth guide developments in the European Union. Other countries might "join forces" with France and Germany in such a group.[24] He suggested that flexibility would allow groups of countries to go ahead with new projects and institutions whether the countries left outside those ventures liked it or not. And if flexibility was not enough, said Mr. Chirac, France and Germany should co-operate outside the framework of the EU treaties entirely.

The conclusion here is that there is an obvious need for more intensive cooperation in crime prevention and criminal justice. If this cannot be achieved within a larger entity, smaller groups of countries with the greatest interest in cooperation may well form a sub-group that moves onto the fast track. Others, realising the benefits being achieved, may soon seek to join this smaller group—but this at the same time may complicate the problems involved in finding a common approach.

C. "Soft" Resolutions and Recommendations are Being Increasingly Supplemented with Treaties and Joint Decisions

Reference has already been made to the fact that cooperation in criminal justice usually begins with law enforcement, and only then expands to include judicial cooperation. Law enforcement cooperation tends to be based on direct contacts and a pragmatic approach, while judicial cooperation often requires a legal framework. For this reason, one trend in international cooperation is towards formalisation.

This trend towards formalisation appears for example in the increasing use made of treaties and binding decisions. As has been noted, up until recently, relatively few multilateral treaties have been signed in the crime prevention and

[23] Although Norway and Iceland are not members of the European Union, they are involved in Schengen cooperation. This is due to the fact that they, together with three EU members (Denmark, Finland and Sweden), form a passport-free zone of their own.

[24] Mr. Chirac did not refer to any other country by name in this connection, just as he did not refer to the Commission. Past experience suggests that Belgium, Luxembourg, Italy and the Netherlands might wish to associate themselves with such a group.

criminal justice field, and only a few countries have been active in drafting bilateral treaties. As a result, intergovernmental cooperation has long relied almost solely on "soft" resolutions and recommendations, in which states are merely requested to adopt certain policies. For example the United Nations has produced a large number of non-binding statements of principles in the form of resolutions, recommendations, declarations, guidelines, and standards and norms.[25] Also other intergovernmental and even non-governmental organizations have produced statements of principles which are designed to guide the work of their membership, but which have no binding effect.

It is true that even "soft," non-binding instruments can be influential. For example the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations have clearly guided national practice in corrections and, in several cases, helped bring about legal reform. However, states have traditionally been quite protective of their sovereignty in this field, as can be seen in the protracted negotiations that are required when such instruments are being drafted or when there is discussion of possible monitoring of the implementation of these instruments.[26] As a result, the wording in resolutions and recommendations tends to allow different interpretations of how they should be applied.

Today, "soft" resolutions and recommendations continue to be produced, but there has been a clear increase in the drafting of "hard" bilateral and multilateral treaties world-wide. On the regional level, several multilateral treaties have been prepared for example in Europe and in Latin America. On the global level, the United Nations 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances was a decisive step in this direction. One of the weaknesses with most multilateral agreements has been that they have been offence-specific, and have presumed (often, incorrectly) the prior existence of workable arrangements for extradition and mutual assistance. The 1988 Convention was innovative in including provisions on, for example, extradition and mutual assistance. As a result, the Convention has proven to be workable. It has, for example, contributed to the relatively rapid spread of the criminalisation of money laundering, and to the revision of legislation on the forfeiture of the proceeds of crime.

The 1988 Convention was followed by the United Nations Convention against Transnational Organized Crime. Reference should also be made to the model treaties prepared by the United Nations, on extradition, mutual assistance, the transfer of proceedings in criminal matters, the transfer of foreign prisoners, and the transfer of supervision of offenders conditionally sentenced or conditionally released. Currently, work has begun on a United Nations convention against corruption.

[25] For an analysis of the legal nature of United Nations instruments, see Clark 1994, pp. 141–144 and passim.

[26] Discussions on the monitoring of the implementation of standards and norms have often run up against different understandings of what exactly "monitoring" involves. Currently the preference is to use different terminology. The Secretary-General of the United Nations does not "monitor implementation" of standards and norms, but for example "promotes their use and application". See, for example, Clark 1994, pp. 229 ff.

A parallel development—one that is so far limited to some parts of the world—has been the development of new mechanisms to ensure the effective implementation of treaty obligations related to criminal justice. One model has been the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms, prepared by the Council of Europe. Acceptance by signatory states of the jurisdiction of the European Court of Human Rights means that even individual citizens can turn ultimately to the Court when they believe that their human rights (as defined by the Convention) have been violated. Since this provides considerable protection against such violations, the various articles of the European Convention on Human Rights have clearly affected national legislation and practice in criminal procedure, for example on issues related to torture or to inhuman or degrading penalties or treatment (art. 3); conditions of arrest and charges, transfer before a magistrate and right to recourse (art. 5), the right to a fair trial (art. 6), and the legality of punishment (art. 7).[27]

The tenor of international cooperation changed once again in Europe with the 1992 Maastricht Treaty, by which the European Communities metamorphosed into the European Union, and by the 1997 Treaty of Amsterdam. Having previously focused more on economic integration, the member states of the European Communities realised that also home and justice affairs must be placed on the agenda for European integration.

Accordingly, home and justice issues form what is called the "third pillar" of the European Union.[28] In areas defined as being of "common interest," the European Council may adopt framework decisions and joint positions, and draw up conventions. Once a framework decision has been adopted, member states are required to amend their laws and practice to bring these into line.[29] Once the European Union has adopted a joint position, member states are required to abide by it in international organisations and at the international conferences they attend. This means that even in respect of contacts with non-member states, EU members must "toe the line" adopted on an international level.

Overall, "soft" methods of cooperation will remain an important element of international criminal policy. These allow individual states considerable leeway to decide on how best to realise the goals set in the resolutions or recommendations. However, in particular the response to

[27] The European Convention on Human Rights has also had an impact on the use of capital punishment (protocol no. 6 from 1983, and the possibility allowed under the 1957 European Convention on Extradition to refuse extradition if the requesting country could impose the death penalty).

[28] In EU jargon, the "first pillar" is essentially economic cooperation through the original European Communities, the second is foreign relations and security, and the third is home and justice issues.

[29] One example of obligations on member states in respect of criminal justice relates to Community law. The European Court of Justice has found that Member States have an obligation to act against violations of Community law as if these were violations of national law (Commission v Greece, ECR 1979, p. 2965). In Germany v. Commission C-240/90, the Court ruled that the European Community has the authority to require that a Member State enact appropriate sanctions against violations of Community law. Note, however, that this is an indirect obligation: Community law cannot directly change the criminal law of a Member State. Any amendments or reforms would have to be made by the Member State through domestic legislation.

transnational organized crime is requiring "harder" methods, and at least in Europe states are agreeing to relinquish part of their sovereignty to this end. Although no other regions have intergovernmental political entities comparable with the European Union, the "European model" may point the way to multilateral development also elsewhere.

D. From an *Ad Hoc* Focus to a More General International Criminal Policy

The traditional pattern in international cooperation in this field has been for states that find that they share a common concern to agree among themselves, on a case-by-case basis, on the appropriate mechanism and response. The existing international treaties that deal for example with criminal justice issues have all been signed by quite different sets of states.

Such a case-by-case approach has undeniable benefits, in that the states can focus on a specific issue and find the appropriate response. It nonetheless does not promote a more integrated and long-term policy in international cooperation. Theoretically, each state, as it were, continues to act entirely on its own, without any reference to the interests of other states in crime prevention and criminal policy.

The alternative would be for groups of states to agree on certain priority issues, and develop an integrated strategy for dealing with these issues.

The Council of Europe has been a forerunner in this. The Council has regularly organized meetings on European criminal policy, and its Committee on Crime Problems has offered a forum for discussion on further action.

More recently, also the European Union has been identifying priority areas. In June 1997, the European Union adopted a "Plan of Action" to combat organized crime. This plan of action was drawn up following discussions about what types of measures in general were needed to respond to organized crime nationally and internationally. In effect, the 1997 decision embodied an agreed-upon international criminal policy. Moreover, instead of being presented as a resolution, recommendation or declaration that have so often been adopted in other fora, regrettably often with little practical impact, the European Union decided on specific action, with a clear division of responsibilities, a clear timetable and a mechanism for implementing the action plan. The strong consensus reached by Member States on the 1997 Plan of Action helped to create the political and professional climate required on both the EU level and the national level to take and implement the necessary decisions.[30] In the year 2000, the Plan of Action was replaced by a new integrated EU strategy to prevent and control organized crime, "The Prevention and Control of Organized Crime: A European Union Strategy for the beginning of the new Millennium."

The shift from an *ad hoc* approach to attempts to formulate a more coherent and general international criminal policy can also be seen in the work of the United Nations. Formerly, there was little

[30] The model for this was taken from the "European Plan against Narcotics" adopted by the European Union in December 1990, and updated several times since then, most recently in December 2000, when a strategy was adopted for the years 2000–2004.

evidence of an over-all strategy in the work of the United Nations Committee on Crime Prevention and Control. Although the Committee dealt with a large number of important issues, this was almost invariably done on a piece-meal basis.

At the beginning of the 1990s, two developments took place that ensured that organized crime would become a central issue in the United Nations crime prevention and criminal justice programme, and that a strong attempt would be made to move from an *ad hoc* approach to the setting of policy.

The first development was that the structure of the United Nations Programme was reformed. The 27-member Committee on Crime Prevention and Control, which consisted of individual experts, was replaced by a 40-member Commission on Crime Prevention and Criminal Justice. These members were Member States. The reform also called for the setting of priorities in the programme.

At its second session in 1993, the United Nations Commission decided on the priority themes for the United Nations crime prevention and criminal justice programme. Organized crime was identified as part of one of three priority themes. The formulation of this priority theme is "national and transnational crime, including organized crime, economic crime (including money laundering), and the role of criminal law in the protection of the environment".[31]

The second development was a series of three meetings, culminating in a major conference at the end of 1994. First, an expert group meeting was held in Bratislava (Czech and Slovak Federal Republic) in 1991. The meeting developed a set of fifteen recommendations on "strategies to deal with transnational crime". Only five months later, a seminar, co-organized by HEUNI, was held in Suzdal, Russian Federation. This international seminar brought together leading law enforcement officers and experts from fifteen countries. The seminar prepared a report which sought to describe the profile of organized criminal groups, and went on to provide a large number of recommendations on substantive legislation, procedural legislation, law enforcement methods, organisational structures, international cooperation, and evaluation. Both sets of recommendations were forwarded to the newly established United Nations Commission. The Commission annexed the two sets to a brief resolution on organized crime, which was subsequently adopted by the Economic and Social Council.[32]

The third and most important meeting was the World Ministerial Conference on Organized Transnational Crime, held in Naples, Italy on 21–23 November 1994. Delegations from 142 countries agreed on the broad outlines of cooperation in the prevention and control of organized transnational crime. The agreement was

[31] The other two priority themes are (ii) crime prevention in urban areas, juvenile and violent crime; and (iii) efficiency, fairness and improvement in the management and administration of criminal justice and related systems with due emphasis on the strengthening of national capacities in developing countries for the regular collection, collation, analysis and utilisation of data in the development and implementation of appropriate policies.

[32] E/CN.15/1992/7, draft resolution II. The Commission also adopted a resolution entitled "Control of the Proceeds of Crime", which in general called on Member States and the Secretary-General to take action to prevent and control money laundering; ibid, resolution 1/2.

embodied in a draft resolution for the General Assembly entitled "Naples Political Declaration and Global Action Plan against Organized Transnational Crime." This was approved by the General Assembly by its resolution 49/159.

The Naples Political Declaration consists of ten paragraphs that express the intention of the countries represented at the Conference to join forces to develop co-ordinated strategies and other forms of international cooperation. Special reference was made to the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. States which had not yet done so were urged to become parties to this Convention, and to fully implement it as well as other relevant existing agreements.

The same document also expresses the wish of the participants to strengthen international cooperation, in particular in relation to closer alignment of legislation on organized crime, operational cooperation in investigation, prosecution and judicial activity, the establishment of modalities and basic principles for regional and global cooperation, the elaboration of international agreements, and measures and strategies to prevent and control money-laundering.

The Global Action Plan consists of seven sections:

a. the definition and description of transnational organized crime,
b. specific issues in national legislation and guidelines,
c. operational cooperation,
d. regional and international cooperation,
e. the feasibility of international instruments on organized transnational crime,
f. the prevention and control of money-laundering, and
g. follow-up and implementation.

The Naples Political Declaration and the Global Action Plan led, in time, to the United Nations Convention against Transnational Organized Crime, and thus their significance has to a large extent been overtaken by events. Even so, they, together with the Vienna Declaration adopted at the Tenth United Nations Congress in the year 2000, are further illustrations of the trend towards adopting broad statements on international policy regarding criminal justice issues.

E. International Cooperation is Becoming Increasingly Politicised

Although all states are undoubtedly agreed on the necessity of determining priorities and establishing policy, this process has not run smoothly. Different states will continue to have different priorities. Furthermore, if too many "priority issues" are accepted into a programme, or if these priority issues are defined too broadly, they do not assist decision-making on the national or international level.

These difficulties are clearly perceptible in the work of the United Nations. One of the fundamental reasons for restructuring the United Nations Crime Prevention and Criminal Justice Programme was that the Programme had become inundated with a large number of mandates, and the Secretariat as well as the other implementing bodies had not been provided with the resources required to implement anywhere near all of these mandates.

The four trends in international cooperation described above—the increasing rapidity of its strengthening, the development of groups of "fast track" countries, the supplanting of "soft" forms of cooperation with treaties, and the shift towards the formulation of a more general international criminal policy—are all in themselves welcome features. It is the fifth trend—the increasing politicisation of international cooperation—that raises questions.

Furthermore, the politicisation of international criminal policy (a process which is perceptible at least in the work of the United Nations Commission, but also for example in the European Union) raises the spectre that international criminal justice forums will be used as a tool in national and international politics. One illustration of this danger can be taken from the recent global debate over money laundering. In July 2000, the Financial Action Task Force on Money Laundering published a so-called "blacklist" of 15 jurisdictions that, in its view, had not been sufficiently co-operative in preventing and controlling money laundering.[33] Since the blacklist appeared, many if not all of these jurisdictions have been more active in, for example, reforming their legislation and filing suspicious activity reports (SARs). Some, however, have regarded this public blacklisting and the related measures as a violation of their sovereignty, and as an attempt to steer their economy, to the advantage of the wealthier FATF members.

The negotiations over the United Nations Convention against Transnational Organized Crime provided a few examples of the politicisation of international criminal policy. Among these were the debate over whether or not to include a specific reference to the recommendations adopted by the FATF,[34] how to address the interrelationship between terrorism and organized crime,[35] how to deal with the issue of sovereignty,[36] and whether or not a mechanism should be created to monitor

[33] FATF updated the list in June 2001. It now includes Cook Islands, Dominica, Egypt, Guatemala, Hungary, Indonesia, Israel, Lebanon, Marshall Islands, Myanmar, Nauru, Nigeria, Niue, Philippines, the Russian Federation, St. Kitts and Nevis, and St. Vincent and the Grenadines.

[34] The solution adopted was to delete references to the FATF resolutions or any other resolutions, and refer only to using as a guideline "the relevant initiatives of regional, interregional and multilateral organizations against money laundering". References to FATF as well as to several other regional organizations were inserted into the *travaux preparatoires*.

[35] The issues involved here are complex. Essentially, several States are convinced that terrorism is one form, and indeed a particularly dangerous form, of organized crime. The majority of States, however, were of the view that a distinction should be made between terrorism and organized crime, not least because including terrorism in the scope of the Convention would raise vexatious political problems with the definition. The view of the majority was that terrorism ultimately had political aims, while organized crime had material aims. Having said that, it was explicitly recognized that terrorists may commit acts (such as murder, arson, extortion and robbery) to which the Convention would clearly apply.

[36] One source of tension in the discussions was the concern of some States that, when transnational organized crime is at issue, some States may engage in actions that violate the sovereignty of other States. This concern was raised, for example, when speaking about joint investigations (art. 19) and special investigative techniques (art. 20). The issue was resolved by including in the Convention a separate article entitled "Protection of sovereignty".

implementation of the treaty obligations.[37]

IV. CONCLUSIONS

Crime has evolved considerably over the past few years. Economic, social and political factors have contributed to changes in the amount and structure of crime. Theories that are based on the concept of a weakening of self-control and on the opportunity for crime help us to understand what has happened.

The background factors—economic integration, political and economic reforms, wide-spread wars and civil disturbances, and demographic changes—are factors that either cannot be changed (or will not be changed solely) in the interest of crime prevention. For example, although economic integration leads to a greater opportunity for economic crime, this is the cost we seem to be prepared to pay for a higher standard of living. And although there are loud calls in many countries for a return to the "good old days" before economic and political reform, such reform will presumably not be halted—and certainly not on the grounds that the process appears to increase the amount of crime.

The *effects* of these changes on crime and the control of crime, however, can be influenced in order to lessen the amount and seriousness of crime, and provide a fair allocation of the costs of crime and of crime control. The strengthening fear of crime in many countries, fanned by the media and by political rhetoric, calls for attention—in particular since this fear is influenced by false or misleading information, and the rhetoric may lead to counterproductive policy decisions, or at worse, to the spread of hate crimes.

Many states are responding to their national crime problem by reviewing the effectiveness of their criminal policy and by setting up a variety of crime prevention councils and projects. Because of the growing ties between countries, it is not surprising that information on successful initiatives is spreading internationally. Although each country's situation is unique, and projects that have worked elsewhere can rarely be transplanted as such, they can lead to modified approaches that are successful in this different environment.

The response to the international aspects of crime has also been notable. International cooperation is broadening and strengthening to the extent that, in such areas as drug trafficking and organized crime, we can speak of broad agreement on the general goals. However, even with such regional initiatives (in Europe) as the Council of Europe, Schengen, Maastricht and Europol, we are a long way from developing a truly international crime policy, much less an international criminal justice system. The different states will continue to have different views of the general role of criminal law in society. Integration can help the different states in responding to their crime problems, but it can never replace national and local action.

[37] For example European Union countries advocated the inclusion in the Convention of arrangements for mutual evaluation. According to this system, international experts assess how well the authorities of a State are implementing their responsibilities. Several States were sceptical of such a system, for example on the grounds that it amounted to interference with State sovereignty. Ultimately, the reference was modified to a rather vague "information provided … through such supplemental review mechanisms as may be established by the Conference of the Parties."

INTERNATIONAL COOPERATION AGAINST TRANSNATIONAL ORGANIZED CRIME: EXTRADITION AND MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

*Matti Joutsen**

I. EXTRADITION AND MUTUAL LEGAL ASSISTANCE: THE BASIC TOOLS OF INTERNATIONAL COOPERATION IN CRIMINAL MATTERS

Investigating and prosecuting cases against persons suspected of participation in organized crime is often notoriously difficult. It is all the more difficult to try to bring a case together when the suspect, the victim, key evidence, key witnesses, key expertise or the profits of crime are located outside one's jurisdiction. Dealing with such cases can be so daunting that the file may be placed aside and "forgotten", perhaps with the fervent hope that the authorities in other countries will take up the matter.

This, of course, is what organized criminals acting across international borders very much hope will happen. By fleeing to another country and in particular by sending the profits from crime beyond the reach of the domestic authorities, offenders seek to frustrate the purposes of law enforcement. If law enforcement remains passive in the face of transnational crime, this will only encourage offenders to continue to commit crime. For the investigator and prosecutor confronted with modern organized crime, relying on international cooperation has become a necessity, and extradition and mutual legal assistance in criminal matters have become two key tools.[1]

Extradition and mutual legal assistance, however, are not tools that can simply be taken down from the shelf. The legal basis (whether treaty or legislation) must exist, the practitioners must know how (and if) this basis can be applied to the case at hand, and above all the practitioners in both the requesting and requested country must be able to work together to achieve the desired result.

Furthermore, as tools, extradition and mutual legal assistance can take many different forms. The possibilities depend not only on the existence, age and contents of a valid international agreement, but also, for example, on the type of offence and on the legislation and practice in a country. The new United Nations Convention against Transnational Organized Crime (the "Palermo Convention") is a case in point. It does, indeed, set out detailed provisions on how extradition and mutual legal assistance should be provided. In many ways, it has expanded the possibilities available. However, these possibilities must first be implemented in domestic law and practice.

This presentation looks at the extent to which the new Palermo Convention can

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[1] The terms mutual assistance, mutual legal assistance and mutual assistance in criminal matters are often used interchangeably.

improve the basic tools available to the practitioner. Even though the focus is on extradition and mutual legal assistance, the Palermo Convention also requires States Parties to make other major changes that can facilitate international cooperation. Examples of this are the criminalisation of four specific offences, provisions on joint investigations, special investigative techniques, protection of victims and witnesses, improving the readiness of suspects to cooperate with law enforcement authorities, cooperation among law enforcement authorities themselves, confiscation and seizure, the transfer of proceedings and the transfer of sentenced persons, the collection, exchange and analysis of information on organized crime, and training and technical assistance. As noted by Mr. Kofi Annan, the Secretary-General of the United Nations, the Palermo Convention is a milestone in the fight against Transnational Organized Crime. He emphasised that "we can only thwart international criminals through international cooperation." It is the Palermo Convention that provides a strong framework for this cooperation.

II. EXTRADITION

A. The Evolution of the Extradition of Offenders

Extradition is the process by which a person charged with an offence is forcibly transferred to a state for trial, or a person convicted of an offence is forcibly returned for the enforcement of punishment (see, for example, Third Restatement, pp. 556–557).

For a long time, no provisions or international treaties existed on the conditions for extradition or on the procedure which should be followed. Extradition was largely a matter of either courtesy or subservience, applied in the rare cases where not only did a case have international dimensions, but also the requesting and the requested states were prepared to cooperate. In short, extradition was rarely required, even more rarely requested, and even more rarely still granted.

In the absence of effective treaties on extradition and on mutual legal assistance, some States have engaged in unilateral actions. This, however, is a violation of international law. According to universally accepted and well-established principles, states enjoy sovereign equality and territorial integrity. States should not intervene in the domestic affairs of other states. In particular,

> *"a party has no right to undertake law enforcement action in the territory of another party without the prior consent of that party. The principle of non-intervention excludes all kinds of territorial encroachment, including temporary or limited operations (so-called "in-and-out operations"). It also prohibits the exertion of pressure in a manner inconsistent with international law in order to obtain from a party "the subordination of the exercise of its sovereign rights" (Commentary to the 1988 Convention, para. 2.17).*[2]

[2] The Commentary cites as authority the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV), annex), and the principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, contained in para. 2 of the Charter.

The principles of sovereign equality, territorial equality and non-intervention in the domestic affairs of other States are explicitly noted in art. 4(1) of the Palermo Convention. To further clarify the point, art. 4(2) of the Palermo Convention states specifically that "Nothing in this Convention entitles a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law."

Bilateral extradition treaties did not begin to emerge until the 1800s. In particular the common law countries and the (former) USSR have made wide use of bilateral treaties. The first multilateral convention was the Organization of American States Convention on Extradition in 1933.[3] It was followed twenty years later by the Arab Extradition Agreement in 1952, and then by the influential European Convention on Extradition in 1957 and the 1966 Commonwealth scheme for the rendition of fugitives.[4] The most recent multilateral treaties have been the 1995 European Union Convention on simplified extradition within the European Union, and the 1996 European Union Convention on the substantive requirements for extradition within the European Union.

In order to promote new extradition treaties and to provide guidance in their drafting, the United Nations prepared a Model Treaty on Extradition (GA resolution 45/116 of 14 December 1990).

[3] This has subsequently been replaced by the 1981 Inter-American Convention on Extradition.

[4] As amended in 1990. The Commonwealth scheme, although not a formal treaty, has been unanimously approved by all members of the Commonwealth.

In addition to these general treaties on extradition, provisions on extradition have also been included in several international conventions that deal with specific subjects. Perhaps the best-known example is the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; the twelve paragraphs of article 6 deal with extradition. Article 16 of the Palermo Convention was largely drafted on the basis of this 1988 Convention.

B. The Conditions for Extradition

Among the common conditions included in agreements are the double criminality requirement (generally accompanied by the definition of the level of seriousness required of the offence before a State will extradite), a refusal to extradite nationals, and the political offence exception.

1. The Principle of Double Criminality (Dual Criminality)

The great majority of extradition treaties require that the offence in question be criminal in both the requesting and the requested State, and often also that it is subject to a certain minimum punishment, such as imprisonment for at least one year.[5] Even where a State allows extradition in the absence of an extradition treaty, this principle of double criminality is generally applied.[6]

[5] The Palermo Convention does not directly stipulate a certain minimum punishment as a condition for extradition, since art. 16(1) provides only that the article applies to extradition for the offences covered by the Convention. However, the entire Convention is drafted to cover serious crime, which is defined by article 2 as "conduct constituting a criminal offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty".

The double criminality principle may cause legal and practical difficulties. Legal difficulties may arise if the requested State expects more or less similar wording of the provisions, which is often an unrealistic expectation in particular if the two States represent different legal traditions. Practical difficulties may arise when the requesting State seeks to ascertain how the offence in question is defined in the requested State.

Double criminality can be assessed both in the abstract and in the concrete. *In abstracto*, what is required is that the offence is deemed to constitute a punishable offence in the requested State. *In concreto*, only if the constituent elements of the offence in both States correspond with each other will the offence be deemed extraditable.

The United Nations Model Treaty on Extradition clearly favours the simpler approach, an assessment *in abstracto*. According to article 2(2)(a), "In determining whether an offence is an offence punishable under the laws of both Parties, it shall not matter whether ... the laws of the Parties place the acts or omissions constituting the offence within the same category of offence or denominate the offence by the same terminology."

An example from Finland cited by Korhonen[7] is that during the summer of 2000, the Ministry of Justice of Finland was informed that a former high Kremlin official who is wanted by the Swiss for money laundering offences had been granted a visa to Finland. The Finnish authorities were prepared to take him into custody pending a formal request for his extradition. The suspected money laundering offence related to the taking of bribes in Moscow from Swiss construction companies in return for granting them lucrative contracts in the renovation of the Kremlin, and to the depositing of the money in Swiss banks. The problem faced in Finland is that he was suspected of laundering the proceeds of his own crime, which is not separately punishable according to Finnish law. On the basis of the *in concreto* approach, Finland would have had to turn down a possible Swiss request for extradition.

On the other hand, the Finnish authorities could take into account all of the facts that were provided in the Swiss warrant of arrest. Clearly, some offence which was punishable also according to Finnish law had been (allegedly) committed in the Russian Federation. Since those facts were included in the Swiss warrant, which implied that the Swiss had considered them in issuing the warrant, the Finnish authorities concluded that double criminality had been sufficiently established *in abstracto*. (Ultimately, the Finnish authorities did not have to take any more action, since the person in question never showed up in Finland.)

The question may also arise as to whether double criminality should be assessed at the time of the commission of the offence, or at the time of the request for extradition. This problem arose in a recent and notorious case in the United Kingdom, where the House of Lords rejected most of the Spanish claim for the surrender of the former head of Chile, General Augusto Pinochet, on the

[6] See, for example, article 15(1) of the Palermo Convention.

[7] Juhani Korhonen, Extradition in Europe, paper prepared for the Phare Horizontal Project for Developing Judicial Cooperation in Criminal Matters in Estonia, Latvia and Lithuania, November 2000.

grounds that his alleged offences had not been criminalised in the United Kingdom at the time of their commission (Korhonen, p. 4). (Ultimately, Jack Straw, the UK Home Secretary, decided that Pinochet was not fit to stand trial and therefore would not be extradited to Spain. Pinochet thereupon returned to Chile.)

Yet another special problem in the application of the principle of double criminality is if the law of the requesting State allows extraterritorial jurisdiction for the offence in question, but the law of the requested State does not.[8] This is included as an optional ground for refusal in art. 4(e) of the UN Model Treaty on Extradition.

Finally, in practice it is possible that extradition is sought for several separate offences, and some of these do not fulfil the conditions of double criminality. The general rule expressed in art. 2(4) of the UN Model Treaty on Extradition and art. 2(2) of the Council of Europe Extradition Convention is that the offences in question must be criminal in both countries; however, the condition of the minimum punishment can be waived for some of the offences. Thus, for example, if extradition is sought for a bank robbery as well as for several less serious offences for which the minimum punishment would not otherwise meet the conditions for extradition, all of them can nonetheless be included in the request.

The corresponding provisions of the Palermo Convention are constructed somewhat differently. Art. 16(1) lays down the basic rule that extradition is possible only where the offence in question is punishable under the domestic laws of both States. Art. 16(2) states that as long as the request refers to at least one offence that is extraditable under the Convention, the requested State may grant extradition for *all* of the serious offences covered in the request. The purpose of art. 16(2) is two-fold. It limits extradition only to serious offences. At the same time, however, it allows extradition also for additional offences where these do not as such (necessarily) involve an organized criminal group.

Recent trends in extradition have attempted to ease difficulties with double criminality by inserting general provisions into agreements, either listing acts and requiring only that they be punished as crimes or offences by the laws of both States, or simply allowing extradition for any conduct criminalised to a certain degree by each State (Blakesley and Lagodny, pp. 87–88).

2. The Rule of Speciality

The requesting State must not, without the consent of the requested State, try or punish the suspect for an offence not referred to in the extradition request and committed before he or she was extradited.[9]

This rule does not prevent an amendment of the charges, if the facts of the case warrant a reassessment of the charges. For example, even if a person has been extradited for fraud, he or she may be prosecuted for embezzlement as

[8] Blakesley, Christopher and Otto Lagodny (1992), Competing National Laws: Network or Jungle?, in Eser, Albin and Otto Lagodny (eds.) (1992), Principles and Procedures for a New Transnational Criminal Law. Documentation of an International Workshop 1991. Beitrage und Materialien aus dem Max-Planck-Institut fur auslandisches und internationales Strafrecht, Freiburg im Breisgau, pp. 47–100, at 88–98.

[9] See, for example, art. 14 of the UN Model Treaty on Extradition.

long as the facts of the case are the ones referred to in the request for extradition.

The rule of speciality is universally accepted, but in practice it does not automatically rule out all possibilities of bringing an offender to justice even for offences not referred to in the request. This, however, would require separate consent from the authorities of the requested State (Korhonen, p. 8). Let us assume that the suspect has been extradited, and in the course of the proceedings it is found that he or she has apparently committed another offence not referred to in the extradition request. Since the fugitive is already in custody in the requesting State, the authorities usually have the time to submit a supplementary request to the State from which the fugitive was extradited, requesting permission to proceed also in respect of these newly uncovered offences. Such supplementary requests must usually be accompanied by a warrant of arrest. It should be clear, on the other hand, that the authorities should not deliberately delay the initial proceedings in anticipation of receiving consent to the bringing of the new charges.

If, following extradition, the person in question is released in the territory of the requesting State, he or she may not be prosecuted for an offence that had been committed before the extradition took place until after this person has had a reasonable opportunity to depart from this State.[10]

3. The Non-Extradition of Nationals

As a rule, States have long been willing to extradite nationals of the requesting State, or nationals of a third State. When it comes to extraditing their own citizens, however, most States have traditionally been of the opinion that such extradition is not possible. Some States have even incorporated such a prohibition into their Constitution. Furthermore, the principle of the non-extradition of nationals is often expressly provided for in treaties. The rationale for such a view is a mixture of the obligation of a State to protect its citizens, a lack of confidence in the fairness of foreign legal proceedings, the many disadvantages that defendants face when defending themselves in a foreign legal system, and the many disadvantages of being in custody in a foreign country.[11]

The United States, the United Kingdom and most other common law countries, in turn, have been prepared to extradite their own nationals. This may have been due in part to the fact that these States have been less likely than for example civil law countries to assert jurisdiction over offences committed by their citizens abroad—and thus, failing extradition, the offender could not have been brought to justice at all. The common law countries have also been aware of the advantages of trying the suspect in the place where the offence was alleged to have been committed. There is, for example, the greater ease with which evidence and testimony can be obtained in the *forum delicti*, and the difficulties in submitting evidence obtained in one country to the courts of another country.

In cases where the requested State does in fact refuse to extradite on the grounds that the fugitive is its own

[10] See, for example, art. 14(3) of the UN Model Treaty on Extradition.

[11] Ethan A. Nadelmann, Cops Across Borders. The Internationalization of U.S. Criminal Law Enforcement, The Pennsylvania State University Press, University Park, Pennsylvania, 1993, p. 427.

national, the State is generally seen to have an obligation to bring the person to trial. This is an illustration of the principle of *aut dedere aut judicare*—"extradite or prosecute", "extradite or adjudicate".[12] Such adjudication, however, would presuppose that the requested State applies the active personality principle, i.e. exercises jurisdiction over offences that its nationals have committed abroad (Korhonen, p. 5).

Such a provision is contained, for example, in article 16(10) of the Palermo Convention.[13] Jurisdiction for such offences is covered by article 15(3) of the Palermo Convention. Paragraph 16(12) of the Palermo Convention contains a parallel provision on enforcement of a sentence imposed on a national of the requested State, by a court in a foreign State.

In practice, some States that have refused to extradite their nationals have also been reluctant to prosecute. To address this issue, art. 16(10) of the Palermo Convention has a new feature in comparison with art. 6(9)(a) of the 1988 Convention and art. 4(a) of the UN Model Treaty on Extradition. It states that the authorities of such a State "shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party." The emphasis here is that, since the offence is by definition a serious case of transnational organized crime, the State in question should make an earnest effort to bring the suspect to justice. The provision goes on to enjoin the two States Parties to cooperate in order to ensure the efficiency of prosecution.

Especially in Europe, the distaste towards extradition of nationals appears to be lessening. The Netherlands, for example, has amended its Constitution and drafted legislation to allow such extradition, as long as the national will be returned to the Netherlands for the enforcement of any sentence passed.[14]

The Palermo Convention incorporates a provision that reflects this development.[15] According to article 16(11),

> *"Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such a conditional extradition or*

[12] The principle of aut dedere aut judicare can, of course, be applied also to other cases where the requested State refuses extradition. See, for example, art. 4(f) of the UN Model Treaty on Extradition.

[13] See also art. 6(9)(a) of the 1988 Convention and art. 4(a) of the UN Model Treaty on Extradition.

[14] Germany is currently in the process of making a corresponding amendment to its Constitution.

[15] The 1988 Convention does not contain a similar provision. Article 12 of the UN Model Treaty speaks obliquely of the possibility that the requested State may "temporarily surrender the person sought to the requesting State in accordance with conditions to be determined between the Parties"; this, however, is in the context of possible proceedings for offences other than the one mentioned in the request for extradition.

surrender shall be sufficient to discharge the obligation set forth in paragraph 10 of this article."

Thus, under the Palermo Convention a national can be extradited on condition that he or she be returned to serve out the possible sentence. Such a guarantee that the actual enforcement of any punishment will take place in the person's home country can well be helpful in overcoming any reluctance to extradite one's nationals.

4. The Political Offence Exception

During the 1700s and the early 1800s, extradition was used very much on an *ad hoc* basis primarily in the case of political revolutionaries who had sought refuge abroad (Third Restatement, p. 558). However, during the 1830s, the idea developed in France and Belgium that suspects should not be extradited for politically motivated offences (Nadelmann, p. 419).

There is no universally accepted definition of what constitutes a "political offence". In deciding whether an offence qualifies as "political", reference is generally made to the motive and purpose of the offence, the circumstances in which it was committed, and the character of the offence as treason or sedition under domestic law. One of the leading cases internationally is *In re Castione* ([1891] 1 Q.B. 149), where the refusal to extradite the suspect was based on the view that alleged offences that had been committed in the course of, or incident to, a revolution or uprising are political (cited in Nadelmann, p. 420).[16]

Gully-Hart argues that "The emergence of an international concept of a political offence should now be accepted".[17] He notes that the European Convention on the Suppression of Terrorism has barred a large number of offences from the political offence exception. He balances this by noting a tendency to "enlarge" the definition of a political offence in cases where there is a danger of persecution or an unfair trial. On the other hand, it may be noted that the danger of persecution or unfair trial is now emerging as a separate grounds for refusal in its own right (see below).

Although it may well be that the existence of such an international concept of a political offence "should now be accepted", recent developments suggest that attempts are being made to restrict its scope or even abolish it (Korhonen, p. 4). This is the case, for example, in extradition among the European Union countries. The recent Palermo Convention does not make specific reference to political offences as grounds for refusal, even though the UN Model Treaty on Extradition, adopted only ten years earlier, had clearly included this as a *mandatory* ground for refusal.

The failure to specifically include the political offence exception in the Palermo Convention is significant. One of the reasons that the scope of the political offence exception has been lessening is that States have tended to avoid entering into extradition treaties with those States with whom such political problems might arise in the first place. This is not the

[16] In respect of the United States, Nadelmann (p. 426) sees two trends: one trend is towards a narrower definition of the political offence exception, and another, somewhat opposing, trend is towards greater consideration of foreign policy interests and its bilateral relationship with the requesting Government.

[17] Gully-Hart, Paul (1992), Loss of Time Through Formal and Procedural Requirements in International Co-operation, in Eser and Lagodny (op.cit.), pp. 245–266, at pp. 257–258.

case with the Palermo Convention, which has been signed by over 120 States. With so many signatories, it is quite likely that a need for extradition may arise between States that are on less than friendly terms with one another. In the discussions on the Convention in Vienna, it was argued that the political offence should not be specifically mentioned, since the Convention itself was limited to serious transnational organized crime.

On the other hand, article 16(7) of the Palermo Convention provides States Parties with a built-in escape clause. It states that

> *"Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including,* inter alia*, . . . the grounds upon which the requested State Party may refuse extradition."*

Thus, if the domestic law of the requested State allows for the possibility of the political offence exception (as would almost inevitably be the case), this option remains, even if not specifically mentioned in the Palermo Convention.

One factor behind the restriction or abolition of the political offence exception is the growth of terrorism, a subject that was raised many times (both directly and obliquely) during the drafting of the Palermo Convention. A distinction is commonly made between "pure" political offences (such as unlawful speech and assembly), and politically motivated violence (Third Restatement, p. 558). If the offence is serious—such as murder, political terrorism and genocide—courts in different countries have (to varying degrees) tended not to apply the political offence exception. Examples include the extradition from the United States of several persons suspected of being Nazi war criminals or IRA terrorists (Nadelmann, pp. 421 and 424). Violation of international conventions is one criterion in determining such seriousness; a case in point is the readiness of many countries to extradite persons suspected of skyjacking.

An example in which the political offence exception arose in European practice, cited by Korhonen (p. 5), is when the Kurdish leader Abdullah Öcalan was taken into custody in Rome in November 1999 on the basis of a German warrant for his arrest. However, Germany, which was clearly concerned with the possibility of domestic unrest if Öcalan would be extradited to Germany to stand trial, withdrew its warrant and did not proceed with the request for extradition. At the same time, Turkey had also issued a warrant for the arrest of Öcalan. In the extradition hearings, the local court in Rome decided that since Germany had withdrawn its warrant and there was a risk that Öcalan would face the death penalty if he were to be extradited to Turkey, the court had no legal grounds to proceed in the matter. (Apparently the Italian court had not considered the possibility of extraditing Öcalan under the condition that he would not be sentenced to death if found guilty. Upon accepting such a condition, Turkey would have been bound by it.) Öcalan was consequently expelled from Italy and moved from one country to another in Europe, with no country willing to allow him in. He finally ended up in Nairobi, Kenya, where he was kidnapped and transported to Turkey to stand trial. He was eventually sentenced to death by a Turkish court, a sentence which on 25 November 1999 was upheld by a court of appeal.[18]

5. The Refusal to Extradite on the Grounds of the Danger of Persecution or Unfair Trial, or of the Expected Punishment

Originally, extradition treaties between States were seen to be just that, treaties between sovereign and equal States as parties. According to this approach, other parties, in particular the fugitive in question, had no standing to intervene in the process, nor was the nature of the proceedings or expected treatment in the requesting State a significant factor. Recently, however, also the individual has been increasingly regarded as a subject of international law. This has perhaps been most evident in extradition proceedings. Democratic countries have been increasingly reluctant to extend full co-operation to countries which do not share the same democratic values, for example on the grounds that the political organization of the latter countries is undemocratic, or because their judicial system does not afford sufficient protection to the prosecuted or convicted individual (Gully-Hart, p. 249).

In line with this reassessment in the light of the strengthening of international human rights law, many of the more recently concluded treaties pay particular attention to the nature of the proceedings or the expected treatment in the requesting State. States will generally refuse to extradite if there are grounds to believe that the request has been made for the purpose of persecution of the person in question, or that the person would not otherwise receive a fair trial (Gully-Hart, p. 249–251, 257).

[18] According to "The Economist" (11 January 2001), the death sentence passed on Mr. Öcalan has been stayed pending a review of his case by the European Court of Human Rights, a process that could take years.

Refusal on the grounds of expected persecution is dealt with in, for example, article 16(14) of the Palermo Convention:

> *"Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons."*[19]

The question of fair trial and treatment is in principle distinct from the question of persecution. Art. 3(f) of the UN Model Treaty on Extradition gives as a mandatory ground for refusal the possibility that the person in question would be subjected to torture or cruel, inhuman or degrading treatment or punishment, or the absence of the minimum guarantees in criminal proceedings, as contained in art. 14 of the International Covenant on Civil and Political Rights.[20]

The issue of fair trial and treatment is dealt with in article 16(13) of the Palermo Convention:

[19] This wording is taken from art. 3(b) of the UN Model Treaty on Extradition (see also the United Nations Convention Relating to the Status of Refugees).
Within the European context, such refusal would be highly unusual, since the European Convention on Extradition is based on mutual trust in the administration of criminal justice of one another's State.

> *"Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present."*

This provision is a new one in UN Conventions. No similar provisions are to be found in the 1988 Convention or in the UN Model Treaty on Extradition.

Perhaps the most notable and influential case concerning fair treatment is the transatlantic case of *Soering v. the United Kingdom* (ECHR 1/89/161/217). Soering had been charged with murder in Virginia, where murder was a capital offence. Following a request for extradition from the United States, he was arrested in the United Kingdom and his extradition was prepared. He appealed the extradition decision, however. Article 3 of the European Convention prohibits torture or inhuman and degrading treatment or punishment. ECHR unanimously found that extradition would be a violation of this, since circumstances on death row—6–8 years of isolation, stress, fruitless appeals, separation from family and other damaging experiences—would be inhuman and degrading. (The follow-up to this case is that Soering was extradited, after the Attorney General had promised not to seek the death penalty.)

Another recent example is the case of Ira Einhorn, who was arrested in 1981 for the 1979 murder of his lover in the United States. Before being brought to trial, however, he jumped bail and disappeared. He was convicted in the US *in absentia*. In 1997, he was finally found living under an alias in France. The US called for his extradition. The French Court of Appeals ruled in 1999 that he could be extradited provided that he would be allowed to have a new trial and would not face the death penalty. After the United States agreed to this, and his appeal all the way to the European Court of Human Rights was denied, he was finally extradited to the United States at the end of July 2001.

Following the adoption in 1983 of Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, which abolished the death penalty, European countries have been reluctant to extradite suspects to countries where the death penalty might be imposed.[21] One common outcome is that, as in the *Soering* case, the requesting State agrees to waive the death penalty or, if this is imposed by the court, the requesting State agrees to ensure that it is not enforced. Another option is to agree that the suspect, if convicted, will be returned to the requested State for enforcement of the sentence. This latter option has been followed in art. 16(11) the Palermo Convention, already referred to above.

[20] Furthermore, art. 3(g) of the UN Model Treaty on Extradition cites as mandatory grounds for refusal the rendering of the judgment of the requesting State in absentia, the failure of the convicted person to receive sufficient notice of the trial or the opportunity to arrange for his or her defence, and the failure to allow him or her the opportunity to have the case retried in his or her presence.

[21] See also art. 4(d) of the UN Model Treaty on Extradition.

6. Other Grounds for Refusal to Extradite

Some extradition treaties specifically rule out extradition for military offences or fiscal offences, or extradition when the person in question has already been judged for the offence.[22]

Art. 16(15) of the Palermo Convention makes specific reference to fiscal offences: "States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters."

One of the fundamental legal principles of the rule of law is that no one should be subjected to double jeopardy (*non bis in idem*). Consequently, extradition will generally be refused if the person requested has already been prosecuted in the requested State for the acts on the basis of which extradition is requested, regardless of whether the prosecution ended in conviction or acquittal (Third Restatement, p. 568). According to art. 3(d) of the UN Model Treaty on Extradition, extradition shall not be granted "if there has been a final judgment rendered against the person in the requested State in respect of the offence for which the person's extradition is requested."

Some States may also deny extradition if the person in question has been prosecuted in the requesting State or in a third State (ibid.). The UN Model Treaty on Extradition also includes, as a mandatory grounds for refusal, the fact that "the person whose extradition is requested has, under the law of either Party, become immune from prosecution or punishment for any reason, including lapse of time or amnesty."

A ground for refusal that is becoming increasingly rare is that the proof of the guilt of the person in question supplied by the requesting State does not meet the evidentiary standards of the requested State. According to Korhonen (pp. 6–7), at least within the European context requiring additional proof of the guilt of the person in question would be in violation of the principle of mutual trust in one another's administration of criminal justice.

C. The Extradition Procedure

Provisional arrest. The process of extradition may be lengthy. In order to ensure the continued presence of the person in question, the requesting State may request that the fugitive be taken into custody pending the outcome of the proceedings (see, for example, art. 9 of the UN Model Treaty on Extradition). According to article 16(9) of the Palermo Convention,

> *"subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings."*

One issue that may arise in this connection is who determines the urgency of the request: is it the requesting State or the requested State (Korhonen, p. 9)? Although the Palermo Convention is phrased so that it is the requested State

[22] Art. 3(c) refers to military offences as a mandatory grounds for refusal, and art. 3(d) refers to double jeopardy.

that is to be "satisfied that the circumstances ... are urgent", it should in fact be left to the requesting State to determine the urgency of the matter.

The Palermo Convention and many extradition treaties do not require that provisional arrest be used in such circumstances, as long as "other appropriate measures are taken". Korhonen (p. 9) has argued that it can be reasonable to assume that there is a presumption that the fugitive is indeed placed under provisional arrest, since otherwise there is the risk that the fugitive will attempt to flee from justice. This, of course, very much depends on the effectiveness of the "other appropriate measures".

"*Disguised extradition*" and *abduction*. A State generally has the right to expel a foreign national who is deemed to be "undesirable", for example on the basis of his or her criminal activity. Occasionally, the authorities of the State in question have expelled the foreign national not to his or her home State or to the State from which he or she arrived, but to the State which has requested extradition. The use of such "back-door" procedures instead of the normal extradition procedure has rightfully been criticized as a violation of international comity and international law.

An example of how this can operate in practice is provided by a case involving the return of a Chinese national from Canada to China. The same person was wanted in the United States on charges related to alleged organized crime activity, but the extradition process appeared to be becoming quite complex and time-consuming. Ultimately, Canada placed the person on a flight back to China—knowing that the flight touched down in San Francisco for refuelling. At San Francisco, the US authorities boarded the plane and took the person into custody.

The case of *United States v Alvarez-Machain* ((91-712), 504 U.S. 655 (1992)) raises another type of improper extradition, that of abduction. A Mexican physician, Humberto Alvarez-Machain, was suspected of taking part in the torture and murder of a US narcotics agent in Guadalajara, Mexico in 1985. Alvarez-Machain was seized by Mexican bounty hunters in Mexico and flown to the United States. The defendant argued that the US court had no jurisdiction to try the case because he, a Mexican citizen accused of a murder that had been alleged to have been committed in Mexico, had been improperly brought to the United States by a US-sponsored abduction. The defendant further argued that such an abduction was a violation of the extradition treaty between the United States and Mexico. The majority on the Supreme Court ruled, however, that the forcible abduction of the defendant does not prohibit his trial in a United States court for violations of this country's criminal laws. (This is an application of the doctrine of "*male captus, bene detentus*", which essentially holds that the court need not look at how a defendant was brought before it.) The Supreme Court also held that there was no violation of the treaty, since this treaty did not expressly say that the two States Parties were obliged to refrain from forcible abductions of persons from one another's territory.[23]

Supplementary information and consultation. Many agreements provide that, if the information provided by the requesting State is found to be insufficient, the requested State may (or even "shall") request the necessary supplementary information (for example

art. 8 of the UN Model Treaty on Extradition and article 13 of the European Convention on Extradition).

According to article 10(16) of the Convention against Transnational Organized Crime, "before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation." This is a new provision, which has no parallel in the 1988 Convention or in the 1990 UN Model Treaty. The provision can thus be understood as a reflection of "good practices" as they have evolved during the 1990s.

Simplification of extradition proceedings. As noted, extradition can be a long, drawn-out and expensive process. During recent years, many efforts have been made to expedite and simplify the process, in particular by eliminating grounds for refusal.

Art. 16(8) of the Palermo Convention calls for the simplification of extradition: "States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies."

In 1995, the European Union adopted a Convention on simplified extradition within the EU. Essentially, the Convention focuses on the many cases where the person in question consents to extradition.[24]

In 1996, the EU adopted a convention that supplements the 1957 Council of Europe Convention, and is designed to facilitate and speed up extradition. The 1996 Convention widened the scope of extraditable offences, restricted refusals on certain grounds (the absence of double criminality, or the nationality of the offender) and eliminated the political offence exception as well as refusals on the grounds that the prosecution or punishment of the person in question would be statute-barred in the requested State.[25]

The European Union is currently considering various options for "fast-track extradition". These discussions have been held within the context of the discussion on mutual recognition of decisions and judgments in criminal matters. In regards to extradition, the goal is to have a warrant of arrest issued by the competent authorities of one State recognized as such by the authorities of another EU State, establishing a basis for extradition.

[23] New York Times, 15 and 16 June 1992. See also Nadelmann, pp. 449–450 and Heymann, Philip B. and Ian Heath Gershengorn (1992), Pursuing Justice, Respecting the Law, in Eser and Lagodny (op.cit.), pp. 101–147, at pp. 132–135.
In December 1992, the defendant was acquitted by the U.S. District Court in Los Angeles of all charges on the grounds that the Government had not produced any credible evidence linking him to the torture and murder of the narcotics agent.
In a somewhat Kafkian follow-up to the case, on his release by the court, the defendant was arrested by the US Immigration Service and held for several hours on the grounds of "illegal entry into the U.S."

[24] This 1995 Convention has been ratified by Austria, Denmark, Finland, Germany, Greece, the Netherlands, Portugal, Spain and Sweden.

[25] The 1996 Convention has been ratified by Denmark, Finland, Germany, Greece, the Netherlands, Portugal and Spain.

III. Mutual Assistance in Criminal Matters

A. The Evolution of Instruments on Mutual Assistance in Criminal Matters

The purpose of extradition is to get a foreign State to send a fugitive to the requesting State so that he or she can be placed on trial, or so that any punishment imposed can be carried out. The purpose of mutual assistance, in turn, is to get a foreign State to assist in other ways in the judicial process, for example by securing the testimony of possible victims, witnesses or expert witnesses, by taking other forms of evidence, or by checking judicial or other official records.

Generally, mutual legal assistance is based on bilateral or multilateral treaties. No global mutual assistance treaties have been drafted that would apply to a broad range of offences. Efforts to smooth international cooperation by developing such a global mutual assistance treaty had long been thwarted in particular by the United States and the United Kingdom, which prefer bilateral treaties that would take into consideration the idiosyncratic features of their common law systems.

Instead, over the years, some international treaties have been drafted that deal with specific offences. These instruments generally include extensive provisions on mutual legal assistance as well as on extradition. The sets of provisions included in some of these agreements are so extensive that they have been referred to as "mini-treaties" on mutual legal assistance.

Such is the case, for instance, with the following conventions:

- the Convention for the Suppression of Unlawful Seizure of Aircraft of 16 December 1970 (article 10),
- the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 23 September 1971(article 11),
- the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, of 10 March 1988,
- the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 19 December 1988 (article 7),
- the International Convention against the Taking of Hostages of 17 December 1979 (article 11), and
- the Palermo Convention, opened for signature on 12 December 2000 (article 18).

In addition, there are two influential multilateral arrangements that apply to a wide spectrum of offences, a Convention prepared by the Council of Europe, and an instrument applied within the context of the British Commonwealth (the so-called "Harare Scheme").

The oldest, most widely applied and arguably most influential is the Council of Europe Convention on Mutual Assistance in Criminal Matters. This was opened for signature in 1959, and entered into force in 1962.[26]

The Council of Europe Convention focuses on assistance in judicial matters (as opposed to investigative and prosecutorial matters). Furthermore, since it has been in force for almost 40 years, it has in some respects been bypassed by practice. In order to improve the effectiveness of the Convention, the

fifteen European Union countries have prepared their own Mutual Assistance Convention of 29 May 2000. This supplements the 1959 Council of Europe convention and its protocol in order to reflect the emergence of "good practices" over the past forty years.

The Commonwealth Scheme for Mutual Assistance in Criminal Matters does not create binding international obligations; instead, it represents more an agreed set of recommendations.[27] It deals with identifying and locating persons; serving documents; examining witnesses; search and seizure; obtaining evidence; facilitating the personal appearance of witnesses; effecting a temporary transfer of persons in custody to appear as a witness; obtaining production of judicial or official records; and tracing, seizing and confiscating the proceeds or instrumentalities of crime. A model Bill to assist countries in preparing legislation has been developed by the Commonwealth Secretariat.

The Commonwealth scheme extends to both "criminal proceedings that have been instituted in a court" and when "there is reasonable cause to believe that an offence in respect of which such proceedings could be instituted have been committed". Thus, it effectively also allows mutual assistance when certain serious offences, such as terrorism, could potentially be prevented.

The United Nations, in turn, has prepared a Model Treaty on Mutual Assistance in Criminal Matters (General Assembly resolution 45/117 of 14 December 1990). The purpose of the Model Treaty is to provide a suitable basis for negotiations between states that do not have such a treaty. The Model Treaty is by no means a binding template. The States can freely decide on any changes, deletions and additions. However, the Model Treaty does represent a distillation of the international experience gained with the implementation of such mutual legal assistance treaties, in particular between States representing different legal systems.

Competing international treaties. Over the years, several multilateral treaties have been drafted that deal with mutual legal assistance. In addition, many states have entered into bilateral treaties with other countries. This raises the possibility that two or more treaties may be applicable to the same facts. Since there may be differences between these treaties (for example in relation to the conditions under which mutual legal assistance can be provided, or the procedure used), the question arises of which treaty should be applied.

General conflicts between treaties can be decided on the basis of the Vienna Convention on the Law of Treaties, which was concluded on 23 May 1969. Among the principles applied are that, other things being equal, a later treaty replaces

[26] At present, the following 40 States are parties to the 1959 Convention: Albania, Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, the Netherlands, Norway, Poland, Portugal, Romania, the Russian Federation, Slovakia, Slovenia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Turkey, Ukraine and the United Kingdom. In addition, it has been signed by Armenia and San Marino.

[27] David McClean, International Judicial Assistance, Clarendon, Oxford, 1992, p. 151. The Harare Scheme was originally adopted in 1983. It has been amended most recently in 1999.

an earlier one, and a treaty dealing with a specific issue replaces a treaty dealing only with general issues.

In addition, some new treaties contain specific provisions on the resolution of possible conflicts between treaties. For example, article 18(6) of the Palermo Convention stipulates that "the provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance." (Article 7(6) of the 1988 Convention is similar.)

This provision means in practice that obligations under other agreements remain in force. The Palermo Convention (or the 1988 Convention) does not in any way diminish these obligations. The practitioner should examine the agreements side by side, and identify which provisions of the different agreements would, in combination, result in the highest possible level of mutual assistance.

Despite the network of international instruments, cases will continue to arise between States that are not linked by a mutual legal assistance treaty. If the States in question are, nonetheless, Parties to the Palermo Convention, and the case involves transnational organized crime, the Palermo Convention can form the basis for mutual legal assistance. According to article 18(7) of the Palermo Convention, paragraphs 16(9)–(29) of the Convention apply to such requests. (Article 7(7) of the 1988 Convention contains a similar provision.) Even if the States in question are bound by a treaty, they can decide to apply paragraphs 16(9)–(29), and indeed the Palermo Convention strongly encourages them to apply the corresponding provisions of this new Convention. As noted in the Commentary to the 1988 Convention (para. 7(23)), "this enables pairs of States to follow the procedures with which they have become familiar in the general context of mutual legal assistance".

B. The Scope of Mutual Legal Assistance

In article 18(1), the Palermo Convention calls for States Parties to afford one another the widest measure of mutual legal assistance (see also art. 1(1) of the 1959 Council of Europe Convention). The scope of measures that can be requested under mutual legal assistance is rather large, and the practice appears to be moving towards a constant expansion of this scope.

According to art.18(3) of the Palermo Convention, which in this respect is based on the 1988 Convention, mutual legal assistance can be requested for any of the following purposes:

a. taking evidence or statements from persons;
b. effecting service of judicial documents;
c. executing searches and seizures, and freezing;
d. examining objects and sites;
e. providing information, evidentiary items and expert evaluations;
f. providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
g. identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
h. facilitating the voluntary appearance of persons in the requesting State Party; and
i. any other type of assistance that is not contrary to the domestic law of the requested State Party.

Most of the items on the above list are familiar from art. 7(2) of the 1988 Convention, art. 1(2) of the UN Model Treaty and para. 1 of the Commonwealth Scheme, as well as from many bilateral Conventions. There are, however, four new elements in the Palermo Convention that reflect the evolution of thinking on mutual assistance.

- point (c) also includes the freezing of assets, and not just searches and seizures. The freezing of assets has been found to be particularly important in preventing and controlling organized crime. (Para. 1(i) of the Commonwealth Scheme separately refers to the tracing, seizing and confiscating of the proceeds of criminal activities.)

- point (e) includes the provision of expert evaluations; the earlier multilateral treaties had not specified this form of assistance.

- point (f) specifies that originals or certified copies can be obtained also of government records; again, this was not clearly noted in the 1988 Convention or the UN Model Treaty. The Commonwealth Scheme, on the other hand, does refer to the "production of judicial or official records". (See also below under "Provision of documents".)

- point (i), which is a catch-all reference to "any other type of assistance that is not contrary to the domestic law of the requested State Party", provides considerable flexibility to the listing.[28]

Requests related to offences for which a corporate body may be liable. One feature of (transnational) organized crime is that corporate bodies (legal persons) may be involved, often as the front for the activities of the actual offenders, and in particular for the laundering of the proceeds of crime. The situation may arise where State A, which recognizes the possibility of corporate criminal liability, requests assistance from State B, which does not recognize such a possibility. Since art. 10 of the Palermo Convention requires that corporate bodies be held liable for serious crime in some manner (no matter whether criminal, civil or administrative), art. 18(9) requires States Parties to provide mutual legal assistance to the fullest extent possible under relevant laws, treaties, agreements and arrangements. Absence of corporate criminal liability in the requested State is thus not a bar to providing mutual legal assistance.

Video conferences. Art. 18(18) of the Palermo Convention adds the possibility of the hearing of witnesses or experts by means of video conference.[29] This is a completely new provision in UN conventions; nothing similar was contained in the 1988 Convention or in the 1990 UN Model Treaty. Its newness, of course, is a reflection of the rapid

[28] Mutual legal assistance is distinct from the transfer of proceedings and the transfer of persons in custody to serve sentences, which would thus not be covered by point (i). The Palermo Convention deals with these subjects separately in articles 17 and 21.

Some commentators and even courts have held that mutual legal assistance treaties are general, and can apply to forms of assistance not specifically mentioned in them. For example, in the United States, the *Re Sealed Case* (1987; 832 F.2d 1268. US Court of Appeals for the District of Columbia) determined that the existence of a treaty does not limit evidence gathering to the procedures stipulated in the treaty; indeed, this point is generally explicitly stated in such treaties.

development of communications technology. Even though this possibility requires an initial investment in the necessary equipment, video technology can considerably facilitate the hearing of witnesses and experts, since they would no longer have to travel from one country to another. It can also serve to protect witnesses or experts, if they fear to reveal their location or fear travelling to a court hearing in the requesting State.

Having a "direct" connection between two countries, however, raises some interesting issues. A normal situation would be when an attorney or a judge located in the requesting State uses a video link to hear a witness located in the requested State. In order to forestall concerns that the requested State may have about possible violations of its sovereignty, or concerns about due process, art. 18(18) specifies that the States may agree that a judicial authority of the requested State may attend the hearing.

The spontaneous transmission of information. In the investigation and prosecution of offences, now and then the law enforcement authorities of a country receive information that may be of interest to the authorities of another country. Art. 18(4) of the Palermo Convention allows the authorities, even without a prior request, to pass on information to the competent authorities of another State.[30] Again, this is a new element in UN conventions. Its usefulness has been demonstrated in practice in, for example, Europe.

Provision of documents. Art. 18(3)(f) of the Palermo Convention states in general that mutual legal assistance can be requested in the provision of originals or certified copies of relevant documents and records. A practical question that was not addressed in the 1988 Convention was the scope of application of this provision. Does it, in particular, extend to documents that are considered secret in the requested State? The matter was considered in art. 16 of the UN Model Treaty, which served as the basis in the drafting of art. 18(29) of the Palermo Convention. This provision *requires* that the requested State provides copies of government records, documents or information in its possession that under its domestic law are available to the general public, but leaves the requested State with *discretion* over whether or not to provide any other government records, documents or information in its possession.

Transfer of persons in custody. In the investigation and prosecution of transnational organized crime cases, a situation may well arise where a person

[29] According to article 18(18) of the Palermo Convention, wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.
See also article 10 of the 2000 European Union Convention. Art. 11 of the 2000 European Union Convention also permits teleconferences.

[30] This spontaneous exchange of data is provided under article 10 of the 1990 European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime. See also art. 7 of the 2000 European Union Convention.

held in custody in one State can provide key testimony in a case in another State.

Art. 7(4) of the 1988 Convention states quite generally that States Parties shall facilitate "to the extent consistent with their domestic law and practice, the presence or availability of persons, who consent to assist in investigations or participate in proceedings". Art. 18(10)–(12) of the Palermo Convention provide more detail on the transfer of persons in custody for this purpose.[31] Transfer is possible only if the person in question consents, and the competent authorities of the two States agree (subject to possible conditions). The person is to be kept in custody in the State to which he or she is transferred, and is to be returned without delay as agreed by the two States. In addition, the person transferred is to receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State to which he or she was transferred.

When persons in custody are transferred from one State to another under art. 18(11) of the Palermo Convention, a form of the principle of speciality applies (art. 18(12)). Thus, unless the requested State agrees, they cannot be prosecuted, detained, punished or subjected to any other restriction of liberty in the territory of the State to which such persons are transferred in respect of offences committed or convictions imposed prior to their transfer.

The concept of "international subpoenas". One, albeit rare, feature of some mutual legal assistance treaties is that they allow for the issuing of subpoenas "backed up" by compulsion, such as penalties for failure to obey. This concept is applied for example in the United States-Italian Mutual Assistance Treaty, which provides for compulsory appearance of a witness in the requesting State (McClean 1992, p. 158). Also, Australia has such an arrangement with New Zealand and Fiji, and Malaysia has such an arrangement with Singapore and Brunei (ibid.).

As noted above, art. 18(7) of the Palermo Convention refers only to facilitating the presence of persons who consent to assist in investigations or participate in proceedings. Witnesses and experts are thus completely free not to go to the requesting country. The Palermo Convention thus does not allow the use of compulsion against witnesses or experts in another State. This same approach is used in, for example, art. 8 of the 1959 European Convention, paras. 15(5), 23(4) and 24(3) of the Commonwealth Scheme, and art. 7(4) of the 1988 Convention.

C. Grounds for Refusal

There are several basic common grounds for refusal for granting a request for mutual legal assistance:

- the absence of double criminality;
- the offence is regarded as a political offence;
- the offence is regarded as a fiscal offence; and
- the granting of mutual legal assistance would be counter to the vital interests (*ordre public*) of the requested State.[32]

Absence of double criminality. According to art. 18(9) of the Palermo Convention, a State may decline mutual legal assistance if the offence in question is not an offence under its laws. However, the Palermo Convention specifies that

[31] Parallel detailed provisions can be found in para. 24 of the Commonwealth Scheme.

this is not a mandatory ground. Thus, the State may decide at its discretion to provide mutual legal assistance even if the condition of double criminality is absent.

Also the Commonwealth Scheme includes a "discretionary double criminality rule" (art. 7(1)). According to the author of the scheme (McClean 1992, pp. 155–156), this was to prevent a situation arising where mutual assistance is requested in respect of certain acts that are heavily punished in some Islamic law jurisdictions are not seen as appropriate for any penal sanctions in other jurisdictions.

Political offences. In respect of extradition, the political nature of the offence is generally a mandatory cause for refusal. In the field of mutual legal assistance in criminal matters, in turn, this is generally only an optional reason for refusing cooperation. Moreover, over the years the possibility or obligation to refuse assistance in such considerations has in general been curtailed, in particular with a view towards the need to combat terrorism. See, for example, art. 2 of the 1959 Council of Europe Convention, when read together with art. 8 of the European Convention on the Suppression of Terrorism of 27 January 1977.

Fiscal offences. Under the 1959 Council of Europe Convention, legal assistance may be refused where the requested party considers the offence to be a fiscal offence. In order to restrict the scope of these grounds of refusal, an additional protocol to the European Convention was drawn up at the same time, in 1959. Signatories to this additional protocol undertake not to refuse assistance on the grounds that the offence in question is a fiscal offence

According to article 18(22) of the Palermo Convention, States Parties may *not* refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

Violation of the vital interests of the requested State (ordre public). Generally speaking, conventions on mutual legal assistance on criminal matters provide that the requested State can refuse assistance which it deems might endanger its sovereignty, security, law and order or other vital interests. This same "escape clause" is maintained even by the 2000 European Union instrument on mutual legal assistance.

The same principle is embodied in art. 18(21)(b) of the Palermo Convention, according to which the requested State Party may refuse to grant mutual legal assistance if it considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests.

Conflict with the laws of the requested state. According to art. 18(21) of the Palermo Convention, mutual legal assistance may be refused:

[32] Art. 4(c)–(d) of the UN Model Treaty on Mutual Assistance in Criminal Matters and para. 7(1)(d) and 7(2)(b) of the Commonwealth Scheme provide as additional optional grounds for the refusal of assistance the presence of substantial grounds for believing that the request for assistance may lead to prosecution or punishment, or cause prejudice, on account of (for example) race, religion, nationality or political opinions, or that the prosecution in the requesting State would lead to double jeopardy. The UN Model Treaty adds as a further optional ground the fact that the offence is already under investigation or prosecution in the requested State.

- if the request is not made in conformity with the provisions of this article;
- if the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction; and
- if it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

Bank secrecy. One relatively common ground for refusal is that granting the request would be contrary to bank secrecy. The scope of this ground for refusal has been restricted during recent years. In line with this development, art. 7(5) of the 1988 Convention and article 18(8) of the Palermo Convention stipulate that States Parties shall *not* decline to render mutual legal assistance on the ground of bank secrecy.

The need to indicate the ground for refusals. Good practice in mutual legal assistance requires that the requested State, if it refuses to grant assistance, should indicate the grounds for such refusal. Art. 18(23) of the Palermo Convention requires that reasons be given for any refusal of mutual legal assistance. Art. 19 of the 1959 Council of Europe Convention and para. 6(3) of the Commonwealth Scheme are similar.

Reciprocity. As noted above, art. 18(1) of the Palermo Convention *requires* that States Parties afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the type of offences covered by the Convention. States are not allowed to refuse assistance unless they have a clear ground to do so.

However, in the drafting of the Palermo Convention, there was considerable discussion over at what stage it should be evident that the offence in question is covered by this Convention. After all, the requested State can simply say that, in its view, the requesting State has not shown that the offence is in fact transnational; this may well be difficult to prove especially at the earlier stage of the investigation.

The solution adopted was innovative. If State A has met with refusals from State B to provide assistance under the Palermo Convention even when State A has reasonable grounds to suspect that the offence in question falls under the Convention, then State A can legitimately refuse, in turn, to help State B should it happen to come forward with a corresponding request.

D. The Mutual Legal Assistance Procedure

Letters rogatory. The traditional tool of mutual legal assistance has been *letters rogatory*, a formal mandate from the judicial authority of one State to a judicial authority of another State to perform one or more specified actions in the place of the first judicial authority (see, for example, chapter II of the 1959 Council of Europe Convention). The concept of letters rogatory had been taken from civil procedure, and focuses on judicial action in the taking of evidence. More recent international instruments simply refer to "requests".

In international practice, letters rogatory have typically been transmitted through diplomatic channels. The request for evidence, almost always originating from the prosecutor, is authenticated by

the competent national court in the requesting State, and then passed on by that State's Foreign Ministry to the embassy of the requested State. The embassy sends it on to the competent judicial authorities of the requested State, generally through the Foreign Ministry in the capital. Once the request has been fulfilled, the chain is reversed.

Central authorities or direct contacts? Increasingly, treaties require that States Parties designate a central authority (generally the Ministry of Justice) to whom the requests can be sent. The judicial authorities of the requesting State can then contact the central authority directly. Today, to an increasing degree even more direct channels are being used, in that an official in the requesting State sends the request directly to the appropriate official in the other State.[33]

In the drafting of the Palermo Convention, there was considerable discussion regarding whether or not direct channels could be used. Some states, which were not familiar with this practice, had a clear preference for the use of central authorities. The basic rule laid out by art. 18(13) of the Palermo Convention (see also art. 7(8) of the 1988 Convention and para. 4 of the Commonwealth Scheme) is that each State Party designate a central authority. Such a central authority has in effect three roles: (1) to receive requests for mutual legal assistance; (2) to execute such requests; and (3) to transmit such requests to the competent authorities for execution.

Where a State Party has a special region or territory with a separate system of mutual legal assistance (as is the case, for example, with Hong Kong in China), it may designate a distinct central authority that shall have the same function for that region or territory. This is a new feature of the Palermo Convention; art. 7(8) of the 1988 Convention and art. 3 of the Model Treaty only contain a general reference to the designation of "an authority or when necessary authorities".

Direct requests may be possible also under some treaties in case of emergency. For example, art. 15(1) of the 1959 Council of Europe Convention allows the judicial authority of the requesting State to send the letter of request directly to the competent judicial authority of the requested State. Art. 18(13) of the Palermo Convention allows the possibility that, in urgent cases and when the States in question agree, the request can be made through the International Criminal Police Organization, if possible.

The form and contents of the request. The Palermo Convention contains several provisions on the procedure to be followed in sending a request for mutual legal assistance.

According to article 18(14) of the Palermo Convention (cf. art. 7(9) of the 1988 Convention), "requests shall be made in writing or, where possible, by any means capable of producing a written record ... under conditions allowing that State Party to establish authenticity. ... In urgent circumstances and where

[33] One of the earliest bilateral treaties to allow for this was the additional protocol to the 1959 Council of Europe Convention drawn up by France and Germany on 24 October 1974.
The 1990 Schengen agreement in the framework of the European Union specifically allows the use of direct contacts between judicial authorities (art. 53). The same concept is embodied in the even more recent European Union 2000 Convention on Mutual Legal Assistance.

agreed by the States Parties, requests may be made orally, but shall be confirmed in writing forthwith."

The Palermo Convention, by referring to requests made "where possible, by any means capable of producing a written record ... under conditions allowing that State Party to establish authenticity", opens up the possibility of for example transmission by fax or electronic mail. This was not possible under, for example, the 1988 Convention.[34]

The minimum contents of a request for mutual legal assistance are listed in article 18(15):[35]

a. the identity of the authority making the request;
b. the subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;
c. a summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;
d. a description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;
e. where possible, the identity, location and nationality of any person concerned; and
f. the purpose for which the evidence, information or action is sought.

Article 18(16) notes that the requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

The formulation used in the Palermo Convention refers to "a language acceptable to the requested State Party". This is a deliberately wide formulation. It includes the national language of the requested State Party, but the special circumstances of the relations between the two countries may suggest the use of other languages. For example, many countries around the world are prepared to accept requests in English and/or French.

E. Execution of the Request for Mutual Legal Assistance

Law governing the execution. The procedural laws of countries differ considerably. The requesting State may require special procedures (such as notarized affidavits) that are not recognized under the law of the requested State. Traditionally, the almost immutable principle has been that the requested State should follow its own procedural law.

This principle has led to difficulties, in particular when the requesting and the requested State represent different legal families. For example, the evidence transmitted from the requested State may be in the form prescribed by the laws of this State, but such evidence may be unacceptable under the procedural law of the requesting State.

The 1959 Council of Europe Convention is one international

[34] Recommendation R(85)10 of the Council of Europe (which is non-binding) in principle encourages the acceptance of the use of telephones, teleprinters, fax and similar means of communication in the transmission of letters rogatory in the application of the 1959 Convention.

[35] The list is word for word the same as in article 7(10) of the 1988 Convention.

instrument that applies to States representing two quite different legal families, the common law and the continental law systems. Although art. 3(1) of this Convention follows the traditional principle referred to above, the Commentary notes that the requesting State can ask that witnesses and experts be examined under oath, as long as this is not prohibited in the requested State.[36]

According to art. 7(12) of the 1988 Convention, a request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request. Thus, although the 1988 Convention does not go so far as to *require* that the requested State comply with the procedural form required by the requesting State, it does clearly exhort the requested State to do so. This same provision was taken verbatim into art. 18(17) of the Palermo Convention.

Promptness in fulfilling the request. One of the major problems in mutual legal assistance world-wide is that the requested State is often slow in replying, and suspects must be freed due to absence of evidence. There are many understandable reasons for the slowness: a shortage of trained staff, linguistic difficulties, differences in procedure that complicate responding, and so on. Nonetheless, it can be frustrating to find that a case must be abandoned because even a simple request is not fulfilled in time.

The 1988 Convention does not make any explicit reference to an obligation on the part of the requested State to be prompt in its reply. The 1990 UN Model Treaty (art. 6) does require that requests for assistance "shall be carried out promptly". Para. 6(1) of the Commonwealth Scheme calls for the requested country to grant the assistance requested as expeditiously as practicable.

The Palermo Convention is even more emphatic about the importance of promptness, and makes the point in two separate provisions. Art. 8(13) of the Palermo Convention provides that, if the central authority itself responds to the request, it should ensure its speedy and prompt execution. If the central authority transmits the request on to, for example, the competent court, the central authority is required to encourage the speedy and proper execution of the request. Art. 18(24) provides that the request is to be executed "as soon as possible" and that the requested State is to take "as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given".

Good practice in execution. Other elements of "good practice" in mutual legal assistance also worked their way into the Palermo Convention, making the life of the practitioner easier than under, for example, the 1988 Convention. According to art. 18(24) of the Palermo Convention,[37]

- the requested State should not only execute the request as soon as possible but also "take as full account as possible of any deadlines suggested by the requesting State Party";

[36] Explanatory Report to the 1959 Convention, p. 14.

[37] Cf. Art. 4 of the 2000 European Union Convention.

- the requested State should respond to reasonable requests by the requesting State for information on progress of its handling of the request; and
- the requesting State should promptly inform the requested State when the assistance sought is no longer required.

Art. 18(25) of the Palermo Convention states that mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding. Art. 7(17) of the 1988 Convention is in this respect similar.

Art. 18(26) of the Palermo Convention states that, before refusing a request for mutual legal assistance, or postponing its execution, the requested State should consult with the requesting State to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. The 1988 Convention (art. 7(18) called for consultations only in the case of postponements, not refusals. The model for the wider formulation used in the Palermo Convention was taken from art. 4(4) of the 1990 UN Model Treaty.

Confidentiality of information and the rule of speciality. Once the information has been sent by the requested State to the requesting State, how can it be used?

The requested State may ask that any information provided be kept confidential except to the extent necessary to execute the request (art. 18(5) and 18(20) of the Palermo Convention). However, the situation may arise that the information received in respect of one offence or suspect at the same time exculpates another suspect in a completely separate procedure. To address this potential problem, art. 18(20) goes on to provide that the State receiving the information is not prevented from disclosing it in its proceedings if this information is exculpatory to an accused person. (The provision also deals with the necessity to inform and, if requested, consult with the other State prior to such disclosure.)

Art. 18(19) of the Palermo Convention embodies the rule of speciality: the State receiving information may not transmit or use it for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Again, however, exculpatory information may be disclosed.

Costs. According to article 18(28) of the Palermo Convention, the ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne. This latter provision has been modelled on, for example, art. VIII(3) of the Canadian-US treaty and para. 12(3) of the Commonwealth Scheme.[38]

IV. SUMMARY: THE GENERAL EVOLUTION OF EXTRADITION AND MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

With the increase in international travel, the improvement in technology

[38] In 1999, the Law Ministers of the Commonwealth adopted guidelines on the apportionment of costs incurred in providing mutual assistance in criminal matters.

and communications, the greater likelihood that a crime can have an impact beyond national borders, and the increased profits that can be made from organized crime, the need to obtain assistance from other states in bringing offenders to justice has expanded rapidly. The basic tools that can be used—extradition and mutual legal assistance in criminal matters—have regrettably not evolved to keep pace with developments in crime.

Much of the everyday practice of extradition and mutual assistance continues to be reliant on bilateral and multilateral treaties that have been drafted many years ago. Moreover, many States which are parties to such treaties still do not have the necessary legislation or resources to respond to requests for extradition or mutual assistance.

- Requests are often transmitted through diplomatic channels or from Government to Government, and the resulting delays may cause a carefully assembled case to collapse in the hands of the prosecutor.
- The requesting State may misunderstand the formal requirements in the requested State as to the presentation and contents of the request. For example, the requesting State may not realize that, under some treaties, it must present documentation that the double criminality requirement is met, that the offence is extraditable, and that execution is consistent with the law of the requested party.
- The requested State, in turn, may not always demonstrate flexibility in demanding more details about the offence and the offender. Often, very specific information may be difficult to provide if the investigation is still underway.

Nonetheless, as shown in this paper, some developments have taken place in both extradition and mutual legal assistance, in particular over the past ten years.

Some of the main trends in the evolution of extradition are summarized in the following table.

The traditional extradition regime	**The "new, improved" extradition regime**
bilateral	multilateral
limited scope of offences; lists of offences	broad scope of offences; no offence lists
need to present prima facie evidence	an arrest warrant suffices
extradition of nationals not possible	nationals can be extradited, although conditions may be imposed
broad grounds for refusal	few grounds for refusal
no reference to the expected treatment or punishment of the suspect	human rights standards applied
slow	trend towards mutual recognition and the "backing of warrants"
bureaucratic	"good practice" standards followed; e.g. the possibility of consultation before possible refusal

- bilateral treaties are being increasingly replaced by multilateral treaties. Although bilateral treaties have been preferred for example by the common law countries, the simultaneous existence of many international instruments complicates the work of the practitioner. For this and other reasons, also the common law countries are seeing the advantages of multilateral treaties with a wide scope of application

- the earliest treaties were based on lists of offences. If an offence was not included in the list, extradition could not be granted. More recent treaties are generic, in that they apply to a broad scope of offences.

- because courts have traditionally been cautious in applying coercive measures, the courts in particular in common law countries have required prima facie evidence that the suspect had indeed committed the offence in question. Because of the differences in the law of evidence and in criminal procedure in different countries, such prima facie evidence was often difficult to provide. More recent instruments have generally regarded it as sufficient that the requesting State (at least if it belongs to a select group of states) produce a valid arrest warrant

- one of the most cherished principles in extradition law has been that States will not extradite their own nationals and will, at most, undertake to bring them to trial in their own courts. Today, more and more States are allowing extradition of their own nationals, although some conditions may be placed, such as that the national, if convicted, should be returned to his or her own country to serve the sentence

- there is currently a clear trend towards elimination of the many grounds for refusal to extradite, such as the political offence exception

- there is a trend towards granting greater rights to the person in question as an object (as opposed to subject) of the process, and to greater consideration of how he or she would be treated or punished in the requesting State. Consideration can be given, for example, to the possibility of persecution on the grounds of sex, race, religion, nationality, ethnic origin or political opinions, the possibility of unfair trial, and the possibility of punishment which, in the requested State, is deemed inhumane

- another trend is toward less rigid procedural requirements, including direct communications and simplified procedure

There has also been a clear dynamic in the development of mutual assistance. New international instruments open up the possibility of mutual assistance between an expanding number of countries, the scope of offences has been enlarged, conditions and grounds of refusal have been tightened or entirely eliminated, and the process has been expedited. Some of the main trends are summarized in the following table.

The traditional mutual assistance regime	The "new, improved" mutual assistance regime
bilateral	multilateral
limited scope of offences	broad scope of offences
assistance limited to the service of summons	many possible forms of assistance
use of central authority	possibility of direct contacts between lower level authorities requesting and granting assistance
broad grounds for refusal	few grounds for refusal
requested State applies solely its own laws in granting assistance	procedures requested by the requesting State can be applied if these are not contrary to the laws of the requested State
bureaucratic	"good practice" standards followed; e.g. the possibility of consultation before possible refusal

- as with extradition treaties, bilateral mutual legal assistance treaties are being increasingly replaced by multilateral treaties

- the earliest mutual legal assistance treaties covered only a limited scope of offences. More recent treaties cover a broad scope of offences.

- the measures offered under mutual legal assistance treaties (and domestic laws in many States) has expanded. At first, the focus was on service of summons. Today, a wide range of measures are offered.

- traditional mutual legal assistance treaties required that requests be sent through diplomatic channels or through a central authority. More recent treaties allow the use of direct contacts

- more recent treaties have restricted or even eliminated the many grounds for refusal to provide assistance

- requested State applies solely its own laws in granting assistance; procedures requested by the requesting State can be applied if these are not contrary to the laws of the requested State

- as with extradition treaties, another trend in mutual legal assistance treaties is toward less rigid procedural requirements, including towards the use of direct communications and simplified procedure.

The Palermo Convention, which was negotiated between 1998 and 2000, reflects in many ways the "state of the art" of extradition and mutual legal assistance. In particular, it includes many provisions that are new for practitioners in many countries, and may well improve the day-to-day practice of international cooperation.

Negotiation of the Palermo Convention, however, is only the first

stage. The Convention must be ratified and the investigators, the prosecutors and the judges must be given the tools they need to complete the job.

INTERNATIONAL COOPERATION AGAINST TRANSNATIONAL ORGANIZED CRIME: THE PRACTICAL EXPERIENCE OF THE EUROPEAN UNION

*Matti Joutsen**

I. DEVELOPING COUNTERMEASURES AGAINST TRANSNATIONAL ORGANIZED CRIME: HOW FAR CAN WE GO?

As long as crime and organized crime remained domestic issues, the history of international law enforcement and judicial cooperation proceeded at a leisurely pace. Many years passed from when private policemen and private security companies were first used to collect evidence and apprehend offenders abroad, to when the first formal arrangements were made for law enforcement cooperation. Initiatives for formal judicial co-operation arrangements emerged even more slowly. The first modern multilateral treaties on cooperation in criminal matters did not appear until less than fifty years ago.

It is thus all the more remarkable how much progress has been made world-wide during the last few years.

It is true that we had a right to expect a qualitative change in our response to crime and international crime. After all, we are facing considerable increases in crime as a result of many factors. These factors include developments in technology, transportation and telecommunications, the social changes related to massive impoverishment, natural disasters and internal conflict, the establishment of regional trade groupings removing barriers to the movement of people, goods, services and capital, and fundamental political changes in many parts of the world.

Nonetheless, it would have required a visionary to have said, only five years ago, that in the year 2001:

- over 120 countries would have signed a wide-ranging global convention against transnational organized crime;
- work is underway on a global convention against corruption;
- a controversial campaign against off-shore and on-shore financial centres engaged in money laundering is leading to significant results; and
- regional cooperation is evolving rapidly in places as diverse as Southern Africa, the Andes countries, the countries around the Baltic Sea, and Southeast Asia.

How far and how fast can this intensification of global cooperation go? One way to try to answer this question would be to look at existing cooperation on a smaller scale, and see if it could be expanded world-wide. The European Union countries provide one useful point of reference. If cooperation can be developed among these fifteen countries, with their quite different legal systems and different criminal justice structures, it can be at least visualised elsewhere.

This paper looks at police cooperation, prosecutorial cooperation, judicial

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cooperation, and cooperation in the formulation of domestic law and policy. In each case, the present status quo in most parts of the world will be set out, and then the practical reality in the European Union will be described.

A few words about the European Union. It consists of fifteen Member States, comprising almost all of Western Europe. (In addition, ten Central and Eastern European countries, and Malta and Cyprus are negotiating on membership.) One important area of cooperation is known as "justice and home affairs", which to a large extent deals with the control of organized crime. Decisions in this sector are made by the European Union Council, which consists of the respective Ministers from each Member State.[1] The Council can adopt so-called framework decisions (formerly known as "joint actions"), common positions, resolutions, recommendations and conventions. "Framework decisions" are binding in respect of their goal, although each Member State has some flexibility on how to amend its legislation in order to ensure that this goal is met. "Joint positions" are used, for example, in negotiations with third States and inter-governmental organizations; Member States are required to adhere to any joint position agreed to. Resolutions and recommendations are non-binding, although they do express a political goal. Conventions are binding on the signatories, and there is political pressure on all Member States to sign them.

A second major decision-making body in the European Union is the Commission, which has responsibilities in particular for deciding on the economic integration of the European Union. It does not have any powers to decide on "justice and home affairs", although it does have the right of initiative. A third power is the directly elected European Parliament, which has a right to be consulted, also on justice and home affairs.

II. POLICE COOPERATION

The global status quo:

The general rule around the world is that law enforcement personnel do not have powers outside of their jurisdiction. Notices are communicated through Interpol. A few countries have posted liaison officers abroad, and informal contacts are used on an ad hoc basis. Otherwise, officially, information may not and is not exchanged except through formal bilateral channels, and even then only in a few cases. Coordination of cross-border investigations is rare, and requires considerable preparation through formal channels.

The European Union reality:

- an international organization, Europol, co-ordinates cross-border investigations, and seeks to provide support to domestic law enforcement services in specialist fields.
- a network of liaison officers has been developed.
- Europol produces annual situation reports on organized crime, bringing together data from all Member States.

[1] To avoid some confusion: the European Union and the Council of Europe are different organizations. The former consists of fifteen Member States, and as noted covers most of Western Europe. Its top decision-making body is called the European Council of Ministers, or the European Council for short. The Council of Europe, in turn, today has 43 Member States, and covers almost all of Europe, East and West, North and South.

Within the framework of the Schengen conventions, which apply to almost all EU Member States,

- the Schengen information system allows national law enforcement agencies to share data on many key issues almost instantaneously with their colleagues in other countries. The system extends to some 50,000 terminals in the member states.
- law enforcement authorities are allowed hot pursuit across borders.
- law enforcement authorities are allowed to engage in surveillance in the territory of other countries.
- law enforcement authorities are allowed to engage in controlled delivery.

A. Europol

Europol was established in October 1998, when the Europol Convention entered into force among the fifteen European Union countries. It is an international organization that has its headquarters in the Hague, in the Netherlands. It is not at present an operational entity. It is not, for example, a "European Bureau of Investigations", with agents mandated to carry out investigations or to arrest suspects in the different European Union countries.

The objective of Europol is essentially "to improve ... the effectiveness and cooperation of the competent authorities in the Member States in preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime where there are factual indications than an organized criminal structure is involved and two or more Member States are affected by the forms of crime in question in such a way as to require a common approach by the Member States owing to the scale, significance and consequences of the offences concerned."

Europol is charged, more specifically, with acting to prevent and combat unlawful drug trafficking, trafficking in nuclear and radioactive substances, illegal immigrant smuggling, trade in human beings and motor vehicle crime. After Europol's establishment, its mandate has been successively expanded, to include for example crimes committed or likely to be committed in the course of terrorist activities, and money laundering. Proposals are now being considered to extend the mandate even further, for example to the forgery of money and means of payment.

The principal tasks of Europol consist of:

1. facilitating the exchange of information between the Member States,
2. obtaining, collating and analysing information and intelligence (including the preparation of annual reports on organized crime),
3. notifying the competent authorities of the Member States of information concerning them and of any connections identified between criminal offences,
4. aiding investigations in the Member States by forwarding all relevant information to the national units, and
5. obtaining a computerized system of collected information.

Europol is also charged with developing specialist knowledge of the investigative procedures of the competent authorities in the Member States and providing advice on investigations, and with providing strategic intelligence to assist with and promote the efficient and effective use of the resources available at the national level for operational activities. For this purpose, Europol can assist Member States through advice and research in training, the organization and

equipment of the authorities, crime prevention methods, and technical and forensic police methods and police procedures.

Work in progress. What about the future of Europol? In October 1999, soon after the Europol Convention entered into force, a special European Union Summit was held in Tampere, Finland, to discuss, among other issues, further improvement of cooperation in responding to transnational organized crime. In respect of Europol, the Tampere meeting concluded, *inter alia*, that:

- joint investigative teams should be set up, as a first step, to combat trafficking in drugs and human beings as well as terrorism. Representatives of Europol should be allowed to participate, as appropriate, in such teams in a support capacity.
- Europol's role should be strengthened by allowing it to receive operational data from Member States and authorising it to ask Member States to initiate, conduct or coordinate investigations or to create joint investigative teams in certain areas of crime, while respecting systems of judicial control in Member States.

In March 2000, a new action plan against organized crime was adopted.[2] It contains a number of points regarding Europol:

- Europol could carry out studies of practice at national and Union level and of their effectiveness, develop common strategies, policies and tactics, organize meetings, develop and implement common action plans, carry out strategic analyses, facilitate the exchange of information and intelligence, provide analytical support for multilateral national investigations, provide technical, tactical and legal support, offer technical facilities, develop common manuals, facilitate training, evaluate results, and advise the competent authorities of the Member States.
- consideration should be given to the feasibility of setting up a database of pending investigations, making it possible to avoid any overlap between investigations and to involve several European competent authorities in the same investigation.
- Europol should help in establishing a research and documentation network on cross-border crime, and in organizing the collection, storage, processing, analysis and exchange of relevant information, including information held by law enforcement services on reports on suspicious financial transactions. The establishment of compatible criminal intelligence systems among Member States should be a long-term goal.

Europol is now up and running. There is a clear need for it in Europe. Its potential for developing strong cooperation between the law enforcement agencies of the fifteen different Member States of the European Union is immense, and the pressures on it to succeed are great. The experience of the European Union shows that practical law enforcement cooperation is possible also within a formal structure.

B. Schengen

Due in part to the slowness with which police cooperation was being developed and to political differences of opinions over the extent of this cooperation, some European Union countries (originally,

[2] The Prevention and Control of Organized Crime: A European Union Strategy for the beginning of the new Millennium. See section V.C., below.

Belgium, France, Germany, Luxembourg and the Netherlands) decided on a "fast-track" alternative. The result was the Schengen Agreement of 1985 and the Schengen Convention of 1990, which has sought to eliminate internal frontier controls, provide for more intensive police cooperation, and establish a shared data system.

The "Schengen group" currently consists of Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Portugal, Spain and Sweden, as well as, from outside the EU, Iceland and Norway.[3] The United Kingdom and Ireland have not joined, since they wish to retain separate passport controls.

Police cooperation within the framework of Schengen includes cross-border supervision, "hot pursuit" across borders into the territory of another Member State; and controlled delivery (i.e. allowing a consignment of illegal drugs to continue its journey in order to discover the *modus operandi* of the offenders, or to identify the ultimate recipients and their agents, in particular the main offenders). These forms of cooperation have been hard-won: they did not see the light of day until after protracted negotiations between the Governments concerned, and even then they have been hedged by a number of restrictions.

The need for Schengen arose with one of the primary goals of economic integration, the elimination of border controls on the transit of persons, goods, capital and services. Although this elimination of border control undoubtedly promotes trade and commerce, at the same time it makes more difficult the task of controlling the entry and exit by offenders. In return for ending checks on internal borders, the Schengen countries agreed on the establishment of the Schengen Information System (SIS). This consists of a central computer (in Strasbourg, France) linked to a national computer in each country, and to a total of some 50,000 terminals. When fully operational, data entered into any one computer (for example data on wanted persons, undesirable aliens, persons to be expelled or extradited, persons under surveillance, and some stolen goods) would immediately be copied to the other national information systems. An electronic mail system (SIRENE; Supplementary Information Request at the National Entry) allows for the transfer of additional information, such as extradition requests and fingerprints. Yet another data-connected acronym is VISION, which refers to the "Visa Inquiry System in an Open-border Network".

The strength of the Schengen arrangements lies in the fact that they allow for highly practical law enforcement cooperation, at a level that is unique in the world. At the same time, the arrangements have been subjected to criticism. Although the arrangements have been made specifically to respond to the opening of the borders between the countries in question, the question remains whether these arrangements are still insufficient to respond to the increased mobility of offenders. Secondly, the arrangements do not include all European Union countries, while on the other hand they do include two non-EU countries. This inevitably leads to some

[3] The principal reason for the inclusion of Norway and Iceland is that these two countries are part of the passport-free zone formed among the Nordic countries. The other three Nordic countries, Denmark, Finland and Sweden, are members of the Schengen group.

practical difficulties. Third, since there is no supervisory court structure or any effective parliamentary review of Schengen decisions, it has been suggested that human rights concerns will receive less attention that the law enforcement priorities. (On the other hand, any actions taken would necessarily fall under the jurisdiction of at least one of the Schengen countries, and so the legality of the action could then be scrutinized under the appropriate national law.)

C. Information Gathering and Analysis

Law enforcement authorities worldwide would be among the first to agree that a more proactive, intelligence-led approach is needed to detect and interrupt organized criminal activities, apprehend the offenders, demolish the criminal networks, and seize and confiscate the proceeds of crime. Information is needed on the profile, motives and *modus operandi* of the offenders, the scope of and trends in organized crime, the impact of organized crime on society, and the effectiveness of the response to organized crime. This information includes operational data (data related to individual suspected and detected cases) and empirical data (qualitative and quantitative criminological data).

Regrettably, on the global level the arrangements for the exchange of operational and empirical data continue to be *ad hoc*, between individual law enforcement agencies or even individuals. Such *ad hoc* arrangements also raise concerns over whether or not domestic legislation on data protection is being followed. Implementation of the United Nations Convention against Transnational Organized Crime (in particular articles 27 and 28) should provide a firmer foundation for this exchange of data, but the Convention has not yet entered into force.

Within the European Union framework, on the other hand, several arrangements are already in place for gathering and analysing data:

- a joint action adopted in 1996 deals with the role of liaison officers. Their function is specifically to focus on information gathering. They are to "facilitate and expedite the collection and exchange of information though direct contacts with law enforcement agencies and other competent authorities in the host State", and "contribute to the collection and exchange of information, particularly of a strategic nature, which may be used for the improved adjustment of measures" to combat international crime, including organized crime. So far, over 300 liaison officers have been posted by EU countries, and they work in close cooperation with one another.
- Europol already produces annual reports on organized crime based on data provided by Member States. These annual reports are being used in an attempt to define strategies. Over the years, the quality and utility of these annual reports have improved, even though continued work is needed to improve the validity, reliability and international comparability of the data.[4] One particular feature of the annual reports is that they contain

[4] The work on the annual situation reports is primarily done by a "Contact and Support Network" consisting of representatives of the law enforcement authorities of the different Member States.

recommendations based on an analysis of the data.
- various decisions have been taken on the exchange of information on specific subjects. For example, a Joint Action adopted on 20 May 1997 requires the exchange of information between law enforcement agencies when potentially dangerous groups are travelling from one Member State to another in order to participate in events.
- the European Union has created a number of financial programmes to encourage the closer involvement of the academic and scientific world in the analysis of organized crime.
- a European police research network is being established to act as an information source on research results, other documented experiences and good practice in crime control.

III. PROSECUTORIAL COOPERATION

The global status quo:

International contacts between prosecutorial authorities are based on bilateral and the few multilateral treaties on mutual legal assistance. Informal contacts are facilitated by the International Association of Prosecutors and other, similar non-governmental organizations.

The European Union reality:
- a special structure, the European Judicial Network, has been set up to promote direct contacts between prosecutors. The system involves computerized links between the Member States, and in time will probably even allow automatic translation and transmission of requests.
- several European Union Member States have posted liaison magistrates abroad, with a specific mandate to facilitate responses to requests for extradition and mutual legal assistance, and a more general mandate to promote international cooperation.
- prosecutorial and judicial co-operation is promoted also by direct contacts through the Schengen structures.
- an international organization, Eurojust, is being set up to assist in the coordination of the prosecution of cross-border cases.

A. The European Judicial Network and the Strengthening of Informal Contacts

Among the greatest difficulties in extradition and mutual legal assistance are the lack of information on how a request should be formulated so that it can readily be dealt with in another country, and the lack of information on what progress is being made in the requested State in responding to the request.

In those (rare) cases where the practitioner personally knows his or her counterpart in the other country, informal channels can be used. The European Union has decided to create a more solid base for these informal contacts by establishing a "European Judicial Network" (EJN).[5] This network consists primarily of the central authorities responsible for international judicial cooperation in criminal matters, and of the judicial or other competent authorities with specific responsibilities within the context of international cooperation. The EJN focuses on

[5] Joint Action of 29 June 1998. A similar structure has been set up for cooperation in civil matters.

promoting cooperation in respect of serious crime such as organized crime, corruption, drug trafficking and terrorism.

The EJN is promoting cooperation in a number of different ways. First of all, it organizes regular meetings (at least three times a year) of representatives of the contact points. These meetings have dealt, for example, with case studies, general policy issues, and practical problems. Organizing the meetings in the different EU Member States provides an additional benefit: the host country can present its system for international cooperation, and the participants can get to know one another. Both factors are important in instilling confidence in one another's criminal justice system.

Second, the EJN is preparing various tools for practitioners. One very useful tool is a CD-rom that provides practitioners with information on what types of assistance can be requested in the different Member States (sequestration of assets, electronic surveillance and so on) for what types of offences, how to request it, and whom to contact. The CD-rom also contains the texts of relative international instruments and national legislation. A second tool is a computerized "atlas" of the authorities in the different Member States, which shows who is competent to do what in the different Member States in relation to international cooperation. Soon, the contact points in all fifteen Member States will be connected with one another by a secure computer link that can be used not only to follow up on requests, but even to send the requests themselves.

A third tool is a uniform model for requests for mutual legal assistance. Consideration is currently being given to developing a system for automatic translation of these requests, at first at least into the major European languages.

B. Liaison Magistrates

The concept of the liaison magistrate is based on the positive experiences with the growing network of liaison officers used to promote cooperation between law enforcement agencies. In law enforcement, the liaison officer uses direct contacts to facilitate and expedite the international collection and exchange of information, in particular information of a strategic nature.[6]

The liaison magistrate is

- an official with special expertise in judicial cooperation,
- who has been posted in another State,
- on the basis of bilateral or multilateral arrangements,
- in order to increase the speed and effectiveness of judicial cooperation and facilitate better mutual understanding between the legal and judicial systems of the States in question.[7]

The liaison magistrate does not have any extraterritorial powers, and also otherwise must fully respect the sovereignty and territorial integrity of the host State.[8]

[6] The recent Treaty of Amsterdam of the European Union (article 30(2)(d)) called on the European Council to "promote liaison arrangements between prosecuting/investigating officials specialising in the fight against organized crime in close cooperation with Europol". In order to create a basis for the development of this work, on 22 April 1996, the European Council adopted a Joint Action on a framework for the exchange of liaison magistrates to improve judicial cooperation.

Liaison magistrates are—so far—used almost solely by the European Union countries. In general, liaison magistrates are sent to countries with which there is a "high traffic" in requests for mutual assistance, and where differences in legal systems have caused delays. France has been the most active in sending out liaison magistrates, and has sent them not only to Germany, Italy, the Netherlands, Spain and the United Kingdom, but also outside the European Union, to the Czech Republic and the United States. France is also considering sending a joint liaison magistrate to the Baltic countries (Estonia, Latvia and Lithuania).

Several other European Union countries have sent one or two liaison magistrates: the United Kingdom to France and Italy; Italy to France (and is considering sending one to Spain and the United Kingdom); the Netherlands also to France (and is considering sending one to the United States); Finland to Estonia (and is considering sending one to the Russian Federation); Germany to France; and Spain to Portugal.[9]

Liaison magistrates work on the general level (by promoting the exchange of information and statistics and seeking to identify problems and possible solutions) and on the individual level (by giving legal and practical advice to authorities of their own State and of the host State on how requests for mutual assistance should best be formulated in order to ensure a timely and proper response, and by trying to identify contact persons who might help in expediting matters). The exact profile of the work of the liaison magistrate varies, depending on such factors as the types of cases, and the extent to which there are direct contacts between the judicial authorities of the two States.

The advantages, from the point of view of the sending State and the host State, are numerous. Language problems are reduced, requests for judicial co-operation can be discussed already before they are sent in order to identify possible problems, and there is a basis for promoting trust and confidence in one another's legal system.

C. Eurojust: A Formal Structure for Prosecutorial Coordination

Even the direct contacts and expertise provided by the EJN and the liaison magistrates cannot always provide the type of coordination needed in investigating transnational organized crime. Over recent years, the idea gradually evolved of setting up a separate entity, somewhat comparable to Europol in the law enforcement field, to

[7] A related concept is that of the legal attache, who is posted in the mission of the sending State to look after legal issues in general that concern the host State and the sending State. Reference can also be made to temporary exchanges of personnel, which are designed to increase familiarity with one another's legal system and foster direct, informal contacts. Neither legal attaches or personnel on temporary exchange, however, have the same expertise and job profile as the liaison magistrate.

[8] See, for example, P.B. Heymann, Two Models of National Attitudes Towards International Co-operation in Law Enforcement, Harvard International Law Journal, vol. 31, p. 99, and Alastair Browne, Towards a Prosecutorial Model for Mutual Assistance in Criminal Matters?, in Peter J. Cullen and William C. Gillmore (eds.), Crime sans Frontieres: International and European Legal Approaches, Hume Papers on Public Policy, vol. 6, nos. 1 and 2, Edinburgh University Press, Edinburgh 1998.

[9] From outside the European Union, Estonia has sent a liaison magistrate to Finland.

coordinate national prosecuting authorities and support investigations of serious organized crime extending into two or more Member States.[10]

The idea for the establishment of such an entity received a considerable push at the special European Union Summit held in Tampere, Finland in October 1999. At the Summit, everyone was agreed on the need for such a new entity. However, there appeared to be different opinions regarding what the precise mandate of Eurojust should be, and how it should go about doing its work.

The Tampere meeting decided that these questions should be solved by the end of 2001—a rather tight schedule, but one which remains feasible. In the meantime, a temporary unit, called "Pro Eurojust" (short for "Provisional Eurojust") started work in Brussels in March 2001.

The way in which the work of Pro Eurojust is evolving provides some indicators of how Eurojust itself will work once it begins operations. Each Member State has sent a senior prosecutor or magistrate to Brussels on permanent assignment. These representatives meet every week to discuss both individual cases and general policy for coordinating investigations. Plenary meetings tend to be devoted to policy issues, while most cases will be dealt with in smaller meetings, among representatives of only the individual countries involved.

Pro Eurojust itself does not have any operational powers. Instead, the national representatives, having agreed on what needs to be done, contact the competent authorities in their own Member State for the required action. In addition, individual members of Pro Eurojust may have operational powers according to their national legislation. One of the topics now being debated is what type of operational powers Eurojust itself will have. For example, it may be able to ask a Member State to initiate criminal proceedings or to provide Eurojust with data regarding the case.[11]

IV. JUDICIAL COOPERATION

The global status quo:

Mutual legal assistance and extradition are based on an incomplete patchwork of bilateral treaties and, in rare cases, multilateral treaties. These treaties tend to cover only some offences, and offer only limited measures. Requests must be sent through a central authority. The procedure tends to be slow and uncertain, with requests often being frustrated by bureaucratic inertia, broad grounds for refusal, and differences in criminal and procedural law.

The European Union reality:

- all European Union Member States are parties to broad multilateral treaties on mutual legal assistance and extradition.
- the European Union has decided on standards of good practice in mutual legal assistance, and regularly reviews compliance with these standards.
- separate European Union treaties on mutual legal assistance and on

[10] See Hans G. Nilsson, Eurojust—the Beginning or the End of the European Public Prosecutor? in Europarattslig Tidskrift, vol. 4, 2000

[11] In order for Eurojust to have the power to ask for data, considerable attention will have to be pay to data protection, for example, on how data are to be transmitted, on who has access to the data, on confidentiality, and on the maintenance of personal records. In this respect, the laws of the different Member States remain quite different.

extradition have been drafted to update and supplement the existing multilateral treaties prepared within the framework of the Council of Europe.
- the European Union is now moving towards a system of mutual recognition of decisions and judgments in criminal matters. When this system is in place, cooperation will be speeded up considerably: a decision or judgment in any Member State can be enforced as such in any other Member State.
- a mutual evaluation system has been established, in which experts from different countries assess the practical conduct of international cooperation in the target country.

A. Mutual Legal Assistance

The Member States of the European Union are all parties to the 1959 Council of Europe Convention on Mutual Assistance in Criminal Matters.

The 1959 Convention, however, was drafted almost a half century ago. Since then, ideas regarding how mutual assistance should be provided have changed considerably, especially in Europe, where there has been extensive experience in this sector. There has been a clear trend towards simplifying and speeding up mutual assistance by eliminating conditions and grounds for refusals. Since the European Union Member States have a lot of cases in common, they have come to expect certain standards of conduct—after all, if the central authority of one country is itself slow or sloppy in responding to requests, it can scarcely expect others to be better when responding to its requests for assistance.

In 1998, the European Union decided to adopt a set of standards on good practice in mutual legal assistance.[12] Each Member State was required to prepare, in one year's time, a national statement of good practice. These were then circulated among all the Member States. The idea here was that the Member States publicly commit themselves to upholding these standards, and can be held accountable.

The sets of standards include at least the following eight points:

a. to acknowledge all urgent requests and written enquiries unless a substantive reply is sent quickly;
b. when acknowledging requests and inquiries, to provide the name and contact details of the authority (and, if possible, the person) responsible for executing the request;
c. to give priority to requests which have been marked "urgent";
d. where the assistance requested cannot be provided in whole or in part, to provide an explanation and, where possible, to offer to discuss how the difficulties might be overcome;
e. where it appears that the assistance cannot fully be provided within any deadline set, and this will impair proceedings in the requesting State, to advise the requesting State of this;
f. to submit requests as soon as the precise assistance that is needed has been identified, and to explain the reasons for marking a request as "urgent" or in setting a deadline;
g. to ensure that requests are submitted in compliance with the relevant treaty or arrangements; and
h. when submitting requests, to provide the requested authorities with the name and contact details of the

[12] Joint Action of 29 June 1998 on good practice in mutual legal assistance in criminal matters.

authority (and, if possible, the person) responsible for issuing the request.

Although some of these points may seem trivial, they all have an immediate impact on the day-to-day work of judicial authorities involved in international cases.

The fifteen European Union countries have prepared their own Mutual Assistance Convention (adopted on 29 May 2000). This is not intended to be an independent treaty, but instead supplements the 1959 Council of Europe convention and its protocol. It brings these earlier treaties up to date by reflecting not only the "good practices" referred to above, but also the development of investigative techniques and arrangements.[13] Given that this Convention and the United Nations Convention against Transnational Organized Crime were negotiated at the same time, it should not come as a surprise that they share many ideas.

For example, the new European Union Convention includes provisions that deal with:

- the sending of procedural documents directly to the recipient in another State (article 5);
- the sending of requests by telefax and e-mail (article 6);
- the spontaneous exchange of information (article 7);
- restitution of property to its rightful owner (article 8);
- temporary transfer of persons held in custody for purposes of investigation (article 9);
- hearing by videoconference (article 10);
- hearing of witnesses and experts by telephone conference (article 11);
- the use of controlled deliveries (article 12);
- the use of joint investigative teams (article 13);
- the use of covert investigations (article 14);
- interception of telecommunications (articles 17 to 22); and
- the protection of personal data provided in response to a request (article 23).

In particular the provisions on the interception of telecommunications are quite lengthy, and were the subject of extensive debate. Different Member States have different provisions on the conditions under which the interception of telecommunications is allowed. However, given the ease with which people can now move from one country in the European Union to another, and given also the ease with which communications can be traced and listened to, this presumably will become an increasingly important issue, and the time spent on it was undoubtedly well spent. The basic solution in this respect was to allow interception, but to keep the authorities in the countries in question informed.

The Convention brings in some other innovations. Perhaps the most interesting one is that it reverses one fundamental principle in mutual legal assistance. Today, the almost universal rule is that the law applicable to the execution of the request is that of the requested State. The new Convention states that the requested State must comply with the formalities and procedures expressly indicated by the requesting Member State. The requested

[13] In May 2001, political agreement was reached on a protocol to the 2000 Convention, which would simplify mutual assistance even further. The proposal is currently under consideration.

Member State may refuse to do so only if compliance would be contrary to the fundamental principles of law of the requested State.

B. Extradition

The Member States of the European Union are all parties to the 1957 Council of Europe Convention on Extradition.

Also here, the Member States of the European Union have sought to supplement the Council of Europe Convention by drafting new treaty obligations. In 1995, the European Union adopted a Convention on simplified extradition within the EU. Essentially, the Convention focuses on the many cases where the person in question consents to extradition. One year later, in 1996, the European Union adopted a Convention on the substantive requirements for extradition within the European Union.[14]

The European Union is currently considering various options for "fast-track extradition". These discussions have been held within the context of the discussion on mutual recognition of decisions and judgments in criminal matters. In regards to extradition, the goal is to have a warrant of arrest issued by the competent authorities of one State recognized as such by the authorities of another EU State, establishing a basis for extradition. A proposal on such a procedure is expected by the end of the year 2001.

In advance of any decision on "fast-track extradition", Spain and Italy have signed a bilateral treaty on this type of extradition, and the United Kingdom is introducing legislation along the same lines.

The Spanish-Italian treaty applies to persons suspected of or convicted for terrorism, organized crime, drug trafficking, arms trafficking, trafficking in human beings or sexual abuse of minors, where the maximum sentence is at least four years. A copy of the court order is to be sent directly to the Ministry of Justice of the other country, which translates it and sends it without delay for enforcement. What is noticeable here is that the procedure does not call for any court hearings at all. The only grounds for refusal are if the documentation is not in order, or the person in question has been granted immunity for some reason.

The United Kingdom proposal is for a "backing of warrants" scheme.[15] The UK already today uses such a "backing of warrants" approach with Ireland.[16] Under this approach, the extradition request is replaced by a simple arrest warrant, which is transmitted through the Home Office to the local court. The local court only has to establish (1) that the person arrested is the person for whom extradition is sought; (2) that the warrant and accompanying documentation are in order; and (3) whether any of the restrictions on extradition apply.[17] If none of these are a bar to extradition, the court simply notes

[14] This 1995 Convention has been ratified by nine of the fifteen Member States: Austria, Denmark, Finland, Germany, Greece, the Netherlands, Portugal, Spain and Sweden. The 1996 Convention has been ratified by Denmark, Finland, Germany, Greece, the Netherlands, Portugal and Spain.

[15] The Law on Extradition: A Review. Home Office, March 2001, London.

[16] Similar arrangements exist among Belgium, Luxembourg and the Netherlands. The five Nordic countries—Denmark, Finland, Iceland, Norway and Sweden—also have a fast-track extradition scheme among themselves.

on the back of the warrant that this can be enforced.

According to the UK proposal the backing of warrants scheme would cover extradition requests from all European Union countries as well as from Iceland, Liechtenstein and Norway (referred to as "tier one" countries). It can be extended to other extradition partners, as appropriate. For "tier two" and "tier three" countries, certain additional conditions should be met: double criminality; the political offence exception; the passage of time has not made it unjust or oppressive to extradite; whether the basis of the extradition is a conviction imposed *in absentia*; and whether the offence is a military offence that is not also an offence under the general criminal law.

From the point of view of the United Kingdom, all remaining states, "tier four" states, would be subject to the *prima facie* requirement. This means that the authorities of these countries should demonstrate, to the satisfaction of the UK authorities, that there is sufficient evidence of the guilt of the person in question to proceed with the extradition.[18]

C. Mutual Recognition of Decisions and Judgments

Because of jurisdictional limits (and perhaps also a deep-rooted lack of confidence in the criminal justice systems of other countries), decisions made in the investigation of organized crime cannot be directly enforced abroad. For example, if a court in one country orders that a suspect be arrested, that his or her assets be frozen, or that his or her house be searched for evidence, mutual legal assistance has to be requested in order to have the decision carried out abroad. The process inevitably takes some time—time during which the suspect can empty out his or her bank accounts and move on to a third country.

So far, little attention has been paid to what can, in a way, be seen as a parallel to mutual legal assistance: recognising the validity of a decision taken by a foreign authority or court, and enforcing it as such. The principle would enable competent authorities to quickly secure evidence, seize assets and immobilize offenders. This would, of course, also be in the interests of the victim.[19]

Internationally, mutual recognition of foreign decisions and judgments is almost

[17] There are two conditions: the offence is punishable by at least a minimum of twelve months in the requesting State, and the *non bis in idem* principle is satisfied.

[18] The United Kingdom has waived the *prima facie* requirement with all States Parties to the European Convention on Extradition and, following an amendment to the Scheme in 1981, with all partners in the Commonwealth Scheme. For the United States, in turn, demonstration of "probable cause" is currently sufficient. See., e.g., Gully-Hart, Paul (1992), Loss of Time Through Formal and Procedural Requirements in International Co-operation, in Eser, Albin and Otto Lagodny (eds.) (1992), Principles and Procedures for a New Transnational Criminal Law. Documentation of an International Workshop 1991. Beitrage und Materialien aus dem Max-Planck-Institut fur auslandisches und internationales Strafrecht, Freiburg im Breisgau, pp. 245–266, at p. 256–257.

[19] Protecting the interests of the victim is one of the priorities of the European Union. On 15 March 2001, a framework decision was adopted on in order to ensure victims uniform minimum legal protections in criminal proceedings. In September 2001, the Commission submitted a proposal on unification of compensation to victims from the State.

non-existent. There are few bilateral or multilateral treaties on this topic. One of the few is the European Convention on the International Validity of Criminal Judgments, prepared within the framework of the Council of Europe in 1970. Even this treaty has very few signatures, and even fewer ratifications.[20] Indeed, most EU Member States have not ratified it, and so it has very little practical importance. Furthermore, this only applies to legally final judgments, and not for example to decisions made in the course of an investigation.[21]

With the increasing integration of Europe, Member States are now seriously considering the potential for mutual recognition of decisions and judgments. It is widely regarded as an effective and indeed almost unavoidable tool in cooperation. Furthermore, proponents argue that the close ties among the European Union countries, and the fact that they are all signatories to the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, has lead to a situation in which all Member States should have full faith and confidence in the operation of the criminal justice system in each other's country. To give an example, if a judge in one country orders that a suspect should be arrested, courts in all other European Union countries should have confidence that the decision was made according to law and with due respect to human rights.[22]

As a result, the Tampere European Summit in October 1999 endorsed the principle of mutual recognition and called for the preparation of a programme to gradually make mutual recognition a working reality. In the view of the Tampere Summit, mutual recognition should become the cornerstone of judicial co-operation in both civil and criminal matters within the European Union. The programme requested by the Tampere Summit was adopted on 30 November 2000.

There is currently discussion in the EU about whether the system of mutual recognition should allow refusals, for example on the grounds that the human rights of the person in question had not been sufficiently taken into consideration. Some regard such a "fail-safe" system as necessary, while others consider that the European Union member states should have confidence that other member states respect the European Convention on Human Rights. Another item of discussion is whether the condition of double criminality should be maintained.

[20] Of the European Union Member States, only Austria, Denmark, the Netherlands, Spain and Sweden have ratified the 1970 Convention. The other countries that have ratified it are Cyprus, Estonia, Iceland, Lithuania, Norway, Romania and Turkey. An additional eleven countries have signed, but not yet ratified, the Convention.

[21] There is one further exception to the lack of mutual recognition internationally. The five Nordic countries (Denmark, Finland, Iceland, Norway and Sweden) recognize one another's decisions and judgments, and refusals are almost unheard of. This system is based on the fact that the Nordic countries share very much the same legal system, and also otherwise have long-standing cooperation with one another.

[22] An analogy can be made with the "full faith and credit" doctrine contained in article IV, section 1 of the Constitution of the United States. According to this section, "Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State."

Work in progress: In February 2001, Belgium, France and Sweden submitted a proposal regarding the mutual recognition of decisions on the freezing of property and of evidence. The goal is to adopt a decision on this by the end of 2001. In July 2001, the European Union began considering a proposal from France, Sweden and the United Kingdom regarding the mutual recognition of fines. In March 2001, Germany has a somewhat parallel proposal to this latter one on fines. A proposal is expected on the mutual recognition of pre-trial orders in investigations into computer crime. The programme of work adopted in November 2000 also contains measures in regard to the transfer of prosecution and the exchange of information on criminal records; work on these may begin in the year 2002 or 2003. Work is also planned on ways to avoid double jeopardy in connection with mutual recognition.

D. Mutual Evaluations

The Member States of the European Union have made a number of commitments to improving their response to organized crime, and to improving international cooperation. These commitments were undoubtedly made in good faith. However, the practical reality of investigation, prosecution and adjudication (for example, lack of resources, and differences in priorities in different sectors and on different levels) can mean that the work that is actually carried out remains at odds with the commitments.

One way to diagnose what problems exist is to carry out expert reviews. The OECD has instituted a system of mutual evaluations of Member States on measures taken to prevent and control money laundering. These evaluations are carried out by teams of experts from different countries who, because of their background, are able to talk as colleagues with experts and practitioners in the target country, and ask the right questions and understand the answers they are given. This approach has been deemed so successful that the European Union has adopted it on a broader scale. Accordingly, on 5 December 1997 the European Union decided on the establishment of a mechanism for evaluating the application and implementation at the national level of international undertakings in the fight against organized crime.

Following the OECD model, small teams of experts visit the target country, interview practitioners, report on their assessment and make recommendations. The assessment is confidential,[23] and the target country is given every opportunity to correct any errors that may have been made.

So far, two rounds of evaluations have been carried out in all fifteen Member States. The first round dealt with mutual legal assistance and urgent requests for the tracing and restraint of property, and the second round dealt with law enforcement and its role in the fight against drug trafficking. A third round, which will deal with extradition, will soon begin.

The Member States are quite satisfied with the way in which the mutual evaluations have been carried out. The process has not only contributed to greater understanding of the differences that exist between the countries, but has also lead to many changes in law and practice.

[23] With the permission of the country in question, the report can be published. Indeed, all of the reports so far have in fact been published.

V. COOPERATION IN THE FORMULATION OF DOMESTIC LAW AND POLICY

The global status quo:

International cooperation on the formulation of domestic law and policy is almost entirely limited to general provisions in bilateral and multilateral treaties, and to even more general recommendations, resolutions and declarations.

The European Union reality:

- the European Union has accepted decisions calling for criminalisation of a number of offences. The definitions are generally rather tightly drawn, and have forced countries to amend their legislation accordingly.
- the European Union has begun cooperation in the prevention of crime, including organized crime.
- the European Union has adopted a number of action plans and programmes that have had a clear effect on policy and practice in all the Member States.
- the cooperation in this regard has been extended to the twelve candidate countries, which are rapidly amending their own procedural and criminal laws.
- there are signs that the European Union may be moving towards what is called the "communitisation" of criminal law, in other words to a situation where the power to determine the contents of criminal law is increasingly shifted from the individual Member States to the fifteen Member States working together.

A. Criminalisation

On the global level, in the area of substantive criminal law, very little international cooperation exists. Where it does exist, it primarily concerns the very few substantive provisions in bilateral and multilateral treaties, such as the minimum definitions of participation in a criminal organization, corruption, money laundering and obstruction of justice in the United Nations Convention against Transnational Organized Crime. There are also a number of resolutions, recommendations and declarations regarding criminal law and criminal justice, but these have tended to have little actual impact on law, practice and policy.

This is not the case with the European Union, where there is not only extensive discussion about the harmonisation of both criminal and procedural law, but much has been done in practice.

The question of how far the criminal law (and procedural law) of the Member States should be harmonised is a subject of considerable controversy. Everyone appears to agree that some degree of harmonisation is necessary in order to ensure smooth international cooperation, as long as by "harmonisation" one means the *approximation* or co-ordination of different legal provisions or systems by eliminating major differences and creating minimum requirements or standards. To use a musical analogy, we can continue to play our national music, as long as it is in harmony with the music of the other fourteen Member States.

Everyone also appears to agree that at this stage at least we are not talking about the *unification* of criminal and procedural law, in the sense that the fifteen distinct legal systems would be replaced by one system. To use the musical analogy, no one supports the idea of replacing the orchestra with a single piano, no matter how beautiful or large.

The process so far has involved a focus on certain key issues, where the Member States have agreed that harmonised legislation is necessary. Among the issues dealt with are the following:

Fraud and counterfeiting
- fraud and other crimes against the financial interests of the Communities (Convention of 26 July 1995, protocols of 27 September 1996 and 19 June 1997)[24]
- fraud and counterfeiting of non-cash means of payment (framework decision on 28–29 May 2001)
- counterfeiting of the euro (framework decision on 28–29 May 2001)

Drug trafficking
- illicit cultivation and production of drugs (Council Resolution of 22 November 1996)
- "drug tourism" (Council Resolution of 22 November 1996)
- sentencing for serious illicit drug trafficking (Council Resolution of 6 December 1996)
- drug addiction and drug trafficking (Joint Action of 9 December 1996)

Trafficking in persons and related offences
- trafficking in human beings and sexual exploitation of children (Joint Action of 21 January 1997)
- combating illegal immigration (Council recommendation of 22 December 1995)

Corruption
- corruption (Convention signed on 26 May 1997)
- corruption in the private sector (Joint Action of 22 December 1998)

Other offences
- racism and xenophobia (Joint Action of 15 July 1996)
- football hooliganism (Council Resolution of 28 May 1997)
- money laundering (Joint Action of 3 December 1998)
- arms trafficking (Council Recommendation of 7 December 1998)
- participation in a criminal organization (Joint Action of 21 December 1998)

Procedural issues
- interception of telecommunications (Council Resolution of 17 January 1995)
- protection of witnesses in the fight against international organized crime (Council Resolution of 23 November 1995)
- individuals who cooperate with the judicial process in the fight against international organized crime (Council Resolution of 20 December 1996)

Work in progress. The work on further harmonisation of criminal and procedural law in the European Union is proceeding on the priority areas identified at the Tampere European Summit in October 1999. Work is underway for example on the minimum provisions on the constituent elements of offences and penalties relating to drug trafficking, on the sexual exploitation of children and child pornography, and on racism and xenophobia. A Commission proposal on the constituent elements and penalties relating to terrorism is expected in October 2001, and another proposal on cyber-crime and other high-tech crime is expected towards the end of 2001. A considerable amount of attention has also been focused on money laundering, and on the freezing of the assets of offenders. For example, a framework decision on

[24] In May 2001, the Commission proposed an amalgamation of the various Convention provisions relating to fraud against the financial interests of the EU.

money laundering and on the identification, tracing, freezing or seizure, and confiscation of the instrumentalities and proceeds of crime was adopted on 26 June 2001.

One general priority area is the protection of the financial interests of the European Union, for example against subsidy fraud, embezzlement and corruption. Here, there is a much further-reaching proposal, called the "Corpus Juris" project.[25] Briefly, this project seeks not only to harmonise the definition of offences against the financial interests of the European Union, but also to set up a European Public Prosecutor system, using identical procedural law provisions in each Member State. Proponents have said that this degree of uniformity is necessary to prevent organized criminal groups from utilising differences between the Member States. Critics, in turn, see this as an attempt to create a supranational criminal law and procedural law, which in time may lead to the unification referred to above.

The Corpus Juris project raises broader issues of how far the harmonisation of criminalisations can go, and who can make the decisions. Questions of criminal law have so far always been reserved to the Member States themselves to decide, on the basis of consensus. Article 31(e) of the Treaty of Amsterdam gave the Commission a right of initiative in these matters. The exact implication of article 31(e), however, has been questioned. Most Member States are of the view that the Commission is limited to the right of initiative, and only the Member States themselves may make any decision on criminalisation. A minority, however, are of the view that article 31(e) in effect gives the Commission the right to *oblige* Member States to adopt criminalisations on certain issues, if criminal law sanctions are the only way to protect Community interests. The issue is still open. So far, a working compromise has been reached: decisions under article 31(e) are being made in tandem, with the Commission taking a decision on matters within its power, and the Member States (through the Council) taking a decision at the same time on matters within their powers.

[25] See http://www.law.uu.nl/wiarda/corpus/engelsdx.html The project was first presented on 17–18 April 1997.

B. The Prevention of Organized Crime

Organized crime, just as is the case with crime in general, does not spread at random. It is often a planned and deliberate activity. Accordingly, it depends to a great deal on the presence of motivated offenders, on the existence of the opportunity for crime, and on the orientation of the work of those who seek to control organized crime. In line with this so-called situational approach, the Member States are exploring ways to ensure that committing crime is made more difficult, that committing crime involves greater risks to the offender (in particular the risk of detection and apprehension), and that the possible benefits to the offender of committing crime are decreased or eliminated.

Also the Tampere European Summit stressed the importance of crime prevention. It suggested that common crime prevention priorities should be developed and identified. Elements for the crime prevention policy are contained in the Council resolution of 21 December 1998 on the prevention of organized crime. In March 2001, the Commission and Europol presented a report on a European strategy on the prevention of organized crime.

One step in developing and identifying priorities was made on 15 March 2001, when the European Union decided on the establishment of a crime prevention network. This network consists of contact points in each Member State, representing not only the authorities but also civil society, the business community and researchers. The network functions by organizing meetings, compiling a database and otherwise by seeking to gather and analyse data on effective crime prevention measures on the local and regional level in order to disseminate information on "good practices."

C. European Union Policies and Programmes

The various measures listed above and that have been taken by the European Union did not come piecemeal, one by one. Instead, they are elements of a wider EU policy against organized crime. A critical step was taken on 16–17 June 1997, when the European Union adopted a Plan of Action to combat organized crime. Instead of the resolutions, recommendations and declarations that have so often been adopted in other fora—regrettably often with little practical impact—the European Union decided, for the first time anywhere, on specific action, with a clear division of responsibilities, a clear timetable and a mechanism for implementing the action plan. The strong consensus reached by Member States on the 1997 Plan of Action helped to create the political and professional climate required on both the EU level and the national level to take and implement the necessary decisions.

The 1997 Plan of Action changed the rate of the evolution of international cooperation against organized crime. Examples of the progress that has been achieved are the mutual evaluation mechanism, the entry into force of the Europol Convention, the establishment of the European Judicial Network, criminalisation of participation in a criminal organisation, the establishment of a variety of funds to support specific measures, the adoption of joint actions on money laundering, asset tracing, and good practices in mutual assistance, the pre-accession pact with the candidate countries, and the identification of further measures in respect of the prevention of organized crime.

The period allotted for the 1997 Plan of Action ended on 31 December 1999. However, more work needed to be done. When Finland held the Presidency of the European Union during the second half of 1999, it led discussions on the necessary follow-up plan. These discussions were given added push by the decision to hold a special Summit, the Tampere European Council (15–16 October 1999), which dealt with, among other issues, cross-border crime.

Among the priorities identified by the Tampere European Summit are:

- the prevention and control of crime through the reduction of opportunities;
- the facilitation of co-operation between Member States in criminal matters;
- co-ordination and, where appropriate, centralisation of criminal proceedings;
- protection of the rights of victims and the provision of assistance;
- development of operational police co-operation and law enforcement training at the EU level;
- enhancement of customs co-operation in the fight against crime and in the use of information technology;
- the fostering of international co-operation in the fight against transnational organized crime;

- reinforcement of the role of Europol;
- adoption of a common approach throughout the EU on cross-border crime;
- depriving criminals of the proceeds of crime; and
- enhancing knowledge and capacity to fight money laundering activities.

These various priorities—known in the European Union as the "Tampere milestones"—set out a fairly clear programme for the European Union for the years to come. More detail was provided by the follow-up to the 1997 Plan of Action that was worked out during the Finnish Presidency of the European Union, and adopted in March 2000.[26] The core of the document consists of eleven chapters that set out the political guidelines, the respective mandates and initiatives, and the detailed recommendations. Specific forms of crime that are the focus include economic crime; money laundering and off-shore centres; terrorism; computer crime; and urban crime and youth crime.

D. Cooperation with Candidate Countries and Other Third Countries

Even if the European Union Member States could effectively develop their laws and systems to prevent and control organized crime within their borders, this would not be enough. Preventing and controlling organized crime requires global co-operation.

One particular focus is cooperation with the so-called candidate countries. The European Union is currently negotiating actively with twelve countries on membership. In December 1999, the European Union decided in addition to start preparations for the extension of this process to Turkey. Enlargement on such a scale, from fifteen Member States to 28, will constitute not so much an evolutionary step for the EU as a leap into the unknown. Institutions, interests, policies, balances of power: everything will change. The European Union is faced with a political challenge of the first order.

In this process, considerable attention is being paid to the prevention and control of organized crime. The European Union has already adopted a large number of measures (referred to as the *acquis communautaire*),[27] and the Member States have implemented them in their domestic legislation and practice. In order to avoid a situation where organized criminal groups take advantage of a sudden expansion of the European Union, also the candidate countries must fully accept and implement the *acquis*. To this end, on 28 May 1998 the European Union has made a so-called pre-accession pact with the candidate countries on how the process should be carried out. Considerable work is underway multilaterally and bilaterally to assist the candidate countries in this work.

A second focus is the Russian Federation. Again during the Finnish Presidency, a special European Union Action Plan was prepared on common action with the Russian Federation on combating organized crime. This in essence sets up a structure and process

[26] The new plan of action is known as "The Prevention and Control of Organized Crime: A European Union Strategy for the beginning of the new Millennium."

[27] The "acquis communautaire" can be loosely described as the legislation of the European Union. It consists not only of the Treaties and all EU legislation, but also of the judgments of the Court of Justice and joint actions.

for continuous consultations and cooperation between the European Union and the Russian Federation. In addition, there is a broader "partnership" agreement with the Russian Federation (and with Ukraine) that provides a basis for cooperation.

Other geographical areas with which the European Union is seeking to strengthen co-operation include the Mediterranean, South Eastern Europe, China, North America, Latin America and the Caribbean.

The European Union is also active in working through intergovernmental organizations such as the Council of Europe and the United Nations. For example, throughout the negotiations on the United Nations Convention against Transnational Organized Crime, the European Union countries worked very closely together in seeking to ensure that the resulting Convention was as effective and broad as possible.

VI. LESSONS TO BE LEARNED

As can be seen, the European Union has put into place an enormous number of measures in only a few years in order to better prevent and control organized crime. The strengths of the European Union in international criminal justice lie in the considerable political pressure and interest in cooperation, as a result of which consensus will often be found even if some countries initially resist the pressure to change their criminal policy.

In this connection, two questions come to mind. Have the measures actually been effective in preventing and controlling organized crime? And if the European Union has been successful, can the progress made within the European Union be repeated elsewhere?

Whether or not the European Union has improved its effectiveness in responding to organized crime can, of course, be debated. It is difficulty to show a clear cause-and-effect relationship. For example, it is misleading to try to judge effectiveness against organized crime by an increase in the number of arrests, prosecutions or convictions. To a large extent, organized crime remains hidden. Evaluation of progress remains difficult. When the present plan of action was being drafted, the Finnish Presidency wanted to include indicators of performance, measures that would provide a more precise tool for evaluating how effective we have been in implementation. Regrettably, it proved to be impossible to incorporate such an element into the plan of action. As long as we have no way of assessing the true extent of organized crime, or of its impact on society, it is almost useless to speculate if, for example, the creation of Europol or Eurojust has had an impact on organized crime in Europe.

On the other hand, it is possible to say from the practitioner's point of view that cooperation has been made more effective and easier. The creation of Europol has clearly improved cooperation among law enforcement authorities, just as the creation of the European Judicial Network, the institution of liaison magistrates and the creation of Pro Eurojust have streamlined cooperation among prosecutors. Information can be received more quickly and analysed more effectively, and the response can be made more promptly.

The networking that is taking place in the European Union has also increased the degree to which practitioners know about, and have confidence in, one's another criminal justice system. Also this makes cooperation more effective.

Can the developments in the European Union be replicated elsewhere?

There are undeniably certain features of the European Union which make progress easier than may be the case elsewhere. One is the existing structure for decision-making. Without the Council and the various networks, it would be difficult if not impossible to get sovereign countries to agree on measures which may have at least the appearance of infringements on sovereignty: examples include the setting up of such formal structures as Europol and Eurojust, the adoption of decisions on the harmonization of key legislation, and decisions related to mutual recognition of decisions and judgments. A second factor which eases progress in the European Union is the fact that the Member States have worked closely together for a long time, and have come to understand and, to at least a modest degree, have faith and confidence in one another's criminal justice system.

Nonetheless, many elements of the European Union response to transnational organized crime can, and in fact are, being implemented elsewhere. The European Union has had the benefit of experience with far-reaching cooperation, and has learned considerably from experience what works and what does not work. As shown in the negotiations on the United Nations Convention against Transnational Organized Crime, the practical experience among the European Union Member States has often served as a guide for other countries and regions. Examples are the "good practices" in mutual legal assistance, the use of videoconferences in the hearing of witnesses, the establishment of joint investigative teams, and the use of liaison officers.

We have come a long way from the period when countries ignored crime beyond their borders. The speed with which the European Union Member States have agreed on cooperation, and the commitment that is being shown on a high political level on implementation, show that the Member States are very mindful of the danger that organized crime poses to the individual, the community, the country and the international community. Over the past few years, there has been remarkable, indeed unprecedented progress in the national and international response to organized crime, as shown by the strengthening of the legislative framework, the reorganisation of the criminal justice system, the growing network of bilateral and multilateral agreements, and the strengthening of formal and informal international contacts.

In the prevention and control of organized crime, we all still have a long way to go. Nonetheless, the first steps have been taken, and the experience in the European Union can help in charting out the possibilities as well as pitfalls on the road ahead.

INTERNATIONAL COOPERATION AGAINST TRANSNATIONAL ORGANIZED CRIME: CRIMINALISING PARTICIPATION IN AN ORGANIZED CRIMINAL GROUP[1]

*Matti Joutsen**

I. INTERVENING IN CONSPIRACIES AND ORGANIZED CRIMINAL GROUPS

Let us assume that the competent law enforcement authorities in three countries, Japan, the United States and Mexico, are informed of the existence of a wiretap of a telephone discussion between A and B. In this, B informs A that he has talked with C, who has said that he can supply B with cannabis in Mexico for a good price. During the same telephone call, A tells B that he knows of a good way to smuggle the cannabis from Mexico to Japan, and that he also knows of people who would be interested in buying cannabis. Has a crime been committed, and can the authorities intervene in any of the three countries?

In responding to the threat of transnational organized crime in particular, criminal justice authorities have a need to intervene as soon as possible in order to prevent crime, break up criminal organisations and apprehend the offenders. Ideally, they should be able to arrest offenders *before* an offence has been committed. Otherwise, there is the considerable risk that the offenders will be able to carry out the offence and escape across national borders, thus evading justice.

Here, however, there is a difficulty. In the case described above, no actual purchase of drugs has been made, much less has there been any overt attempt to smuggle the drugs into Japan. The criminal laws of many countries would even hold that, since there has been no act other than the first contact between A and C, and the telephone call between A and B, there has not even been an attempt at any offence (such as an attempt at purchasing illegal drugs). If indeed no offence has been committed, then the authorities would not have the right to make any arrests. The law enforcement authorities would have to wait and, in the worst-case scenario, would lose the trail of A and B, and the drugs will be successfully smuggled into Japan.

A second concern has to do with proving complicity in an offence in connection with crimes undertaken by a large, well-structured organized criminal group. Trafficking in persons, for example, may involve a number of offenders, acting in different capacities. Some may seek to identify the persons to

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[1] I am indebted to the members of Working Group 2 for the benefit of stimulating discussions in the course of the preparation of this paper: Mr. Zafarullah Khan (chairperson), Mr. Yasunari Hataguchi (co-chairperson), Mr. Sittipong Tanyapongpruch (rapporteur), Mr. Takashi Maruoka (co-rapporteur), Mr. Nouphanh Mahaphonh, Mr. Zainal Rashid Bin Hj Abu Bakar, Mr. Bhola Prsad Kharel, Mr. Muchwangali Charles and (as advisors), Prof. Yasuhiro Tanabe, Prof. Hiroshi Tsutomi and Prof. Mikiko Kakihara.

be trafficked, others will forge the papers needed to cross borders, others will see if key authorities can be bribed, yet others will take care of transport and lodging, and finally some people will look after the placement of the people in the destination country, and perhaps will continue to control their movement. Each activity may involve a different individual crime (fraud, forgery, corruption, illegal border crossing, extortion and so on), and some activities may in fact not involve a crime at all (transport within a country). Proving complicity in trafficking in persons, or in any other organized criminal activity, may be difficult.

A third concern has to do with procedural economy. If a large number of persons agree to commit crimes, and these are in fact committed at different times by different people (as is often the case, for example, with extortion carried out by large organized criminal groups), it may be difficult to obtain sufficient evidence to convict all of them of the substantive offences. However, it may be easier to prove that they have been acting as conspirators, or as members of an organized criminal group.

A fourth concern has to do with international co-operation. In our case, each of the three persons is located in a different country. Of all the fields of law, criminal law is perhaps most closely tied to the essential values of a country. Over the centuries, considerable variety has emerged in what is criminalised and what is not in the different jurisdictions. From the point of view of domestic legal systems, this does not cause any particular difficulties, since the legal systems almost invariably apply their own criminal law.

From the point of view of international co-operation, however, the existence of different criminal laws has caused, and will continue to cause, considerable difficulties. One of the greatest difficulties in practice is caused by the principle of double criminality. International agreements on extradition and mutual legal assistance almost invariably require that the offence in question is a crime in both the requested and the requesting State. The requested State will presumably not extradite a suspect to the requesting State if the conduct in question is not criminal under its laws. However, even if the two countries agree that the conduct is criminal, the details of the definition may vary to such an extent that the requested country may well decide not to co-operate.

It is against this background of domestic and international concerns that the United Nations Convention against Transnational Organized Crime (the Palermo Convention) requires States Parties to criminalise either conspiracy or participation in an organized criminal group. Both concepts require some explanation.

II. CONSPIRACY

The concept of conspiracy arose at common law during the early 1600s in England, from where it spread to other common law countries.[2] At English common law, if an offence was not completed, it was not punishable.

This, of course, was not considered satisfactory. The concept of "inchoate crime" arose. Inchoate crimes are crimes

[2] The leading decision was that of the Star Chamber in the *Poulterer's Case* in 1611. See Glanville Williams, Criminal Law. The General Part, second edition, Stevens and Sons Limited, London 1961, p. 663, and the literature cited in footnote 1 therein.

that are committed by an act done with the purpose of effecting some other crime (called the substantive crime or the consummated crime).[3] The three types of inchoate crimes are attempt, conspiracy and incitement. By and large, attempt of, conspiracy to commit, and incitement to commit any offence is punishable.

The concepts of attempt and incitement are universally recognised, and need no further introduction in this connection. It is the third concept, conspiracy, which is of interest here. Under common law, mere thought did not constitute a crime. A person could think of doing evil deeds, but would remain unpunished for this. However, should he or she agree with another person about the commission of a crime, this was regarded as increasing the direct risk to the community of criminal activity in two ways. First, it increased the likelihood of success of the crime. Secondly, it makes the commission of other crimes more likely. Because of this increased risk, it was deemed useful to bring such conduct into the scope of criminal law even before it reached the stage of attempt. The concept of conspiracy was born.[4]

The first statutory definition of conspiracy in the United Kingdom did not come until with the Criminal Law Act 1977.[5] As subsequently amended by the Criminal Attempts Act 1981, section 1(1) of this law states:

> *"Subject to the following provisions of this Part of this Act, if a person agrees with any other person or persons that a course of conduct shall be pursued which, if the agreement is carried out in accordance with their intentions, either:*
>
> *a. will necessarily amount to or involve the commission of any offence or offences by one or more of the parties to the agreement; or*
> *b. would do so but for the existence of facts which render the commission of the offence or any offences impossible,*
>
> *he is guilty of conspiracy to commit the offence or offences in question."*

The corresponding provision in, for example, the Canadian criminal code (section 423(2) avoids defining conspiracy, and merely states that "Every one who conspires with any one (a) to effect an unlawful purpose, or (b) to effect a lawful purpose by unlawful means, is guilty of an indictable offence."[6]

A few particulars about conspiracy:[7]

1. In its basic form, the mere agreement to commit an offence constitutes conspiracy (see, however, below).
2. Negotiating the commission of an offence is insufficient to constitute

[3] Glanville Williams, Textbook of Criminal Law, Stevens and Son Limited, London 1978, p. 349.

[4] Regarding the justification of the law on conspiracy, see Williams 1961, op.cit., pp. 710–713.

[5] Outside the realm of statutory conspiracy are for example conspiracy to defraud and conspiracy to corrupt public morals. See Williams 1961, op.cit., pp. 686–710 and Mike Molan, Denis Lanser and Duncan Bloy, Bloy and Parry's Principles of Criminal Law, Fourth Edition, Cavendish Publishing Limited, London 2000, pp. 152–154 and 162–168. Regarding US law, see for example Robert W. Ferguson and Allen H. Stokke, Concepts of Criminal Law, Holbrook Press, Boston 1976, p. 136.

[6] See, for example, Alan Mewett and Morris Manning, Criminal Law, second edition, Butterworths, Toronto 1985, pp. 179–189.

conspiracy. There must be a concluded agreement, even if the agreement leaves open the method and time of commission is left open (for example, the conspirators agree to act "as and when the opportunity arises").

3. The agreement can be manifested by word or conduct.
4. There must be two or more parties. However, a person may still be convicted of conspiracy even if none of the other co-conspirators are apprehended or even identified.[8]
5. The conspirators must be knowledgeable of the elements of the conduct that amount to the offence. This means that each must know or believe he or she knows the facts that will make the conduct criminal when done. (For example in the case of fraud, if one person agrees only to deliver an invoice, without knowing that the invoice is for goods that have not been delivered, this person would not be guilty of conspiracy to fraud.)
6. Any act done by any of the conspirators in the furtherance of the conspiracy is an act of all, even if this act was not planned or contemplated by all.
7. It is not necessary that the offence is in fact consummated, and may indeed lie in the indefinite future.
8. A person who supplies a necessary weapon or service, even if he or she knew that this would be used for an unlawful purpose, can be convicted of conspiracy only if he or she somehow promotes the unlawful conduct itself.
9. Even if the conspiracy falls apart almost immediately (for example a key conspirator backs out), the conspiracy exists. The withdrawing conspirator remains guilty of conspiracy and of any acts committed in furtherance of the conspiracy up to that point.
10. An offender can be convicted of both conspiracy and the actual offence.[9]

By its very nature, conspiracy may be difficult to prove. A conspiracy may be inferred from conduct (in other words from overt acts). The testimony of a co-conspirator regarding the existence of the

[7] Regarding English law, and in addition to Williams 1961, and Molan et. al., see for example Richard Card, Card, Cross and Jones. Criminal Law, twelfth edition, Butterworths, London 1992, pp. 479–500, J.C. Smith and Brian Hogan, Criminal Law, seventh edition, Butterworths, London 1992, pp. 269–304, and D.W. Elliott and Michael Allen, Elliott and Wood's Casebook on Criminal Law, sixth edition, Sweet & Maxwell, London 1993, pp. 451–473.

[8] Some limitations exist regarding who can be deemed a co-conspirator. At English law, no conspiracy exists if the only other conspirator is the spouse of the first conspirator, or under the age of criminal responsibility, or the intended victim of the offence (section 2 of Criminal Law Act 1977). The law in some other common law jurisdictions may vary somewhat; for example, in the United States a husband and wife can now constitute a conspiracy. Ferguson and Stokke, op.cit., pp. 138–139. On this point, Canadian legal practice follows that of England; Mewett and Manning, p. 183.

A special case arises when one of the two co-conspirators is a law enforcement officer who is an undercover officer trying to break up drug trafficking. For example in England, the officer himself or herself can, technically, be convicted of conspiracy although the court will probably hold that his or her "mental reservation" against the conspiracy meant that he or she had not in fact agreed. The other co-conspirator, however, can be convicted. See the *Yip* case cite in Molan et al, op.cit., pp. 159–160. Under Canadian law, however, the fact that the second conspirator was a police agent provocateur led to the acquittal of the first conspirator of conspiracy; O'Brien [1954] S.C.R. 666, cited in Mewett and Manning, p. 181.

conspiracy may also be taken and used as evidence. This latter rule (which has been construed somewhat differently in different common law jurisdictions) means in practice the allowing of hearsay evidence.[10]

At English law, the mere agreement to commit an offence constitutes conspiracy. In some other jurisdictions, however, statutes have added a requirement of an overt act committed in the furtherance of the agreement. This overt act may be comparatively slight, but nonetheless such an additional element is thus required.[11]

English law has also explicitly addressed the question of jurisdiction. The courts in England are deemed to have jurisdiction both when a conspiracy in England is directed towards an offence to be committed in another country, and when a conspiracy abroad is directed towards an offence to be committed in England.

In the United States, it was decided to build on the concept of conspiracy to come to grips specifically with organized crime, and its attempt to infiltrate into the legitimate economy. This was done with the 1970 Racketeer Influenced and Corrupt Organisations Statute (18 USCA § 1961), commonly referred to as the RICO statute. This statute criminalised participation in or conducting of the affairs of an enterprise involved in racketeering.[12] The definition of "racketeering" is rather complex, but essentially it is based on a list of offences that are commonly associated with organized criminal activity. The definition of "enterprise" is based on the definition of conspiracy, and involves an "association in fact" of two or more people. A refinement to the definition of conspiracy is that the racketeering activity must involve at least two racketeering acts committed within ten years of each other (as opposed to the fact that a conspiracy may be designed to commit only one wrongful act).[13]

RICO allows not only stiff punishment for the offences within its scope, but also civil remedies such as treble damage actions, corporate dissolution and reorganisation. This aspect has been deemed to be particularly useful in coming to grips with organized crime.

Canada has enacted the concept of "enterprise crime offence" (art. 462(3) of the Criminal Code), which is based on a list of offences that is more limited than the RICO statute in the United States.

[9] The Federal Model Penal Code in the United States, however, holds that where the conspiracy has only one object or crime as its purpose, the conspirators may not be punished for both the crime and the conspiracy. Myron Hill, Howard Rossen and Wilton Sogg, Smith's Review. Criminal Law, West Publishing Company, St. Paul 1977, p. 133.

[10] See Williams 1961, op.cit., pp. 681–682.

[11] Ferguson and Stokke, op.cit., pp. 135–136.

[12] See Norman Abrams, Federal Criminal Law and Its Enforcement, West Publishing Company, St. Paul 1986, pp. 167–270.

[13] Further refinements in the United States include the Continuing Criminal Enterprise Statute, which is targeted at large-scale drug trafficking, and the Violent Crime Control and Law Enforcement Act of 1994, which in turn is targeted at street gangs. See Sabrina Adamoli, Andrea Di Nicola, Ernesto U. Savona and Paola Zoffi, Organized Crime Around the World, HEUNI publication no. 31, Helsinki 1998, p. 136.

III. THE OFFENCE OF PARTICIPATION IN AN ORGANIZED CRIMINAL GROUP

The concept of conspiracy has been developed on the basis of common law. In civil law countries, the concepts of attempt and incitement are widely recognised, but conspiracy is not. The general position in civil law countries is that mere planning of an offence, without an overt act to put the plan into operation, is not criminal. (As noted, some statutes in some common law jurisdictions have taken this very same position.) For example, mere planning of a robbery, and even such preliminary stages as an examination of the premises, arrangement for a getaway car or the recruiting of assistants, do not constitute criminal conduct. The offenders may be arrested and brought to trial only when they have gone so far as to, for example, enter the premises with weapons.

In Italy, which has long had difficulties in coming to grips with organized criminal groups, this was regarded as unsatisfactory. Groups such as the Mafia and the Camorra may be highly organized, and it may be difficult for the law enforcement authorities to show how individual members of the group, and in particular the leadership, have participated in actual criminal activity. The Italian legislature therefore decided, in 1982, to adopt special legislation that was directed not at individual criminal acts, but at the role of the member in the organized criminal group. The assumption was that members of criminal organisations commit crimes. For this reason mere membership was regarded as a crime, and persons suspected of this could be arrested.[14]

Article 416*bis* of the Italian criminal code thus criminalises "participation in a Mafia-type unlawful association".[15] Such an association is said to exist "when the participants take advantage of the intimidating power of the association and of the resulting condition of submission and silence to commit criminal offences, to manage, at all levels, control, either directly or indirectly, of economic activities, concessions, authorisations, public contracts and services, or to obtain unlawful profits or advantages for themselves or for others, or with a view to preventing or limiting the freedom to vote, or to get votes for themselves of for others on the occasion of an election."

If the participants have firearms or explosives at their disposal, the punishment is higher. The punishment is also higher if the economic activities that the participants intend to control are funded even in part by the price, product or proceeds of criminal activities.

The assessment of the impact of this legislation has been that it is effective. The prosecutor no longer needs to prove that, for example, a leader of an organized criminal group has in some way participated in a criminal offence. It is enough to demonstrate that such a person is a member of a certain type of organisation.

The Italian definition can be regarded as quite broad, since even a person who is a passive member of an organized criminal group can be punished. Other civil law countries have been reluctant to follow suit. Portugal has been one country that has adopted somewhat similar

[14] See Adamoli et al, op.cit., p. 133.

[15] Other provisions in Italian criminal law deal with "common association crime" and "drug-trafficking association crime". See Adamoli et al, op.cit., pp. 132–133.

legislation. Portugal has criminalised the founding of a group for the purpose of committing crimes, becoming a member of such a group, or providing such groups with help, particularly in the form of weapons or ammunition, or seeking to recruit further members. Among Central and Eastern European countries that have enacted somewhat similar legislation are Estonia, Lithuania, Moldova and Poland.[16]

In addition, several civil law countries have enacted legislation directed at more tightly defined forms of participation or conspiracy in the case of particularly serious offences. For example, the respective criminal codes of Denmark and Finland contain provisions regarding conspiracy to commit treason. Furthermore, several civil law countries regard commission of an offence as a member of an organized criminal group to be an aggravating factor to be considered in sentencing.

Finally, several civil law countries have enacted legislation that criminalises active participation in an organized criminal group. Germany, for example, criminalised the formation of a group whose goals are the commission of offences, [active] participation in the group, soliciting for the group, and providing support for the group.

In 1997, the European Union adopted an Action Plan against organized crime. One of the key elements of this Action Plan called for the adoption of a joint action requiring all fifteen Member States of the European Union to criminalise participation in an organized criminal group. Such a joint action was indeed adopted in December 1997.

In the discussions leading up to the joint action, there was considerable controversy over its formulation. The two Member States with a common law system, the United Kingdom and Ireland, noted that they already use the concept of conspiracy, and were not prepared to change their law in this regard. Italy strongly advocated legislation that would follow its model in criminalising "participation in a Mafia-like unlawful association". Countries that did not have either option were adverse to adopting them, in particular on the grounds that both options (conspiracy and "participation") were rather vague, and in this respect were seen to be in violation of the principle that conduct to be criminalised should be defined explicitly (the "legality principle").

The end result was, as so often in such a context, a compromise. All member states of the European Union were required to ensure that their legislation criminalised either conspiracy or participation in an organized criminal group, and the definition of participation was drawn to require an overt act, "active participation".[17]

It was this joint action which contributed to the definition adopted in the Palermo Convention.

IV. ARTICLE 5 OF THE PALERMO CONVENTION AND ITS IMPLICATION

A. The Text of Article 5

Article 5 is one of only four criminalisation obligations contained in the Palermo Convention. It requires States Parties to ensure that their laws criminalise either conspiracy or participation in an organized criminal

[16] Adamoli et al, op.cit., pp. 138–141.

group, or both. The article reads as follows:

Article 5
Criminalisation of participation in an organized criminal group

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
   (a) Either or both of the following as criminal offences distinct from those involving the attempt or completion of the criminal activity:
   (i) Agreeing with one or more other persons to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement or involving an organized criminal group;
   (ii) Conduct by a person who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes an active part in:
      a. Criminal activities of the organized criminal group;
      b. Other activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the above-described criminal aim;
   (b) Organising, directing, aiding, abetting, facilitating or counselling the commission of serious crime involving an organized criminal group.
2. The knowledge, intent, aim, purpose or agreement referred to in paragraph 1 of this article may be inferred from objective factual circumstances.
3. States Parties whose domestic law requires involvement of an organized criminal group for purposes of the offences established in accordance with paragraph 1 (a) (i) of this article shall ensure that their domestic law covers all serious crimes involving organized criminal groups. Such States Parties, as well as States Parties whose domestic law requires an act in furtherance of the agreement for purposes of the offences established in accordance with paragraph 1 (a) (i) of this article, shall so inform the Secretary-General of the United Nations at the time of their signature or of deposit of their instrument of ratification, acceptance or approval of or accession to this Convention.

B. The Criminalisation Obligation

2(a)Conspiracy

For the purposes of the Palermo Convention, conspiracy is thus defined as:

[17] In September 2001, the Commission of the European Union introduced a proposal for a Council framework decision on combating terrorism (12103/01 DROIPEN 81, 24 September 2001). If accepted, this framework decision would require that each of the fifteen Member States of the European Union (and, in time, the twelve candidate Member States) "take the necessary measures to ensure" that inter alia the following offences will be punishable:
- directing a terrorist group, and
- promoting of, supporting of or participating in a terrorist group.

The definition of a "terrorist group" is quite similar to that of an organized criminal group. It is "a structured organisation established over a period of time, or more than two persons, acting in concert to commit terrorist offences..:"

- intentionally agreeing with one or more other persons
- to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit and,
- where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement or involving an organized criminal group.

Certain key points emerge when this definition is compared with for example the statutory definition of conspiracy under English law.

First, however, a point of similarity: a conspiracy can be present even when there are only two conspirators. It may be recalled that art. 2(a) of the Palermo Convention defines an "organized criminal group" as a structured group of *three* or more persons.

One difference is that the conspiracy must be directed to the commission of a "serious crime". Art. 2(b) of the Palermo Convention defines serious crime as "conduct constituting a criminal offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty". Thus, States Parties need not extend their definition of conspiracies to include those directed at less serious offences.

A second difference is that the purpose of the serious offence in question must be related "directly or indirectly to the obtaining of a financial or other material benefit". Also this is in line with the definitions given in article 2 of the Palermo Convention. States Parties need not extend the concept of conspiracy beyond offences that are basically covered by the Palermo Convention. (In this regard, the criminalisation obligation in article 5 is narrower than any of the other three criminalisation obligations.)

A third difference is that the State Party may, if its domestic law so requires, include the additional condition that one of the participants has undertaken an act "in furtherance of the agreement" *or* that the act involves an organized criminal group. This would be in line with statutory law in some common law jurisdictions that require an overt act in furtherance of the conspiracy. It is not enough to have a "meeting of the minds"; there must also be action. How substantive this additional act must be to fulfil the condition laid down in article 5(1)(a)(i) of the Palermo Convention is left open to the individual State Party.

Article 5(3) makes reference to the fact that some States Parties may wish to limit the scope of conspiracy to only a list of serious offences. In such case, the States Party must "ensure that their domestic law covers all serious crimes involving organized criminal groups", and must inform the Secretary-General of the United Nations accordingly.

Article 5(3) also requires that States Parties whose domestic law requires an act in furtherance of the agreement for purposes of the offences established in accordance with paragraph 1 (a) (i) so inform the Secretary-General.

2(b)Participation in an Organized Criminal Group

"Participation proper" is defined in article 5(1)(a)(ii) as:

- conduct by a person who,
- with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question,

- intentionally takes an active part in
  - *either* the criminal activities of the organized criminal group *or*
  - other activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the above-described criminal aim.

Here again there are key points of difference between the criminalisation requirement in art. 5 of the Palermo Convention, and such predecessors as art. 416*bis* of the Italian Criminal Code.

First, the person must know the aim and general criminal activity of the group in question, or of its intention to commit crimes.

Second, the person must take an active part in the organisation. The clearest form of such participation is in the criminal activities of the organisation. Here, it may be noted that if this option is taken, art. 5 requires criminalisation of such participation as *distinct* from the attempt or completion of the criminal activity itself. Let us assume that A joins an organized criminal group and intentionally takes part in robberies. This person, A, should then be held guilty of *both* the robbery *and* of participation in an organized criminal group that commits the robberies. (In this respect, the thinking behind this requirement is closer to that of conspiracy, since most common law jurisdictions hold that the offender could be convicted of both conspiracy and the offence in question.)

The alternative form of participation can be in "other activities of the organized criminal group". However, here there is the additional condition that the person in question is aware that "his or her participation will contribute to the achievement of the above-described criminal aim". It is left to the State Party to determine how substantive this contribution should be. Presumably an accountant knowingly working for an organized criminal group would fulfil this definition, even if he or she in no way engages in illegal accounting practices or in money laundering; merely helping the group with its accounts would seem to be sufficient. A driver who drives the leader of the group from place to place—especially where none of the meetings would appear to be related to the planning or commission of illegal activities—would be a more doubtful case. And going to the other extreme, persons who work for members of the group as, for example, gardeners, cooks or custodians would presumably not be seen to "contribute to the achievement of the ... criminal aim," although this would ultimately depend on the individual case.

C. Attempt and Forms of Participation

As noted, under the Palermo Convention either conspiracy or participation in an organized criminal group are to be criminalised as distinct from attempt or completion of the criminal activity in question.

Article 5(1)(b) makes the further point that States Parties are also to criminalise certain specific forms of participation in the commission of serious crime involving an organized criminal group. The forms themselves (organising, directing, aiding, abetting, facilitating and counselling) are fairly well recognised in criminal law, although the construction placed on the words may well vary from one legal system to the next.

Presumably most, of not all, legal systems of the world are already in compliance with this requirement, in that e.g. aiding and abetting in the

commission of any serious crime is punishable. Although art. 5(1)(b) makes reference to e.g. aiding and abetting "the commission of serious crime *involving an organized criminal group*," it can be argued that a State Party need not separately enact such a qualified criminalisation. Nothing, however, would prevent States Parties from adopting a statute that does define an organized criminal group, and sets a special tariff of punishment for various forms of participation in its criminal activities. This has, indeed, already been done by several states around the world.

D. Evidence of Conspiracy and Participation

Art. 5(2) very briefly states that "the knowledge, intent, aim, purpose or agreement referred to in paragraph 1 of this article may be inferred from objective factual circumstances." This is basically a rule for interpreting the evidence of guilt. States Parties can, alternatively, provide that their courts may look at the totality of evidence, thus giving courts much more leeway in construing possible guilt.

E. Coda: Applying the Convention to the Case Study, and Assessing its Utility

The case cited at the outset involves three persons, A, B and C. How would this be dealt with under the two definitions in article 5 of the Palermo Convention?

Under the heading of conspiracy, art. 5(1)(a)(i), all three suspects could be found guilty of conspiracy, since A and B, and B and C, had apparently agreed on the (illegal) purchase of cannabis, and A and B had further agreed on its import into Japan.

Under the heading of participation in an organized criminal group, the prosecutor would have to show that A, B and C constituted a structured group existing for a period of time. If this can successfully be done, then all three can be convicted of participation.

Would either or both approach add anything to the arsenal of the investigator and the prosecutor, and would there be any drawbacks?

To summarise on the basis of the foregoing,

- the criminal justice authorities would have the possibility of intervening at an earlier stage of the criminal activity,
- all three could be charged with conspiracy or participation even if their role had been more marginal than in the case used as an illustration;
- should the three suspects continue their activity, the prosecutor need not prove complicity in each and every act of drug trafficking;
- the concepts of conspiracy and participation allow, in effect, double punishment: one for the conspiracy or participation, and one for the offences committed in furtherance of the conspiracy or participation;
- legislation referring to conspiracies and organized criminal groups could provide the framework for the use of civil measures in addition to punishment.

There has also been significant criticism of the concepts of conspiracy and participation in an organized criminal group:

- the concepts are ambiguous and confusing, in particular if juries are involved. The legal practice has

shown that the concepts can be confusing even to trained lawyers;

- some critics have said that the concepts violate the principle of legality, which requires definition of precisely what acts or omissions constitute criminal conduct;
- this ambiguity raises concerns regarding legal safeguards, such as ensuring that the defendant knows exactly what conduct he or she is charged with having committed;
- the ambiguity also raises concerns that the concept will be used to expand the scope of criminal behaviour to an unacceptable extent; and
- the concept of conspiracy has been used, in the view of some, to "convert innocent acts, talk and association into felonies".[18] The discussion within the European Union regarding the joint action requiring Member States to criminalise participation in an organized criminal group shows that these same qualms exist regarding this latter concept. The concern here is that the concepts may be abused by over-zealous prosecutors.

Even so, the experience that has been collected in the growing number of countries applying one or the other of these concepts shows that, in the hands of trained investigators and prosecutors, they can be highly useful tools in the constant efforts of the criminal justice system to come to grips with organized crime. The drafters of the Palermo Convention have seized this opportunity, and are requiring States Parties to act accordingly.

[18] Ferguson and Stokke, op.cit., pp. 140–141. The authors cite the use of the concept in the United States against, for example, union organisers, members of the Communist Party, and conscientious objectors during the Vietnam War.

THE CURRENT SITUATION OF AND COUNTERMEASURES AGAINST TRANSNATIONAL ORGANIZED CRIME IN THE REPUBLIC OF THE PHILIPPINES

*Severino H. Gaña, Jr.**

I. INTRODUCTION

The end of the Cold War and the rapid pace of globalization has provided opportunities for criminals and organized crime groups to globalize their illegal activities, thus they have led to the emergence of all forms of transnational crimes and led to the development of new security threats. These new threats include various types of transnational organized crime, such as trafficking in persons, international terrorism, money laundering, intellectual property rights violation, illicit trafficking of drugs, piracy on the high seas, illicit trafficking of firearms, and cybercrime. This globalization has also led countries to take new security adjustments/ arrangements as organized transnational crime exploit these advances in technology, services, and communication. These incidences of the various transnational crimes, at least within the Philippines, has created a significant impact on its political, economic and socio-cultural stability and security.

II. PHILIPPINE EXPERIENCE

A. Trafficking in Persons

Human trafficking refers to the recruitment, transportation, transfer, harboring, or receipt of persons, by threat or use of force, by abduction, fraud, deception, coercion or the abuse of power or by the giving or receiving of payments or benefits for the purpose of exploitation. Persons may be trafficked for the purpose of prostitution, other sexual exploitation or forced labor. When the practice involves coercion or deceit, consent of the victim is not an issue.

Human smuggling on the other hand is the procurement of illegal entry or illegal residence of a person into a state of which the latter person is not a national or a permanent resident in order to obtain, directly or indirectly, financial or other material benefit. Children refer to persons' under eighteen years of age.

The Philippines is a major source of people that are trafficked to other countries with able economies. In Europe alone, almost 705,439 Filipinos are undocumented and most of them are victims of trafficking, reportedly perpetrated by Philippine-based organized crime groups that have contacts with similar criminal syndicates in the receiving country. Their operation runs parallel with the continuing deployment of documented Overseas Filipino Workers (OFWs) to fill in the manpower requirements of developed countries and at the same time to solve the soaring unemployment problem of the country. Aggravating this scenario is the presence of some unscrupulous foreigners who reportedly exploit Filipino women and children ranging from pedophilia to sex trafficking and prostitution, especially those sent abroad for the same reason.

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From 1995 to early 2000, 751 cases of human trafficking were recorded. Most of the victims come from Region III (11%), NCR (10%) and Region IV (9%). Of the 66% of women victims, 18% were forced into prostitution. Furthermore, 51% were trafficked to the Asia-Pacific, 27% to the Middle East, and 19% to Europe.

Table 1
Preliminary Review of Human Trafficking and Smuggling Cases in the Philippines (1995 to Early 2000)

Recorded cases of human trafficking (1995 to early 2000)	751 cases
Increase in trafficking cases in 1999	37%
Victims coming from Region III	11%
Victims coming from NCR	10%
Victims coming from Region IV	9%
Women victims	66%
Women forcibly put into prostitution	18%
Forced to work in slavery-like conditions	42%
Trafficked to Asia Pacific	51%
Trafficked to the Middle East	27%
Trafficked to Europe	19%
Victims aware of what they were getting into	58%
Victims that were deceived	42%
Victims that were recruited by parties not related/unknown to them	53%
Victims that were repatriated by the Philippine Government	31%

* Philippine embassies and consulates noted cases of wholesale recruitment at the barangays/local communities

As of December 2000, based on a report from the Commission on Filipinos Overseas (CFO), there are already 7.38 million Overseas Filipinos of which 2.99 million are documented and 1.84 million are products of irregular migration. A significant number are victims of all forms of human trafficking and smuggling while more than half are "informed victims" (58%) who voluntarily went out of the country on the strength of fraudulent travel documents or false identities or travel abroad as tourists, pilgrims, students, or any other lawful means but prolong their stay in the country of destination in their attempt to find jobs and earn more wages even after the expiration of their appropriate visas, thus categorizing them as undocumented or illegal migrants. Almost 10% of cases involved intermarriages. Other mode includes introduction through pen pal clubs, marriage bureaus, and the Internet.

Table 2
Estimated Number of Overseas Filipinos as of December 2000

Total Number of Overseas Filipinos	7.38 Million
OFWs	2.99 M
Permanent Residents	2.55 M
Irregular	1.84 M

The CFO reports the top regions of destination of undocumented Filipinos are America, South and East Asia, the Pacific, Europe, the Middle East and Africa. Top ten countries of destination of undocumented Filipinos in chronological order include the United States, Singapore, Canada, Japan, Italy, United Kingdom, Saudi Arabia, Greece, Germany and France. However, according to the reports, within the last quarter 2000 and during the first quarter

of 2001 reveal the increasing incidences of irregular migration in all its forms to countries such as Jordan, Malaysia, Italy, and Japan which may drastically change to order of arrangement by the end of this year if such trend remains unabated.

Transit countries being used in going to states of destination include most members of ASEAN, countries in Eastern Europe and just recently Morocco. Most of these transit countries have no visa requirements for entering Filipino nationals thus complicating the problem of irregular migration. Apart from this, the Eastern European countries, being newly independent and sovereign states, have yet to formulate and strictly enforce their immigration policies and laws to discourage human trafficking syndicates as well as illegal immigrants from turning them as transit countries in entering Western Europe.

The Philippines is being utilized also as a transit and destination country as well. Recent apprehensions by the Bureau of Immigration reveal that Iranian, Bangladesh and Chinese nationals are using the Philippines as a transit point to other countries such as Japan, Canada, United States, and Australia. Indian nationals, on the other hand, are illegally entering the country to establish illegal business such as lending with exorbitant interests.

Below is a list of identified seaports used to smuggle persons in and out, both Filipinos and aliens:

- Iloco Sur (Salomague Island)
- Zamboanga del Sur (Zambo Port, Digos, Bauin Point
- Davao del Sur (Davao Gulf, Digos Point, Panabo Port)
- Bicol (Pio Duran, Albay)
- Dagupan City

The nationalities of those involved in human trafficking in the Philippines are mostly Filipinos with contacts in transit and destination countries. Others include Malaysians who have been assisting Indians to enter the country via the southern backdoor, Nauru and Kiribati nationals who have been facilitating the entry into the country of undocumented Chinese as well as Chinese, Taiwanese and Hong Kong nationals.

The following are some significant cases:

1. "Baby Tanya" Case

This is a case of smuggling through adoption by using spurious supporting documents and false statements of John Lopez and Maria Ella Carrion who presented themselves as the biological parents of the child, Baby Tanya Samantha Lopez. However, upon arrival in the U.S., the INS upon receipt of report from the U.S. Embassy that the documents and statements presented and executed by Ms. Carrion and Mr. Lopez were not true, held Baby Tanya. Tanya Samantha was repatriated on June 16, 2001 and is now under the custody of the DSWD. The case is now with the Department of Justice, undergoing preliminary investigation.

2. "Kimber" Case

This is the complaint filed by the PCTC and Mr. James H. Kimber (complainant) against respondents William S. McKnight, Lilian U. McKnight, Rudelyn P. Uriarte and Elvira U. Mandap dated January 6, 2000 for violation of Republic Act No. 6955 Mail Order Bride and Estafa.

Mr. James H Kimber, corresponded to the advertisement of the Pacific Islands Connection to meet girls in the Philippines he could marry, choosing

Rudelyn P. Uriarte, 16 years old and sister-in-law of William McKnight. He, upon arrangement made by William McKnight, married Rudelyn. He returned to the United States without his wife, Rudelyn, with the assurance that his wife would join him after six months. The promise was not fulfilled. He sought help from concerned agencies of both the US and the Philippines. He later learned that their marriage was never registered and that Rudelyn was married to another foreigner named Howard W. Gardner. He formally filed a case against the respondents. The tour and travel operation of McKnight was put under investigation.

3. "Marilou Pontana et al" Case

This is a case of trafficking women through illegal recruitment. The respondents, Evelyn A. Tuprio and Grace Cervantes, recruited young girl victims in the guise of domestic helpers but they were later utilized as sex slaves in Malaysia. Their illegal activities were busted when police operatives intercepted four young victims holding tampered documents on board a vessel bound for Malaysia.

B. Terrorism

Terrorism is "the use of violence, threat or intimidation, or destruction of lives and properties by any other means, with the objective of creating a state of fear in the public mind to achieve a purported political end; or to coerce or to influence their behavior; or to undermine the confidence of the general public on the government."

The Philippines' experience on international terrorism was first felt as early as 1985 when international terrorist groups attempted to establish a foothold in our country. They were able to stage terrorist activities and tried to establish their cells in the country but were later on neutralized. These groups which came to the Philippines with barely three years interval, were identified as the Abu Nidal Organization (ANO), the Japanese Red Army (JRA), the Iraqi terrorists, the Ramzi Yousef Terrorist Cell, the Liberation of Tigers Tamil Eelam (LTTE) and the recent Free Vietnam Revolutionary Group (FVRG).

1. Abu Nidal Organization (ANO)

In 1985, some members of the group, using student visas, have reportedly slipped into the Philippines on a recruitment and indoctrination mission. It was also recorded that during that time there were about 3,000 Palestinian students enrolled in different colleges and Universities in Metro Manila. The local members of this group remained unidentified up to December 1987 when the police arrested five members. The arrest led to the discovery of ANO's attempts to organize terrorist cells in the country to be employed in the Asian region.

2. Japanese Red Army

On November 15, 1986, the Manila-JRA cell conducted a joint operation with the New Peoples' Army (NPA), known as the "Operation Customer" in kidnapping Nobuyuki Wakaoji of Mitsui Corporation (Philippines).

Investigation revealed that three top-ranking cadres of the NPA-General Command in close coordination with two JRA members were responsible for the planning, execution and supervision of the said operation. Wakaoji was released in December 1986 in Quezon City after paying 3M US dollars to the kidnappers.

3. Ramzi Yousef Terrorist Cell

On January 7, 1995, police authorities arrested Abdul Hakim Murad, a

Pakistani national in one of the apartments in Manila. Murad was a member of an international terrorist group planning to kill Pope John Paul II on his scheduled visit to Manila from January 10–15 for the Celebration of the World Youth Day. Pieces of evidence recovered revealed the group's plan to bomb U.S commercial airlines plying the Manila - Hong Kong - Los Angeles. route. This plot was to be the centerpiece of the so-called "Oplan Bojinka" which was an intricate network of international terrorists using the Philippines as a venue of their terrorists activities. The bombing of a Philippine Airlines jet bound for Japan from Cebu on December 11, 1994 was a test-run to Oplan Bojinka. It can be recalled that one Japanese national was killed while several others were wounded during the incident.

4. Free Vietnam Revolutionary Group (FVRG) Terrorist Cell

The presence of this terrorist cell was recently discovered with the arrest of Vu Van Doc, a U. S. citizen of Vietnamese origin, Huynh Thuan Ngoc, a Swiss citizen of Vietnamese origin and Makoto Ito, a Japanese national on August 30, 2001. One of the arrested suspects, Vu Van Doc, who operates a terrorist cell in the Philippines is a member of the Free Vietnam Revolutionary Group (FVRG), the military arm of the Government of Free Vietnam (GFV), a worldwide organization engaged in liberating the Republic of Vietnam from communist rule.

The arrested suspects were reportedly planning to conduct bombing activities targeting the Vietnamese Embassy in Manila on or before September 2, 2001, which is the National Day of the Republic of Vietnam.

C. Money Laundering

In the Philippines, the problem has its own dimension. The perception that the Philippines is a haven for money laundering is supported by data. The US Treasury Department's Financial Crimes Enforcement Network reported that the Philippines ranked second among 15 non-cooperative jurisdictions in terms of the number of suspicious activities relating to financial transactions from April to July 1996. During this period, the total number of reports on suspicious activities filed reached 566, second only to Russia, which reported a total of 847.

Since drug trafficking is a lucrative business in the country, money laundering becomes the parallel activity of drug syndicates. It is further aggravated with the absence of punitive laws for this crime. The proceeds from the illicit drugs industry in the country reaches P 265 billion annually, about 8 percent of the local economy's output and roughly a third of the government's budget this year. Another source of dirty money cleaned through the country's financial system is through corruption. Transparency International, using its "corruption perception index," ranks the Philippines as the 65th least corrupt out of 91 countries. The Office of the Ombudsman, the agency tasked to run after corrupt government officials, estimates that about Php100 million is being lost daily to corruption. The figure is actually closer to about Php150 billion a year or Php278 million a day. Based on this data alone, graft and corruption in a larger scale is so pervasive that it is capable of triggering money laundering.

The Philippines' efforts to be taken out of the list suffered from the scandal that erupted over allegations of corruption and money laundering involving the former President Joseph Estrada who

allegedly stashed from P10 billion to P15 billion in payoffs from operators of the "jueteng" illegal numbers game, kickbacks from tobacco excise taxes and questionable government investments during his 31 months in office. He was arrested and jailed for plunder, a non-bailable offense punishable by death as well as the *Jose Velarde* scandal, where Estrada allegedly used a false name to launder illegally acquired wealth. In testimonies given to the Senate last year, key witnesses provided details on how Estrada allegedly amassed and "legitimized" dirty money using the financial system. In yet another case of money laundering in the Philippines, an official of Equitable PCI Bank Inc., disclosed that Yolanda Ricaforte, the alleged auditor for the "jueteng" payoffs to Estrada, deposited more than Php200 million in the bank's six branches in Metro Manila.

D. Intellectual Property Rights

"Intellectual property" is a property interest in an idea or creation granted by the creation of law. It exists only in countries that recognize laws on intellectual property rights.

The Annual BSA Global Software Piracy Study, which involves the Software and Information Industry Association (SIIA), confirms that the country's piracy rate decreased from 77% in 1998 to 70% in 1999 and eventually to 61% last year, causing the Philippines to have the second lowest piracy rate among Southeast Asian countries. Despite the drop of the country's piracy rate, however, the software industry continues to suffer an annual loss amounting to P1.3 billion in revenues due to software piracy.

The prevalence of software piracy among selected countries in Asia/Pacific in 2000 are identified as follows:

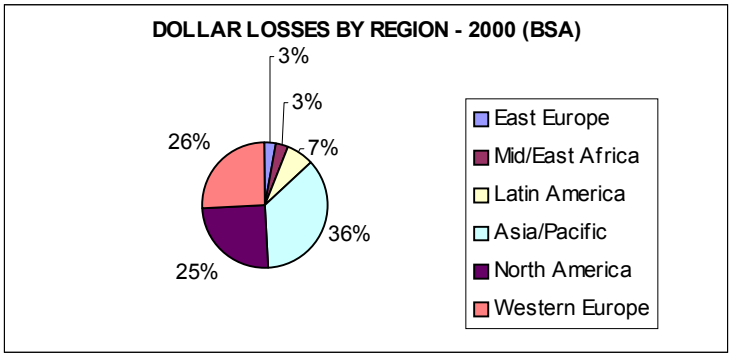
Table 3

Vietnam	97%
China	94%
Indonesia	89%
Thailand	79%
India	63%
Philippines	61%
Hong Kong	57%
Korea	56%
Singapore	50%
Japan	37%
Australia	33%
New Zealand	28%

(Source: Sixth Annual BSA Global Piracy Study, 2000)

The International Planning and Research Corporation (IPRC), in a study commissioned by Business Software Alliance (BSA), to review available data and to utilize systematic methodology to determine worldwide business software piracy and associated dollar losses, has noted that the world piracy rate in 2000 has increased to 37%, and dollar losses have reached a total of US$11.75 billion worldwide. The Asia/Pacific region in particular has increased its piracy rate to 51% and a loss of over US$4 billion in 2000.

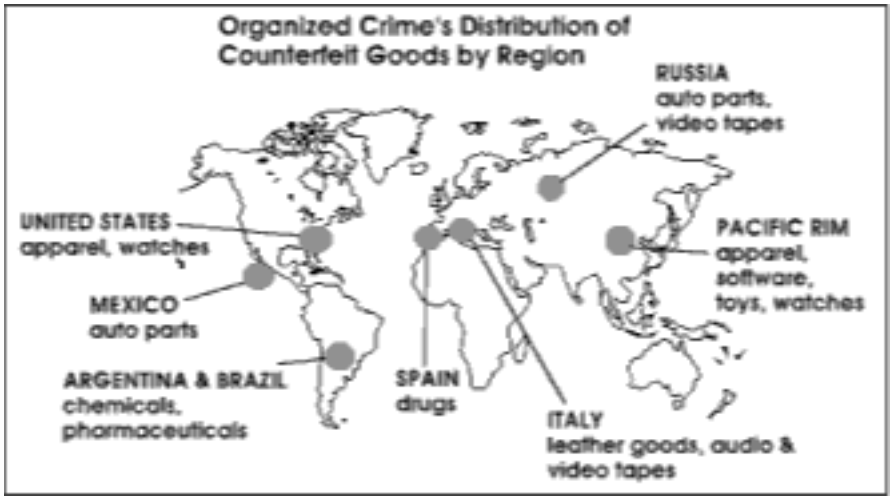
The Asia-Pacific sustains the most dollar losses, followed by Western Europe and North America (see the following for the distribution of dollar losses by region).



(Source: Sixth Annual BSA Global Software Piracy Study, 2000)

According to the data from the International Anti-Counterfeiting Coalition (IACC), trademark counterfeiting is a highly profitable tax-free business.

Below is the pattern of distribution of counterfeit goods of organized crime groups by region:



(Source: International Anti-Counterfeiting Coalition)

It must be noted as well that most counterfeit products are often sold at a third of its original price or even cheaper. In this regard, wholesalers and retailers are having second thoughts in procuring legitimate items over the pirated ones.

E. Drug Trafficking

Drug trafficking refers to the act of transporting and eventually selling illegal drug substances. A diversion occurs when drugs legally shipped eventually end up on the hands of drug traffickers and syndicate groups and sold in the illegal market.

The drug problem in the Philippines resurrected in the latter part of the 1960's with marijuana, valium, mercodol, mogadon, madrax, opium and heroin as the popular drugs of abuse. Even after the execution of drug smuggler Lim Seng in 1972 which tremendously cut off the supply of heroin entering the country, there were already 20,000 drug users. This number increased by more than twelve times in 1980. It was during this year when the smuggling of hashish and mogadon tablets into the country and the exportation of marijuana were perpetrated by foreigners. In 1981, the country became a transit point for heroin and cocaine and as a consequence, drug users increased to about 312,000. In 1983, the drug problem started to transcend international borders even as drug users continue to increase at a rapid pace with corex-d, hylorin, ornacol, peracon, DM, and lagaflex as additional drugs of abuse. At that time there were already 343,750 drug users.

The production and exportation of marijuana increased during the following year. It was also at this time that methamphetamine hydrochloride or *shabu* manifested its presence as one of the growing popular drugs of abuse.

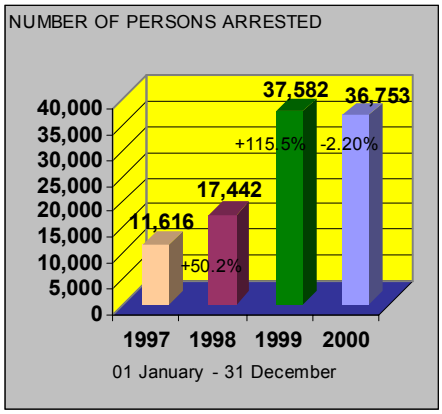
Thus, the government intensified its campaign against the drug problem based on a three-pronged approach namely law enforcement, preventive education campaign and treatment and rehabilitation programme. Even so, the problem remained unabated such that prior to the restoration of the death penalty on December 13, 1993, there were already 800,000 drug abusers with a significant number concentrated in Metro Manila.

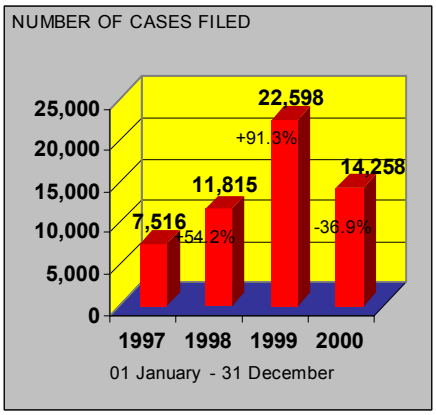
The drug users comprised approximately 5% or 3.7 million of the 74 million Filipinos of which according to the NDLEPCC echoing the survey of the National Youth Commission (NYC), 7% or approximately 1.2 million of the total youth population of 17 million aged 15 to 29 were drug users and more than 500,000 were in need of rehabilitation. Unfortunately, only 5,098 are treated in the 26 public and private drug rehabilitation centers throughout the country.

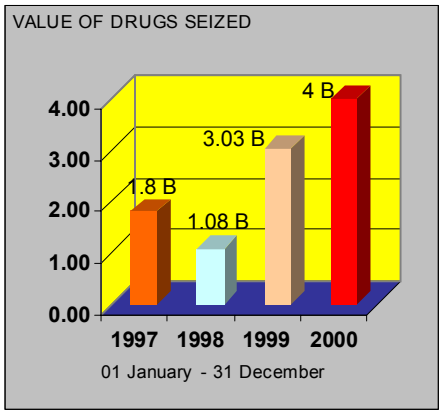
The drug pushers on the other hand are roughly placed at 560,000 in Metro Manila alone victimizing about a million drug dependents aggravated by the involvement of 83 drug syndicates. Foreign criminal syndicates mostly run the local drug trafficking business with 62% of their activities conducted in the Metro Manila area. The local illegal drug trade is worth about P251 billion and is likely to increase as the Philippines is gradually emerging as a major transit point for drugs and as a producer of marijuana for export to consuming countries.

Narcotics operations conducted by different drug law enforcement agencies nationwide for year 2000 resulted in the arrest of 36,753 persons and the filing of 14,258 drug cases in various courts. The total value of drugs seized for that year was pegged at 3,994,264,482.00 billion. The tables below illustrate the gains of all operating drug law enforcement agencies for the year 2000.

Comparative Accomplishment 1997–2000







From January to August 2001, the series of narcotics operations nationwide conducted by different drug law enforcement agencies resulted in the arrest of 23,395 persons and filing of 16,636 drug cases in various courts. The total value of P828,557,053.40 worth of illegal drugs were seized (DDB estimated value) and a total of 26 foreign nationals were arrested.

A successful police operation resulted to the discovery of a shabu laboratory in Brgy. Sto Nino, Lipa Batangas and the arrest of nine Chinese nationals and one Filipino national in the name of Benjamin Tubay Marcelo, the owner of the 2.5 hectares where the shabu laboratory was located. Confiscated were 200 kgs of high grade shabu, 400 kgs of newly processed shabu and 500 kgs of ingredients of shabu.

Early this year, over P7 million worth of fully grown marijuana plants and seeds were destroyed by law enforcement agencies in a huge plantation in Sugpon, Ilocos Sur, La Union and Benguet. According to police operatives, New People's Army guerillas operating in the province are reportedly giving protection to the plantation.

The popular drugs of abuse at this point in time are marijuana and methamphetamine hydrochloride (shabu).

F. Illicit Trafficking of Firearms

Firearm is defined as "any barreled weapon that will or is designed or may be readily converted to expel a bullet or projectile by the action of an explosive, including any frame or receiver of such a barreled weapon but not including any antique firearm manufactured before the twentieth century or its replicas." This includes "revolvers and self-loading pistols; rifles and carbines; submachine guns; certain hand-held under-barrel and mounted grenade launchers; portable

anti-aircraft guns; portable anti-tank guns, recoilless rifles; certain portable launcher of anti-aircraft missile and rocket system; certain portable lahar launchers of anti-aircraft missile systems; mortars of caliber less than 100 mm cal."

The main sources of loose firearms are the unregistered local gun manufacturers. We call these sources as "PALTIK" manufacturers. They are concentrated in the island of Cebu particularly in Danao City, Mandaue City and other neighboring towns. These are clandestine backyard or cottage industries manned by family members purposely to produce "paltik" firearms for trade and economic alleviations.

Illicit trafficking of firearms is another menace to Philippine society. It becomes a stumbling block to our country's economic development and poses a serious threat to national security. The ultimate goals to have political control, economic advantage, power, revenge, seek for immediate justice and personal security are just but a few of the factors that a firearms trafficker has in mind. It is in this context that he violates the existing laws of the country.

The "gun trail" can be traced from the individual "paltik" manufacturers elusive dens and production sites to the consumers through the enterprising individuals or groups whose main agenda is economic gain. Syndicated Crime Groups involved in trafficking of firearms collect finished products from individual sources and consolidate these firearms on pre-designated bodegas. Caches of firearms are shipped to Manila or any port for delivery to contacts for the cash trade by *Yakuza* contacts/agents. Thereafter, the agents transport the said firearms mostly by ships, barges, motor bancas and other water carriers. Some utilize helicopters and aircraft for shipments and use of major international airports.

The gun trail had been monitored ever since. Reports of confiscation, buy-bust operations and police raids prompted the *Yakuza* to import technology of the gun manufacturer by hiring individual gun makers. These gunsmiths are brought to Japan in the guise of tourists, contract workers, and other legitimate cover purposely to manufacture guns inside Japan.

While the government campaign to dismantle all private armies in the Philippines has resulted in a significant decline in gunrunning transactions and incidents of firearms smuggling, the proliferation of loose firearms remains unabated. This can be attributed to the opportunities offered for local transshipments of firearms and inbound smuggling of foreign-made weapons through International airports and maritime ports. Sometime in 1992, it was monitored that a big shipment of firearms, mostly cal. 5.56 US made rifles, were unloaded in Mindanao and local officials allegedly purchased the firearms.

Information gathered states that the Yakuza is engaged in illegal firearms trade. Members of the Yakuza organization acquire the bulk of "paltik" productions in Cebu using different exit points like Batangas, Ilocos Sur and other northern parts of the country.

The following factors contribute to the flow/movement of firearms in and out of the country:

(i) The country's geographic configuration with its long and irregular coastlines, and some sparse and isolated islands,

afford gunrunners numerous natural covers for landing sites and storage points;

(ii) The prospects of huge profits and ready markets for smuggled firearms;

(iii) Increased connivance among gun-running syndicates and some corrupt law enforcers; and

(iv) Persistent involvement of some political families and other influential families in these activities either to beef up their private armies or as instruments in the conduct of illicit activities

G. Piracy on the High Seas and Armed Robbery Against Ships

Article 101 of the 1982 UN Convention of Law of the Sea (UNCLOS) defines piracy as any of the following acts:

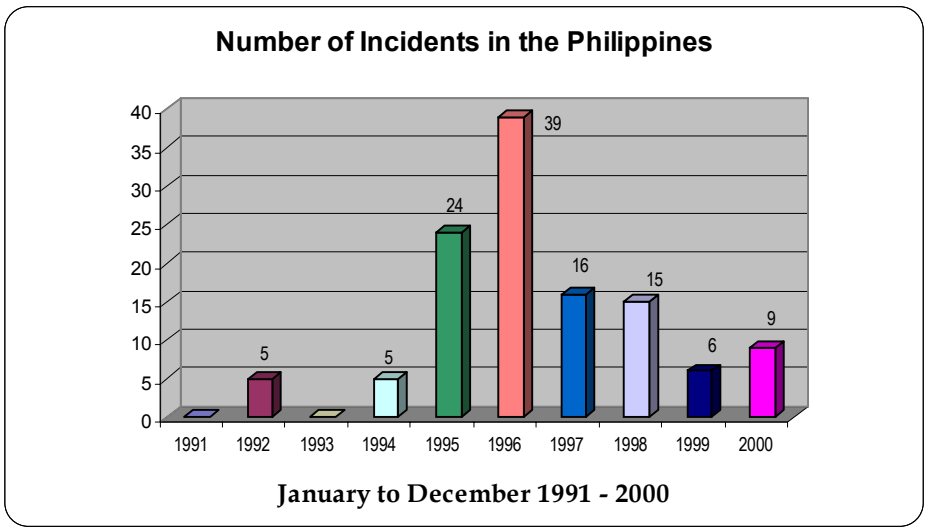
(i) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

- on the high seas, against another ship or aircraft, or against persons or property on board such as ship or aircraft;
- against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(ii) any act of voluntary participation in the operation of a ship or an aircraft with knowledge of facts making it a pirate-ship or aircraft;

(iii) any act of inciting or of intentionally facilitating an act described in subparagraph (i) or (ii).

Based on IMB-PRC records, piracy in the Philippines exhibited a downward trend, from a high of 39 incidents in 1996 to only nine (9) last year (2000). However, the country was reported to have the highest number of crew members/ passengers killed (40) during piracy attacks in 2000. Yemen, Bangladesh and Guatemala followed suit, in that order. In 1996, the same report also highlighted the Philippines as a Flag State with the highest number of attacks at 27 or 12% of the total number of Nationalities of Ships Attacked.



Among the most significant incidents of piracy that transpired in the Philippine waters were the following:

(i) On April 23, 2000, a group of 21 people were forcibly taken from Sipadan Island, Malaysia by members of the *Abu Sayaf* Group. After taking some of their money and personal belongings, the victims were transported on board two vessels to the island of Jolo in the southern Philippines. The Philippine authorities believed that the members of the group were pirates and bandits who have joined the *Abu Sayaf* solely for monetary considerations;
(ii) The hijacking of MV Juliana, a General Cargo Ship loaded with 1,993 tons of steel sheets as ordered by the Philippine Steel Company from Indonesia. Investigations revealed that the said cargo ship was repainted and renamed several times and had earlier been used by the Thai Mafia for several years to smuggle goods; and
(iii) The hijacking of MV Inabukwa, an Indonesian vessel carrying US$2.1 million worth of tin ingots, tin concentrate and white pepper on board. The vessel was seized in Sayap Island, Indonesia on March 15, 2001 by Indonesian pirates. The vessel was heading towards Singapore when it was hijacked. The vessel was directed to an undetermined destination before it finally entered the Philippine territorial waters. The Philippine Coast Guard (PCG) officials on March 25 arrested seven alleged Indonesian pirates and took custody of the vessel, which name had been changed to MV Chungsin, at Salomague Port, Cabugao, Ilocos Sur.

Both the Indonesian and Philippine governments, through their respective action agencies, conducted initial investigations into the incident. The vessel and the Indonesian nationals were released on June 27, 2001 to the authorities of the Indonesian Embassy in the Philippines. The Indonesian government paid all expenses arising out of the detention of the vessel and the arrest of its alleged pirates as well as other fees incurred during their custody by the Philippine authorities. The Indonesian government promised to provide the Philippines with investigation update and results thereof.

H. Cybercrime

Cyberterrorism is the "unlawful acts and threats of attack against computers, networks, and information stored therein when done to intimidate or coerce a government or its people in furtherance of political or social objectives. Further, to qualify as cyberterrorism, an attack should result in violence against persons or property, or at least cause enough damage to generate fear."

The infamous ILOVEYOU virus and its variations as a result of mutation, which is so far considered to be the most damaging and most widespread virus outbreak in history, is a manifestation of cyberterrorism that unfortunately involved the Philippines. According to final estimates, this virus was able to invade tens of millions of computers representing 80% of computer systems worldwide and caused a staggering financial damage amounting to $10 billion. It was able to cause various irreparable damages to computers in Hong Kong, Malaysia, Germany, Belgium, France, the Netherlands, Sweden, Great Britain and the United States. Specifically, the virus disabled ATMs in Belgium leaving citizens

cashless for quite sometime, disrupted the British House of Commons' internal communications system and corrupted the e-mail systems of the US Congress including that of the Pentagon with specific reference to the classified information system of the US Defense Department.

The use of computers as instruments for terrorist operations can be best illustrated by the case of Ramzi Ahmed Yousef who is now serving a life sentence in the United States for the 1993 bombing of the World Trade Center in New York. A laptop seized from him during his arrest by members of the Philippine National Police reveals a detailed operational plan to bomb dozens of American airlines over the Pacific. Osama Bin Laden's terrorist activities and underground infrastructures are sustained by personal computers complete with sophisticated satellite uplinks and encrypted messages which provide him with the capacity to direct terrorist operations in other countries while maintaining a secluded underground network in Afghanistan with the aid of the Taliban militia.

The Philippines is a home to 180 internet service providers and at least 700,000 computers of which 50% are connected to the internet. With a developing economy that is slowly embracing electronic technology, it is also gradually becoming a vulnerable prey to the onslaught of computer crimes and cyberterrorism. At this early, the development of its computer networks is hampered by threats posed by these perverse activities. The more notable of these computer crimes include Internet Service Provider (ISP) hacking involving the illegal use of ISP accounts, denial of service which includes web defacing and other service interruptions of websites which was done to the website of the Department of Foreign Affairs, the AMA Computer College, the BBPilipinas.com, Globe.com.ph, and the Fapenet.org., backdoor/Trojan involving the sniffing of important documents of other websites, and credit card fraud which is the most prevalent computer crime being committed.

Since January of this year, several institutions were hacked to include the PLDT, the Office of the President and that of the Press Secretary, Ateneo de Manila University, and the University of Santo Tomas. Just recently, Senator Roco's website was hacked by a malicious prankster who defaced the site and replaced it with irrational and incomprehensive information.

The cyber-terrorist threat, on the other hand, could be perpetrated by the CPP/NPA/NDF which has been computer reliant since 1987. The movement is able to enhance its intelligence networks and intercept classified information with its sophisticated computer system. To deny government authorities classified information of the movement, the latter has institutionalized encryption as a means of relaying information to operating units in other parts of the country. Even its recognized leader, Jose Maria Sison, maintains a personal website from which he can communicate and rally the local insurgents into launching terrorist attacks against the government. Non-government organizations here and abroad that are sympathetic to their cause and giving financial and other assistance can also be reached through the internet thus facilitating unhampered transactions.

The National Youth Student Bureau, which serves as an important subordinate party organ of the National Organizational Department of the CPP/

NPA, maintains a pool of computer literates and experts. Several party members have enrolled in different computer schools while others have infiltrated the underground computer networks to gain expertise on how to initiate computer crimes and utilize the same in their terrorist activities.

III. COUNTERMEASURES/ INITIATIVES

The prospect of law enforcement cooperation in Asia has come of age. In an era of regionalization and globalization, states have to recognize that in combating a threat together it is likely that they will have to collaborate and coordinate their actions.

The array of regional and global arrangements takes many forms: standing bodies, ad hoc conferences, bilateral agreements, and multilateral conventions. These non-state actions form the basis for cooperation and, at its essence, is the basis for a continuing union of states. The ultimate objective of such cooperation is the formation of global and regional groupings with the stated minimum aim of providing a forum on issues of significant mutual concern.

A. Trafficking in Persons

The Philippines has no specific law that deals squarely with human trafficking. However, a bill titled as "Anti-Trafficking in Human Beings Act of 2001" that seeks to criminalize human trafficking in all its forms is pending in the Philippine Congress. Pending the passage of this legal measure, law enforcement authorities to penalize those involved in human trafficking are utilizing several laws. These are the following:

1. **Republic Act No. 6955** entitled "An Act to Declare Unlawful the Practice of Matching Filipino Women for Marriage to Foreign Nationals on a Mail-Order Basis and Other Similar Practices Including the Advertisement, Publication, Printing or Distribution of Brochure, Filers and Other Propaganda Materials in Furtherance Thereof and Providing Penalty Thereof".
2. **Republic Act No. 7610**, known as the "Special Protection of Children Against Abuse, Exploitation and Discrimination Act". This law prevents the prostitution and other forms of sexual abuse committed against children (Article III) and also penalizes child trafficking (Article IV).
3. **Republic Act No. 8042**, known as the "Migrant Workers and Overseas Filipino Act of 1995". It penalizes illegal recruitment of persons for employment abroad.
4. **Republic Act No. 8239**, known as the "Philippine Passport Act of 1996" penalizes the procurement and use of spurious Philippine passports.

The Philippine law enforcement organization has specialized units to deal with human trafficking cases. These are the following:

1. **Human Trafficking Desk of the Philippine Center on Transnational Crime (PCTC)**. This desk is in charge of gathering data on human trafficking cases as well as in the maintenance of the central database, continuous gathering of information to sustain the data requirements of the database, generating reports from the database needed in police investigation, and operations, trend analysis, strategic studies and policy recommendations.

2. **Anti-Illegal Recruitment Branch of the Philippine Overseas Employment Administration (POEA)**. It is specifically tasked to investigate cases of illegal recruitment for employment abroad and filing cases in appropriate courts.
3. **Violence Against Women and Children Division of the National Bureau of Investigation**. This specialized unit takes cognizance of all cases with women and children as victims to include trafficking and smuggling, forced labor and prostitution.
4. **Women and Children Concern of the Criminal Investigation Detection Group**. This is counterpart of the Violence against Women and Children Division of the NBI at the Philippine National Police and as such its functions is similar with the former.

The following are the programmes of various international and national organizations as well as the Philippine governments to stop trafficking in women and children:

1. Prevention

(i) **Philippine Overseas Employment Administration**—offers dancing skills development for would-be entertainers and caregiver's training to potential domestic helpers, in the belief that these talents and skills would protect Filipino women workers abroad.

(ii) **National Commission on the Rights of Filipino Women (NCRFW)**—Advocating policies and programmes to stop trafficking in women and children such as the enactment of an anti-trafficking bill into law and the development of information and education materials for advocacy and public dissemination.

(iii) Other government agencies into advocacy and awareness are the Department of Tourism **(DOT)**, Department of Social Welfare and Development **(DSWD)**, Philippine Overseas Employment Administration and the Commission on Filipinos Overseas **(CFO)**. The Department of Education, Culture and Sports **(DECS)**—conceptualizing integrated programmes to be conducted for school officials, curriculum developers, student/community leaders and parents.

(iv) **Philippine Network against Trafficking in Women (PNATW)**—lobbied for the introduction of anti-trafficking legislation and has been involved in the production of several videos and broadcast programmes about the risks of working aboard.

(v) **The International Organization on Migration (IOM)**—also supported various information, advocacy law development activities.

(vi) **The United Nations Coalitions Against Trafficking in Persons Global Programme**—enables the country's coordinating agencies to draft a Strategic Action Plan Against Trafficking in Persons. More over, representatives from the Coalition are consistently monitoring the programmes of the Center as well as continuously sharing information, which could facilitate and effectively implement such programmes.

(vii) Other NGOs advocate initiatives paying attention to prostitution as a violation of human rights.

2. Protection and Return

Protection and return activities focuses on the special assistance to victims who come out of prostitution by providing

shelter, health care, counseling, education, and vocational training.

3. Reintegration

Reintegration programmes are aimed at facilitating the recovery from any traumatic experience and the turn to normal life of victims to pursue their aspirations in life.

B. International Terrorism

It is the national policy of the Philippine government to declare a total war against terrorism. It considers all terrorist actions, regardless of motivation, as criminal acts, not to accede to blackmail or demand nor grant any concession, not to provide sanctuary or "safe haven" for terrorists whether they are Filipino or foreign nationals. It also adheres to all international conventions and initiatives against terrorism and participates in all endeavors designed to strengthen international cooperation in order to prevent and neutralize terrorist acts.

Because of the global character of terrorism, the Philippines has sought to strengthen its international linkages by signing the Joint Communique on international terrorism during the 1993 Conference of ASEAN Chiefs of Police (ASEANAPOL) and the Memorandum of Agreement on Counter-Terrorism with several countries and pursued various agreements with the USA, likewise establishing an INTERPOL-National Central Bureau.

In 1996, the Philippines hosted the International Conference on Counter-terrorism (ICCT) in Baguio, which was attended by nineteen representatives from different parts of the world to enhance international cooperation against all forms of terrorism. The "Baguio Communique" took into consideration some fundamental principles such as: 1) there must be no sanctuary for terrorists; 2) there must be no compromise in the fight against terrorism; 3) the strengthening of multilateral and bilateral cooperation or coordination of policy and action against terrorism; etc.

The Philippine government established the Philippine Center on Transnational Crime (PCTC) on 15 January 1999 pursuant to EO. Nr 62, to deal specifically with all transnational crimes including that of terrorism. The PCTC's primary functions among others are: to establish a shared central database among government agencies for information on criminals, methodologies, arrests and convictions regarding transnational crimes, to explore and coordinate information exchanges and training with other government agencies, foreign countries and international organizations.

Relatedly, on 7 May 1999, Executive Order No. 100 was issued transferring the INTERPOL-NCB functions from PNP to PCTC's supervision in order to fortify and facilitate the coordination between and among foreign countries. This, in essence, placed other agencies, offices and instrumentalities such as the Loop Center of the NCCAS (before NACAHT); the Police Attaches of the PNP and Political Attaches/Counselors for Security Matters of the DILG under its supervision and control in order to strengthen the operational, administrative and information support system of the PCTC. Additionally, E.O No. 110 was issued, dated June 15 1999, which directs the PNP to support the AFP in Internal Security Operations for the suppression of insurgency and other serious threats to national security, the Department of the Interior and Local

Government (DILG) was relieved of its primary responsibility on matters involving the suppression of insurgency and other threats to national security.

On the other hand, Memorandum Order No. 121 dated October 31, 2000, provides and defines measures and guidelines on how to effectively address terrorism particularly hostage-taking situations. However, all aviation-related incidents shall be covered by existing laws and procedures under the National Action Committee on Anti-Hijacking and Terrorism (NACAHT), and this Memorandum shall be supplementary thereto.

To further ensure the effectiveness of the government's drive against terrorism, the government issued Executive Order Nr 336 on 5 January 2001, reconstituting the National Action Committee on Anti-Hijacking and Anti-Terrorism to National Council for Civil Aviation Security (NCCAS). The reconstituted NCCAS was established primarily to contain threats of aviation-related terrorism and to strengthen the law enforcement capabilities in order to effectively address all forms of terrorist acts against civil aviations.

Just recently, President Gloria Macapagal Arroyo announced the fourteen point policy including six measures to combat terrorism as follows:

Six Measures

- One, to join the International Counter-Terrorist Coalition and to work with the United Nations.
- Two, to work closely with the United States on intelligence and security matters concerning terrorism.
- Three, to make available Philippine air space and facilities when these are required as transit or staging point.
- Four, to contribute logistical support in the form of food supply, medicines and medical personnel;
- Five, to subject to the concurrence of Congress, to provide combat troops if there is an international call for such troops.
- Six, to prevent the flow of funds to terrorist groups to the Philippines by passing and implementing legislation against money laundering.

Fourteen Pillars

- Organize the whole enterprise and delineate clear lines of responsibility and accountability (including the cabinet oversight committee on internal security).
- Anticipate events more efficiently and effectively (with the national security advisers undertaking special intelligence coordinating projects).
- Strengthen internal focus against terrorism (with all the government units "down to the barangay level" involved).
- Hold accountable all public and private organizations and personalities abetting or aiding terrorism.
- Synchronize internal efforts with the global outlook (including the fast-tracking of a regional consensus with Indonesia and Malaysia in the war against terrorism).
- Combine a policy of tactical counter force with a set of strategic legal measures.
- Pursue broader inter-faith dialogue to promote Christian and Muslim solidarity.
- Exercise vigilance against movements of suspected persons, firearms, explosives, raw materials of explosives, toxic materials and biological materials.

- Coordinate preparations and actions in the event of catastrophic terrorist attacks.
- Draft a comprehensive security plan for critical infrastructure.
- Support the immediate transfer out of overseas Filipino workers.
- Modernize the armed forces and the national police considering current and emerging needs to contain the global terrorist threat.
- Seek the support of media to promote consensus and counsel prudence.
- Take cognizance of terrorism's political, social and economic underpinnings.

C. Money Laundering

The Senate and the House of Representatives of the 12th Congress had passed recently the much-debated Anti-Money Laundering Bill through the *Republic Act No. 9160*, an Act Defining the Crime of Money Laundering, Providing Penalties Therefor and for other Purposes. This Act shall be known as the "*Anti-Money Laundering Act of 2001*." This act, which is a consolidation of House Bill No. 3083 and Senate Bill No. 1745, was finally passed by the House of Representatives and the Senate on September 29, 2001 and was approved into law by President Gloria Macapagal-Arroyo. The bill makes it a crime to transact through the banking system money in excess of four-million pesos (US$80,000.00) representing proceeds for 14 specific crimes.

Included in the predicate crimes of this law are kidnapping for ransom; drug trafficking; graft and corruption; plunder; robbery and extortion; *jueteng* and *masiao*; piracy on the high seas; qualified theft; swindling, smuggling, cyber-crimes; hijacking; destructive arson and murder, including those perpetrated by terrorists against non-combatants; securities fraud; and offenses of a similar nature punishable under the penal laws of other countries.

D. Intellectual Property Rights' Violations

Below are some specific initiatives undertaken by the Philippine government for the protection and promotion of intellectual property rights:

1. **BSA and NBI Campaign Against Software Piracy**—Coordinated and conducted a campaign against the continuing problem of illegal software.
2. **Republic Act 8293**—Known as the "Intellectual Property Code of the Philippines", it is being implemented as the primary law on intellectual property to combat all forms and manner of infringement, piracy and counterfeit of intellectual property rights.
3. **Creation of Intellectual Property Office (IPO)**—Tasked to administer and implement the State Policy to protect the exclusive rights of scientists, inventors, artists, and other gifted citizens to their intellectual property and creations which are beneficial to people, for periods as provided in the Intellectual Property Code.
4. **Creation of the PIAC-IPR**—Created to coordinate concerned government agencies and private entities for the proper enforcement of intellectual property rights in the country.
5. **Creation of the PCTC**—Tasked to perform the necessary and proper courses of action to contribute in the battle against intellectual property rights crime.
6. **BSA and PISO Campaign Against Internet Piracy**—Both agreed to work together in addressing internet

piracy problems specifically in generating greater awareness and the appreciation of the roles of internet service providers in the prevention and control of this problem.

7. **Private Sector Initiatives**—Forged an agreement to restrict the sale of pirated compact discs and to sanction those who will violate such agreement.

E. Drug Trafficking

Republic Act No. 6425 otherwise known as "The Dangerous Drugs Act of 1972" as amended by Presidential Decree Numbers 44, 1675, 1683, 1707, Batas Pambansa Blg. 179, and Republic Act No. 7659—this law institutionalizes the internationally accepted two-pronged approach of supply and demand reduction. Supply reduction is manifested through the imposition of penalties for acts punishable in relation to prohibited and regulated drugs and the forfeiture of the proceeds or instruments of the crime so penalized in favor of the government.

Department of the Interior and Local Government (DILG) Circular No. 98-227—this DILG issuance mandates all local government units (LGUs) to organize Anti-Drug Abuse Councils in their respective areas of responsibility. The chief executives of all local political units (barangays, municipalities, cities, and provinces) are concurrently the chairmen of these ADACs with the provincial directors, chiefs of police and precinct commanders as vice chairmen. These organizations are tasked to implement demand and supply reduction through the realization of programmes and projects on preventive education, treatment and rehabilitation, research, and interdictions. These organizations also offer venues through which various organizations and individuals will work together in the planning, implementation and evaluation of programmes on drug abuse prevention and intervention. As of year 2000, forty thousand four hundred and forty six thousand Barangay Anti-Drug Abuse Councils (BADACs) were organized through the orchestration of the National Drug Law Enforcement and Prevention Coordinating Center (NDLEPCC).

Letter of Instruction Nr. 1 (LOI Nr 1)—this LOI was signed by President Gloria Macapagal Arroyo on July 4, 2001 the purpose of this LOI was to seek to mobilize and bring to bear the entire Governments machinery and the Civil Society in all-out and sustained anti-drug campaign nationwide towards the attainment of a drug free Philippines 2010.

F. Piracy on the High Seas and Armed Robbery Against Ships

Currently, the Philippine Government is coming up with a national plan of action to address piracy on the high seas and armed robbery against ships.

In the meantime, the Maritime Group of the Philippine National Police, Philippine Coast Guard, Philippine Navy, MARINA and the PPA primarily enforce all applicable laws regarding piracy and armed robbery. These agencies and offices have congruent functions to implement such laws, although with specific limitations in terms of equipment and facilities. A core group composed of selected representatives from these agencies drafted a programme of activities on matters pertaining to law enforcement, legal and information exchange.

On August 3, 2001, CABCOM-MOAC Core Group on Piracy expressed its support to the Japanese proposal on the "Regional Agreement on Anti-Piracy in

Asia". This ASEAN-Japan proposal was discussed on October 4–5, 2001, in the aspect of the scope of agreement, information network, capacity building and cooperation, among others.

G. Illicit Firearms Trafficking

The control of "Paltik" manufacturing is one of the problems that beset our law enforcement agencies. The country through its PNP Firearms and Explosive Division is encouraging illegal manufacturers to come to terms and organize a license industry. As of now, there are two licensed manufacturers in Danao City, Cebu—the Danao Arms Corporation (DAMCOR) and the Workers League of Danao Multi-Purpose Cooperative (WORLD-MPC). These two manufacturers are authorized to produce a total of 6,000 assorted firearms annually based on their manufacturers license issued by the PNP Chief. This power to approve and disapprove applications for firearms manufacturing license was expressly delegated to the Chief, PNP under Section 27 (f) of Republic Act 6975.

There is a need therefore to liberalize the issuance of manufacturer's license to eliminate red tape, and come up with a simpler system. Decentralizing of the processing to the regional level may encourage illegitimate "paltik" manufacturers to come out in the open and abide with the regulations.

The Bureau Customs is the primary agency tasked to address the smuggling of firearms. The Philippine government formed an AD-HOC committee to incorporate the efforts of all law enforcement and intelligence agencies by creating a coordinating body called the National Law Enforcement Coordinating Committee (NALECC). Each member-agency passes information to other agencies to come up with SPIDER WEB efforts to identify and entrap smugglers even at local inter island ports of entry and exit. Intensified information gathering by appointed intelligence agents and informants is likewise being undertaken. Searches by Coast Guard and Custom Officials are implemented on suspected carriers.

1. <u>On Pilferage of Firearms</u>

The counterintelligence units and respective Security Officers of AFP/PNP are now addressing the problem of pilferage of firearms. Inventory and inspection of physical establishments are being monitored regularly. Aside from the enhancement of physical structure on camps and other military installations, safeguard mechanisms are employed.

2. <u>On Losses from Police and Military Operations</u>

Professionalizing the police and the military can negate losses during legitimate Police and Military operations. Training, Information and Education of troops in order to take care of their individual equipment are every now and then undertaken. Executive Order 122 dated 8 September 1994 pertains to proper reporting of lost FA's as well as recovered firearms from the enemy. This includes the proper accounting of all government firearms as basis for future audit and inventory.

H. Cybercrime

The government is continuously strengthening its legal as well as structural mechanisms to counter the proliferation of computer crimes and cyberterrorism *vis-à-vis* the implementation of the National Information Technology Plan that seeks to ensure the electronic interconnection of all government units, agencies and instrumentalities and also ensures that

all sectors of society will have access to information technology.

Foremost of these initiatives is the passage into law of Republic Act No. 8792, also known as the Electronic Commerce Act. It seeks, among others, to ensure network security and penalize unauthorized access, illegal use of electronic documents and the wanton destruction of computer files.

Complimenting this law is the Task Force on National Information Infrastructure Protection established on May 20, 2000. It is tasked to conduct an assessment of all national infrastructures that form part of the country's social backbone, identify their vulnerabilities to cyberterrorism and other related crimes and recommend response measures to ensure their protection leading to the realization of a comprehensive National Information Infrastructure Security Programme.

IV.ASSESSMENT

The rapid growth of technology has created a paradox in society, such that we have to live side by side with the advances it has for our lives, as well as the dangers it poses to man and society. For no matter how remarkable these advances have become, there also will always be advancements in criminal undertakings and activities that use the very same technology to "advance" their very own peculiar interests.

The Philippines has remained as a source, transit and destination country for illegal emigrants to include victims of trafficking and smuggling. This is due to wide range of national conditions that favor the exodus of people out of the country as well as large economic and social opportunities abroad. This phenomenon is further enhanced by globalization, which is easing the mobility of people across national borders.

Institutional mechanisms and international/regional arrangements are sound actions that will definitely strengthen national capabilities against human trafficking and smuggling and other transnational crimes.

Terrorism has always existed and the chances are strong that it will continue to exist. It will remain as long as there is little regard for the emotional component of political, social and economic problems besetting two or more opposing states. These factors motivate individuals, groups or class to conduct aggressions as a means to correct perceived injustices or inequity in their relationship. The threat of terrorism will continue to be felt in the Philippines. This is a strong indication that the Philippine government should be determined and sincere in addressing the threat of domestic and international terrorism.

In Asia, money laundering is on the rise. The reasons cited are official corruption, strict bank secrecy laws, traditional ethnic underground banking networks and in some countries a lack of anti-money laundering laws. The report pinpointed China, Hong Kong, and Macau as major money laundering centers, and also named India, Indonesia, and the Philippines. The Philippines has taken its move. It is expected that other countries, especially those falling under the category as probable havens of money launderers, will finally heed the call of FATF.

The massive increase in piracy, counterfeit and infringement of intellectual property rights has

significantly affected the Southeast Asian region, including the Philippines. The proliferation of the crime has also been implicated in the continuing economic crisis being experienced by the region. Despite the efforts and measures taken by the government, the nation is still at risk and great danger. According to Business Software Alliance's Chief Executive Officer, Robert Holleyman, "the Philippine laws are not enough to protect IPR and copyright."

The illicit trafficking of firearms is a common problem shared by many state. The gravity of the problem depends on how rules on firearms regulations are being implemented. The definition of firearm has been a subject of debate. But the scope of its operation and impacts are undermining the security of every individual. The Philippines should address the problems posed by unregistered firearms and the production of "paltik" guns. Control through effective regulation is needed. A proactive concept should also be developed to counter illicit trafficking of firearms.

Another transnational crime recognized as an offense against the law of nations is piracy. Incidents of piracy were expected to increase with increase trade and commerce using international sea lanes. There is, therefore, a need for greater regional naval cooperation, diplomatic dialogue and continuing understanding of various maritime issues. These issues could include the following: information sharing; joint exercise/patrolling; standard operating procedure on piracy reporting; training of personnel; technology exchange and the establishment of anti-piracy networks and rescue center.

In drug trafficking, international, regional and national initiatives to combat the problem on illegal drugs are sufficient in substance but not in a way these are being implemented. With respect to international and regional initiatives, their implementation within the territory of signatory states are hampered.

Unfortunately, the economic environment is being transformed by transnational criminal syndicates to their advantage. With the emergence of a borderless world, member of these criminal syndicates can enter any country with ease to perpetrate their illegal activities masquerading as legitimate investors and tourists.

V.CONCLUSION

Transnational crimes have existed and a consensus has emerged that these will be a growing challenge. Not all states, however, agree which of these crimes are to be given priorities because they do not affect every country equally. Its effects in a country, like the Philippines, facing the challenges of sustaining a certain level of economic growth, can be more severe compared to its neighbors. For example, migration can be harmful to sending state, but in some respects, it can be helpful to a sending state because of pecuniary remittance being sent back to the families of migrants. The harm, however, is greater than the help because a number of these migrants end up exploited. Other national conditions vulnerable to exploitation by transnational organized syndicates include the following:

1. Archipelagic condition of the country characterized by scattered islands and islets and a long and virtually unguarded coastline;
2. The widening gap between the rich and the poor accompanied by an

unemployment problem and the shortage of manpower and specialized skills in industrialized countries;
3. Proximity to drug producing and exporting countries and source of illegal migrants; and
4. The absence or ineffectiveness of laws against transnational crime.

OVERVIEW OF THE PROVISIONS OF THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME AND ITS PROTOCOLS

*Dimitri Vlassis**

I. THE NEW CONVENTION: A NEW ERA IN INTERNATIONAL COOPERATION

In December 1998, the United Nations General Assembly established[1] an Ad Hoc Committee for the elaboration of the United Nations Convention against Transnational Organized Crime and three additional Protocols addressing: trafficking in persons, especially women and children; illegal trafficking in and transporting of migrants; and illicit manufacturing of and trafficking in firearms, their parts and components and ammunition. In establishing this Committee, the Assembly took a giant step toward closing the gap that existed in international cooperation in an area generally regarded as one of the top priorities of the international community in the 21st century. The Assembly also lay to rest the uncertainty and uneasiness that surrounded the endeavor by manifesting the collective political will of all States to tackle conceptual and political problems and find commonly acceptable solutions. One year later, in December 1999, the General Assembly adopted another resolution[2], by which it asked the Ad Hoc Committee to intensify its work in order to complete it by the end of 2000. The Assembly thus formalized the deadline under which the Ad Hoc Committee had been working since its establishment. Apart from the symbolism involved, the deadline reflects the urgency of the needs faced by all States, developed and developing alike, for new tools to prevent and control transnational organized crime. It also reflects the need of sustaining and building on the momentum that made the original decision possible in order to foster consensus while not compromising the quality of the final product.

The process leading up to the establishment of the Ad Hoc Committee may seem long and arduous. However, the reader is urged to keep in mind that only four years passed from the time that the idea of a convention first surfaced until the official commencement of the negotiation process. This compares extremely favourably with other similar initiatives, especially in areas that are as complex as that of criminal justice and the development of international criminal law. Further, the Ad Hoc Committee charged with conducting the negotiations operated from the beginning under a self-imposed short deadline[3], which is rather unusual in international negotiations of

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[1] See General Assembly resolution 53/111 of 9 December 1998. In resolution 53/114, also of 9 December 1998, the General Assembly asked the Ad Hoc Committee to devote sufficient time to the elaboration of the Convention and the three additional international legal instruments.

[2] See General Assembly resolution 54/126 of 17 December 1999.

this sort, especially in the context of the United Nations. This deadline set a very vigorous pace for the negotiations, which often taxed heavily the capacity of smaller delegations.

The reader should also keep in mind that the Ad Hoc Committee was essentially negotiating in parallel four international legally binding instruments. All this notwithstanding, the Convention was finalized in July, a few months ahead of schedule, and two of the Protocols were completed within the deadline, in spite of the numerous complexities and political concerns they might have entailed.

Finally, the reader should always bear in mind that the United Nations is a global organization founded on the principle of equality. The concerns of all States, big or small, more or less powerful, deserve equal attention and should be taken into account in all of the activities in which the United Nations is engaged. The principal strength of international action, especially that of a normative nature, is its universality. In the case of an instrument intended to address an issue as complex as transnational organized crime, the active participation of both developing and developed countries from all regions is essential. The very nature of transnational organized crime, with the ability of criminal groups to seek the most favourable conditions for their operations, demands no weak links in the chain of joint action.

The spirit guiding the negotiations has been one of constructive engagement and sensitivity to the concerns of everyone involved in the process. Everyone agrees that the objectives of the negotiations cannot be expediency but consensus, together with conscious and genuine commitment, which are the cornerstones of successful action. Consensus has often been equated with weakness and obscurity, especially when it comes to negotiated texts. It may be true that, at first glance, many documents that have been the results of prolonged negotiations may appear convoluted and inefficient. After all, very often one of the key elements of compromise is ambiguity. Having said this, however, it is also important to bear in mind that equally often the ideal is far removed from the feasible. An international legal instrument that upholds the highest standards of clarity and directness of language, and includes strong and straightforward obligations is desirable and commendable. It also deserves careful study at the academic level and is an essential component of any course in international law. However, if this instrument fails to come into force, or, if it does, is acceded to and implemented by a handful of countries, its practical utility becomes doubtful, to put it mildly, and is destined to languish in library books and soon forgotten.

The Ad Hoc Committee operated with these guiding principles from the time of its establishment. The negotiation process was highly participatory. Over 125 countries participated in the sessions of the Ad Hoc Committee. With the generous help of Austria, Japan, Norway, Poland and the United States, on average 23 of the Least Developed Countries (a group of 48 countries from Africa, Asia and Latin America determined by the General Assembly each year) attended the sessions. Its members agreed early on that the quality of the final product was essential. Other existing Conventions,

[3] It should be noted that the General Assembly made this deadline official with resolution 54/126 of 17 December 1999.

such as the 1988 Vienna Drug Convention and the Convention against Terrorist Bombings[4] would provide inspiration, as they had often dealt with similar issues. However, the Ad Hoc Committee also agreed that every conscious effort would be made to improve upon the texts of these Conventions, to the extent possible, in order to meet the needs of the new Convention and to reflect new trends.

Before proceeding to giving an overview of the text of the Convention, it is important to note a very interesting feature of the negotiation process. It will be recalled that, to a large extent, the driving force behind helping the idea of the convention mature was the enthusiasm of developing countries. Faced with the breakneck pace of the negotiations, several developing countries began complaining that the deadline was having an impact on their ability to study the text fully and prepare their positions. These countries felt that keeping the deadline should not have an adverse impact on the ability of developing countries to express their concerns and negotiate solutions they regarded as acceptable. In addition, as the text was gradually embellished and enriched with new proposals, several developing countries started to entertain fears that developed countries viewed the Convention as an opportunity to impose approaches and solutions on their less powerful counterparts, and this was the reason that the Convention had become highly desirable to them.

Criminal justice is an integral component of a country's soul and, as such, one of the key attributes of sovereignty. In a rapidly developing and very demanding field as action against transnational crime, particularly organized crime, the tendency to expand jurisdiction at will, in order to respond to specific exigencies, has been noted and feared. Further, developing countries realized that the new Convention would impose a multitude of obligations, which would require the investment of considerable resources. With limited resources and competing priorities, especially at present when most efforts are directed towards addressing problems related to infrastructure and meeting the challenges of globalization, many of these countries foresaw the difficulty of meeting those obligations. This latter dimension of the thinking of those few countries was also a result of two perceptions.

Firstly, all developing countries and countries with economies in transition had gradually become aware, in a more or less painful way, of the ramifications and potential of modern transnational organized crime. However, for several of them the problem had not caused dramatic crises domestically. Consequently, the new obligations were viewed as being out of proportion with their domestic experiences and their political agenda at home.

Secondly, many policy-makers in some developing countries had geared their thinking towards the short-term, mainly as a result of pressing needs. Consequently, the implications of the expansion of transnational organized crime were not included as a parameter in the development of policies for the future. In addition, this short-term thinking could not capture the ramifications of concerted action against transnational organized crime, using the new Convention as the framework and main tool. In other words, the short-term

[4] Adopted by the General Assembly by resolution 52/164.

thinking failed to assess the impact of the tendency of organized criminal groups to seek conditions of relative safety when governmental action increases the risk and cost of operations. It should be made very clear that the political commitment and the conviction about the need for the Convention and the desirability of concluding it remained totally undiminished. The negotiations, however, went through a phase of caution on the part of several developing countries and became, as a result, more intricate.

The new Convention can be divided into four main areas: criminalisation, international cooperation, technical cooperation and implementation.

It will be recalled that one of the main reasons for the initial scepticism was whether the concept of transnational organized crime could be defined in an appropriate manner, from both the legal and political perspectives. The negotiators decided to use a two-pronged approach to the issue. First, it was agreed that it would be sounder to define the actors rather than the activities. The rationale behind this approach was that the international community was embarking on negotiating a binding international legal instrument for the future. Organized criminal groups are known to shift from activity to activity, from commodity to commodity and among geographical locations, often on the basis of what in the business world would be called a cost-benefit analysis.

Given this known characteristic, it would be futile to try and capture in a negotiated legal text everything that these groups are known to engage in at present or might decide it makes good business sense to carry out in the future. In this context, the Convention defines an organized criminal group as being "a structured group of three or more persons existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established pursuant to [the] Convention, in order to obtain, directly or indirectly, a financial or other material benefit."

Second, the new Convention should bring about a certain level of standardization in terms of offences as they are codified in national laws, as a prerequisite of international cooperation. Working on these premises, the Ad Hoc Committee begun discussing the concept of serious crime. At the beginning, many countries expressed doubts as to whether the term would be appropriate, arguing that it signifies different things to different systems. It would be useful to bear in mind that this discussion was closely linked to the question of whether the Convention would include a list of offences.

The Ad Hoc Committee asked the Secretariat to carry out an analytical study on serious crime and on if and how the concept was reflected in national laws. The study, which was based on the responses of over 50 States, showed that the concept of serious crime was well understood by all, even if the qualification might not necessarily be used in legislation. The doubts about, or objections to the use of the term gradually subsided. Serious crime is defined as "conduct constituting a criminal offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty."

The Convention establishes four offences: (a) participation in an organized criminal group; (b) money laundering; (c) corruption; and (d) obstruction of justice.

The provision establishing the offence of participation in an organized criminal group is a carefully crafted one, which balances the concept of conspiracy in the common law system with that of the various versions of participation as such versions have evolved in various continental jurisdictions. The aim was to promote international cooperation under the Convention by ensuring the compatibility of the two concepts, without attempting to fully harmonize them.

The provision on criminalisation of money laundering departs from a previous similar provision in the 1988 Vienna Drugs Convention, but goes beyond by expanding the scope of predicate offences covered.

The provision on the establishment of the offence of corruption was the subject of considerable debate, mainly because it was deemed a limited effort against a much broader phenomenon. The approach finally selected was to include a provision in the Convention, in view of the fact that corruption is one of the methods used, and activities engaged in by organized criminal groups. This was done on the understanding that this Convention could not cover the issue of corruption in a comprehensive manner and a separate convention would be needed for that purpose. In fact, on the recommendation of the Ad Hoc Committee and the Commission, the General Assembly adopted a resolution[5] on this matter. This resolution sets out the preparatory work, which would need to be carried out in 2001, for the elaboration of the terms of reference of the negotiation of a new separate convention against corruption. Following the completion of this work, a new Ad Hoc Committee will be established and asked to negotiate the text.

Finally, the provision establishing the offence of obstruction of justice captures the use of force, intimidation or bribery to interfere with witnesses or experts offering testimony, as well as with the performance of the duties of justice or law enforcement officials.

In the area of international cooperation, the Convention includes articles on extradition, mutual legal assistance, transfer of proceedings and law enforcement cooperation.

The provision on extradition adopts the approach of double criminality to this tool of international cooperation. The article provides that most of the particulars of extradition would be essentially left to national legislation or treaties that exist or will be concluded between States. It is for this reason that, with the exception of a safeguard clause on prosecution or punishment on account of sex, race, religion, nationality, ethnic origin or political opinions, the article does not contain grounds for refusal of extradition. There is an implicit recognition of nationality as a traditional ground for refusal of extradition, because this was identified as an area where the new Convention could not attempt to bring about change in national legislation, due to very strict traditions or constitutional impediments. The Convention, however, embodies the principle *aut dedere aut judicare* when extradition is refused on the ground of the nationality of the alleged offender. The article on extradition provides that the offences covered by the Convention would be deemed to be included as extraditable offences in any treaty existing between States Parties, or would be included in future treaties. States Parties can use the

[5] General Assembly resolution 55/61.

Convention for extradition purposes even if they make extradition conditional on a treaty. Those which do not make extradition conditional on a treaty will recognize the offences covered by the Convention as extraditable offences between themselves.

Another important feature of the article is that it contains an obligation for States Parties to try and resolve differences by consultation before they refuse an extradition request.

The article on mutual legal assistance is much more extensive, having been called by some a "treaty within a treaty". In its 31 paragraphs, the article details every aspect of mutual assistance, including grounds for refusal. It is important to note that, while the article is largely based on similar provisions in other Conventions, it brings forth the considerable evolution of the concept of mutual legal assistance, as one of the primary tools of international cooperation against transnational crime. In this vein, the article speaks of the use of modern technology, such as electronic mail for the transmission of requests, or video link for the giving of testimony. The Convention also includes language regarding the spontaneous provision of information and assistance, without prior request. In the area of law enforcement cooperation, the Convention includes provisions on exchange of intelligence and other operational information and on the use of modern investigative methods, with the appropriate safeguards.

Prior to proceeding to the area of technical cooperation, it is important to mention that the Convention includes detailed provisions on the development of regulatory regimes to prevent and control money laundering and on confiscation, including provisions on the sharing of confiscated assets. The Convention also includes provisions for the protection of witnesses, a key component of any successful action against organized crime. The relevant article includes a provision asking States to consider entering into agreements with other States for the relocation of witnesses. Further, and in the same vein, the Convention includes an article on the protection of and assistance to victims and another on measures to enhance cooperation with law enforcement authorities of persons involved in organized criminal groups (those who have been described in recent years using the Italian term *pentiti*).

As mentioned earlier, the involvement and participation of all countries in the joint effort against transnational organized crime lies at the core of the decision to negotiate a new international legal instrument. It also inspired the negotiations throughout the work of the Ad Hoc Committee. The new Convention will create numerous obligations for countries, which range from updating or adopting new legislation to upgrading the capacity of their law enforcement authorities and their criminal justice systems in general. Many of the activities required to meet these obligations are resource intensive and, as a consequence, will create a considerable burden for the limited capacities of developing countries. The spirit of the discussions around this subject has been very interesting. These discussions have been based on the understanding that the implementation of the Convention would be in the interest of all countries. Consequently, such implementation would be the responsibility of all countries, regardless of their level of development. Developing countries would gear their systems and bring their limited resources to bear in discharging this responsibility. However, everyone recognizes that, once this has

been done, there will be many areas where developing countries and countries with economies in transition would require significant assistance until they are able to bring all their capacities up to a common standard.

Following extensive discussion, the Convention includes two articles on technical cooperation, one intended to cover cooperation to develop specific training programmes and the other to deal with technical assistance in the more traditional sense of the term, i.e., involving financing of activities at the bilateral level or through international organizations, such as the United Nations. The latter provision foresees that States Parties will make concrete efforts to enhance their cooperation with developing countries with a view to strengthening the capacity of the latter to prevent and combat transnational organized crime.

States Parties are also asked to enhance financial and material assistance to developing countries in order to support efforts to implement the Convention successfully. For the provision of technical assistance to developing countries and countries with economies in transition, the Convention foresees that States Parties would endeavour to make adequate and regular financial contributions to an account specifically designated for that purpose in a United Nations funding mechanism. The Ad Hoc Committee decided that this account will be operated for the time being within the Crime Prevention and Criminal Justice Fund, a mechanism set up to receive voluntary contributions for the technical cooperation activities of the Centre for International Crime Prevention.

In the resolution by which it adopted the Convention, the General Assembly established this special account under the Crime Prevention and Criminal Justice Fund. It is interesting to note that almost immediately, donor countries begun making contributions to that account, demonstrating the seriousness with which they regard the matter of providing assistance to developing countries and countries with economies in transition, even at the pre-ratification stage.

On implementation, the Convention has taken a very interesting course. The Convention will establish a Conference of the Parties, which will have the dual task of improving the capacity of States Parties to combat transnational organized crime and to promote and review the implementation of the Convention.

The Conference of the Parties will accomplish these tasks by (a) facilitating the activities of States Parties foreseen under the articles on technical cooperation, including by mobilizing resources; (b) facilitating the exchange of information among States Parties on patterns and trends in transnational organized crime and on successful practices for combating it; (c) cooperating with relevant international and non-governmental organizations; (d) examining periodically the implementation of the Convention by States Parties; and (e) making recommendations to improve the Convention and its implementation. The relevant article goes on to say that the Conference of the Parties will acquire the necessary knowledge on the measures taken by the States Parties in implementing the Convention and on the difficulties encountered by them in doing so by the States Parties themselves, and

through such supplemental review mechanisms as it may establish.

The mechanism set up is a clear movement forward from previous practices in the field of implementation of international conventions, at least in the context of the United Nations. The provision establishes a dual form of review. On the one hand, it preserves the more traditional obligation, found in most other Conventions, for States Parties to file regular reports on the progress they have made in implementation. This is supplemented by additional review mechanisms, which the Conference may establish. This is an indirect reference to a system of "peer review", which has been developed in various forms in recent years in the context of regional instruments. Another important feature of the provision is that the Conference of the Parties will not only function as a review body. It will pay equal attention to serving as a forum for developing countries and countries with economies in transition to explain the difficulties they encounter with implementation and seek the assistance necessary to overcome such difficulties. This link between implementation and technical cooperation and assistance reinforces the collective will that guided the negotiations to take into account all concerns and needs and address them jointly in order to achieve the common goals embodied in the new Convention.

Another innovative feature of the new Convention is an article on prevention. The provision is designed not only to introduce formally the concept of prevention, which is relatively new in action against transnational organized crime, but also to include in the Convention some of the results of the latest thinking in this field. The language of the article is permissive, thus reflecting the novelty of the concept and the fact that it still needs to mature in order to be treated more as an obligation. However, given that States generally interpret even permissive provisions to merit the best possible efforts, the importance of the article is significant. The provision transfers to the global level efforts already discussed or undertaken at the regional level. It is designed to encourage countries to take appropriate legislative, administrative or other measures to shield their legal markets from the infiltration of organized criminal groups. Some of the measures foreseen are the promotion and development of standards and procedures designed to safeguard the integrity of public and private entities, as well as codes of conduct for relevant professions and the prevention of the misuse of legal persons by organized criminal groups.

Perhaps the most interesting feature of the Convention is its scope of application. Its analysis was left last because of the long debate its finalization required, but also because it conditions the entire text of the Convention.

The Convention will apply "to the prevention, investigation and prosecution of (a) the offences established in accordance with [the Convention]; and (b) serious crime as defined [by the Convention], when the offence is transnational in nature and involves an organized criminal group." However, the criminalisation obligations that countries will undertake, regarding the offences they would have to establish in accordance with the Convention, would be "independent". This means that States will legislate to establish as criminal offences the four types of conduct described in the Convention, regardless of whether they are transnational or involve an organized criminal group.

The Convention also defines transnationality. An offence is transnational in nature if it is committed in more than one State; it is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State; it is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or it is committed in one State but has substantial effects in another State.

In addition, the provisions on extradition and mutual legal assistance contain specific and very carefully negotiated language to permit application of these articles in order to establish both the transnationality and the involvement of an organized criminal group. Solutions to these matters were based on the demonstrated political will of all countries involved in the process to conclude a Convention that meets all their concerns. Such solutions were also based on the shared desire to reach agreement without diminishing the functionality and quality of the new instrument.

II. THE THREE PROTOCOLS

A. The Protocol Against Trafficking in Persons, Especially Women and Children

1. General Provisions (Articles 1–5)

Article 1 sets out the relationship between the Convention and the Protocol, complementing Article 37 of the Convention. The same text appears in Article 1 of the Protocol against the smuggling of Migrants and has been added as Article 1 of the revised draft Protocol against the Illicit Trafficking in Firearms. The Protocol supplements the Convention, and provisions of the two should be interpreted together. Provisions of the Convention apply to the Protocol *mutatis mutandis* unless otherwise specified or the Protocol contains provisions which specifically vary or are inconsistent with those of the Convention. All Protocol offences are also regarded as Convention offences, which makes all Convention provisions (e.g., legal assistance, applicable to cases which involve only Protocol offences. The Conference of States Parties, which is established by Article 32 of the Convention, will have similar functions for each protocol by the application of Article 32 to the protocol in question, *mutatis mutandis*.

Articles 2 and 4 set out the basic purpose and scope of the Protocol. The Protocol is intended to "prevent and combat" trafficking in persons and facilitate international co-operation against such trafficking. It applies to the "prevention, investigation and prosecution" of Protocol offences, but only where these are "transnational in nature" and involve an "organized criminal group", as those terms are defined by the Convention.

The key definition, "trafficking in persons", appears in Article 3. This term, which is being defined for the first time, is intended to include a range of cases where human beings are exploited by organized crime groups where there is an element of duress involved and a transnational aspect, such as the movement of people across borders or their exploitation within a country by a transnational organized crime group. The definition is broken down into three lists of elements: criminal acts, the means used to commit those acts, and goals (forms of exploitation). At least one element from each of these three groups is required before the definition applies.

Thus, to constitute "trafficking in persons", there must be:

- **an act of** "recruitment, transportation, transfer, harbouring or receipt of persons";
- **by means of** "the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person";
- **for the purpose of** exploitation, which includes, at a minimum, "...the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."

The question of whether a victim could consent to trafficking was a major issue in the negotiations. In many trafficking cases, there is initial consent or cooperation between victims and traffickers followed later by more coercive, abusive and exploitive circumstances. Some States, and many NGOs felt that incorporating an element of consent in the definition or offence provisions would make enforcement and prosecution difficult because such early consent would be raised by traffickers as a defence. Other States felt that some element of consent was needed to limit the scope of the offence, distinguish trafficking from legitimate activities and for constitutional reasons. To resolve the issue, paragraph (b) of the definition clarifies that consent becomes irrelevant whenever any of the "means" of trafficking has been used. This compromise addressed the concerns of both positions. To further clarify the relationship between consent, the offence and criminal defences, it was agreed that the *travaux preparatoires* would draw attention to Article 11(6) of the Convention, which applies to this Protocol *mutatis mutandis*, and which ensures that existing criminal defences in domestic law are preserved.

2. Protection of trafficked persons (Articles 6–8)

The negotiation of the Protocols against Trafficking in Persons and the Smuggling of Migrants both found it necessary to deal with the fact that the primary subject-matter, while often treated as a commodity by smugglers and traffickers, consists of human beings whose rights must be respected and who must be protected from various forms of harm. The terms "smuggling" and "trafficking", have acquired different definitions from those traditionally associated with narcotic drugs, for example. The need for an appropriate balance between crime-control measures and measures to support or protect smuggled migrants and victims of trafficking arose in two primary places in each Protocol: the provisions dealing with the return of persons to their countries of origin, and provisions expressly providing for protection, support. These provisions are similar in some respects, but they are not identical. The language of the two instruments also takes account of the fact that there are critical differences between migrants, who have consented to smuggling and for whom repatriation generally poses no significant risks, and victims of trafficking, who have been subjected to various forms of coercion and who face significant risks of re-victimisation or retaliation if they are sent home, particularly if they have assisted law enforcement in prosecuting their traffickers.

Article 6 of the Protocol against Trafficking in Persons contains a series of

general protection and support measures for victims. Paragraphs 1 and 2 require States Parties to take basic measures, subject to constitutional or similar constraints, which include shielding the identities of victims and providing access and input into legal proceedings. While the physical safety of victims cannot absolutely guaranteed, States Parties are required to endeavour to do so by Article 6(5), as well as by Articles 24(2)(a) (witnesses) and 25(1) (victims) of the Convention. Further measures in Articles 6(3) and 7 of the Protocol are subject to the discretion of States Parties. These include a list of social support benefits such as counselling, housing, education, medical and psychological assistance (Art. 6(3)) and an opportunity for victims to obtain legal status allowing them to remain in the receiving State Party, either temporarily or permanently (Art. 7). The provisions of Convention Articles 24 and 25 may also apply in such cases. Where victims have also been witnesses, for example, the relocation provision of Article 24(2)(a) may apply.

The return of victims of trafficking to their countries of origin is dealt with in Article 8 of the Protocol, which is similar but not identical to the corresponding provision (Art. 18) of the Protocol against the Smuggling of Migrants. A major concern with the return of trafficking victims is that it may leave them vulnerable to being trafficked all over again, or in some cases, vulnerable to retaliation from traffickers for having co-operated with law enforcement or prosecution authorities. Another concern is that in some cases, victims have been sent home while criminal or other legal proceedings in which they have an interest are still ongoing. To respond to these concerns, the text requires all States Parties involved to have due regard for the safety of the victim and for the status of any ongoing legal proceedings (Art. 8(1), (2)). Returns may be carried out involuntarily, but the text states that the process "...shall preferably be voluntary" (Art. 8(2)). This reflects a compromise between concerns that giving victims any concrete formal legal status or right to remain in destination states might provide further incentives and opportunities for traffickers on one hand, while excessive or rapid returns might unnecessarily expose victims to further hardship and risk on the other. The text does not make any special provision for victims who are also witnesses, but the additional safeguards for witnesses found in Article 24 of the Convention would apply in such cases. More generally, Articles 24 (witnesses) and 25 (victims) of the Convention will generally apply to trafficking victims.

The negotiation of the provisions governing the repatriation or return of smuggled migrants and trafficking victims in both Protocols also faced the need to specify the legal preconditions on which the right of destination States to return individuals and the obligations of countries of origin to facilitate and accept the return, should be based. There was general agreement that States Parties should be required to accept the return of their own nationals and permanent residents, but views differed on whether the status of a smuggled migrant or trafficking victim should be determined at the time of entry into the State seeking to return the person or at the time of the actual return itself. The former option precludes States from revoking status as a national or resident to prevent the return, whereas the latter does not.

Different language was used to address this question in each of the two instruments. In the case of victims of trafficking, countries are obliged to accept

the return of any person who is a national at the time of the return or who had a right of permanent residence at the time he or she entered the destination State (Art. 8(1)). In the case of smuggled migrants, the obligation is only to accept those who are nationals or have a right of permanent residence at the time of the return (Art. 18(1)), although States Parties are also required to consider the return of migrants who had permanent residency rights at the time of entry into the destination State. The *travaux preparatoires* for the Protocol against the Smuggling of Migrants also record the understanding of the Ad Hoc Committee that States Parties "...would not deprive persons of their nationality contrary to international law, thereby rendering them stateless." This acknowledges that nationality can be taken away for cause, but should not be taken away exclusively to prevent repatriation.

Apart from these differences, the obligations placed on States concerning return or repatriation are the same in both instruments. The basic obligation on States Parties is to "facilitate and accept" the return of nationals or specified permanent residents without undue delay and to verify without delay whether illegal migrants in other countries are in fact their nationals or residents (Art. 8(1), (3)). This includes the obligation to issue any necessary travel documents such as passports, entry or transit visas (Art. 8(4)).

3. Prevention, Co-operation and Other Measures (Articles 9–13)

Generally, the law enforcement agencies of countries which ratify the Protocol would be required to co-operate with such things as the identification of offenders and trafficked persons, sharing information about the methods of offenders and the training of investigators, enforcement and victim-support personnel (Art. 10). Countries would also be required to implement security and border controls to detect and prevent trafficking. These include strengthening their own border controls, imposing requirements on commercial carriers to check passports and visas (Art. 11), setting standards for the technical quality of passports and other travel documents (Art. 12), and co-operation in establishing the validity of their own documents when used abroad (Art. 13). Social methods of prevention, such as research, advertising, and social or economic support are also provided for, both by governments and in collaboration with non-governmental organisations are dealt with both in Article 9, which supports Article 31 of the Convention[6].

B. The Protocol Against the Smuggling of Migrants by Land, Air and Sea

1. General Provisions (Definitions, Criminalisation, Scope and Purpose, Articles 1–6)

Article 1 sets out the relationship between the Convention and the Protocol, complementing Article 37 of the Convention. The same text appears in Article 1 of the Protocol against Trafficking in Persons and has been added as Article 1 of the revised draft Protocol against the Illicit Trafficking in Firearms. The Protocol supplements the Convention, and provisions of the two should be interpreted together. Provisions of the Convention apply to the Protocol *mutatis mutandis* unless otherwise specified or the Protocol

[6] See in particular Article 31(5) (public awareness campaigns) and 31(7) (projects aimed at alleviating the circumstances which make certain groups vulnerable to transnational organized crime).

contains provisions which specifically vary or are inconsistent with those of the Convention. All Protocol offences are also regarded as Convention offences, which makes all Convention provisions (e.g., legal assistance, applicable to cases which involve only Protocol offences. The Conference of States Parties, which is established by Article 32 of the Convention, will have similar functions for each protocol by the application of Article 32 to the protocol in question, *mutatis mutandis*.

Article 2 expresses three purposes: preventing and combatting smuggling, promoting cooperation among States Parties and protecting the rights of smuggled migrants. The scope of application of the instrument (Art. 4) applies both to combatting smuggling and protecting rights, but limits both to offences which are transnational in nature and involve an organized criminal group as defined by the Convention. The Protocol applies only to the prevention, investigation or prosecution of such offences and the protection of the rights of persons who have been the objects of such offences. The phrase "persons who have been the object of such [i.e.: trafficking] offences" in this and other Protocol provisions is intended to clarify that smuggled migrants, while sometimes exploited or endangered by smugglers, are not "victims" of the primary Protocol offence.

The criminalisation provision, Article 6, requires States Parties to criminalise the smuggling of migrants as defined in Article 3, and enabling a person who is not a national or permanent resident of a State to remain there illegally. Producing, procuring, providing, or possessing fraudulent travel or identity documents must also be made an offence, but only where these acts are committed for the purpose of smuggling migrants. This will generally apply to smugglers without also including the illegal migrants who may only possess the documents for the purpose of use in their own smuggling. A major political and legal concern during negotiations was the general agreement among participants that the Protocol should criminalise the smuggling of migrants without criminalising mere migration or the migrants themselves. This was difficult because illegal migrants have generally committed offences relating to illegal entry or residence in most countries, and would usually be complicit in their own smuggling without language in the Protocol and any implementing legislation to the contrary. The solution, found in Article 5 and Article 6(4) is that the Protocol specifies that the provisions of the Protocol and its implementing legislation should criminalise smuggling but not create any liability for having been smuggled (Art. 5), while providing that offences or other measures adopted or applied by States Parties on their own authority could still apply to mere migrants. As noted, the document offences of Article 6(1)(b) also apply only to those who commit them for the purpose of smuggling others and not for their own migration.[7]

In recognition that smuggling is often dangerous, and to increase protection for migrants, States Parties are also required to make smuggling in circumstances which endanger the migrants' lives or safety, or which entail inhuman or degrading treatment as aggravating circumstances to the Protocol offences (Art. 6(3)).

[7] See the note in the *travaux preparatoires* to Art. 6(1)(b) on this point.

2. Smuggling of Migrants by Sea (Articles 7–9)

While all of the Protocol applies to all forms of smuggling by land, sea or air, it was felt necessary to make specific provision for smuggling by sea because of the seriousness and volume of the problem, and the body of international maritime law already in existence. Many of the specific provisions of this Part were drawn from or developed based on provisions from three earlier sources dealing with the boarding and searching of vessels and related safeguards: Article 110 of the 1988 U.N. *Convention on the Law of the Sea*, Article 17 of the 1988 U.N. *Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, and a more recent (1988) Circular from the International Maritime Organization titled *Interim Measures for Combatting unsafe practices associated with the trafficking or transport of migrants by sea.*

Generally, the provisions of Part II are intended to give states which encounter ships which are believed to be smuggling migrants sufficient powers to take actions to apprehend the migrants and smugglers and to preserve evidence, while respecting the sovereignty of the states (if any) to which the ships are flagged or registered. A major factor for most delegations in striking a balance between sovereignty and effective powers to intervene was the fact that, in many cases, vessels used to smuggle migrants are decrepit or unsound to the point where fast action could be essential to preserving the safety of any migrants on board.

The general rule for taking actions against a ship at sea is that this can only be done with the approval of the State whose flag the ship flies or with whom it is registered. The Protocol requires States Parties to co-operate "to the fullest extent possible" in accordance with the "international law of the sea", which term includes both the 1988 U.N. Convention and other instruments (Art. 7). The taking of measures against ships at sea is governed by Article 8, which provides separately for three basic cases:

- States seeking assistance against ships they believe to be their own (Art. 8(1));
- States seeking permission to act against ships believed to be flagged or registered to another State (Art. 8(2)); and
- States taking action against ships believed to be without nationality (Art8(7)).

The remaining provisions of Article 8 deal with the mechanisms whereby the nationality of ships can be established and other relevant information can be transmitted from one interested State Party to another. Under Article 8(1), a state which believes that one of its ships, or a ship which is flying its flag, is being used for smuggling may call upon other States Parties to take action to suppress this, and those States are required to render such assistance as necessary, within available means. Under Article 8(2), a State which believes that a ship registered or flagged to another State is involved in smuggling may check the registry, and ask the registry state for authorisation to board, inspect, and if evidence of smuggling is found, to take other actions. The responding state must answer the requests expeditiously, but may place limits or conditions on what may be done (Art. 8 (4), (5)). Such conditions must be respected, except where there is imminent danger to lives or safety, or where there a bilateral or multilateral agreement between the states involved says otherwise (Art. 8(5)).

Where there is no apparent nationality or registry cannot be determined, the ship may be boarded and inspected as necessary (Art. 8(7)).

The other provision of Part II, Article 9 contains "safeguard clauses" which limit the powers of States Parties to act under Article 8, ensure that fundamental interests such as the safe and humane treatment of persons found on board vessels and the security of vessels and other cargoes are protected, preserve the existing jurisdictions of coastal states and the flag states of vessels, and provide for compensation in cases where the grounds for having taken measures against a vessel later prove unfounded. As a further safeguard, Art. 9(4) also requires that any vessel or aircraft used by a State Party to take actions under Part II must be a warship, military aircraft or other ship or aircraft clearly marked to identify it as being on government service when the action is taken.

3. Prevention, Co-operation and Other Measures (Articles 10–18)

As with the provisions of Articles 27–29 of the Convention, the Protocol provides for the exchange of information which may range from general research or legislative information which would assist others in implementing the Protocol or combatting smuggling in more general terms to much more specific and sensitive information about specific smuggling cases or more general means and methods being used by smugglers (Art. 10). As in the Protocol against Trafficking in Persons, specific legal and administrative measures to combat smuggling which involves commercial carriers are also required, "to the extent possible" (Art. 11). These include penalties where carriers found carrying smuggled migrants are complicit or negligent and requirements that carriers check basic travel documents before transporting persons across international borders.

The use of false or fraudulent passports and other travel documents is an important element of smuggling, and documents are often taken from migrants upon arrival so that they can be re-used by the smugglers over and over again. To address this part of the problem, Article 12 requires the use of travel documents that cannot easily be used by a person other than the legitimate holder, and of such quality that they cannot easily be falsified, altered or replicated, and Article 13 requires States Parties to verify the legitimacy and validity of any documents purported to have been issued by them. A number of delegations noted that countries which became parties to the Protocol against Trafficking in Persons as well as this Protocol would find it necessary to implement the parallel provisions on travel documents jointly, since it would not be practicable to adopt or apply different rules for smuggling and trafficking cases. As a result, the requirements of Articles 12 and 13 are identical in both instruments.

States Parties are called upon to undertake training activities (Art. 14) and adopt general preventive measures (Art. 15). Training under Article 14 for officials can be domestic or in co-operation with other States Parties where appropriate. It must include not only methods and techniques for investigating and prosecuting offences, but also background intelligence-gathering, crime-prevention, and the need to provide humane treatment and respect for the basic human rights of migrants. Adequate resources are called for, with the assistance of other States where domestic resources or expertise are not enough (Art. 14(3)). Based on the

assumption that a key element of prevention is the dissemination of information about the true conditions during smuggling and after arrival to discourage potential migrants, Article 15 requires the creation or strengthening of programmes to gather such information, transmit it from one country to another, and ensure that it is made available to the general public and potential migrants. This supports Article 37 of the Convention which calls for information campaigns directed at groups who are particularly vulnerable to the activities of transnational organized crime, which would include regional or ethnic groups likely to be solicited or recruited as potential migrants.

Part II of the Protocol also contains provisions which deal with the protection, assistance and return of migrants. As with the Protocol against Trafficking in Persons, these provisions take account of the fact that migrants, while often treated as a commodity by smugglers, are human beings whose rights must be respected and who must be protected from various forms of harm. Articles 16 (protection and assistance) and 18 (return) provide for the basic assistance of smuggled migrants, taking into account the fact that they are not generally victims of crime and are in far less jeopardy of retaliation from traffickers, but also considering the fact that smuggling is often conducted in circumstances which endanger their lives or safety.

Several provisions of the Protocol are intended to ensure that the basic human rights of migrants are protected from infringement, whether by traffickers, government officials or others. The primary provision is Article 16, which requires appropriate legislative or other measures to "preserve and protect" the rights of smuggled migrants. Article 14(2)(e) also requires the training of officials in "the humane treatment of migrants and the protection of their rights", and Article 19 ensures that any rights (e.g., for migrants who are also refugees) under other international humanitarian and human rights law are not affected by the Protocol. Article 16(5) requires conformity with the provision of the Vienna Convention on Consular Relations which requires States Parties to that instrument to inform apprehended migrants of their rights to consular access.[8]

Other provisions address concerns about the fact that migrants are in many cases subjected to dangerous conditions, degrading conditions or physical violence in the course of smuggling. Article 16(2) requires the adoption of appropriate measures to afford migrants protection against violence. Article 6(3) requires States Parties to make the existence of circumstances which endanger lives or safety or entail inhuman or degrading treatment in the course of smuggling an aggravating circumstance to the basic smuggling offence, and Article 16(3) requires appropriate assistance to migrants whose lives or safety are endangered in the course of being smuggled.

The return of smuggled migrants to their countries of origin is dealt with in Article 18 of the Protocol, which is similar but not identical to the corresponding provision (Art. 6) of the Protocol against Trafficking in Persons. Since migrants

[8] The relevant provision is Article 36 of the Vienna Convention, 596 UNTS 8638–8640. In the discussion of this provision, it was pointed out that as conventional international law, the Convention, and hence the obligation to provide consular access, was binding on all States.

are less likely to be witnesses in transnational organized crime proceedings, the Protocol makes no specific provision for protection or participation in such proceedings, although migrants who are in this position would still be covered by Articles 24 and/or 25 of the Convention, depending on the exact circumstances of their cases. The only protection specifically provided for returned migrants is found in Art. 18(5), which requires all of the States Parties involved in return of a migrant to ensure that it is carried out "...in an orderly manner and with due regard for the safety and dignity..." of the migrant.

The negotiation of the provisions governing the repatriation or return of smuggled migrants and trafficking victims in both Protocols also faced the need to specify the legal preconditions on which the right of destination States to return individuals and the obligations of countries of origin to facilitate and accept the return, should be based. There was general agreement that States Parties should be required to accept the return of their own nationals and permanent residents, but views differed on whether the status of a smuggled migrant or trafficking victim should be determined at the time of entry into the State seeking to return the person or at the time of the actual return itself. The former option precludes States from revoking status as a national or resident to prevent the return, whereas the latter does not.

Different language was used to address this question in each of the two instruments. In the case of victims of trafficking, countries are obliged to accept the return of any person who is a national at the time of the return or who had a right of permanent residence at the time he or she entered the destination State (Art. 8(1)). In the case of smuggled migrants, the obligation is only to accept those who are nationals or have a right of permanent residence at the time of the return (Art. 18(1)), although States Parties are also required to consider the return of migrants who had permanent residency rights at the time of entry into the destination State. The *travaux preparatoires* for the Protocol against the Smuggling of Migrants also record the understanding of the Ad Hoc Committee that States Parties "...would not deprive persons of their nationality contrary to international law, thereby rendering them stateless." This acknowledges that nationality can be taken away for cause, but should not be taken away exclusively to prevent repatriation.

Apart from these differences, the obligations placed on States concerning return or repatriation are the same in this instrument as in the Protocol against Trafficking in Persons. The basic obligation on States Parties is to "facilitate and accept" the return of nationals or specified residents without undue delay and to verify without delay whether illegal migrants in other countries are in fact their nationals or residents (Art. 18(1), (3)). This includes the obligation to issue any necessary travel documents such as passports, entry or transit visas.

C. Protocol Against the Illicit Manufacturing of or Trafficking in Firearms

1. Status

Many provisions of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms were finalised at the 11th session of the Ad Hoc Committee, but several key issues had not been resolved, and the General Assembly called upon the Ad Hoc

Committee to conclude the Protocol at an additional session.[9] The Committee decided to apply a narrow, conventional definition of "firearm", excluding other forms of destructive device such as rocket-launchers and explosive devices. It also developed language for Article 4(1) and (2) which excludes legitimate State-to-State and national security-related activities from the application of the Protocol while ensuring that the exclusion is not so broad as to opt out virtually any activity. The language developed for Articles 4 and 8 also ensures that all firearms, even those made for government purposes, will be marked at manufacture, allaying concerns about unmarked government firearms later stolen or otherwise diverted into illicit traffic. The language developed for Article 8 ensures the unique marking of each firearm with "alpha-numeric" characters, but allows countries which have previously used "simple geometric" markings as part of their marking systems to maintain this practice. Based on these agreements, the entire Protocol was agreed by the Ad Hoc Committee on consensus. It was then referred to the General Assembly, which adopted it on 31 May 2001.[10] Under Article 17 of the Protocol, it is open for signature at U.N. Headquarters in New York from 2 July 2001 until 12 December 2002.[11]

2. Relation with the U.N. Convention

Article 1 sets out the relationship between the Convention and the Protocol, complementing Article 37 of the Convention. The same text appears in Article 1 of the Protocols against Trafficking in Persons and the Smuggling of Migrants. The Protocol supplements the Convention, and provisions of the two should be interpreted together. Provisions of the Convention apply to the Protocol *mutatis mutandis* unless otherwise specified or the Protocol contains provisions which specifically vary or are inconsistent with those of the Convention. All Protocol offences are also regarded as Convention offences, which makes all Convention provisions (e.g., legal assistance, applicable to cases which involve only Protocol offences. The Conference of States Parties, which is established by Article 32 of the Convention, will have similar functions for each protocol by the application of Article 32 to the protocol in question, *mutatis mutandis*.

3. Purpose, Scope and Application

The purpose provision (Art. 2) was concluded at the 12th session. It was decided to make the language consistent with that of the other instruments, giving the purpose as: "to promote, facilitate and strengthen cooperation…to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components, and ammunition."

As noted above, Article 4, dealing with scope of application, was also not concluded until the 12th session. There was general agreement that all types of transfer, transaction and firearm should

[9] GA/Res/55/25.

[10] GA/Res/55/255. For *travaux preparatoires* notes, see A/55/383/Add.3.

[11] Since the adoption of the Protocol by the General Assembly was too late for the Palermo signing conference at which the other instruments were opened for signature, conventional language concerning signature was added to Art. 17 during the final drafting session. The instrument opens for signature somewhat later than those adopted earlier, but it was decided to close all 4 instruments on the same date, 12 December 2002, which is the 2-year anniversary of the opening of the initial 3 instruments.

be *prima facie* included in the Protocol, provided that there is some link to offences which are transnational in nature and involve an organized criminal group in some way as required by Article 3 of the Convention itself. There was also general agreement that the Protocol, which deals with individual criminality and not disarmament or State activities, should not apply to "State-to-State" transactions. The issues not resolved until the final session involved activities which directly involved either only one or no States, but which were nevertheless seen as raising legitimate "national security" concerns on the part of one or more States Parties. This was eventually addressed using language which opts out "national security" transfers, provided that this is consistent with the United Nations Charter (Art. 4(2). The agreed text of Article 4 also included all illicit "manufacturing" of firearms (Art. 4(1)), while only excluding "transactions" and "transfers" (Art. 4(2)). The effect is to ensure that all firearms must be marked, addressing concerns about the problem of firearms which might otherwise be made without marking for legitimate government or national security purposes and then subsequently diverted, creating a supply of untraceable illicit firearms.

4. Definitions (Article 2)

"Firearm"

The question of subject-matter is dealt with in the definition provision (Art. 2). It was agreed that the term "firearm" should include any "barrelled weapon which expels a shot, bullet or projectile by the action of an explosive", with the exception of some antique firearms. To address concerns that this applied to very large "firearms", such as artillery-pieces, the word "portable" was added, accompanied by a note in the *travaux preparatoires* to the effect that "portable" itself was intended to mean portable by one person without mechanical or other assistance. After discussion at several sessions, the Committee ultimately decided not to apply the Protocol to other so-called "destructive devices".

"Illicit manufacturing"

The agreed definition of illicit manufacturing includes three distinct activities: manufacturing without a license, manufacturing from illicit (i.e., trafficked) parts, and manufacturing without marking. Each of these is intended to address a major source of diverted or trafficked firearms. Unlicensed manufacture would include illegal factories and firearms made in a legal factory, but of a type or quantity the producer was not licensed to make. Assembling from trafficked parts would address schemes in which stages of the manufacturing process were split among several jurisdictions to avoid committing offences in any of them. Manufacturing without marking requires that all firearms be marked at manufacture, which ensures that unmarked firearms cannot be diverted before being marked at a later stage. There is some overlap between the definitions of illicit manufacturing and illicit trafficking, since each includes an element (and hence an offence) relating to the manufacture and transfer of firearms without the necessary markings.

"Illicit trafficking"

The agreed definition of "illicit trafficking" is the core of the Protocol. As defined, "Illicit trafficking" would include any transaction or transfer in which a firearm moves from one country to another where the exporting, importing, and transit States, if any, have not licensed or authorized it. This must be read in conjunction with Article 5(1)(a), which requires illicit trafficking to be made a domestic criminal offence, and

11(2), which precludes the issuance of any export license until the corresponding import and transit license has already been issued. The combined effect is to commit States Parties criminalise the export of any firearms, parts, components or ammunition unless the subsequent import is authorized.

5. Criminalisation Requirements (Article 5)

The structural approach taken to the criminalisation of illicit trafficking and illicit manufacturing is similar to those of the other instruments: the detailed specification of conduct or activities to be criminalised is set out in the definitional provisions, and then merely criminalised by cross-references back to the definition. States Parties are also required to criminalise attempting to commit, participating as an accomplice in, or organizing or directing others to commit any Protocol offence, although these obligations are subject to limits that make criminalising some of these things impossible in some legal systems (Art. 5(2)).

In substance, States Parties are required to criminalise the two basic activities against which the Protocol is directed, illicit manufacturing and illicit trafficking. They are also required to create one supporting offence, the obliteration, removal or alteration of the serial numbers or other markings on a firearm (Art. 5(1)(c)). It was not necessary to criminalise failing to mark a firearm or transferring an unmarked firearm *per se*, because these activities are included in the definitions and general offences of illicit manufacturing and illicit trafficking. Further offences relating to the financing of illicit trafficking and domestic possession or misuse of trafficked firearms and the breach of arms-embargoes had been proposed, but were ultimately dropped because they were redundant either with the Convention itself or domestic criminal law or beyond the scope of the Protocol.

6. Confiscation Seizure and Disposal (Article 6)

The subject of confiscation, forfeiture and disposal is dealt with in Convention Articles 12–14, which deal with both proceeds of crime and instrumentalities of crime, and which apply to the Protocol, *mutatis mutandis*. These would also apply to firearms which have been used in crime as instrumentalities and firearms which have been trafficked as a commodity as proceeds. The Convention definition of "proceeds" (Art. 2(e)) includes "...any property derived from or obtained, directly or indirectly, through the commission of an offence." This was seen as problematic, because the customary method of disposal for proceeds and instrumentalities is generally to sell them and use the resulting funds for legitimate State purposes or to pay compensation or restitution to victims. Where firearms are concerned, many States felt that the better course was to simply destroy them, thereby ensuring that they could never enter illicit commerce or be used in crime. As a result, Article 6 of the Protocol creates an exception to the general principle established by the Convention, providing that, in the case of firearms parts, components or ammunition, the property should be disposed of either by destruction, or by other disposal only where officially authorised and where the items have been specifically marked and the disposal recorded.

7. Record Keeping (Article 7)

Critical to the overall control of trafficking in firearms is the marking of firearms (Art. 8) to ensure that they can be uniquely identified, and the keeping of

records based on the markings in order to make it possible to distinguish between legitimate and illicit activities and to facilitate investigations when a transaction subsequently proves to have been illicit or where firearms are diverted to illicit hands in the course of a legitimate, authorized transaction or transfer. Some delegations had concerns about the need for keeping records with respect to legitimate activities, but it was ultimately agreed that legitimate activities must be scrutinised in order to identify and suppress illicit activities.

Article 7 requires States Parties to either keep records themselves, or to require others (e.g., the actual parties to each import/export transaction) to do so, for a period of ten years, the period being a compromise between the need to limit the administrative burdens on States Parties and the fact that firearms are durable goods which can surface many years after having been transferred. The means whereby States "shall ensure" the keeping of records by others is not addressed by the Protocol, but would in most cases involve a legal requirement that those involved in import/export transactions create and preserve the necessary records. It is open to States Parties to create additional offences to compel the keeping of appropriate records, but the Protocol does not require it. The record-keeping requirement extends to records of transactions in parts, components and/or ammunition only "where appropriate and feasible". This recognizes the practical difficulties in dealing with smaller parts and components, which may be impossible to mark and are difficult to identify and inspect. Creating and verifying a complete record of parts and components might require the disassembly of each firearm in a shipment to record and inspect each of its parts, for example. In the case of ammunition, individual marking and record keeping was also seen as impracticable because of the very large numbers of individual cartridges in most shipments. One option for keeping records "where appropriate and feasible" in such cases is for States Parties to require the keeping of records which describe shipments or batches of parts or ammunition, but not individual elements of each.

The actual substance of the records which must be kept consists of whatever information is needed to trace and identify the items involved. This must include the serial number or other markings on the firearm and specified information relating to the source, transit and destination countries in international transfers, but the list is indicative and not exhaustive. Since there is no overall co-ordination of the marking schemes of manufacturers or countries, markings are only unique when other information about a firearm is also known. In most cases, to permit identification and tracing as required, States Parties will therefore find it necessary to keep additional information about a firearm, such as its manufacturer, model, type or calibre.

8. Marking (Article 8)

As noted, the marking requirements were also not finalised until the 12th session of the Ad Hoc Committee. There was general agreement that firearms should be marked in a way which would permit unique identification, but the actual content of markings varies from country to country and manufacturer to manufacturer. Some delegations also sought to exempt firearms made for State agencies, but this was seen as problematic because of the large numbers of State firearms later transferred or diverted to private hands, whether by legitimate or illicit means, which would

provide a substantial source of untraceable illicit firearms. The identification of the content of "unique" markings was also complicated by the fact that firearm manufacturers employ serial numbers or other markings which are generally only unique when combined with other characteristics of the firearm in question, such as type, calibre and the place, country or factory where it was made. A handgun made in the United States might well have the same serial number as a rifle made in Germany, for example, and ensuring that this could never occur would prove difficult for the countries and companies involved. Ultimately, it was decided to require "unique" marking using the "...name of the manufacturer, the country or place of manufacture, and the serial number" but to allow countries already using a combination of numeric, alpha-numeric and simple geometric symbols to maintain their existing practices.

9. Deactivation of Firearms (Article 9)

In most countries, records tracking firearms are purged whenever the firearms to which they apply are themselves destroyed. Problems have arisen in some cases where firearms are not completely destroyed if the records are purged and the firearms are subsequently restored and used for criminal purposes. Firearms which have been "deactivated" in ways which make them inoperable but leave them intact from a standpoint of outward appearance are popular as display items, and this process is often used to preserve war-trophies which would otherwise be prohibited by domestic laws. To deal with the problem of reactivation, Article 9 of the Protocol contains technical standards which ensure that firearms are not considered to have been destroyed for the purposes of a State Party's licensing and record-keeping practices unless the process is essentially irreversible. Paragraph 9(a) also requires essential parts to be disabled and incapable of removal from the deactivated firearm, which precludes any re-circulation of individual parts, or the assembly of new firearms using parts from deactivated ones.

10. Import-Export Requirements (Article 10)

As noted, the offence of "illicit trafficking" consists of international transfer without the legal authorisation of all of the states concerned. To support this, Article 10 contains the requirement that exporting States verify that subsequent transit and import is authorized by the States involved before they license the export itself (Art. 10(2)) Article 10 also provides standard requirements for the documents involved, which provide information about the transaction and identify the firearms involved for purposes of record keeping and any subsequent tracing or other investigative inquiries. After extensive discussion about whether to require the authorization of "transit" States and how to define "transit" for the purposes of imposing such a requirement, a simpler approach was adopted in this Article. The simplified scheme requires that documents identify any transit states and that such States be notified in advance of the transit (Art. 10(3)). If a transit State does not give written notice that it does not object, the exporting State cannot issue an export permit for the transaction (Art. 10(2)(b)). To address concerns about the application of the Protocol to individuals who import or export firearms for temporary use for occupational or recreational purposes, Article 10(6) provides for "simplified procedures" in such cases.

11. Security and Preventive Measures (Article 11)

Some illicitly trafficked firearms are manufactured directly for the illicit market, but most are firearms originally made for lawful purposes and subsequently diverted into criminal hands. To address this, Article 11 calls for security measures to prevent theft or diversion at every stage of the manufacturing, storage, import, export, transit and distribution process.

12. Information and Tracing (Article 12)

As with Articles 27–28 of the Convention, Article 12 of the Protocol covers the exchange of information ranging from very general scientific or forensic information about firearms to specific and potentially sensitive information about organized criminal groups, their means and methods and information about specific legal or illegal transactions. Information about specific individuals or companies involved in the firearms trade can only be provided on a case by case basis (Art. 12(1)). Information about the means and methods of offenders can be requested on a more general basis (Art. 12(2)). Article 12(3) contains the third core obligation of the Protocol, the obligation of States Parties to assist one another as necessary in the tracing of firearms. The term "tracing" itself is defined in paragraph 3(f).

13. Brokers and Brokering (Article 15)

During negotiations, there was extensive discussion about whether the brokering of firearms transactions was a separate activity from trafficking itself, and if so whether it required regulation under separate provisions of the Protocol. A further issue, given the fact that most brokers operate in many jurisdictions, was which of the jurisdictions involved should regulate a broker and what specific licensing, record-keeping, security and other requirements should be imposed. It was ultimately decided to adopt a flexible provision which leaves these matters to the discretion of each State Party. Where a State Party does impose requirements on brokers, Article 15(1) contains an indicative list of what should be included: basic licensing and registration, and a requirement that brokers identify themselves and state their involvement on import, export and transit documents. Article 15(2) further urges States Parties to keep records with respect to brokering and to exchange such information with other States Parties under Article 12. Article 7, which states that States Parties "shall ensure the maintenance…" of records, does not specify by whom such records would be kept. This means that States Parties could impose a requirement on brokers within their jurisdiction to keep the records of transactions in which they are involved.

THE GLOBAL SITUATION OF TRANSNATIONAL ORGANIZED CRIME, THE DECISION OF THE INTERNATIONAL COMMUNITY TO DEVELOP AN INTERNATIONAL CONVENTION AND THE NEGOTIATION PROCESS

*Dimitri Vlassis**

I. TRANSNATIONAL ORGANIZED CRIME IN PERSPECTIVE

The threat posed to national and international security by transnational crime, in all its forms and manifestations, is not the inadvertent by-product of long-term trends. On the contrary, this threat is an inevitable consequence of the activities of individuals and organizations as they corrupt state institutions, undermine the rule of law, threaten the integrity of financial and commercial sectors of society, contravene legal and social norms and conventions, transgress national sovereignty and violate national borders. New opportunities offered by the globalization of trade and communications have been exploited eagerly and effectively by criminals, leaving law enforcement trailing behind and working to match the inventiveness, adaptability and resilience of criminal organizations that have become transnational in both thought and deed.

The toll of crime has become frightening. Not to mention the misery it leaves in its wake, the financial damage to societies is staggering. The economic price exacted on nations is enormous, while its social and hidden human costs are even higher. In addition to traditional and "street" crime, the consequences of organized crime present real and present dangers to progress and a brake to development. Violence associated with this form of crime is extending its reach far beyond national frontiers. Organized criminal groups are spreading their operations around the globe and are engaging in a variety of activities that range from the traditional to the modern with an increased level of sophistication. They also display a remarkable ability to shift across borders and from activity to activity with speed and adaptability that would be the envy of any legitimate business. Overall, the annual profits of organized crime are estimated, according to some sources, at one trillion dollars world-wide; almost as much as the United States annual federal budget. Moreover, the export of precious raw materials, including chemical, biological and nuclear material, is increasingly attracting the attention, and often falling into the hands of organized crime. Through its interfaces with other licit and illicit activities, organized crime is infiltrating national economies, taking advantage of the difficulties of following the trail of criminal proceeds. It has become clear that only by tackling organized crime in a concerted manner inroads can be made into a problem that exceeds the capacity of national mechanisms operating alone.

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Developing countries and emerging democracies are becoming a target for organized criminal groups operating across borders, because of their vulnerabilities, while their institutions are either young or in the process of being built. Often, the sophisticated *modus operandi* of these groups is no match to the criminal justice systems of developing countries and countries with economies in transition. The need for foreign capital to give new life to the economy and assist these countries in entering today's competitive and demanding global market, frequently obscures the long-term threat posed by the investment of criminal proceeds. Criminal groups are keen to enter developing countries and economies in transition, not only because of their potential, but also because of the decreased risks involved. The advantages that such groups enjoy, due to the sizeable amounts of money at their disposal and their ability to eliminate competition through intimidation and violence, make risks that would daunt any legitimate business perfectly acceptable. The consolidation of their power places in grave danger the growing economies of those countries, particularly in terms of their future development, their competitiveness in the international arena, and their stability.

Money laundering is a vital component of all forms of organized crime. The infiltration of legal financial markets and the attempts of organized crime to control sectors of national economies through the laundering of its illicit proceeds continue to represent grave threats for the international community and for national and international financial systems. Free trade and high-speed telecommunications make it easier to engage in multiple activities and launder money across national borders, with an estimated one billion dollars in crime profits wire-transferred through the world financial markets every day. In addition to concealing wealth and laundering proceeds, organized criminal groups are turning to "borderline" economic endeavours, while diversifying their operations in response to a principle that has been driving international business for ever: reduce risks and maximize profitability. Since these types of crime often involve no violence, they offer the additional advantage of not drawing public attention, which puts increased pressure on national authorities for action. Such activities come with the potential for power, which organized crime has never shunned. Another feature in these types of crime is that the successful engagement of criminals in economic crimes is often viewed by the public as an act of cunning and even bravery. This attitude amply demonstrates the corrosive effects that such crimes have on the social fabric. It is fundamental that this attitude be reversed, because it can prove equally or more dangerous than the offences themselves.

Novel threats demand novel combinations of expertise and novel operational capabilities. If the international community is to respond effectively to the threats posed by transnational criminal organizations, then policy solutions need to be not only comprehensive and well-coordinated, but also highly imaginative. Strategies should take full account of the nature of the challenge. On the grounds that it takes a network to defeat a network, emphasis should be given not simply to extending the formalities of law enforcement and judicial cooperation, but also to building a transnational network of coordinated measures that would eventually be global. An effective concerted approach should also take into

account the risk management strategies of criminal organizations and should initiate appropriate action to reduce or overcome them. The responses should be the converse of the criminal organizations. Among the objectives to be achieved is to eliminate safe havens for criminal organizations, recognizing that a safe haven is more likely to be the result of limited state capacity than to be the result of lack of will. A multilateral approach offers distinct advantages and a higher probability of success. Equally important is the targeting of the assets of criminal organizations, focusing less on the money laundering process as such and more on the uncovering and forfeiture of the assets accrued by these organizations. States must reflect very seriously on the impact of organized transnational crime on the lives and economic activity of their citizens. It is imperative to promote worldwide a culture of legality and tolerance, instead of accepting a culture of lawlessness and violence, which dangerously threatens national institutions and their principal foundation: global values. Policy- and decision-makers, and leaders must begin, as a matter of urgency, to think in terms of new partnerships to safeguard global values and prevent organized crime and money laundering from impeding the quest of countries for growth, stability and steady progress towards democracy.

Throughout the world, there is recognition of the need to develop more effective, ideally global, strategies for the prevention and control of organized crime in all its forms and manifestations. The task before the international community is, however, even greater, because the development of better and more effective solutions is not the only need; the international community must reassess the very nature and dimensions of the problem, and the policies that can serve the common purpose of dealing with it. States must also reflect very seriously on the impact of crime in general, and organized transnational crime in particular, on the lives and economic activity of their citizens. Policy- and decision-makers, leaders and the public in general must gear their minds to think beyond and challenge perceptions more or less well ingrained. It is necessary to reassess interests and look beyond traditional roles and stereotypes. If this is done, it is almost certain that the international community will discover that the public and private sectors share much more than was thought. They share not only common interests but also common values. The international community must begin, as a matter of urgency, to think in terms of new partnerships to safeguard these values and protect mutual interests.

II. UNITED NATIONS EFFORTS TO STRENGTHEN INTERNATIONAL COOPERATION AGAINST ORGANIZED CRIME: THE EARLY YEARS

The work of the United Nations to strengthen international cooperation against organized crime dates back twenty-five years. The issue in its various aspects has been debated and analysed by successive congresses on the prevention of crime and the treatment of offenders, the quinquennial event organized by the United Nations Crime Prevention and Criminal Justice Programme since its establishment.[1] This debate and its results reflect the changing perceptions and comprehension of the problem over several decades. It must also be viewed as

[1] The Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders was held in Vienna from 10 to 17 April 2000.

a series of steps, as a sustained course in the direction of raising awareness among policy- and decision-makers and challenging the conventional thinking about crime prevention and criminal justice matters. The process must be viewed in perspective and in context. The United Nations is a global organization, with a steadily increasing membership, especially after the end of the Cold War. In this environment, there are various and multiple political concerns and differences in political and substantive approaches to problems. Dominant among the concerns remains safeguarding sovereignty, which is for many smaller developing countries and countries with economies in transition (or emerging democracies) the last bastion of national integrity and identity. Criminal justice matters are at the core of sovereignty concerns, being perceived as essentially domestic in nature, touching as they are on institutions ranging from national constitutions to legal regimes and systems.

The Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in 1975, examined the "Changes in Forms and Dimensions of Criminality—Transnational and National" under agenda item 5. In what could today, with the benefit of hindsight, be termed prophetic, the Congress focussed on crime as business at the national and transnational levels: organized crime, white-collar crime and corruption. Crime as business was recognized to pose a more serious threat to society and national economies than traditional forms of crime. While it was a serious problem in many developed countries, the national welfare and economic development of the entire society in developing countries was found to be drastically affected by such criminal conduct as bribery, price-fixing, smuggling and currency offences.

In 1980, the Sixth United Nations Congress, under agenda item 5 entitled "Crime and the Abuse of Power: Offences and Offenders beyond the Reach of the Law," added new elements to the international perception of organized crime. Among these offences were those crimes with respect to which the law enforcement agencies were relatively powerless because the circumstances under which they had been committed were such as to decrease the likelihood of their being reported or prosecuted. Organized crime, bribery and corruption were among the first examples listed.

The Seventh Congress considered the issue further in 1985 under its Topic 1, entitled "New dimensions of criminality and crime prevention in the context of development: challenges for the future." The Congress emphasised that multiple illicit operations carried out by international criminal networks represented a major challenge to national law enforcement and to international cooperation.

In 1990, within the framework of its Topic III, entitled "Effective national and international action against: (a) Organized crime; (b) Terrorist criminal activities," the Eighth Congress examined the problem of organized transnational crime in the light of new historic developments. The rapid increase in the number of independent countries, together with the growing expansion of criminal activities beyond national borders, had created the need for new international institutions, which could introduce a measure of order and enhance the effectiveness of crime prevention efforts. On the recommendation of the Congress, the General Assembly focused

on strengthening international cooperation by adopting the Model Treaties on Extradition,[2] on Mutual Assistance in Criminal Matters,[3] on Transfer of proceedings in Criminal Matters[4] and on Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released.[5] The Congress also adopted a set of guidelines against organized crime in resolution 24, which was welcomed by the General Assembly in resolution 45/121. In resolution 45/123, the General Assembly urged Member States to implement these guidelines and invited them to make available to the Secretary-General their national legislation against organized crime and money laundering.

The Eighth Congress also marked the beginning of a new era for the United Nations Crime Prevention and Criminal Justice Programme. At first glance, the changes that were precipitated by the recommendations of the Congress, and the action that followed at the legislative level, were of a mostly institutional nature. Quite to the contrary, the significance of these changes lies in the fact that States confronted, albeit imperfectly, one of the core concerns of the international community. The question was to what extent the United Nations, faced with radically changed political and historical realities, would credibly perform its primary function of being a policy-making forum and medium, while simultaneously providing developing countries with the means to effectively cooperate with their peers. On the recommendation of the Eighth Congress, the Secretary-General convened the Ministerial Meeting on the Creation of an Effective United Nations Crime Prevention and Criminal Justice Programme, which was held in Versailles from 21 to 23 November 1991.[6] The Meeting developed a Statement of Principles and Programme of Action, which the General Assembly adopted in December 1991.[7] In this document the Assembly determined that the revamped Programme would focus its activities on specific areas of priority, and direct its energies toward providing timely and practical assistance to States at their request. Action against organized crime figured prominently among the areas of priority attention for the new Programme. On the institutional level, the Assembly decided that the Committee on Crime Prevention and Control, the governing body of the Programme composed of experts nominated by Governments but serving in their individual capacity, would cease to exist. In its place, the Assembly established the Commission on Crime Prevention and Criminal Justice, a functional Commission of the Economic and Social Council, composed of the representatives of 40 Governments, thus ensuring direct governmental involvement in both decision-making and oversight of the Programme's activities.

The Commission was established and held its first session in 1992. One of its first endeavours was to flesh out further the general guidelines established by the General Assembly regarding the priorities of the Programme. On its

[2] See General Assembly resolution 45/116, of 14 December 1990.

[3] See General Assembly resolution 45/117, of 14 December 1990.

[4] See General Assembly resolution 45/118, of 14 December 1990.

[5] See General Assembly resolution 45/119, of 14 December 1990.

[6] See General Assembly resolution 45/108, of 14 December 1990.

[7] See General Assembly resolution 46/152, of 18 December 1991.

recommendation, the Economic and Social Council determined that one of the priority themes that should guide the work of the Commission and the United Nations Crime Prevention and Criminal Justice Programme would be: "national and transnational crime, organized crime, economic crime, including money laundering, and the role of criminal law in the protection of the environment".[8] The Council also took note of the recommendations of two Ad Hoc expert group meetings, which had been held in 1991, in Smolenice, Slovak Republic, and in Suzdal, Russian Federation, and requested the Secretary-General to continue the analysis of the impact of organized criminal activities upon society at large.[9] The Commission, also at its first session, requested the Secretary-General to examine the possibility of coordinating efforts made at the multilateral level against the laundering of proceeds of crime, and to propose means for technical assistance to requesting Member States in drafting legislation and in training of law enforcement personnel, as well as in developing regional, subregional and bilateral cooperation.[10]

III. THE ROAD TO THE CONVENTION

The direct governmental involvement in setting the agenda for the United Nations Crime Prevention and Criminal Justice Programme, assured through the establishment of the Commission, helped give new impetus to the importance of international action against organized crime. In its first couple of sessions, the Commission engaged in intense work, reviewing and assessing the activities of the Programme until that time and paving the road for the future. International concerted action had been identified as a key component of success against organized crime, which was sorely missing at the time. This was one of the conclusions which one of the prominent figures of the fight against organized crime, Judge Giovanni Falcone, had derived from all his efforts against the Mafia. Judge Giovanni Falcone is known for sweeping successes against organized crime in Italy through meticulous work, expansion of his investigations into fields previously beyond the scope of traditional prosecutorial work, and through cooperation with the authorities of other countries. What is perhaps less well known is that about two months before his tragic death, Judge Falcone led his country's delegation to the inaugural session of the Commission. In what probably was his last public address at an international forum, he called for more meaningful action at the international level against organized crime, in order to address the problem of national authorities trying to cope with a phenomenon that was no longer national. In explaining why he thought more international cooperation was a must, Judge Falcone launched the idea of a world conference at a sufficiently high political level to lay the foundations for such cooperation.

The Commission took up the idea of a major world conference on organized crime the year after Judge Falcone's death. In doing so, it built on the efforts of the United Nations and the awareness and interest displayed by the international community through the significant work at the policy-making

[8] See Economic and Social Council resolution 1992/22.

[9] See Economic and Social Council resolution 1992/23.

[10] See Commission on Crime Prevention and Criminal Justice resolution 1/2.

level that it had accomplished in its short existence. The result was the organization of one of the most significant events in the history of the United Nations Crime Prevention and Criminal Justice Programme. The World Ministerial Conference on Organized Transnational Crime, held in Naples, from 21–23 November 1994 was also one of the best attended events ever, with over 2000 participants and delegations from 142 States (86 of them at the Ministerial level, while others were represented by their Heads of State or Government). The Conference unanimously adopted the Naples Political Declaration and Global Action Plan against Organized Transnational Crime,[11] which was approved by the General Assembly one month later.[12]

The Naples Political Declaration and Global Action Plan emphasised the need for urgent global action against organized transnational crime, focussing on the structural characteristics of criminal organizations. Countries were called upon to begin the process of harmonising their legislation, while special attention was paid to the need for countries to ensure that their criminal justice systems had the capacity to prevent and control organized transnational crime in all its manifestations. Equal attention was given to the need for the international community, particularly donor countries and financing institutions, to assist developing countries and countries with economies in transition to bridge the gap between the capacity of their criminal justice systems in general, and law enforcement authorities in particular, and the ability of organized criminal groups to shift their operations from activity to activity and to elude efforts against them by using sophisticated methods of operation.

The Naples Political Declaration and Global Action Plan stressed the need for the international community to arrive at a generally agreed concept of organized crime as a basis for more compatible national responses and more effective international cooperation. Particular attention was given to more effective bilateral and multilateral cooperation against organized transnational crime, asking the Commission on Crime Prevention and Criminal Justice to examine the possibility for a convention or conventions against organized transnational crime. Furthermore, the prevention and control of the laundering and use of the proceeds of crime were considered essential elements of any international effort.

The negotiations for the Naples Political Declaration and Global Action Plan were long and difficult. One issue of contention was whether the document would issue a clear mandate for the elaboration of a new convention against transnational organized crime. Most of the members of what is known in the United Nations as the Western European and Others Group (a regional group which includes all Western European countries as well as Australia, Canada, New Zealand and the United States) were sceptical, if not openly negative to the idea of a convention. The reason was that they regarded the subject as too thorny to approach, especially since it involved a number of conceptual and legal difficulties, with definitions figuring prominently among them. These conceptual and legal problems, coupled with the inherent difficulty of negotiations with the full membership of the United Nations around the table, led

[11] See United Nations document A/49/748.

[12] General Assembly resolution 49/159 of 23 December 1994.

these countries to conclude that the final product was likely to be the lowest common denominator. An instrument without "teeth" was something that was not desirable and perhaps not worth the time and effort for most developed countries. A further concern stemmed from the perception that the more or less quite well developed networks of regional and bilateral arrangements that developed countries had developed, especially in the field of international cooperation in criminal matters, was sufficiently operational and functional to deal with organized crime. These countries thought that a new convention might place those arrangements in jeopardy, especially regarding the presumably stronger provisions they contained.

At the other end of the spectrum stood the vast majority of developing countries that thought the idea of a new convention was a good one for several reasons. First, the prospect of a universal instrument held appeal for developing countries because of the nature of the problem they were beginning to witness crossing into their territories and affecting their efforts towards development. In this regard, many developing countries and countries with economies in transition were experiencing sentiments bordering on genuine shock because they had no way of accurately estimating the malicious potential of organized criminal groups. For many years, they were under the impression that organized crime was the problem of industrialised countries. Most of them were also under the impression that organized crime was synonymous to drug trafficking and that issue had been the object of numerous international and regional initiatives and instruments, which provided a certain degree of guidance and coordinated response. Second, the possibility of dealing with a problem in the context of a global forum, such as the United Nations, has always been favoured by developing countries because of the relative parity, which that forum affords them. Strengthening this conviction is the tendency of United Nations in most of its entities to favour decisions by consensus and to avoid, if at all possible, voting. Consensus decision-making allows more room for the concerns of smaller countries to be taken into consideration and reflected in the final outcome of the endeavour. Third, as any instrument against transnational organized crime would dwell at length on methods of international cooperation, developing countries saw a new convention as the way of addressing pressing needs in that area. Lacking the resources, both human and financial, as well as the negotiating power, developing countries and emerging democracies had quickly recognized their inability to embark upon the development of extensive networks of bilateral agreements or arrangements in the field of international cooperation in criminal matters. An international convention offered the potential of making up for this inability and of filling the gaps these countries had identified in the cooperation they needed.

In view of all this, developing countries and countries with economies in transition, as a block, threw their support behind the idea of a convention in Naples and tried to use the Declaration as the vehicle for promoting its elaboration. The final language of the Declaration was a compromise solution, which was the result of the tireless efforts of the then Vice-President of Colombia (who was chairing the negotiating committee at the Conference) and the delegate of Italy in charge of these negotiations, Ambassador Luigi Lauriola (who is now serving as the Chairman of the Ad Hoc Committee on

the Elaboration of the Convention). It is important to keep this background in mind, when the elaboration of the Convention itself will be discussed, because over time and with changing circumstances and political agendas, there has been considerable evolution of that position.

The Commission on Crime Prevention and Criminal Justice followed up on the implementation of the Naples Political Declaration and Global Action Plan at its fourth[13] and fifth[14] sessions. On its recommendation at its fourth session, the Economic and Social Council requested the Secretariat to perform the following functions: (a) to initiate the process of requesting the views of Governments on a convention or conventions; (b) to collect and analyze information on the structure and dynamics of organized transnational crime and on the responses of States to this problem, for the purpose of assisting the international community to increase its knowledge on the matter; (c) to submit to Member States at the following session of the Commission a proposal on the creation of a central repository of existing legislative and regulatory measures and information on organizational structures designed to combat organized transnational crime; (d) to submit proposals to the Commission for the development of practical models and practical guidelines for substantive and procedural legislation in order to assist developing countries and countries in transition; (e) to provide advisory services and technical assistance to requesting Member States in needs assessment, capacity-building and training, as well as in the implementation of the Naples Political Declaration and Global Action Plan; and (f) to join efforts with other relevant international organizations in order to reinforce common regulatory and enforcement strategies in the area of prevention and control of money laundering, and to assist requesting States in assessing their needs in treaty development and the development of criminal justice infrastructure and human resources.[15] An in-sessional intergovernmental working group was established at the fifth session of the Commission to review the views of Governments on a convention or conventions, as well as the proposals of the Secretariat described under (c) and (d) above. The (then) Crime Prevention and Criminal Justice Division, on the basis of information provided by Member States, prepared a report for the Commission's consideration at its fifth session, in which the actual situation of organized crime was reviewed. Most responding Member States expressed their favourable disposition towards a convention against organized transnational crime.

In November 1995, the Division organized a regional Ministerial Workshop on the Follow-up to the Naples Political Declaration and Global Action Plan, hosted by the Government of Argentina in Buenos Aires. The Workshop adopted the Buenos Aires Declaration on Prevention and Control of Organized Transnational Crime. The countries of Latin America and the Caribbean expressed their support for expeditious follow-up to the Naples Political Declaration and Global Action Plan and endorsed the idea of developing a convention against organized transnational crime, offering a list of elements that such a convention should include.

[13] Vienna, 30 May to 9 June 1995.

[14] Vienna, 21 to 31 May 1996.

[15] Economic and Social Council resolution 1995/11.

At its fifth session, the Commission devoted particular attention to the issue of organized crime in general and to the follow-up to Naples in particular. On its recommendation, the General Assembly adopted the United Nations Declaration on Crime and Public Security.[16] By this Declaration, Member States undertook to protect the security and well-being of all their citizens, by taking effective national measures to combat serious transnational crime, including organized crime, illicit drug and arms trafficking, smuggling of other illicit articles, organized trafficking in persons, terrorist crimes and the laundering of proceeds from serious crimes. Member States also pledged to promote bilateral, regional, multilateral and global law enforcement cooperation and assistance, while taking measures to prevent support for and the conduct of operations of criminal organizations in their national territories. In addition, Member States agreed to provide, to the fullest extent possible, for effective extradition or prosecution of those who engage in serious transnational crimes in order to ensure that these criminals find no safe haven.

According to the Declaration, mutual cooperation and assistance in these matters would also include the strengthening of systems for the sharing of information among Member States, and the provision of bilateral and multilateral technical assistance. This cooperation was also considered important in connection with the agreement of States to take steps to strengthen the overall professionalism of their criminal justice, law enforcement and victims assistance systems, as well as relevant regulatory authorities. Member States were urged to become parties as soon as possible to the principal existing international treaties relating to the various aspects of the problem of international terrorism, as well as to the international drug control conventions. The Declaration called upon States to take measures to improve their ability to detect and interdict the movement across borders of those engaged in serious transnational crime, as well as the instrumentalities of such crime, and to protect their territorial boundaries. Such measures would include adopting effective controls on explosives and against illicit trafficking in certain materials and their components that are specifically designed for use and manufacturing of nuclear, biological or chemical weapons; strengthening supervision of passport issuance and enhancement of protection against tampering and counterfeiting; strengthening enforcement of regulations on illicit trafficking in firearms; and coordinating measures and enhancing information exchange to combat the organized criminal smuggling of persons across national borders.

In connection with the control of the proceeds of crime, Member States agreed to adopt measures to combat the concealment or disguise of the true origin of the proceeds of serious transnational crime and the intentional conversion or transfer of such proceeds for that purpose. Member States also agreed to require adequate record keeping by financial and related institutions and the reporting of suspicious transactions and to ensure effective laws and procedures to permit the seizure and forfeiture of the proceeds of serious transnational crime. Member States recognized the need to limit the application of bank secrecy laws with respect to criminal operations and to obtain the cooperation of financial institutions in detecting these and other

[16] General Assembly resolution 51/60.

operations, which may be used for the purpose of money laundering.

Further, Member States agreed to combat and prohibit corruption and bribery and to consider developing concerted measures for international cooperation to curb corrupt practices, as well as developing technical expertise to prevent and control corruption.

On the recommendation of the Commission at its fifth session, the Economic and Social Council adopted a resolution,[17] in which it took note of the Buenos Aires Declaration and requested the Secretary-General to continue his consultations with Member States on the possibility of elaborating a convention or conventions against organized transnational crime. The Council also requested the Secretary-General to assist in the implementation of the Naples Political Declaration and Global Action Plan and to meet the needs of Member States for increased knowledge on the structure and dynamics of organized transnational crime in all its forms, as well as trends in its development, areas of activity and diversification. In addition, the Secretary-General was called upon to assist Member States in reviewing existing international instruments and exploring the possibility of elaborating new ones to strengthen and improve international cooperation against organized transnational crime and to intensify technical assistance in the form of advisory services and training. The Secretary-General was also requested to establish a central repository for national legislation, including regulatory measures, on organized transnational crime; information on organizational structures designed to combat organized transnational crime; and instruments for international cooperation, including bilateral and multilateral treaties and legislation to ensure their implementation. For the purpose of providing increased technical assistance to requesting Member States, the Secretary-General was requested to develop training manuals for specialised law enforcement and investigative personnel on action against organized transnational crime, taking into account differences in legal systems.

In 1995 and 1996, the issue of the convention was a topic of discussion and debate during the annual Commission sessions but also in other for a, both within and outside the United Nations. The doubts and hesitation that had resulted in the compromise language of the Naples Declaration persisted, even though the surveys carried out by the Secretariat showed that the majority of countries were favourably disposed to the convention. In numerous discussions, the issue that appeared to be the most difficult was how would the international community define organized crime in a way that would be acceptable to everyone, despite differences in concepts, perceptions and legal systems. But even within the group of countries which had been the most sceptical, there were signs of at least a change in thinking. The Group of Senior Experts, which was established by the Group of Seven Major Industrialised Countries and the Russian Federation (what was then known as G7/P8 and since 1998 is referred to as the G8) at Lyon, deserves much of the credit for this reversal of opinion. The Group's mandate was to explore ways and means to strengthen cooperation against transnational organized crime. Chaired by Ambassador Lauriola of Italy, the Group produced a set of forty recommendations, which set the stage for

[17] Economic and Social Council resolution 1996/27.

much of what has been done since in the field.

In September 1996, the President of Poland submitted to the General Assembly the draft of a framework convention against organized crime.[18] Poland had been one of the most vocal proponents of the new convention since the Naples Conference. Its initiative was a component of its consistent policy of support for the new instrument, but also resulted from the Government's conviction that the issue was urgent and required commensurate action. The Government of Poland was of the view that the best way to allay the fears and dispel the doubts expressed by several countries about the difficulty of approaching the matter was to get them to focus on something in writing. Poland's methodological approach was sound. The question of the new convention until that time had been a largely abstract one. Every discussion revolved around whether the approach to international cooperation was more effective at the bilateral and regional level, or whether there was tangible benefit to be gained by elevating normative efforts to the global level. In the absence of a draft, which people could study and discuss at capitals with their criminal law and other experts, there was hardly any debate about what the contents of a new convention could be. Consequently, hardly anyone was visualising the possible benefits of a new international binding legal instrument. Poland tried to shift the focus of the discussion and stimulate national thinking along the lines of assessing potential benefits and coming to terms with the individual problems that would be associated with the process of obtaining those benefits. Poland also wanted to show that isolated manifestations of the type of criminality, which the new instrument would target, had already been the object of previous international negotiations. In order to achieve these goals, Poland included in its draft a list of offences, based on the terminology used in other previous international conventions.

Poland's objective about focusing the thinking and discussions on the possibility of the convention was achieved. The General Assembly adopted a resolution in December 1996,[19] by which it took note of Poland's proposal and asked the Commission to devote priority attention to the question of the convention at its sixth session. Even if on the face of it that resolution did not give the green light for the beginning of the process towards the new convention, the discussions that preceded its final drafting were indicative of a change in attitude. This change ranged from acceptance of the merit of having a new convention to resignation to what appeared to be inevitable. This latter approach stemmed from the building and expanding momentum in favour of the convention, which began increasing the political cost of its rejection.

On the other hand, the inclusion of the list of offences in Poland's draft, and especially the inclusion of terrorism in that list, created two problems. First it was immediately picked up by a number of countries, which had serious problems with terrorism. For these countries, including terrorism into a list of offences usually committed by organized criminal groups, thus treating terrorism as just another form of organized crime, was the answer to their frustrations of many years about the lack of progress in

[18] See United Nations document A/C.3/51/7.

[19] General Assembly resolution 51/120 of 12 December 1996.

concerted action against terrorism at the international level. This is an important feature of the development and evolution of the convention because it was resolved only at the very last moment in the negotiations. Second, including offences established or defined in other conventions created problems for those countries that were not Parties to these conventions.

In preparation for the sixth session of the Convention and in order to boost the chances of the convention, the Giovanni and Francesca Falcone Foundation (a foundation established in Palermo in the memory of Judge Giovanni Falcone and his wife, who was killed with him) organized from 6 to 8 April 1997 in Palermo an informal meeting. All members of the Commission were invited to discuss what issues a new convention should cover. The meeting in Palermo confirmed the attitude described earlier but also showed that whatever reservations remained were still to be reckoned with.

The key turning point for the fate of the new convention was the sixth session of the Commission.[20] During that session, the Commission established a working group to deal with the matter of the implementation of the Naples Declaration. The core mandate of the group, however, was to discuss the question of the convention. Even if, as mentioned earlier, attitudes had begun to change and even those still holding reservations about whether the new convention was truly feasible or desirable had begun to accept the inevitable, the group had to tread a fine line. The careful formulation of the group's report to the Commission is perhaps the best indication of how precarious the whole question remained. The group reported that "... it was [its] sense that its contribution would be most useful to the Commission if it would canvass the scope and content of a convention, rather than engage in a drafting exercise, which would be outside the mandate given by the Council and the Assembly, and would require significantly more time than that available. ... In determining the scope and content of a convention, the international community could draw on the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, but should be able to come up with new and more innovative and creative responses. The Group recognized that it was desirable to develop a convention that would be as comprehensive as possible. In this connection, several States indicated that their remaining reservations on the effectiveness and usefulness of a convention were contingent upon a convention's scope of application and the measures for concerted action that such an instrument would include. Several States stressed the importance they attached to the nature of a convention as a framework instrument. One difficult issue was arriving at an acceptable definition of organized crime. It was indicated, however, that this issue was not insurmountable, especially in the presence of a strong and sustained political will. Several States were of the view that a definition was not necessarily the most crucial element of a convention, and that the instrument could come into being without a definition of organized crime. In this connection, it was also suggested that the phenomenon of organized crime was evolving with such rapidity that a definition would limit the scope of application of a convention, by omitting activities which criminal groups may engage in. Other States felt that the absence of a definition would send the

[20] Vienna, 28 April to 9 May 1997.

wrong signal regarding the political will and commitment of the international community. In addition, avoiding the issue would eventually create problems in the implementation of a convention. In view of all this, concerted efforts to arrive at a solution should be made. ... The problem of definition could be solved by looking at each of its elements separately. It was suggested that a first step towards a definition might be to use the definitions of offences contained in other international instruments. .... There was also discussion about whether in approaching the definition, the focus should be on the transnational aspects of organized crime or on organized crime in general. It was pointed out that the mandate of the Commission was related to transnational organized crime but that the issue required further serious consideration in the context of determining the overall scope of a convention.In the context of the discussion on whether a convention should include a list of offences, some States expressed their support for the inclusion of terrorist acts in such a list. Most States were of a contrary view, recalling the initiatives currently under way in the United Nations and other forums on terrorism and the conclusions of the Commission at its fifth session. The Group agreed that it would be useful to focus on widely accepted constituent elements of organized crime. In the discussion that ensued, the elements identified included some form of organization; continuity; the use of intimidation and violence; a hierarchical structure of groups, with division of labour; the pursuit of profit; and the purpose of exercising influence on the public, the media and political structures. The Group decided that the best way to proceed for the purpose of advancing the issue was to seek common ground, utilising as many previous contributions as possible, and building on the positive experience and valuable work done at other forums, such as the European Union and the Senior Experts Group on Transnational Organized Crime. The draft United Nations framework convention against organized transnational crime (A/C.3/51/7) was a useful point of departure and a good basis for further work. In this connection, the Group decided to discuss matters related to international cooperation in criminal matters that would form an essential part of an international legally binding instrument. The overriding concern would be to equip the international community with an effective instrument to strengthen action against organized crime.

In spite of this careful language, it was evident that the tide had changed. In fact, several delegations began putting proposals on the table that went beyond a mere discussion of the desirability or feasibility of the convention. The issue became not whether there would be a new convention but what should the new convention contain and how soon it should be developed. It is interesting to note that some of these proposals were submitted in the form of "non-papers", in order to afford their authors the possibility to keep the option of backing out open. The Group agreed that considerable work was required on the issue of the convention. For this purpose, it proposed that an open-ended intergovernmental group of experts should be established to consider all pending proposals related to the issue of conventions, as well as all elements thereof and appropriate cooperation modalities and mechanisms.

Continuing its efforts for the implementation of the Naples Political Declaration and Global Action Plan, the

Crime Prevention and Criminal Justice Division organized a regional Ministerial Workshop in Dakar, Senegal, for the countries of the African region in July 1997. That was the second follow-up ministerial meeting after the one organized in 1995 in Buenos Aires. The purpose of the meetings was to sustain the commitment and political will, which developing countries had clearly displayed in Naples, and to further build on it in order to promote the idea of the convention. In unanimously adopting the Dakar Declaration, the Ministers reaffirmed their commitment to fight against organized transnational crime and reiterated their collective political will to support the efforts of the Commission towards the elaboration of an international convention against organized transnational crime. In addition, the Ministers reviewed and approved two regional projects for technical cooperation, aimed at providing assistance to the Governments of the region in strengthening their capacities to prevent and control organized transnational crime.

On the recommendation of the Commission at its sixth session, the General Assembly established[21] an intergovernmental group of experts, which met from 2 to 6 February 1998 in Warsaw. The group's mandate was to elaborate a preliminary draft of a possible international convention against organized transnational crime, on the basis of the contributions and proposals that Governments had made at the sixth session of the Commission, or such documents as the forty recommendations of the G7/P8 Lyon Group.

[21] See General Assembly resolution 52/85 of 12 December 1997.

The Warsaw meeting was the first occasion on which the question of the desirability or possibility of the new convention was laid to rest. The intergovernmental working group reported that "there was broad consensus on the desirability of a convention against organized transnational crime. There was much to be gained from this international legal instrument, which would not only build on, but also go beyond, other successful efforts to deal with pressing issues of national and international concern in a multilateral context."

The Group then went on to develop a "list of options" for the convention, which amounted to a first draft containing several options for various provisions. The term "list of options" was deliberately used as a way of satisfying those few who were still reluctant to speak of a "preliminary draft", considering this term as determining in an unequivocal manner the resolution of the issue of whether the negotiations for the new convention should be authorised. It is interesting to note that before embarking on the very loose drafting exercise, the Group put down a number of general principles, which it understood would guide "the efforts to elaborate a new international convention." The main principles emanating from the general discussion, were as follows:

"(a) While the contours of organized crime were generally understood, there continued to be divergences of a legal nature that made it difficult to reach a comprehensive definition. Engaging in such an endeavour might require considerable time, whereas there was a general feeling of the urgency of action in the direction of elaborating the new convention. Organized crime continued to evolve and manifest itself in different ways. As there was a general

understanding of criminal organizations, efforts to determine the scope of the convention should build on that understanding, focusing action under the new convention against those groups.

(b) Certain States were of the view that attempting to list all possible criminal activities in which criminal organizations were likely to engage would be difficult and might lead to a convention that was too narrow. Such an approach entailed two major risks. First, it would *ab initio* prejudice the applicability and effectiveness of the convention, as a list could not be all-inclusive and would most probably exclude emerging forms of criminal activity. Secondly, it would present considerable difficulties with regard to other provisions of the convention, as specific crimes often demanded specific responses. The need to deal with specific offences might be accommodated by additional protocols, which could be negotiated separately, not affecting the comprehensiveness of the convention or it operability and effectiveness. Furthermore, it was observed that such an approach might prove more conducive to a more expeditious negotiating process that would make the new convention a reality in a shorter period of time.

(c) An alternative approach that was proposed might be based on the seriousness of the offence, which might be determined on the basis of the penalty foreseen in national legislation and a requirement that the offence be committed in connection with a criminal organization, association or conspiracy. That approach was not free of difficulties, as the concept of seriousness was not as meaningful in all national systems. However, there was merit in further considering such an approach as a potential solution, especially combining it with a focus on the organized nature of the offence in question, as well as looking at elements that would necessitate international cooperation, including its transnational reach.

(d) There was agreement that the convention should include practical measures of international cooperation, such as judicial cooperation, mutual assistance in criminal matters, extradition, law enforcement cooperation, witness protection and technical assistance. The convention should be a capacity-building instrument for States and the United Nations alike in connection with the collection, analysis and exchange of information, as well as the provision of assistance. Furthermore, the convention should expand the predicate offences for the purpose of action against money-laundering, while it should include provisions creating the obligation of States to confiscate illicitly acquired assets and regulate bank secrecy. The convention should also include provisions to prevent organized crime, such as measures to reduce opportunities for criminal organizations or limit their ability to engage in certain activities. The convention should have provisions that require legislative action on the part of Governments, in order to facilitate meaningful and effective cooperation. Certain delegations expressed strong opposition to a "serious crimes convention" as opposed to an instrument focused on organized crime.

(e) Other international instruments, especially the International Convention for the Suppression of Terrorist Bombings (General Assembly resolution 52/164, annex) and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, were useful sources of inspiration. They contained provisions

of direct relevance to the new convention. Some of those provisions could provide solutions to similar problems, or serve as a point of departure in order to go beyond their scope, taking into account new needs and developments. In addition, the convention should empower the law enforcement authorities of States parties to employ extraordinary investigative techniques (e.g. wire-tapping and undercover operations), consistent with constitutional safeguards.

(f) Finally, the convention should incorporate appropriate safeguards for the protection of human rights and to ensure compatibility with fundamental national legal principles."

In March 1998, the Centre for International Crime Prevention[22] organized the third regional ministerial event in follow-up to the Naples Political Declaration and Global Action Plan. This time, the meeting was convened in Manila, was attended by countries of the Asian and Pacific region and adopted the Manila Declaration on the Prevention and Control of Transnational Crime, in which renewed support for the convention was expressed.

The proposals of the Warsaw Intergovernmental Group were submitted to the Commission at its seventh session.[23] During that session, the traditional in-sessional working group on the implementation of the Naples Declaration began what in essence was a first reading of the draft prepared in Warsaw. That same working group also made recommendations to the Commission, which formed the basis for a draft resolution, for eventual consideration and adoption by the General Assembly, by which an Ad Hoc Committee would be established to elaborate the new instrument.[24] One key element of the debate on that draft resolution was whether it would include a deadline for the work of the Ad Hoc Committee. Many delegations thought this would be premature and a deadline was not included in the text. However, everyone began speaking in terms of making every effort possible to complete the work by the end of 2000. The symbolism was certainly one motive for the choice of the unofficial deadline. Other motives included the desire of many countries to ensure that embarking on negotiations was not an open-ended endeavour, not wishing to see the issue embroiled in endless debate, as had been the case with other international conventions. Another, perhaps more powerful, reason was the prominent place on the international agenda that action against transnational organized crime had acquired. Linked with this was the realization that attempting to negotiate such a major international legal instrument was fraught with all kinds of conceptual and political difficulties, which had the potential to erode the political will that made the commencement of the negotiations possible.

The negotiations of the draft resolution that would give the green light for the elaboration of the new convention to begin were conditioned by an interesting development. Faced with pressing political priorities, or frustrated by other processes, some countries had begun identifying individual issues, which they

[22] As part of the reform of the United Nations, the Crime Prevention and Criminal Justice Division was reconstituted into the Centre for International Crime Prevention in October 1997.

[23] Vienna, 21 to 30 April 1998.

[24] General Assembly resolution 53/111.

thought merited attention at the international normative level.

Argentina had for quite some time favoured action, in the form of a new convention, against trafficking in minors. It had tried to push forward the initiative in the context of the work done in Geneva on additional protocols to the Convention on the Rights of the Child. However, progress there was frustratingly slow, mainly because of the fact that the proposed new protocol approached the issue from a purely human rights perspective. Therefore, Argentina decided to give the whole matter a new spin and see whether the international community was ready to deal with it in the context of criminal justice. At the seventh session of the Commission, Argentina proposed the drafting of a new convention against trafficking in minors, citing the growing evidence of this becoming an activity in which organized criminal groups were engaged.

Austria was experiencing an increase in incidents of smuggling of migrants. Its efforts to cope with the problem led it to discovered that it was not alone in having to deal with more and more cases of illegal entry of migrants, organized by criminal gangs from various regions of the world. As part of its consolidated effort to see the issue rising in the international agenda, and building on previous work on smuggling of migrants done by the Commission and the Secretariat, Austria presented to the Commission the draft of a convention against the illegal trafficking and transport of migrants. At about the same time, Italy was developing new policies in response to the influx of Albanian migrants who were being transported across the Adriatic by organized crime groups. Italy was also shocked by the sinking of a ship carrying illegal immigrants off its coast. Consequently, Italy undertook an initiative at the International Maritime Organization (IMO) aimed at the issuance of directives regarding trafficking of migrants by sea. When it found out about Austria's initiative at the Commission, Italy joined forces and presented a proposed protocol to deal with trafficking by sea, to be attached to the proposed Austrian convention.

The Crime Prevention and Criminal Justice Division had been mandated to carry out a study on firearms regulation. The study had been assigned to the Division on the initiative of Japan and had been carried out with voluntary funding provided by that country. The study (which was eventually published in 1998) was before the Commission at its seventh session. The Governments of Canada and Japan thought that, as a result of the conclusions of the study, the issue of action against the illicit manufacturing of and trafficking in firearms had sufficiently matured to merit attention at the normative level. They thus proposed a new instrument on that subject, which could draw upon and be inspired by the Organization of American States Convention on Firearms, which had recently been concluded.

The Commission was thus found in front of a major decision. Whereas it had been engaged in discussing whether the time was ripe to ask that the international community embark on the negotiations of a new convention, it was now faced with the prospect of authorizing negotiations for four such instruments. All of the proposed subjects deserved attention, having risen, in one way or another, to the top of the political agenda. However, there was also the question of limited resources, especially

of the United Nations, in supporting, both substantively and organizationally, the negotiations. In addition, there was the political issue of whether authorization to commence negotiations on four separate conventions would not result in dispersing efforts and diluting the political commitment required for success. Then, there was the issue of which of these instruments would command priority. The question facing delegations was whether prioritising was feasible and, if so, what would be the criteria for determining which of these proposed instruments would be elaborated first. The political decision reached at the end was to link the more recent initiatives to the proposed convention against transnational organized crime. The talk among delegations was along the lines of negotiating protocols to the convention on each of these subjects. Not everyone was happy with that solution, mainly because of the lower status of a protocol compared with a full-fledged convention. As a result, the draft resolution proposed by the Commission for adoption by the General Assembly did not speak of protocols but of additional instruments, leaving their status open for further consideration at a more opportune moment.

On the recommendation of the Commission, the General Assembly decided "to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration, as appropriate, of international instruments addressing trafficking in women and children, combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, and illegal trafficking in and transporting of migrants, including by sea."[25] The Assembly also decided to accept the recommendation of the Commission to elect Luigi Lauriola of Italy as the Chairman of the Ad Hoc Committee.

As mentioned earlier, the discussions that led to the final version of this resolution revolved around establishing a deadline for the completion of the negotiations. Even if the draft did not include such a deadline, planning for the work of the Ad Hoc Committee had to be carried out taking into account the commonly shared understanding about the total time available to it to complete its tasks. At the seventh session of the Commission, the delegation of Argentina came forward with an invitation to host a meeting of the Ad Hoc Committee. However, the resolution remained a draft, as it was intended for adoption by the General Assembly. The annual sessions of the General Assembly begin in September and the Third Committee, which is the committee responsible for crime prevention and criminal justice matters, does not take up relevant recommendations before October. Legally speaking, the Ad Hoc Committee would not come into existence before the General Assembly had adopted the resolution establishing it. A paragraph was included in the resolution to deal with this institutional problem, while assuring that the time between May and October would be productively used. The General Assembly "welcomed with appreciation the offer of the Government of Argentina to host an informal preparatory meeting of the intergovernmental ad hoc committee at Buenos Aires, so as to ensure the continuation without interruption of

[25] General Assembly resolution 53/111 of 9 December 1998.

work on the elaboration of the convention." In order to further advance the work, the Chairman invited interested countries to form an informal group of "Friends of the Chair", which would explore mainly procedural matters to pave the way for the Ad Hoc Committee.

The "Friends of the Chair" held a meeting in July 1998 in Rome, where they began discussing a host of issues surrounding the new convention. One of these was the timetable for the negotiations, in order to ensure that the work could finish by the end of 2000. Even if the terms of reference of the group were oriented primarily towards procedure, several substantive matters began to be ventilated by delegations. It is important to note that the size of the group kept increasing. Wishing not to let anyone out, the Chairman of the Ad Hoc Committee had specifically indicated that the group was open-ended. As countries started coming to terms with the implications of the negotiations, they joined the group in order to participate in decisions that could have a bearing on the process.

The meeting in Buenos Aires was held from 28 August to 3 September 1998. It picked up where the Commission had left off in going through the Warsaw text by way of a first reading. Already at this early stage, delegations started beefing up the text with new proposals on most major issues that it was supposed to cover. Also at this early stage, one of the questions that was intensely debated was the list of offences and whether such a list would make reference to terrorism. Perhaps most importantly for the negotiation process, the Buenos Aires meeting marked the formation of a core group of delegates, who were experts in their fields and shared considerable experience from previous negotiations. One important feature of this core group was that it was highly participatory, in the sense that it included representatives from virtually all regions and all legal systems of the world. The formation of this core group brought with it a gradually increasing sense of ownership regarding the text, which is a key element of the success of the endeavour.

The group of "Friends of the Chair" held two more meetings, one in the margins of the Buenos Aires meeting and another in November 1998 in Vienna. Its contribution was considerable especially in mapping the road towards the completion of the process and discussing in a very informal way other procedural matters, including the question of the Ad Hoc Committee's Bureau.

The Ad Hoc Committee was officially established in December 1998 and held its first session in Vienna in January 1999. It finalized the text of the Convention at its tenth session in July 2000 and the text of the Protocols against Trafficking in Persons, Especially Women and Children and against Smuggling of Migrants at its eleventh session in October 2000. The Ad Hoc Committee tried very hard but did not manage to overcome differences impeding the finalization of the text of the third Protocol, against Illicit Manufacturing of and Trafficking in Firearms. Therefore, it scheduled another session (its twelfth) for February/March 2001, in order to complete this task. After a very intense week, the Committee's efforts were crowned with the successful conclusion of the negotiations for the third Protocol, which completed the package that the international community had set out to conclude only two years before.

EFFORTS OF THE CENTRE FOR INTERNATIONAL CRIME PREVENTION TO PROMOTE EXPEDITIOUS ENTRY INTO FORCE OF THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME AND ITS PROTOCOLS AND EXPECTED IMPACT OF THESE NEW INSTRUMENTS

*Dimitri Vlassis**

I. THE PALERMO HIGH-LEVEL SIGNING CONFERENCE

The Convention and the two Protocols finalized by the Ad Hoc Committee at its October 2000 session were submitted to the General Assembly for consideration and action at its fifty-fifth session, together with a draft resolution that the Ad Hoc Committee prepared at its July and October sessions. The General Assembly adopted unanimously the resolution[1] and, by virtue thereof, the Convention and the two Protocols. By striking his gavel in the morning of 15 November, the President of the General Assembly brought to a successful conclusion the strenuous efforts of the international community to negotiate in good faith a set of instruments to collectively fight organized crime. Because of the fully participatory nature of the negotiating process and the sustained political commitment that formed the core of the joint efforts of the all States, the new instruments take into full consideration all legitimate concerns of all countries, big or small. They do so without in any way compromising the quality, functionality and, most importantly, universality of the instruments. Perhaps one of the most significant features of the negotiation process was that all countries engaged in it came away with a strong sense of ownership of the new instruments. It will be this sense of ownership that will constitute the best guarantee for the expeditious entry into force of the Convention and its Protocols and their subsequent implementation.

The new Convention and the two Protocols were opened for signature on 12 December 2000 at a high-level political signing conference in Palermo. The symbolism and significance of this action by the General Assembly[2] extend beyond the obvious. By gathering in Palermo, the 149 States present sent a powerful message to the world about their determination to join forces against transnational organized crime. The successful conclusion of the negotiations for the Convention and its Protocols in record time was only the beginning of joint efforts in this field. The political commitment remained as strong as ever. In evidence of this commitment, the Convention was signed by 123 countries and the European Community, while the Protocols against Trafficking in Persons

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[1] General Assembly resolution 55/25 of 15 November 2000.

[2] The High-Level Political Signing Conference was convened pursuant to General Assembly resolution 54/129 of 17 December 1999.

and Smuggling of Migrants received 81 and 78 signatures respectively.

The Protocol on the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition was finalized at the twelfth session of the Ad Hoc Committee in March 2001. It was submitted to the General Assembly, which had kept the item entitled "Crime Prevention and Criminal Justice" on the agenda of its fifty-fifth session open, in anticipation of the successful completion of the work of the Ad Hoc Committee. The Assembly adopted resolution 55/255 of 31 May 2001, by which it unanimously adopted the Protocol and opened it for signature at United Nations Headquarters in New York on 2 July 2001.

Since Palermo, the number of signatories to the Convention and the first Protocols has increased to 127, 88 and 84 respectively. The third Protocol has been signed by two countries so far, but a significant number of signatures are expected on the occasion of the 56th session of the General Assembly, which opened on 11 September 2001. Five countries have ratified the Convention to date, while there are three parties to the Trafficking in Persons Protocol and two parties to the Smuggling of Migrants Protocol.

II. EFFORTS OF THE CENTRE FOR INTERNATIONAL CRIME PREVENTION TO PROMOTE SPEEDY RATIFICATION OF THE NEW INSTRUMENTS

Immediately after the Palermo Conference, the Centre for International Crime Prevention embarked on a consolidated and comprehensive effort to promote expeditious entry into force of the Convention and its Protocols. The Centre developed a framework for action, based on a number of key strategic precepts and objectives.

The Centre structured its activities along two major lines: first, bringing itself to a position of being able to respond rapidly to individual requests for assistance; and second, sustaining and nurturing the political will and momentum that made the completion of instruments of such complexity in such a record time.

The first course of action was geared towards achieving the objective of supporting and strengthening the efforts of individual countries, which had already embarked on, or were about to begin the pre-ratification process. Several of these countries were intent on incorporating the Convention and its Protocols into their domestic legal system, but found themselves in need of specialized expertise or consolidated information about the experience of other countries, in order to successfully and expeditiously review their existing legislation. Further, these countries required the same type of assistance in order to amend their existing legislation, or draft new legislation, as the case may be, which would bring their systems in line and in compliance with the new instruments. This course of action was pursued by engaging in consultations with the national authorities of the countries requesting assistance, which were directly responsible for the ratification process and working with them in reviewing existing legislation or drafting amended or new laws.

The second course of action intended to achieve the objective of providing countries the opportunity to exchange experiences and analyze difficulties encountered in the pre-ratification

process, as well as mutually reinforce each other, on both the political and substantive levels. The Centre decided to pursue this course of action by organizing sub-regional or regional consultations or seminars. The Centre opted for a balance between the sub-regional and regional approach, in order to engage, in groups, countries which share common legal traditions and systems, or pursue common goals in economic and social development, while gradually expanding to cover countries which share geographical regions and are active in that context in pursuing common political objectives. In order to maximize the impact of its activities, the Centre decided to seek close cooperation with sub-regional and regional organizations, which pursue similar objectives and bring into the process the profound knowledge of their respective region or sub-region and their political presence and influence.

The underlying premise of all of the Centre's activities is that at this stage, emphasis should be placed on supporting and promoting the efforts of countries to bring the new instruments in force. Implementation of the Convention and its Protocols would be a subsequent goal, which would require a much broader and more detailed set of strategies and activities. Implementation would also require a much more comprehensive and larger technical cooperation programme, supported by a considerably expanded and sustained financial base. The Convention has established its own mechanism, the Conference of the Parties, which is charged with the task of overseeing and guiding implementation efforts.

In this context, the Centre made proposals to donor countries and was gratified by the immediate response. Several countries, among which Japan figures prominently, made voluntary contributions to the special account established under the United Nations Crime Prevention and Criminal Justice Fund, which was set up in accordance with the General Assembly adopting the Convention. At the time of writing this paper, the Centre had undertaken the following activities:

In January 2001, the Centre attended the annual meeting of the Law Ministers and Attorneys-General of the Caribbean Community, at the invitation of that organization, and presented the Convention and the two Protocols that had at the time been adopted by the General Assembly. The CARICOM countries had not been able to attend the Palermo Conference and, as a consequence, were a group of countries that had not signed the new instruments. Working closely with the CARICOM Secretariat, the Centre managed to secure the commitment of the majority of the CARICOM countries to sign the Convention and its Protocols, as appropriate. Bahamas signed the Convention and the two Protocols in March, and several more of the CARICOM countries have confirmed their intention to do so at a special signing ceremony which will take place during the current session of the General Assembly. As a follow-up, the Centre is organizing, in cooperation with the Commonwealth Secretariat, a Ministerial Seminar in Trinidad and Tobago at the end of November to review progress on the ratification process and help the CARICOM countries analyze the requirements for ratification.

In March, the Centre organized, in close cooperation with the Southern Africa Development Community, a sub-regional Ministerial Seminar in Pretoria, South Africa for the 14 SADC States. The

SADC States agreed to work intensely towards ratification and review progress towards the end of the year.

In April, the Centre organized another Ministerial Seminar in Guatemala for the countries of Central America and in July, the Centre participated in a meeting of the ASEAN countries devoted to the common efforts towards transnational organized crime and the ratification of the Convention and its Protocols.

The Centre is planning similar events for the ten countries of the Economic Cooperation Organization in Teheran, Islamic Republic of Iran, for the countries of the Economic Community of West Africa (ECOWAS) in Ouagadougou, Burkina Faso, for the countries of the Latin American region in Quito, Ecuador, for the entire African region in Algiers, Algeria, and for the countries of Central and Eastern Europe, in Vilnius, Lithuania. The Centre is also engaged in consultations with interested host countries in order to organize a similar regional event for the countries of the Asia and Pacific region.

The Centre is cooperating closely with the Inter-Parliamentary Union and attended its most recent annual conference in Ouagadougou, Burkina Faso, engaging in very useful dialogue with parliamentarians from around the world on the contents of the new instruments and the crucial importance of their support at the legislative level.

The Centre has been joined in its efforts by the International Scientific and Professional Advisory Council (ISPAC), which organized an interregional meeting involving thirty countries on the ratification of the Convention and its Protocols, on 14 and 15 September in Courmayeur, Italy.

Meanwhile, the Centre has begun responding to individual requests for assistance and has built into its work plan several more advisory missions before the end of the year.

In all of these activities, the Centre has been using a "checklist" containing substantive elements of ratification plans. This tool is reproduced below.

A. Substantive Elements of Ratification Plan

1. Legislative Action

Article 5—Criminalization of Participation in an Organized Criminal Group

Establish the following criminal offences as distinct from those involving the attempt or completion of a criminal activity:

- Agreeing to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit.
- Conduct by a person, who with knowledge of an organized criminal group or its intention, takes an active part in:
  - Criminal activities of the organized criminal group.
  - Other activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the above-described criminal aim.
- Organizing, directing, aiding, abetting, facilitating or counseling the commission of crime involving an organized criminal group.

Ensure that domestic law covers all serious crimes involving organized criminal groups.

Article 6—Criminalization of the Laundering of Proceeds of Crime

Establish the following criminal offences:

- The conversion or transfer of known proceeds of crime, to conceal or disguise the illicit origin.
- The concealment or disguise of the true nature, source, location, disposition, movement or ownership of known proceeds of crime.
- The knowing acquisition, possession or use of proceeds of crime.
- Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counseling the commission of the above offences.

Ensure that above criminalization applies to widest range of predicate offences (both within and outside domestic jurisdiction).

Article 8—Criminalization of Corruption

Establish the following criminal offences:

- The promise, offering of an undue advantage or giving to a public official, in order that the official act or refrain from acting in the exercise of his or her official duties.
- The solicitation or acceptance by a public official of an undue advantage, in order that the official act or refrain from acting in the exercise of his or her official duties.
- The participation as an accomplice in the above offence.

Article 10—Legal Persons

Establish the liability of legal persons (to the extent consistent with the State's legal principles) for participation in serious crimes involving an organized criminal group and for the offences established in accordance with articles 5, 6, 8 and 23 of the Convention.

Article 23—Criminalization of Obstruction of Justice

Establish following criminal offences:

- The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or the production of evidence in a proceeding.
- The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official.

B. Procedural Legislation/ Administrative Measures

Article 11—Prosecution, Adjudication and Sanctions

Make the commission of an offence established in accordance with articles 5, 6, 8 and 23 of this Convention liable to sanctions that take into account the gravity of that offence.

Establish under domestic law (where appropriate) a long statute of limitations period in which to commence proceedings for any offence covered by this Convention and a longer period where alleged offender has evaded the administration of justice.

Article 12—Confiscation and Seizure

Adopt the following measures to enable confiscation of:

- Proceeds of crime derived from offences or property the value of which corresponds to that of such proceeds.
- Property, equipment or other instrumentalities used in or destined for use in offences.

- Adopt measures to enable the identification, tracing, freezing or seizure of any item referred to in para 1 of the article for the purpose of eventual confiscation.

Empower courts or other competent authorities to order that bank, financial or commercial records be made available or be seized (bank secrecy shall not be a legitimate reason for failure to comply).

Article 15—Jurisdiction

Adopt measures to establish jurisdiction over the offences established in accordance with articles 5, 6, 8 and 23 of this Convention when:

- The offence is committed in the territory of that State Party
- The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.
- May also establish jurisdiction when:
- 2.(a) The offence is committed against a national of that State Party.
- 2.(b) The offence is committed by a national of that State Party or a stateless person, who has his or her habitual residence in its territory.
- 2.(c) The offence is:
  - 2.(c)(i) One of those established in accordance with article 5, para 1, of this Convention and is committed outside its territory with a view to the commission of a serious crime within its territory.
  - 2.(c)(ii) One of those established in accordance with article 6, para 1 (b)(ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 6, para 1 (a)(i) or (ii) or (b)(i), of this Convention within its territory.
- Adopt measures to establish jurisdiction over the offences when the alleged offender is present in the territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

May also adopt measures to establish jurisdiction over the offences when the alleged offender is present in the territory and it does not extradite him or her.

Article 24—Protection of Witnesses

Provide evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of the witness.

Take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings and their relatives and other persons close to them.

Article 25—Assistance and Protection of Victims

Take appropriate measures within its means to provide assistance and protection to victims of offences covered by this convention, in particular in cases of threat of retaliation or intimidation (in so far as legislation is concerned).

Establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by this convention (in so far as legislation is concerned).

Article 26—Measures to Enhance Cooperation with Law Enforcement Authorities

Consider providing for the possibility of mitigating punishment of an accused

person who provides substantial cooperation.

Consider providing for the possibility of granting immunity from prosecution to a person, who provides substantial cooperation.

Take appropriate measures to encourage persons, who participate or who have participated in organized criminal groups:

- 1.(a) To supply information for investigative and evidentiary purposes.
- 1.(b) To provide factual, concrete help contributing to depriving organized criminal groups of their resources or of the proceeds of crime.

2. International Cooperation Measures

Article 16—Extradition

Review current extradition arrangements and/or legislation to ensure compliance with Article 16. In particular:

- If States make extradition conditional on the existence of a treaty: review extradition treaties currently in force to ensure that offences covered by the Convention and the Protocols are extraditable offences and seek were appropriate to conclude extradition treaties with other State parties to this Convention.
- If States do not make extradition conditional on the existence of a treaty, review legislation or arrangements to ensure recognition of the offences covered by the Convention and the Protocols as extraditable offences.
- Review legislation applicable to extradition to ensure expeditious extradition procedures for offences covered by the Convention and the Protocols.
- Review legislation applicable to extradition to provide for simplification of evidentiary requirements relating to extradition for offences covered by the Convention and the Protocols.
- Review legislation to ensure extradition requests under the Convention are not refused on the sole ground that the offence is also considered to involve fiscal matters.

Article 18—Mutual Legal Assistance

Review current mutual legal assistance arrangements and/or legislation to ensure compliance with Article 18. In particular:

- Review mutual legal assistance legislation, treaties, agreements or arrangements, as appropriate, to ensure that such assistance is extended where the requesting State has reasonable grounds to suspect that an offence established or covered by the Convention and the Protocols is transnational in nature.
- Review legislation and other administrative arrangements to ensure confidentiality of information provided by another State as a result of a request for mutual legal assistance under the Convention.
- Review legislation to ensure that requests for mutual legal assistance under the Convention are not refused on the ground of bank secrecy.
- Designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to competent authorities.

Notify the Secretary-General of the UN at the time of ratification, acceptance or

approval of or accession to this Convention of the language or languages acceptable to each State for the transmission of requests for mutual legal assistance.

III. EXPECTED IMPACT OF THE CONVENTION AND ITS PROTOCOLS

Combating crime and the organizations that pursue it for achieving wealth and power is the central goal of the new instruments. It denotes the perception of the problem and the will of countries to act. Shifting from this dimension to the reality prevailing in each country, the perception of the problem and the will to act are influenced by many intervening variables, which condition the effectiveness of the action. These variables include a number of objective elements, such as the level of resources available, the qualifications and professional skills of decision-makers and those charged with implementation, in particular the criminal justice system personnel, including law enforcement agencies.

The Convention and its Protocols have been designed and negotiated as cooperation tools that will enable countries throughout the world to work together in raising the standards, consolidating their approach and maximizing the effects of joint action against transnational organized crime. The new instruments contain a variety of mechanisms employed in the achievement of these objectives. Their strength lies in the ingenuous and careful combination of measures, as well as in the innovative solutions they contain to problems of a substantive as much as a political nature.

Substantive criminal law must adapt to the challenges posed by organized crime in different ways. Those countries which have had more threats posed by organized crime have been the first to react, by refining their legislation. The main changes relate to the crime of participating in an organized criminal group and to the confiscation of assets acquired through criminal activities. In some countries, legislation allows the confiscation of crime proceeds through civil action against the proceed (*in rem*). This can be seen as a further expansion of the capability of the law in dealing with the changing trends of organized crime.

The Convention has solidified and expanded the trend of modified criminal legislation to include the offence of "participation in an organized criminal group". In many countries, this would coincide with the crime of "conspiracy". The Convention's negotiators went to great lengths to ensure the full compatibility of the legal concepts and traditions, which are at the core of these two approaches. The purpose of the new instrument was not to engage in efforts towards full unification of national legislation, recognizing the futility of the task, but to bring about a sufficient degree of harmonization, understood in the sense of convergence and compatibility. Criminal legislation is the point of departure and reference for the collective efforts of a criminal justice system. Criminal justice systems, however, are constructed on the basis of legal, cultural and social traditions, which are evidenced throughout that systems operations and methods of work. The transnational nature of the threat demands close interoperability and cooperation of criminal justice systems representing numerous and diverse traditions and approaches. The purpose of the new Convention and its Protocols is

to achieve harmony in that interoperability and cooperation.

The success of efforts against the laundering of criminal proceeds directly depends on the level of accessibility of law enforcement agencies to the activities of financial bodies. A problem here is that opening up the activities of the financial bodies to outside scrutiny can affect their competitive position. However, the activities of organized crime may undermine the entire financial market, affecting the whole society. Furthermore, the money derived from organized crime often circulates through the same channels as money concealed from taxation authorities. In view of this, it is vital for the banks to maintain records of the identity of their clients, and to cooperate with law enforcement agencies whenever there are suspicious deposits or other transactions. It may be necessary to strengthen mechanisms of control over banking operations and even to centralize information of this kind.

In the last decade, many countries have introduced in their criminal laws the crime of money laundering in compliance with the Vienna United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. However, due to the fact that drug trafficking is only one of the sources of the proceeds of crime, there is a tendency in many Western countries to expand the predicate offences from drug offences to virtually all serious crimes. But the approach had been far from uniform. In most other regions of the world, countries which criminalised money laundering as a separate offence often limited its application to drug proceeds. The new Convention intends to set a standard of criminalisation of money laundering that would not greatly expand the predicate offences. Compliance with the obligation contained in the new Convention would result in extending money laundering legislation to all serious crime, as defined in the Convention, and to the offences established by the Convention and its Protocols.

A number of areas have been identified as implementation priorities for an effective anti-money laundering strategy. These areas are predicated on a number of assumptions about the presence of certain enforcement mechanisms. Key among them, is the concept that a net or web operates at three complementary levels—international, regional and national. Political support, adequate resources, and high professionalism are essential conditions for effective action at all three levels. Governmental institutions must allocate adequate means and facilities to successfully regulate or exercise other types of control over activities which enjoy the benefit of a high level of sophistication and which may involve a high volume of legitimate transactions, as may be the case with electronic transfer technology.

The key element that characterizes the approach of the new Convention, not only with respect to criminalisation, but also with regard to the measures that countries should take in order to put in place an effective regime against money laundering, is the fact that the new Convention sets a truly global standard. That standard is the product of a negotiation process, which was characterized by respect for diversity and took into account the concerns of all countries. The result is a combination of actions that countries can subscribe to and incorporate into their systems, without constrains of a substantive or political nature.

Corruption greatly facilitates the activities of organized criminal groups. In view of this, many countries have enacted special anti-corruption legislation. Prosecution of corruption is difficult and the adjudication of the alleged offender even more difficult, especially when organized crime is involved due to the problems in obtaining evidence. Laws often create incentives for solidarity between corrupted and corrupter, with both punished equally. For these reasons, there is broad agreement within the international community that it is urgently necessary to develop new sets of policies against corruption, from regulatory to criminal ones. Many regulations in areas sensitive to corruption need be reshaped (preventive policies), with the incorporation of incentives to the reporting of corruption cases in the same legislation which criminalizes the corrupted officials and with the creation (at a legislative or judicial level) of a conflict of interest between the corrupter and the corrupted, in order to get evidence.

The new Convention includes a specific criminalization provision against corruption and an article setting out a set of basic measures against this form of criminal activity. The inclusion of both provisions was done on the understanding that the purpose of the Convention was by definition limited in this particular area. It was deemed appropriate to set a standard insofar as corruption is a modality that features prominently in the operations of organized criminal groups, either as a direct activity or as corollary to their other activities. The negotiators of the Convention realized that the issue of corruption was much broader than the scope and purposes of the new Convention. It would risk not doing justice to the concerted political will prevailing among the international community to deal with corruption in a comprehensive manner to try and cover such a broad issue in this Convention. Thus, the decision was made, relatively early on in the negotiation process, to limit the provisions on corruption to those absolutely essential for the purposes of the new Convention and embark on negotiations of a new separate Convention against corruption at a later stage. The process of embarking on these negotiations is already under way. In july 2001, an open-ended intergovernmental group of experts met in Vienna and successfully complied with the mandate given to it by the General Assembly to draft terms of reference for the negotiation of the new Convention. Subject to final approval by the General Assembly at its current session, a new Ad Hoc Committee will begin negotiations on the new instrument in early 2002.

The Convention pays particular attention to the problem of deterring and punishing misconduct by legal entities, such as multinational and other corporations. Individual executives may frequently be beyond national jurisdiction and personal responsibility may be difficult to establish. Criminal punishment of the entity itself, by fine or by forfeiture of property or legal rights, is utilized in some jurisdictions against corporate misconduct, and an increasing number of countries are including corporate crimes in their legislation. Criminalization of a legal entity for corporate crimes is a powerful deterrent tool, intervening in the invisible or intangible good of the “reputation”. The growth of economic crimes strictly connected with organized crime, such as frauds, calls for more attention to the activities of legitimate enterprises. These are the places where the infiltration of organized crime begins the process of

pollution of the legitimate economy and corporate sanctions can help to reduce the vulnerability of the economic systems.

The new Convention establishes an obligation to direct appropriate attention to this matter. The fact that the Convention leaves the choice of the nature of the liability that countries will decide to incorporate in their legislation is yet another reflection of the care with which the Convention approaches the issue of diversities among national systems. The approach of the Convention in this are has been one of pragmatism. If countries concentrate on the effectiveness of measures designed to attribute liability to legal persons, and on the appropriate enforcement of these measures, instead of trying to introduce concepts that might be alien to their legal system and might create conflicts of a nature related to fundamental principles of these systems, the result cannot but be beneficial for international cooperation.

Crime committed for economic gain can be successfully countered by the forfeiture of such gains and of any other assets of the individuals and organizations involved. In some legal systems great significance is attributed to the freezing, seizure, and confiscation of assets related to illegal activity. The need for more effective organized crime control makes it necessary to regard forfeiture as a strategic weapon, an economic method of discouraging organized crime activities and a means of eliminating the financial advantages of such antisocial activities.

The Convention takes the approach that the procedures for freezing, seizure, and confiscation need to be broad in their scope and permit the confiscation of a wide range of assets of an offender in order to eliminate all gain from the criminal activity. A subsidiary benefit of such action is allowing law enforcement agencies to use confiscated assets or funds to further the activities of the agency. This can have a powerful incentive effect. International agreements may provide also for sharing such assets.

The Convention will also set in motion consideration to allowing certain liberal evidentiary rules to be used in the procedures for confiscation of the assets of criminals involved in organized crime.

Confiscation has acquired growing importance as a necessary complement to anti-money laundering policies drawing on the experience of those countries, which have practiced it. Drawing on the experience of those countries, which have practiced it, other countries could be encouraged to develop these sanctions in their legislation.

The Convention builds on the experience which suggests the advantages provided by using information obtained with the help of electronic surveillance, undercover agents, controlled delivery, the testimony of accomplices and similar methods of investigation for the collection of evidence. The use of the testimony of accomplices can be extremely helpful in prosecutions involving organized crime. Careful assessment and use of such testimony can enable law enforcement authorities to penetrate the layers of secrecy which are characteristic of organized criminal groups and which would otherwise protect them from prosecution.

The Convention attributes great importance to provisions for the protection of witnesses. Its application will encourage national systems of criminal justice to pay close attention to

these programmes, with legislation aimed at providing for the security of a witness. In particular, attention is expected to be focused on the adoption of measures for the protection of witnesses that allow for the relocation and change of identity of witnesses, along with their physical protection if there is a threat posed by a defendant and the defendant's associates. This can necessitate making arrangements to provide the witnesses with documents enabling them (and their family) to establish a new identity, with temporary housing, providing for the transportation of household furniture and other personal belongings to a new location, subsistence payments, assisting them in obtaining employment, and providing other necessary services to assist the witnesses in leading a full and normal life. In considering the type of protection to be provided, the financial circumstances of a country must be taken into account. In addition, provision need to be made for the safe custody of incarcerated witnesses, including separate accommodation. Legislation may also be necessary to deal with the practical problems that may arise in connection with relocated witnesses, such as child custody disputes and crimes committed under their new identity.

Witness assistance programmes have been key issues in the fight against organized crime for those countries which have experienced on a large scale this phenomenon and the consequent number of cooperating witnesses. The quality of their contribution and the evidence they allow to collect depend also on the quality of protection (physical, psychological, and economical) provided. The Convention will set in motion processes at the national level, and agreements at the international level, in this field.

If effective action is to be taken against organized crime, the law enforcement authorities must be able to prevent and detect any manifestation of such crime. This requires the systematic collection and analysis of all relevant information from all appropriate sources in order to make possible the production and use of intelligence for both strategic and tactical purposes. The methods employed for the collection and utilization of such information may be authorized and controlled by legislation. Even so, it is important that the technical facilities and techniques which law enforcement authorities are allowed to use are always sophisticated enough to enable them to match those employed by organized crime.

The production of intelligence requires the collection, processing and analysis of a wide range of information on the persons and organizations suspected of being involved in organized criminal activity, often including even information which at first sight does not directly relate to organized crime. There may be no rigid borderline between strategic and tactical intelligence, but the main aim of tactical intelligence is to help in the planning of particular police operations and to identify the sources for obtaining the evidence which makes it possible to arrest a suspect and to prove guilt. Trained intelligence analysis greatly increases the effective application of law enforcement intelligence. It is important to note that there is often a need to continue the collection of information during all appropriate stages of the legal process. Intelligence should always be collected in such a manner that even years later it can be retrieved and used as evidence.

Computerized information systems are of particular benefit in combatting

organized crime where resources permit. Computers are used to store information on the various persons and organizations suspected of being involved in organized crime, as well as information about the crimes committed, and those under preparation. Where there are different law enforcement agencies collecting information, appropriate arrangements need to be made to allow a regular exchange of information between local and national (or federal) authorities, and between local police forces in different areas. Careful attention must be paid to the compatibility of computerized systems, and the convertibility of manual systems to computerized ones. Creation of a centralized data bank may be appropriate in some countries, with the information shared internationally on the basis of mutual agreements. Furthermore, technical assistance in setting up and organizing criminal intelligence systems represents a mutual benefit to both developing and developed countries.

Particular attention has to be paid to information from confidential police sources, including prisoners. However, important intelligence comes from other sources, in particular, financial and taxation bodies. When permitted to do so, they can be of great assistance, as they frequently find themselves directly in contact with organized groups seeking to utilize the proceeds of crime. Also of value may be legislative inquiries and official and public records. An essential resource in the effective investigation of organized crime is the capability to collect, and present in an intelligible manner as evidence, complicated financial and commercial information. The collection of information concerning forfeitable assets allows the forfeiture of such property and makes it available for police use.

The infiltration of organized crime into legal enterprises and any contacts it may make in political circles, can create a superficial respectability, facilitate corruption and be used by criminals to hinder investigations of their activities. Therefore, law enforcement agencies, when collecting data on the criminal activity of a particular person or organization need to obtain the most comprehensive intelligence picture possible. A range of measures have been adopted, which include the following: a) to develop intelligence, through informants, searches and other techniques, in order to uncover large-scale organized criminal enterprises; b) to determine the factors and conditions facilitating the development of organized criminal activity; c) to provide for centralized collection, storage and analysis of information (including use of criminal organization charts) and for the tactical application of such information; d) to ensure cooperation with law enforcement authorities and other bodies involved using a multi-agency approach; e) to study other countries' experience of organized crime control; and g) to develop on the basis of the above factors a systemic approach to criminal policy, based on appropriate legislation, proper allocation of resources and mobilization of public support.

To lift the veil of secrecy, conspiracy and fear-induced silence of possible witnesses, as well as to understand how the criminal groups function, who directs their activities and, where their illegal income is channelled, police bodies generally collect intelligence and evidence by using undercover methods. With appropriate safeguards, secret operations directed against organized crime can be conducted effectively through the use of undercover agents and informants, often in conjunction with the

use of technical facilities to intercept and to record conversations, the contents of which may facilitate the disclosure of crimes. These techniques may include wire-taps, surveillance by means of closed circuit systems, night vision equipment, as well as video and audio recording of on-going events. In some jurisdictions, such technical surveillance may be used only in cases when other mechanisms of investigation have failed, or there are no reasons to think that they lead to the directed results, or where other mechanisms are too dangerous.

If extreme care is exercised with regard to the reliability of their testimony, and due account is taken of the severity of their offence, the cooperating witnesses for the prosecution may be a valuable means of infiltrating organized crime groups. Mitigation of sentence or even dismissal of charges, where possible, can motivate lesser criminals to assist in investigations of organized crime. Incorporation of such procedures into national legislation or recognized practice, together with the protective services previously discussed, has served to attract such cooperating witnesses.

The Convention and its Protocols are expected to spark considerable activity and improve methods in the field of collection, analysis and exchange of intelligence and information. One of the key features of cooperation in this are under the Convention and its Protocols is the standard-setting element of the new instruments, thus guarding against the inherent risks posed by the necessarily intrusive nature of many of the methods used for the collection of information and intelligence.

Organized crime may be investigated by a variety of law enforcement agencies with different jurisdictions. In this connection, it is essential to ensure that close coordination is maintained between central and peripheral structures, as well as effective liaison between intelligence and operations. In countries with federal structures it is also essential that effective mechanisms be established to ensure coordination of jurisdiction, intelligence and operations among federal policing agencies and those of other Governmental units. Whole coordination within and between agencies and units is a condition for to successful action against organized crime, a clear delineation of jurisdiction contributes to a harmonious and effective working relationship.

When resources permit, there may be great value in the formation of one or more specialized units dedicated to the investigation of organized crime, particularly in the areas of corruption, money laundering and illegal drug trafficking. However, the danger must be recognized that exclusive jurisdiction over an area of investigation may create susceptibility to corruption, and appropriate safeguards should be developed.

Within any individual law enforcement agency a strictly centralized senior management system which can scrutinize all aspects of investigations and monitor their course is necessary to ensure that all investigations are conducted in accordance with national laws and with proper respect of human rights. It is important for senior management officials to take due account of the necessity of ensuring financial, logistical, and moral support.

Investigators and in particular those leading the investigation should be selected on the basis of their ability, experience, moral qualities, and

dedication. The importance of basic and in-service training should not be underestimated not only for the police, but also prosecutors and judges. High professionalism and specialization are key factors of success.

The relationships between investigative functions and prosecutorial, and judicial organs vary markedly between different legal systems. To combat organized crime, effectively, in any system, it is necessary to ensure that there is harmonious coordination among them,. Obviously, due respect must be accorded to maintaining the proper relationships between the functions, keeping in mind the importance of preserving the independence and impartiality of the judiciary, as well as the proper role of defence lawyers.

The Convention and its Protocols contain specific provisions on cooperation between law enforcement agencies and, most importantly, detailed provisions on training and technical cooperation. Regarding the latter, the Convention and its Protocols were negotiated on the basis of a fundamental assumption. It was clearly understood by all countries involved in the negotiating process that the joint fight against transnational organized crime would entail the incorporation into the new instruments of a number of obligations. Many of these obligations would be onerous for many developing countries, which had limited resources and competing priorities for these resources. Conversely, it was also understood that effective cooperation against transnational organized crime required sustained commitment on the part of all countries, manifested among other things by a decision to bring limited resources to bear in the common effort. However, when that was done, it was clearly accepted that for many countries there would still be needs, which would be covered through the provision of technical assistance. In this respect, it was the common belief that effectiveness and efficiency in international cooperation depended on the equally sustained commitment to efforts to promote the provision of this technical assistance.

Due to the inherent characteristics of organized crime, which is simultaneously engaged in providing illegal services and goods and in infiltrating the legitimate economy, the criminal justice system alone cannot successfully fight it. For these reasons, the Convention and its Protocols have incorporated a range of "preventive" policies, aimed at, for example, reducing the demand for illicit goods or deregulating/regulating some markets, in order to minimize their vulnerability to infiltration by organized crime groups. These preventive policies, as opposed to crime control policies, relate to various sectors of the social and economic systems. Their increased use (e.g., the regulation of non bank financial institutions as an anti-money laundering policy), calls for their close integration with crime control policies and, consequently, with the criminal justice systems.

A systemic approach oriented to identifying the most effective strategies against organized crime focuses on two elements: goals and policies. The more these are rationally linked, the better are the chances that the prevention and control system will be effective. "Rationally" is intended to mean that a given society or country should select priorities among the goals desired, being ready and willing to accept trade-off effects, and relating this selection to the choice of those policies which are less costly and present fewer political and

juridical constraints, keeping also in mind that organized crime is at the same time a domestic and an international problem.

In terms of strategies, the main question is that of identifying which are the most effective policies for preventing and controlling organized crime. The distinction between prevention and control is based on the nature of the policies pursued (defensive or offensive). Although they may appear closely interlinked in terms of the effects that they produce, the difference lies in the goals that are to be achieved. For example, with respect to prevention policies, decreasing the demand for illicit goods and services reduces the opportunities for organized crime and prevents its expansion. Conversely, the deregulation, or the introduction of a different type of regulation, of the construction industry has tended to minimize its vulnerability, preventing criminal organizations from obtaining dominant, often monopolistic positions in the market and impeding their infiltration of the legitimate economy. On the other side, crime control policies aim at disrupting the structure of criminal organizations. These two policies, to be effective, should be integrated in a systemic approach. In fact, when crime control policies are used without considering the advantages of preventive measures, and general deterrence receives the overwhelming attention and is intended as the only form of prevention, the criminal justice system becomes overburdened and, therefore, less effective.

When considering how to prevent or reduce the incidence and expansion of organized crime, the main assumptions are the following: a) organized crime is a derivative of a complex society: the more complex societies become in their organizational structure, the more the crime problem reflects this complexity, featuring varying and more sophisticated organizational patterns; b) the criminal justice system is overloaded. Some experts are questioning whether the economic costs of control policies have reached the point of diminishing utility. Criminal law alone, and law enforcement in isolation, cannot succeed in dealing with the increasing complexity, flexibility and sophistication of large-scale organized crime operations; c) as organized crime is oriented to providing illicit goods and services and to infiltrating legitimate activities through a variety of methods, including corruption and violence, it is necessary to identify preventive strategies that, while reducing the opportunities, also increase the threshold of vulnerability of the economic systems to infiltration. These strategies need to be integrated with—and not opposed to—crime control measures.

These policies should be integrated, as they tend to achieve the same goal. On the one hand, there is the aggregated demand, while on the other, there is only the demand for illegal goods and services. Since the problem is highly complex, it should be treated as such, taking into account the trade-offs and side effects that might occur. Deeper knowledge and thorough evaluation of the different implications, as well as their effects in the different regions of the world are necessary for addressing this side of preventive strategies.

In relation to preventive measures against crime, the strengthening of the values of morality and legality must occupy a prominent position. They are the essential prerequisites for building social and cultural consensus against organized

crime. The operations of organized crime groups, and their continued existence in territories where they are established and traditionally located, require social consensus which helps minimize the risk of law enforcement activities and in the process facilitates recruitment of new members. Organized crime groups achieve consensus through a redistribution of resources and, consequently, by creating incentives to employment in economically and socially depressed areas, and also creating disincentives through corruption and fear of violence. Building and maintaining high moral standards in political and administrative structures through respect for the law is the first commitment for effective action against organized crime. A culture of morality and legality has strong messages to convey to those who violate the law and to those who allow them to do so. These values need to be implanted, nurtured with extreme care, and passed on to new generations. As organized crime represents the organized violation of these values, it is essential to devise and implement comprehensive strategies to restore legality wherever it has been eroded, and to create "incentives for morality" for those who are exposed or susceptible to corruption. Measures for the protection of the criminal justice system against violence and the fear of violence are in the direction of restoring legality. Codes of conduct established in different areas of Government and administration are also in the direction of restoring morality.

Policies oriented toward civic education can produce important results against organized crime by building a social consensus against it, disseminating information and increasing awareness of the cost of organized crime to society. In this context, mass media play an important central role. Messages transmitted by the media, however, may have contradictory educational effects, as they may often be oriented to producing spectacular or sensational effects. Fiction crime stories and non-fiction accounts are attracting increasingly wider audiences. Crime, violence, and corruption capture public attention in all parts of the world: the issue of reconciling the rights of information and freedom of artistic expression, with the civic and social responsibility of promoting values of morality and legality, is a very difficult one. The interrelationship between media and crime, and their role in crime prevention, are truly challenging questions that will become even more important in the future. Research and documentation on experiences acquired so far, as well as an increasing attention by educational institutions, are essential for gaining the support of the media in this area.

A second goal within the framework of preventive strategies is related to the need to reduce the level of vulnerability of legitimate industries to the infiltration of organized crime groups. The assumption is that organized crime tends to infiltrate the legitimate economy for different purposes, such as: a) laundering and investing the proceeds of crime in less-risky activities; b) acquiring respectability and social consensus for its members; and c) controlling the territory where it operates in order to maximize economic and political advantages and minimize the risk of apprehension, arrest, and conviction (law enforcement risk). Activities in the illegal markets and infiltration in the legitimate business are not separated in the life of an organized crime group. Opportunistic criminal organizations go where there is money to take, and mono-task organizations such as those specializing in drug trafficking

become opportunistic when they have to invest the money produced by their criminal activities. For both, infiltration of legitimate business is part and parcel of their activities. The reverse aspect of the same goal, i.e. reducing vulnerability, means increasing the transparency of the economic system.

Successful policies involve a good chemistry of regulation and deregulation, for example a strong regulation of licensing all those economic activities that could easily be infiltrated by organized crime has recently been pursued in a number of countries. Another example of regulation is the licensing of all those economic activities, such as the banking and financial services, that can be infiltrated by organized crime. In particular, the regulation of the transactions requested by the banks for anti-money laundering purposes helps to identify money-laundering operations and trace criminal organizations. Furthermore, new regulations and codes of conduct of business and professionals also help as an anti-money laundering policy, by keeping high standards of transparency in the system and avoiding illicit infiltration.

Preventive strategies and policies, although not sufficiently used in the past, are increasingly being explored in recent times in the area of organized crime. They are promising and cost effective if carefully planned and implemented. As such, they represent the natural complement to traditional crime control policies.

The Convention and its Protocols promote effective action against organized crime which is based on priorities in objectives and efficient management of resources. It is possible that in those countries where organized crime does not appear to the public as violent or as damaging as in others, it may not be regarded to as a top priority. Also, street crimes are closer to the day-by-day experience of the general public, than transnational organized crime. Decision makers, who are necessarily sensitive to public opinion and are also aware of the costs and the impact of these forms of crime on the society at large, may be forced to take decisions that privilege an immediate response to street violent crimes. The reality, however, is that there clearly exists a global-local nexus in relation to organized transnational crime.

As far as police action and criminal proceedings are concerned, the Convention and its Protocols promote strategic measures in the following areas:

- improvement of intelligence in order to identify the organizational structure of criminal groups, types of activities of these groups, interrelations between the various groups and the means used to sustain themselves;
- development of investigative methods that permit to "penetrate" criminal organizations, such as the creation of specialized investigative units, the interception of communications, the use of undercover operations and controlled deliveries, the protection of witnesses and victims, and rewards/ protection of turncoats;
- investigative methods and other mechanisms aimed at seizing and freezing illicit profits, thus facilitating confiscation, such as the establishment of appropriate structures at the national level (integrated proceeds of crime units, seized property management directorates).

Strategic measures are also those addressed to the law enforcement agencies in terms of enhanced capability, professionalism and coordination. Strategic intelligence should not be sacrificed to the tactical one. Investment in this area is essential, as is the cooperation between different agencies. The experience of concentrating energies and resources against organized crime in a specialized agency could be an innovative organizational measure only if this concentration truly happens. When this is not possible because of the notorious difficulties and resistance, substantial and effective coordination among existing agencies and between them and the prosecutors should be consistently pursued. Different patterns of cooperation and coordination can be found in the most experienced law enforcement agencies of many countries.

The Convention and its Protocols would promote responses to the growing threat to the economy posed by organized crime through the progressive development of preventive strategies, mostly addressed at preserving the stability of financial institutions and focused on:

- the provision of technical and forensic training for police, prosecutors and judges, enabling them to understand financial operations, and collect evidence;
- the limitation of bank secrecy and other relevant regulations;
- a more active role of financial institutions in appropriate controls, such as suspicious transactions reporting.

The criminal justice system alone, usually overburdened and overloaded, has structural limitations in controlling organized crime. This imposes a deep investment in preventive strategies, which probably had traditionally been neglected in the past. This development requires that the different systems to which these strategies are addressed are increasingly more integrated. The process which begun asking for more cooperation between the banking system and the criminal justice system should be extended to the educational system and to all the areas of media communications. Commissions of inquiry and overviewing legislative committees could encourage such a process which is a progressive one, involving a wide set of new policies and institutions traditionally outside the area of criminal justice. Property laws in common law systems and civil law in the civil law countries are being confronted with new forms of regulation of confiscated assets. Administrative law and other forms of regulation of public contracts could reduce the probability of corruption and defend the legitimate businesses from the infiltration of organized crime groups. Together with the existing "hard laws", a new set of "soft laws" is being accepted domestically and internationally for achieving new standards.

In conclusion, the Convention and its Protocols will promote an integration of strategies, policies, and mechanisms, with their effective and transparent management, as the challenging answer to the growing danger posed by transnational organized crime.

AN OVERVIEW OF ELECTRONIC SURVEILLANCE IN THE UNITED STATES; LAW, POLICY, AND PROCEDURE

*Julie P. Wuslich**

I. INTRODUCTION

In the United States, there are two primary levels of government—the federal system and the state system.[1] Although these independent systems each have their own governing bodies and law enforcement agencies, shared areas of legitimate governmental interests, such as combating drug-trafficking, result in overlapping and concurrent jurisdiction where the federal and state governments act independently or even jointly to address these mutual problems. This discussion will focus on the use of electronic surveillance as an investigative technique used in the federal system and will not discuss the systems of the various states and their laws.

As practiced in the federal system, electronic surveillance (commonly referred to as "wiretapping") is one of the most effective law enforcement tools for investigating many types of criminal enterprises. In the United States, electronic surveillance has been used successfully to prosecute traditional organized crime (the American mafia or La Costra Nostra), large drug-trafficking organizations, violent street gangs, and criminals involved in various types of public corruption and fraud. In a recent, for example, electronic surveillance was used successfully to uncover a fraud scheme that victimized the McDonald's restaurant chain and its customers. McDonald's was sponsoring games of chance for its customers, which involved prizes of up to one million dollars. The defendants, who were responsible for running the contests for McDonald's, pre-selected the winners in exchange for a portion of the prize money. In this case, the electronic surveillance led to the arrests of several persons who are currently awaiting trial.

Since 1990, the number of federal investigations using electronic surveillance has increased dramatically, and that trend is expected to continue. In 1990, federal law enforcement agencies submitted a total of 791 electronic surveillance requests to the Department of Justice for approval. Between October 1, 2000, and September 20, 2001, the federal agencies submitted over 1,700 electronic surveillance requests. Over the past ten years, there has been not only an increase in the number of electronic surveillance requests, but also a growing number of investigations that have multi-jurisdictional and international components, particularly in the area of drug trafficking and alien smuggling,

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** As a consequence of the terrorist attacks in the U.S.A. on 11 September 2001, Ms. Wuslich was unable to attend the 119th International Training Course. Copies of the two lectures Ms. Wuslich had prepared were distributed to all of the participants.

[1] The federal system includes federal law affecting all 50 states, as well as the territories of the United States Virgin Islands, the District of Columbia, Puerto Rico, Guam, and the Northern Mariana Islands. The state system is comprised of the 50 state governments.

where American traffickers and smugglers have co-conspirators overseas and in multiple states within the United States. Crime, once primarily a local concern, has gone global. The proliferation of the Internet and the use of hand-held communications devices, such as cellular telephones and two-way pagers, has increased a criminal's mobility, expanded the reach of his or her criminal enterprise, and shortened the time necessary to plan and execute even the most complex crimes.

While electronic surveillance is a very valuable technique, and has yielded tremendous results in some significant investigations, it is also a very intrusive one that implicates privacy rights protected under the United States Constitution, particularly the Fourth Amendment protection against unreasonable searches and seizures. For that reason, significant legal and policy restrictions have been placed on the use of electronic surveillance in the United States, mostly imposed by Congress and some imposed by the courts. These restrictions are designed to balance the needs of law enforcement to fight crime against the right of citizens to be free of overbroad or unnecessary government intrusion into individual privacy.

II. LEGAL REQUIREMENTS

A. Background Of Title III

In 1968, the United States Congress enacted the federal electronic surveillance statutes, which are often referred to as Title III of the Omnibus Crime Control And Safe Streets Act of 1968 (hereinafter, "Title III").[2] Congress enacted Title III in response to several United States Supreme Court decisions recognizing the applicability of constitutional protections to an individual's communications, and because it wanted to regulate the use of electronic surveillance by law enforcement and private citizens, resolve conflicts in the law, set a federal standard by which electronic surveillance would be conducted and, most importantly, to combat organized crime.[3] In 1968, organized crime (La Cosa Nostra) was seen as a plague on American society, and was credited with controlling various criminal enterprises, such as drug-trafficking, gambling, loansharking, and prostitution, and corruptly influencing legitimate businesses, labor unions, and the political process.

While Congress wanted to give law enforcement an effective tool to eradicate organized crime, it also wanted to tightly control the use of electronic surveillance to avoid abuse of the technique and to protect individual privacy, as constitutionally required. To accomplish these conflicting, yet important goals, Congress: 1) enacted a two-step approval process requiring Executive and Judicial Branch concurrence for two of three types of communications a law enforcement officer is permitted to intercept; 2) limited the types of crimes for which electronic surveillance can be authorized; 3) restricted electronic surveillance to thirty-day intervals and; 4) required the government to submit an affidavit to the authorizing authorities which would justify the electronic surveillance and outline how the government would comply with the statutory requirements. Each of these fundamental requirements and their related statutory components will be discussed, in turn.

[2] 18 U.S.C. §§2510–2522.

[3] United States Senate Report No. 1097, 90th Congress, 2nd Session, 1968.

B. The Approval Process

When law enforcement agents of a government investigative agency want to conduct a wiretap over a telephone or install listening devices in a location, they must obtain approval from two entities.[4] First, they must obtain approval from a statutorily specified high-level official at the Department of Justice, who must concur in the need for the proposed interception and find that it meets all of the statutory and constitutional requirements. The Department official does not authorize the interception, but instead authorizes the government agents to apply to the appropriate federal court for an order authorizing the interception. Second, the agents must then obtain such an order from a federal district court judge. Congress enacted the provision requiring Justice Department approval because it believed that centralized review by the Department would promote national uniformity in the way electronic surveillance was conducted, and because Congress wanted to hold a politically accountable official responsible for any abuses that might occur.

With regard to approval by a judge, Congress enacted this provision in accordance with constitutional principles that require a detached and neutral authority to review and authorize certain types of law enforcement action directed against the citizenry.

Unless the government has obtained both approvals, and in the correct order, it cannot conduct the electronic surveillance.[5] If the government fails to get both approvals, but conducts the electronic surveillance, the evidence must be suppressed and the government will not be allowed to use that evidence, or any derivative evidence, at trial.[6]

The approval process at the Justice Department usually takes a few days and involves the following process. When a federal investigative agency and the United States Attorney's Office in the location where the crime is being committed[7] is ready to conduct electronic surveillance in an investigation, it submits an affidavit as part of its application[8] to conduct surveillance to the Electronic Surveillance Unit, which is part of the Justice Department's Criminal Division. An attorney in that Unit reviews the affidavit for legal sufficiency. If the affidavit meets the statutory requirements, it is forwarded to the appropriate high-level official for review along with a recommendation that the request be approved. If the official agrees that the affidavit is legally sufficient, he or she will grant the request. At that point, the government may submit the application and approved affidavit to a judge, who may grant or deny the request to conduct the surveillance. If the judge grants the request, he or she will issue an interception order, which allows the law enforcement agency to conduct surveillance over a particular telephone/facility or within a particular location for a thirty-day period. Most judges will issue

[4] 18 U.S.C. §2516(1).

[5] United States v. Reyna, 218 F.3d 1108 (9th Cir. 2000).

[6] United States v. Chavez, 416 U.S. 562 (1974).

[7] Many times throughout this paper, the term "government" is used to refer collectively to the federal investigative agencies and the United States Attorney's Offices, or their representatives.

[8] 18 U.S.C. §2518(1); United States v. Williams, 124 F.3d 411 (3d Cir. 1997)(The procedure of submitting a sworn affidavit by a law enforcement officer, which is attached to prosecutor's application, is sufficient.).

the order the same day they receive the request from the government.

It should be noted that when Title III was amended in 1986 to specifically provide for the interception of electronic communications, which are communications that occur, *inter alia*, over a paging device, a computer, or a facsimile machine, Congress required only approval by a judge, without the predicate Department review and approval.[9] Congress did not consider the interception of these communications to involve the same level of intrusion into a person's privacy as the interception of a person's telephone calls or private conversations. Nevertheless, by agreement between Congress and the Justice Department, internal Department policies require review and approval prior to applying to the court for an order authorizing the interception of electronic communications over computers, facsimile machines, and two-way paging devices.

The requirements for the government's affidavit in support of the electronic surveillance application to the court are discussed below.

C. The Affidavit

1. Sworn to by a Law Enforcement Officer

Like a traditional search warrant under longstanding United States law, Title III requires the application to be made by a federal law enforcement officer, who has investigative and arrest powers for the crimes under investigation and who swears to the facts and statements set forth in the affidavit.[10] As a matter of policy, the Department of Justice limits the number of federal agencies which can conduct electronic surveillance. The Department does this to ensure that only the agencies with the most expertise, resources, and experience can conduct electronic surveillance as part of their investigations. Those agencies that are not historically approved to conduct electronic surveillance can do so only when partnered with an approved agency, usually the Federal Bureau of Investigation ("FBI"), where both agencies have jurisdiction over the crimes under investigation.

2. Identifying the Persons Committing the Crimes

Title III requires the government to identify by name, if it can, the persons who are committing the crimes under investigation and who are expected to be intercepted over the specified telephone or within the location.[11] This provision serves two purposes. First, it requires that the government determine if the persons identified in the affidavit have been the subject of prior electronic surveillance.[12] If they have, the government must include in the affidavit all of the information about such prior surveillance. One of the reasons this information is required is so that the judge may determine if the government is being overzealous in its investigation of these individuals, such as could be the case if numerous, prior court-authorized interceptions had failed to produce any evidence of criminal involvement by the targets. In such a situation, the judge may require the government to justify the request.[13] Second, at the conclusion of the

[9] 18 U.S.C. §2516(3); The Electronic Communications Privacy Act of 1986, United States Senate Report No. 541, 99th Congress, 2nd Session, 1986.

[10] 18 U.S.C. §2518(1).

[11] 18 U.S.C. §2518(1)(b)(iv).

[12] 18 U.S.C. §2518(1)(e).

[13] 18 U.S.C. §2518(2).

investigation, the government must give notice to the persons named in the affidavit that they were intercepted so that these persons can prepare their defense if charges are brought, or otherwise challenge the legality of the surveillance.[14]

3. Identifying the Facility or the Location and the Type of Communication

Next, under Title III, and in compliance with the Fourth Amendment, the government must identify, with particularity, the telephone facility or location that will be the subject of the electronic surveillance, and the type of communication that will be intercepted, i.e., telephone conversations (wire communications), face-to-face conversations (oral communications), or computer transmissions, pager data, or facsimile transmissions (electronic communications).[15] This requirement ensures that the law enforcement officer who is conducting the surveillance knows what facility or location—and what kind of communications—he or she is allowed to intercept. This prevents the law enforcement officer from conducting an open-ended or overly broad search, targeting any telephone or location used by a subject (except for "roving" interceptions, discussed *infra*). However, once the government has established that a particular telephone or a location is being used to facilitate criminal activity, the court's order generally provides that the government can intercept the criminal-related communications of anyone who may use that telephone or location, and not just those persons named originally in the court order.[16]

The exception to the particularity requirement is the "roving" provision of Title III. Under Title 18, United States Code, Section 2518(11), the government can obtain a court order for a 30-day period to intercept communications over any telephone/facility or within any location that a specific subject may be using to commit the crimes. For example, drug traffickers often use a series of different cellular telephones to carry out their criminal activities, and will often use a telephone for only a few days in order to prevent law enforcement detection of their crimes. By the time the government has identified the telephone the subject is using and obtains the requisite approvals, the subject may no longer be using it. The roving provision allows the government to intercept communications over any telephone the subject may obtain and use during the 30-day period as long as the government can show that the subject's behavior has the effect of thwarting its ability to intercept his or her calls, and that the subject has a pattern of using multiple telephones to conduct his or her criminal activity. With respect to a location, the government must show that it is unable to specify in advance to the reviewing court where the subject and his or her co-conspirators will be meeting to conduct their criminal activity. In one case, the government obtained a court order to intercept communications of Mafia members who were planning to conduct a ceremony to induct new members into the crime family.[17] The government's confidential informant, who would be present at the ceremony, would not learn of the meeting location until a few hours before the ceremony was to take place. A more recent example involved a public corruption case, wherein the subject of

[14] 18 U.S.C. §2518(8)(d).

[15] 18 U.S.C. §2518(1)(b)(ii), (iii).

[16] United States v. Kahn, 415 U.S. 143 (1974).

[17] United States v. Ferrara 771 F. Supp. 1266 (D. Mass. 1991).

the investigation scheduled meetings with his co-conspirators at the last minute to make bribe payments, and had not been seen meeting with them at the same location twice.

After the government obtains a court order to conduct roving interceptions over different telephones or within different locations, the government may only intercept the communications of the subjects identified in the affidavit as the users of the telephones or locations, and subjects in communication with them. If other subjects of the investigation are using the telephones or locations, without the named subjects also participating in the communication, the government cannot intercept those communications, even if they are criminal in nature.[18]

4. Listing the Crimes under Investigation

Title III allows for electronic surveillance only when the government is investigating one of several crimes listed in the statute. Congress decided that electronic surveillance should be used to investigate only the most serious types of offenses. If the government wants to wiretap a telephone (wire communications) or install listening devices in a location to capture face-to-face communications (oral communications), the government must be investigating one of the enumerated offenses listed in Title III.[19] If the government wants to intercept communications over a computer, a pager, or a facsimile machine (electronic communications), the government only needs to be investigating a federal felony offense, which again recognizes Congress's view that electronic communications warrant lesser protection than required for wire and oral communications.[20] By requiring the government to identify which crimes are under investigation, the statute again ensures that the electronic surveillance will not be overly broad or unnecessarily intrusive.

5. Establishing Probable Cause

In accordance with the Fourth Amendment, Title III requires the government to outline the facts that show a particular telephone or location is being used to facilitate the commission of criminal acts.[21] There are several ways the government can do that. For example, the government may have a confidential informant or an undercover law enforcement agent who can engage the subject in a discussion of criminal activity during a call over the telephone or during a meeting within the location. The drug dealer may instruct the informant to call the drug dealer on a particular telephone when the informant wants to buy cocaine. Thereafter, the informant calls the drug dealer at that telephone. During the call, the informant asks to buy a quantity of cocaine and the dealer agrees to make the sale at a nearby parking lot. The informant travels to the parking lot, meets the dealer, and buys the cocaine. It is clear from that chain of events that the drug dealer used the telephone to facilitate his or her drug business.

6. Establishing the Need for the Electronic Surveillance

Because electronic surveillance is so intrusive, the government must show why it needs to conduct electronic surveillance to gather the evidence necessary to prosecute the subjects.[22] Specifically, the government must state

[18] United States v. Gaytan, 74 F.3d 545 (5th Cir. 1996); United States v. Jackson, 207 F.3d 910 (7th Cir. 2000).

[19] 18 U.S.C. §2516(1).

[20] 18 U.S.C. §2516(3).

[21] 18 U.S.C. §2518(1)(b).

[22] 18 U.S.C. §2518(1)(b).

what other investigative procedures have been tried, and if not, why they would be unlikely to succeed or would be to dangerous to use. These other procedures include physical surveillance of the subjects, search warrants executed at locations or residences known to be used by the subjects, interviews of the subjects or their associates, the use of a grand jury to investigate the subjects, examination of telephone records for their telephones, and seizures of contraband. If the government has not performed each of these investigative techniques, it must explain why it cannot do so, or, even if it did, why using the technique would not be sufficient in and of itself to meet the goals of the investigation. For example, the government may have conducted physical surveillance of the subjects, but the subjects observed the surveillance agents and stopped their criminal activities, or the subjects routinely engage in counter-surveillance maneuvers, which create a danger to the police officers or others, or the subjects live or travel in an area that makes such surveillance difficult. In one case, the FBI was investigating a cocaine conspiracy in a small town. One day, FBI agents were conducting physical surveillance, and the mayor of the town began to follow the agents. The mayor escalated his pursuit of the agents and forced the agents to drive out of town. The FBI learned later that the mayor chased the agents because they were suspicious strangers. Moreover, the government may have used confidential informants or undercover agents at one time in their case producing some evidence supporting the investigation, but the subjects discovered their identities and to continue to use them would compromise their safety. The government may also have seized contraband from a vehicle during a search, but the driver of the vehicle refuses to cooperate or was only privy to limited information about the person to whom he was delivering the drugs.

7. Prior Electronic Surveillance

Title III requires that the government set forth in the affidavit whether any of the subjects, facilities, or locations have been the subject of prior surveillance.[23] The government is required to give a full and complete statement of any prior electronic surveillance orders. That statement includes the dates of the prior orders, the names of the subjects of the investigation in those orders, and what facilities or locations were the subject of the electronic surveillance. As explained previously, one of the purposes of this requirement is for the judge to determine if the government is being overzealous in its investigation of these individuals. These checks must be done by all of the investigative agencies that may have conducted electronic surveillance of the subjects, and not just the agency making the instant request.

8. Statement of Time

Under Title III, the government can only conduct electronic surveillance for a period of up to 30 days, and the affidavit must contain a statement to this effect.[24] If the government has not met its investigative goals during the first 30 days of interceptions, the government may seek approval from the Department of Justice and the judge to conduct interceptions for another 30-day period. Each time the government applies for an extension order, it must describe the evidence derived from the wiretap and demonstrate a continuing investigative need to intercept the communications.[25] There is no statutory limit on the number of times the government can seek to

[23] 18 U.S.C. §2518(1)(e).

[24] 18 U.S.C. §2518(1)(d), (5).

[25] 18 U.S.C. §2518(1)(f).

extend the electronic surveillance. As long as the government meets the statutory requirements each time, and the judge so permits, the government may continue to conduct surveillance. The average electronic surveillance investigation is conducted for approximately four months. It is the exceptional electronic surveillance investigation that lasts for a year or longer.

9. Minimization

Title III requires that the government minimize the interception of communications not related to the crimes under investigation.[26] This means that the government is required to terminate the interception of the communication when the communication does not concern the criminal matters under investigation or any other type of criminal activity.[27] For example, if a law enforcement officer is listening to a telephone call and the subjects are not talking about their identified criminal activities or any other crime, the officer must turn off the monitoring equipment. After a reasonable interval, the officer can turn the equipment back on to determine if the call has become criminal in nature. If the subjects are now talking about their crimes, the officer can listen to and record the call. When monitoring a call, the officer may have to turn the equipment off and on several times. To determine if the government lawfully minimized the communications, the courts consider the following factors: 1) the number of co-conspirators; 2) the complexity of the crimes being committed; 3) the size and longevity of the criminal enterprise; 4) the actions taken by the monitoring officers to minimize the communications and whether they showed a high regard for the subjects' privacy; 5) the use of coded language by the subjects; 6) whether the telephone or the location is the center of the criminal activity; 7) judicial review and approval of the minimization efforts; and 8) whether the monitoring agents were adequately instructed on the proper minimization techniques.[28]

There is a statutory exception to the requirement to minimize communications as they are occurring. If the subjects are conversing in a foreign language or in a code that the law enforcement officers do not understand, and the government does not have translators available to translate and minimize the communications as they are occurring, Title III allows the government to record the conversations in their entirety and minimize the conversations later.[29] This procedure is called "after-the-fact minimization." The key to after-the-fact minimization is that the process used must protect the subject's privacy interests to approximately the same extent as would contemporaneous minimization. To achieve this result, translators are told to translate only the portions of the recorded communications that seem relevant to the crimes under investigation. The translators then give only the relevant portions of the communications to the law enforcement

[26] 18 U.S.C. §2518(5).

[27] Congress anticipated that communications about crimes that were not identified in the order might be intercepted during a lawfully conducted wiretap. The government may intercept those communications, and disseminate those communications to law enforcement officers for further investigation. If the government wants to use those communications in subsequent court proceedings, it may do so if it obtains an order under 18 U.S.C. §2517(5).

[28] United States v. Parks, 1997 WL 136761 (N.D. Ill.).

[29] 18 U.S.C. §2518(5).

officers investigating the case. The non-relevant parts of the communications are placed under seal with the court and are not reviewed by the law enforcement officers.[30]

While not explicitly provided for in Title III, there are other instances when the government cannot minimize the interception of communications as they are occurring, but must intercept, record, and review the entire communication to determine its relevance to the investigation.[31] One instance involves electronic communications over facsimile machines, computers, and pager devices, and another instance involves voice-mail left on a telephone system. Given the nature of the communication and the way it is transmitted, the government must intercept the whole communication and use the after-the-fact minimization procedures, disclosing and using only those communications that are relevant to the investigation, and sealing the information that is not relevant.

III. EMERGENCY INTERCEPTIONS

Congress, in recognizing that there are emergency circumstances under which the normal approval processes must be circumvented, enacted a provision by which law enforcement may conduct electronic surveillance without first obtaining a court order. A discussion of that provision follows.

With the approval of a highly-placed Department of Justice official, Title III allows the government to conduct interceptions over a particular facility or within a location without first obtaining a court order when: 1) there is an imminent threat of death or serious bodily harm to an individual; 2) there is a threat to national security; or 3) events characteristic of organized crime are about to occur, and interceptions must begin before a court order can, with due diligence, be obtained in order to prevent the harm, forestall the threat, or capture evidence of the organized crime activity.[32] To illustrate these principles and the process involved, consider the following example. The FBI receives information that several armed gunmen have robbed a bank and have taken hostages. Upon arrival at the scene, the FBI observes through the windows of the bank three masked, armed gunmen and four hostages, bound and blindfolded. The FBI also sees that one of the gunmen is talking on a cellular telephone, leading them to believe that the gunman is conversing with co-conspirators. The FBI hostage negotiator reports that the gunmen are making demands for money and safe passage from the bank and out of the country, and that they want to take one of the hostages with them. The gunmen have given the FBI four hours to comply with their demands. At this stage, the FBI identifies the telephone that the gunman is using[33] and decides to contact the telephone company to obtain records for the telephone that will show what telephone numbers are being called from the gunman's telephone.[34] An analysis of the calling records reveals that the gunman's telephone is being used to call a telephone that is registered to the person who also appears as the registered owner

[30] United States v. David, 940 F.2d 722 (1st Cir. 1991); United States v. Padilla-Pena, 129 F.3d 457 (8th Cir. 1997).

[31] United States v. Tutino, 883 F.2d 1125 (2nd Cir. 1989).

[32] 18 U.S.C. §2518(7).

[33] When turned on, a cellular telephone emits certain signals. Law enforcement can capture these signals through specialized equipment and identify the telephone.

[34] 18 U.S.C. §2703(c)(1)(C).

of a suspected getaway car parked outside of the bank. (A check of motor vehicle records reveals that the name and address information listed for this person is fictitious.) Unable to proceed further, the FBI decides to seek emergency authorization to intercept communications over the telephone used by the gunman. The FBI hopes to obtain information that will help to resolve the situation peacefully, as well to gather evidence about the identities of the gunmen and any of their co-conspirators. To begin the process, the FBI contacts a federal prosecutor in the appropriate United States Attorney's Office, who contacts the Criminal Division of the Justice Department and talks to one of the lawyers in the Electronic Surveillance Unit. That lawyer coordinates the approval process orally within the Department and with the FBI, and one hour later, the Attorney General personally grants the head of the FBI permission to decide whether an emergency situation exists as defined by the statute and, if so, to intercept calls over the gunman's phone.

From the time the Attorney General authorizes the interception, the prosecutor has 48 hours to obtain a court order approving the emergency interception. The court order must be based on a written affidavit that is sworn to by a law enforcement officer and sets forth the facts known at the time the emergency was authorized by the Attorney General. If the prosecutor fails to obtain the order within the 48-hour time period, the intercepted telephone calls and any evidence derived from the electronic surveillance must be suppressed. If the emergency situation has not been resolved within the 48-hour period, and the government wants to continue to intercept calls over the telephone, the government must submit an affidavit to the Department of Justice for approval to seek a court order to do so. It is important to note that all of the requirements of Title III apply to emergency situations. The government must have probable cause to believe that communications about a crime listed in the statute will be intercepted over the telephone/facility, or within the location, and that alternative investigative techniques will not suffice to prove the crimes or forestall the danger or threat.

IV. POST-INTERCEPTION REQUIREMENTS

A. The Sealing Requirement

Title III requires that when the government has concluded its electronic surveillance investigation, it must take the original recordings of the communications and place them under seal with the court.[35] The sealing requirement ensures the integrity of the recordings and enables their use at trial. If the government fails to seal the recordings in a timely manner, the court may prohibit their use at trial.[36] Because sealing is only required at the end of the electronic surveillance investigation, the government could continue the interceptions for over a year without having to seal the recordings. However, the Justice Department recommends sealing the recordings every 30 days to ensure the continuing evidentiary value of the recordings.

B. The Notice Requirement

Within 90 days of the conclusion of the electronic surveillance investigation, the government must notify the named subjects that they were the targets of an electronic surveillance investigation.[37]

[35] 18 U.S.C. §2518(8)(a).

[36] United States v. Ojeda-Rios, 495 U.S. 257 (1990).

[37] 18 U.S.C. §2518(8)(d).

This provision gives the subjects the opportunity to challenge the electronic surveillance evidence. If, at the end of the 90-day period, the government is still investigating the subjects, it may seek to postpone the notice for another 90 days, or until further order of the court.

V. ACTIVITY NOT COVERED BY TITLE III

A. Consensual Recordings

Title III, by its terms, does not apply to the interception and recording of telephone calls, face-to-face conversations, or computer or pager transmissions that are made by a law enforcement officer, a confidential informant, or a private citizen, when that person is a participant in the communication.[38] The legal rationale is that a person does not have a reasonable expectation to believe that the person with whom he or she communicates will keep his or her confidence.[39] Therefore, the government does not have to obtain Department of Justice approval or a court order before an undercover government agent or a confidential informant may record a telephone call or a conversation with the subject of a criminal investigation. Additionally, a private citizen may record his or her communications with others as long as he or she is not recording the communications for the purpose of committing a crime or a tortious act. An example of a criminal or tortious act would be that the communication was recorded in order to blackmail someone.

Consensual recordings of a person's communications are strong evidence of that person's criminal culpability, and they are commonly used to establish that a person is using a location or a telephone to facilitate the commission of a crime. Therefore, consensual recordings are a very valuable technique for law enforcement to use when a government agent or an informant has gained the trust of someone suspected of criminal wrongdoing.

B. Prison Monitoring

Under Title III, the government may monitor inmate calls over prison telephone lines without obtaining Department of Justice approval or a court order. Specifically, 18 U.S.C. §2510(5)(a) allows the recording of telephone conversations of inmates by prison officials to ensure the safe and orderly administration of the prison. If, however, the government wants to investigate the criminal activities of a particular inmate involving crimes with persons outside of the prison system, the Department of Justice, as a matter of policy, requires the government to obtain its approval and a court order to conduct the electronic surveillance.

C. Video Surveillance

Another common investigative technique that is not proscribed by Title III involves the use of closed-circuit, hidden cameras to record a subject's criminal conduct. Although Title III does not regulate or prohibit the use of video surveillance, several court opinions have circumscribed its use.[40] In accordance

[38] 18 U.S.C. §2511(2)(c), (d).

[39] Lopez v. United States, 373 U.S. 427 (1963); Hoffa v. United States, 385 U.S. 293 (1966); United States v. White, 401 U.S. 745 (1971).

[40] United States v. Falls, 34 F.3d 674 (8th Cir. 1994); United States v. Koyomejian, 970 F.2d 536 (9th Cir. 1992); United States v. Cuevas-Sanchez, 821 F.2d 248 (5th Cir. 1987); United States v. Biasucci, 786 F2d 504 (2d Cir. 1986); United States v. Torres, 751 F.2d 875 (7th Cir. 1984); United States v. Mesa-Rincon, 911 F.2d 1433 (10th Cir. 1990).

with these opinions, the government must obtain a court order to conduct video surveillance in any area where the subject has a reasonable expectation of privacy. The court order must be based on a warrant sworn to by a law enforcement officer that establishes reason to believe that the subject(s) will be engaged in criminal conduct in the location that will be videotaped. Video surveillance is often used in drug-trafficking cases where the government believes that contraband will be stored at, or delivered to, a particular location, and it wants to identify the persons involved in the drug activity.

VI. SUPPRESSION OF TITLE III EVIDENCE

Title III contains a statutory suppression rule that provides that the government cannot use electronic surveillance evidence or any evidence derived from the surveillance in a court proceeding if: 1) the communications were intercepted unlawfully; 2) the court order approving the electronic surveillance was insufficient on its face; or 3) the interceptions were not conducted in accordance with the order.[41] Because the court order authorizing the electronic surveillance is based on an *ex parte*, *in camera* showing of facts by the government, the judge who authorized the wiretap, when presented with a defense motion to suppress, may reconsider the original facts and decide that suppression is warranted. A court hearing to determine if the evidence will be suppressed is triggered by a motion to suppress the evidence by the defendant's attorney.[42]

Title III evidence has been suppressed because the government failed to establish an investigative necessity for the electronic surveillance.[43] Title III evidence has also been suppressed because the government failed to determine if the subjects had been the subject of prior electronic surveillance,[44] and when the government failed to obtain Department of Justice approval before it obtained the court order for the electronic surveillance.[45]

Because of the safeguards placed on the government's use of electronic surveillance, Title III evidence is rarely suppressed.

VII. CONCLUSION

While Title III limits government conduct with regard to the use of electronic surveillance, this law has provided reasonable guidelines well understood by investigative agents and prosecutors, and these guidelines ensure that the interceptions conducted pursuant to court orders will result in the successful prosecutions of those who communications are intercepted.

[41] 18 U.S.C. §2515; United States v. Ruggiero, 824 F. Supp. 379 (S.D.N.Y. 1993).

[42] 18 U.S.C. §2518(10)(a).

[43] United States v. Aileman, 986 F. Supp. 1228 (N.D. Cal. 1997).

[44] United States v. Luong, No. CR-94-0094 MHP (N.D. Cal. 7/14/98) (unpublished).

[45] Reyna, supra.

ELECTRONIC SURVEILLANCE IN THE UNITED STATES: A CASE STUDY

*Julie P. Wuslich**

I. INTRODUCTION

The following is a case study of a typical electronic surveillance investigation. This case study begins with the initial investigation, and proceeds through preparing the evidence for trial.

II. THE INVESTIGATION

On February 22, 2001, FBI Special Agent Clark Kent interviewed a confidential government informant ("CI-1"). CI-1 has provided reliable information in other investigations, and in those investigations, CI-1 bought drugs and introduced undercover agents to the targets of those investigations. CI-1's information has been used previously in arrest warrants and search warrants. The information that CI-1 has provided in this case has been corroborated by physical surveillance of the subjects, and information from other confidential informants and an undercover agent. CI-1 has a prior conviction for possession of cocaine, and is cooperating with the FBI in this investigation in hopes of gaining leniency for a family member who has pending drug charges.

During the interview on February 22, CI-1 told Agent Kent that Robert Gerard ("Gerard") and members of his drug crew distribute cocaine and heroin in the Keeney Heights area of Washington, D.C., and that CI-1 bought cocaine from "J-Boy," a member of Gerard's crew, in December 2000. CI-1 identified the following persons as members of Gerard's drug crew: "Little G," "Kay Kay," and "Sweet Nancy." Agent Kent showed driver's license photographs to CI-1 and CI-1 was able to identify Little G as Gene Blum, Kay Kay as Katrina Karr, and Sweet Nancy as Nancy Prim.

On March 30, 2001, Agent Kent learned that Fred Hendricks was murdered that day in the same neighborhood in Keeney Heights where Gerard lives. Agent Kent reviewed the official police reports written by the local police officers investigating the murder. Based upon those reports, Agent Kent learned that Gene Blum, Bridget Lynn, and Natasha Spencer were present at the scene of the murder on March 30. Those reports also contained the following information: The police questioned each of these individuals about the murder. Lynn and Spencer denied any knowledge of the circumstances surrounding the murder. As to Blum, when police arrived at the scene, he was seen trying to leave the area on a motorcycle. Blum was detained and he volunteered to answer some questions. During the questioning, Blum advised the police that there was a quantity of cocaine inside a locked compartment in the motorcycle. Blum gave the keys to the compartment to the

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** As a consequence of the terrorist attacks in the U.S.A. on 11 September 2001, Ms. Wuslich was unable to attend the 119th International Training Course. Copies of the two lectures Ms. Wuslich had prepared were distributed to all of the participants.

officer. Later that day, the police obtained a search warrant for the motorcycle compartment. The next day, the search warrant was executed and approximately one quarter of a kilogram of cocaine was found inside. Because Blum is suspected in the murder of Fred Hendricks, a decision was made not to charge Blum with any crime at this time, but rather to continue the investigation.

On April 5, 2001, Gerard's house was burned to the ground. Agent Kent reviewed police reports of the incident, which reflected that witnesses saw three unidentified males enter the house carrying gasoline, and set the house on fire. Two persons, one of whom was an infant male, were inside the house when the fire was set, and died as a result. Gerard was not at home at the time of the fire.

On April 25, 2001, Agent Kent interviewed Stephen Simon, who has been indicted on charges of distributing cocaine. Simon provided the following information as part of a plea bargain in his pending case. In the presence of his attorney, Simon told Agent Kent that he was a member of a rival drug gang, and that he knows Gerard and Blum. Simon stated that Gerard had given Hendricks two kilograms of cocaine on consignment, and when Hendricks failed to pay Gerard for the cocaine, Gerard had Hendricks killed. Simon stated that he learned this information from his girlfriend, Natasha Spencer, who was at the scene of the murder. Simon stated further that Gerard receives large shipments of cocaine every few months, and that he sells cocaine for $17,500 per kilogram.

On May 5, 2001, the local police interviewed an individual who was willing to provide information about Gerard's drug trafficking activities. This person ("CI-2") has never provided information to law enforcement before and, therefore, his reliability is unknown. CI-2 stated that Gerard and Blum are heavily involved in drug trafficking and are very violent. On May 11, 2001, CI-2 told the local police that Gerard and members of his crew were at the Starlight Motel in Raljon, Maryland. Based on this information, local police officers established surveillance at the motel. During the surveillance, officers saw Gerard, Blum, and several unidentified males enter and exit two motel rooms.

On May 13, 2001, an undercover FBI agent ("UC") was sent to the Starlight Motel to apply for employment. On May 18, 2001, the UC began work at the Starlight Motel as a maintenance worker.

On May 20, 2001, CI-2 told the local police that Gerard and Blum were at the Starlight Motel, and that they were selling drugs from a room there. That day and the following day (May 21, 2001), surveillance agents observed Gerard and Blum entering and exiting room 123. In addition, throughout the day, several unidentified males were seen entering room 123, staying a few minutes, and then leaving the room.

On May 25, 2001, CI-2 stated that Blum had gone to the Starlight Motel again to sell drugs. The local police conducted surveillance of the motel and saw Blum exit room 178. Blum entered a Chevy Suburban truck that was being driven by a female. Surveillance agents later identified this female from photographs as Nancy Prim. One hour later, agents saw the Chevy Suburban return to the motel. Blum exited the car and entered room 178. Prim, the driver, departed the area.

On May 25, 2001, the UC was working at the motel, when someone from room 178 called the front desk to complain about a maintenance problem. The UC went to room 178 to fix the problem and observed Blum and two unidentified males inside the room. When the UC arrived, he heard Blum refer to one of the unidentified males as "J-Boy." While in the room, the UC used the telephone to make a call to another police officer. During the call, the UC mentioned going to a party and getting some cocaine to take to the party. Blum overheard the UC's call and offered to sell the UC some cocaine. The UC, who was wearing a recording device, recorded his conversation with Blum. During the conversation, Blum stated, "I can get you all the coke you want. How much do you want?" The UC replied, "I'll take an oz (one ounce of cocaine)." Blum told the UC to call him later at the motel. The UC then left the room.

That evening, the UC called the telephone in room 178 and spoke to Blum. The UC recorded his conversation with Blum. During the call, the UC and Blum agreed to a price of $1,100 for one ounce of cocaine. Blum gave the UC his pager number and told the UC to page him at that number when the UC was ready to conduct the drug deal.

On May 26, 2001, at 9:15 a.m., the UC paged Blum at the number he was given, and input the telephone number of his cellular telephone. At 9:20 a.m., the UC received a call from Blum. The caller identification device on the UC's cellular phone revealed that Blum was calling from a telephone bearing the number (202) 514-1234. During this conversation, which the UC recorded, the UC told Blum that he was ready to buy some cocaine from him. Blum instructed the UC to meet him at room 178 at the Starlight Motel at 10:30 a.m. Blum then ended the call. Later, the FBI subpoenaed[1] telephone records for Blum's phone, (202) 514-1234 (hereinafter, referred to as the "target phone"). Those records show that immediately after Blum ended the call with the UC, the target phone was used to call a pager. The FBI subpoenaed records for the pager from the service provider, and learned that the pager is subscribed to in the name of Dorothy Gerard, Gerard's mother. At 10:30 a.m., the UC arrived at the motel and met Blum in room 178. The UC bought one ounce of cocaine from Blum in exchange for $1,100. Meanwhile, surveillance agents were outside the motel. After the transaction, the UC left the motel room, followed by Blum. Blum entered a white Ford Navigator sport utility vehicle and drove away from the motel. Surveillance agents followed Blum to Interstate Highway 95. While Blum was driving on Interstate 95, he slowed down and drove along side of the car being driven by the surveillance agents. Blum waived to the agents and then sped off. Realizing that they had been detected, the agents discontinued surveillance of Blum.

On June 2, 2001, the UC attempted to contact Blum at the pager number Blum had given the UC. The UC never received a call back from Blum.

On June 22, 2001, a local police officer contacted Agent Kent and advised that she had been contacted by a confidential informant ("CI-3"). The police officer advised Agent Kent that CI-3 was reliable, and that CI-3 had provided credible information to her in the past. The police officer advised that CI-3, who is associated with many gang members, knows that Blum uses the target phone in furtherance of his drug business.

[1] 18 U.S.C. §2703(c)(1)(C).

On June 28, 2001, Agent Kent learned of another confidential informant working for the local police ("CI-4"). CI-4 has never provided information before, but knows Blum and has bought cocaine from Blum on several occasions within the last six months, most recently in the beginning of June 2001. CI-4 stated that he has never bought cocaine from Gerard, but knows that Blum works for Gerard as a drug distributor. CI-4 indicated that he would be willing to contact Blum to buy cocaine, but that he was not willing to record any of his conversations with Blum. CI-4 stated that, given the drug crew's reputation for violence, he feared retribution from Blum or others, if the recording equipment was detected on his person.

On August 1, 2001, at 1:20 p.m., CI-4 paged Blum and input the telephone number where CI-4 could be reached. At 1:45 p.m., Blum called CI-4. Subpoenaed phone records for the target phone show that at approximately 1:45 p.m., the target phone was used to call CI-4's phone. According to CI-4, he told Blum that he wanted to buy an ounce of cocaine. Blum told CI-4 to meet him at a gas station in one hour. One hour later, CI-4 went to the gas station. Before CI-4 arrived at the gas station, Agent Kent searched CI-4 for contraband, with negative results, and gave CI-4 $1,100 in pre-recorded government funds. Surveillance agents then observed CI-4 approach the gas station. A short while later, Blum arrived at the gas station in a red Lexus automobile. Blum got out of his car and walked over to CI-4. Agents saw CI-4 hand something to Blum. Blum returned to his car, reached inside, and returned to CI-4. Blum handed an object to CI-4. CI-4 left the gas station and Blum drove away. CI-4 then met with Agent Kent and gave him one ounce of a substance that later tested positive for the presence of cocaine.

On August 5, 2001, Agent Kent subpoenaed telephone records for the target phone from the service provider. A review of those records shows that between July 2, and August 2, 2001, the target phone was used to make and receive a total of 1,144 calls. Of that total number of calls, Agent Kent determined that the target phone was used to make calls to the following telephone numbers: 1) 34 calls to the pager believed to be used by Gerard, most recently on August 1, 2001; 2) 22 calls to a residential phone subscribed to by Dorothy Gerard, most recently on July 23, 2001. Agents conducting physical surveillance have seen Gerard frequent this residence; and 3) 19 calls to a telephone at the Starlight Motel, most recently on July 28, 2001. Agents observed Gerard, "J-Boy," and Nancy Prim at the Starlight Motel on July 22, 2001, and saw "J-Boy" at the motel on July 28, 2001.

III. POST-APPROVAL PROCESS

Based upon the above facts, on August 10, 2001, the FBI agent and the prosecutor submitted an application and an affidavit[2] to the Department of Justice, seeking approval to conduct electronic surveillance over Blum's phone—the target phone—in connection with their investigation of federal drug crimes being committed by Blum and others. On August 12, 2001, the Department of Justice approved the application,[3] authorizing the prosecutor to seek a court order for the electronic surveillance. On August 13, 2001, the prosecutor submitted the application and affidavit to a judge for approval. On

[2] See Attachments A and B.

[3] See Attachment C.

August 13, 2001, the judge signed the order[4] granting authorization to intercept wire communications over the target phone used by Blum to investigate federal drug violations being committed by him and his co-conspirators.

IV. CONDUCTING THE ELECTRONIC SURVEILLANCE

A. The Logistics

1. The Personnel

Conducting an electronic surveillance investigation is a manpower intensive operation, requiring the requisite number of monitors (those persons who will be intercepting and recording the communications) and an adequate number of law enforcement officers to provide investigative assistance during the course of the investigation.

Depending on the type of criminal activity being investigated, the government may want to monitor the telephone or the location, 24 hours a day, seven days a week. In a typical drug investigation, like the one described above, the government will monitor the telephone on a constant basis and an issue will be whether the government can locate and train enough monitors in order to comply with Title III's minimization requirements as outlined in 18 U.S.C. §2518(5). In addition to the hours during which the interception will be conducted, the government must determine if it will need monitors who speak a foreign language or who are conversant in the coded language that the subjects may be using to discuss their criminal activity. Drug dealers often discuss their illegal activities in coded terms. In one investigation, the drug traffickers had their own language, where they used numbers to represent the letters of the alphabet. By the end of the investigation, the government had a complete dictionary of coded words that the drug dealers used.

Many times, the monitors are not federal law enforcement agents. Title III permits the use of local and state police officers and contract personnel (such as foreign language translators) to monitor the communications as long as they are under the supervision of a federal agent.[5]

As to the requisite number of law enforcement personnel, it is critical that the government has enough officers to engage in complimentary investigative action to corroborate and support the electronic surveillance evidence. For example, as explained above, drug dealers often use coded language when conversing with one another over the telephone, and sometimes will use code words that reflect legitimate business activities in which they may be involved. In one recent case, the drug dealer owned an auto repair shop. When the dealer discussed his drug trafficking activities over the telephone, he often used terminology related to the auto repair business. Physical surveillance of his business was used to show that, despite his claims that his calls were related to his legitimate business, he had very few customers, performed very little, if any, auto repair work, and that his business was often closed during normal business hours. In addition, through physical surveillance, the agents were able to seize a load of cocaine based upon a series of calls that were intercepted over the drug dealer's telephone,[6] in which the dealer used words related to his business.

[4] See Attachment D.

[5] 18 U.S.C. §2518(5); United States v. Lyons, 695 F.2d 802 (4th Cir. 1982); United States v. Manfredi, 488 F.2d 588 (2d Cir. 1973).

Without physical surveillance, the government would not have been able to contradict the drug dealer's assertions that his calls were innocent in nature, nor would it have been able to seize corroborative evidence, in this case a load of cocaine, of his drug dealing.

Intercepted communications, in and of themselves, are rarely enough to convict the subjects of the crimes. Rather, intercepted communications are a means by which to establish relationships between individuals and to locate evidence that will be used at trial to prove the crimes. Without corroborative evidence obtained through physical surveillance and other investigative techniques, the wiretap evidence has little or no meaning to a trier of fact.

2. Where to Monitor the Communications

Under Title III, a court can only issue an order for communications that will be intercepted within its territorial jurisdiction.[7] Judicial opinions have defined the term "interception" broadly so that it can occur in at least two places: 1) where the interception (or initial capture of the communications) will occur technically for the first time (this is usually the place where the premises are physically located or where the telephone is being used), or 2) where the communications will be redirected and heard or accessed by the government for the first time (the monitoring location).[8] It is the policy of the Department of Justice that if the government is going to listen to, or access, the communications in a jurisdiction where the premises are not located or where the telephone is not being used, there must be some investigative connection to that jurisdiction, i.e., some element of the criminal conspiracy is occurring there. Usually, the telephone or the premises is located in the same jurisdiction where the government will be monitoring (i.e., listening to or accessing) the communications, but that is not always the case. In the scenario outlined above, subject Blum uses a cellular telephone in two jurisdictions, Washington, D.C., and Maryland, to commit his drug trafficking activities. It would be permissible under Title III to obtain the court order in either place. In this instance, it is likely the government would obtain the court order from a judge in the jurisdiction where it can monitor the communications.

Given the mobility of cellular telephones and the ability to access the Internet from anywhere, traditional notions of jurisdiction and where an interception of a communication actually takes place no longer apply. In the case of computers, consider this example: the subject lives in jurisdiction A, where he or she orchestrates a nationwide criminal conspiracy using his or her home computer; the Internet service provider that processes the communications is in jurisdiction B, where the communications are captured or intercepted, in technical terms, for the first time; and the law enforcement agency investigating the

[6] 18 U.S.C. §2517(1), (2) permit the disclosure of electronic surveillance evidence by law enforcement officers to other officers while acting in the proper performance of their duties. See also United States v. Vento, 533 F.2d 838 (3rd Cir. 1976); United States v. Rabstein, 554 F.2d 190 (5th Cir. 1977). Section 2517 does not authorize disclosure of wiretap information to foreign law enforcement officers. United Kingdom v. United States of America, 238 F.3d 1312 (11th Cir. 2001).

[7] 18 U.S.C. §2518(3).

[8] United States v. Rodriguez, 968 F.2d 130 (2d Cir. 1992); United States v. Denman, 100 F.3d 399 (5th Cir. 1996); United States v. Jackson, 207 F.3d 910 (7th Cir. 2000).

case is in jurisdiction C, where some elements of the criminal conspiracy are occurring and where it has the technical capability to access the subject's communications from the service provider. Arguably, jurisdiction could lie in all three of these places. Most likely, the government would obtain the court order authorizing the interception of the subject's communications in jurisdiction A, where the subject is actually using the computer to commit the crimes and where he or she will ultimately be prosecuted for them.

Consequently, when considering the court's jurisdiction to authorize the interception of communications in today's technically advanced world, it is important to consider the types of communication devices that criminals use to facilitate their crimes, law enforcement's ability to intercept those communications, and the telecommunication industry's ability to assist law enforcement in this area. Jurisdiction is no longer a concept defined strictly by geographical boundaries. Technology has erased those boundaries and now permits criminals a global reach, allowing them to facilitate the commission of crimes in places far from where they may be.

B. The Role Of The Prosecutor

1. Training the Monitors

The prosecutor and the lead investigating agent are responsible for training the monitors, those persons who will be intercepting, listening to, and recording the communications. The monitors may not be law enforcement agents, but could be support personnel who work for the law enforcement agency, foreign language translators, or local police officers with no experience in conducting an electronic surveillance investigation. The initial training of the monitors involves two components. First, the monitors must read the affidavit that was submitted for approval so that they understand the investigation, know who the subjects are, and what crimes are being committed. Second, the prosecutor must instruct the monitors about the proper minimization procedures.[9] The monitors must not only attempt to minimize the interception of innocent communications, but also they must avoid intercepting communications between persons and their attorneys, between husbands and wives, between doctors and patients, and between parishioners and clergy.[10] Additionally, the prosecutor must instruct the monitors about how long they can intercept a communication to determine if it is criminal in nature,[11] what to do if a privileged communication was intercepted inadvertently, and how to maintain the recordings in a way that

[9] See Attachment E.

[10] 18 U.S.C. §2517(4). It should be noted, however, that if an attorney, spouse, doctor, or clergyman is involved in the criminal conspiracy, the government may intercept the communications. For example, in alien smuggling cases, attorneys are often used to obtain fraudulent documents for the illegal aliens. In insurance fraud cases, doctors are often co-conspirators by performing unnecessary medical procedures or providing false documentation to support an insurance claim. See United States v. Zolin, 491 U.S. 554 (1962) (crime fraud exception to attorney-client privilege); United States v. Dube, 820 F.2d 886 (7th Cir. 1987)(clergy-penitent privilege did not apply where person was seeking relief from his obligation to pay taxes); United States v. Gotti, 771 F. Supp. 535 (E.D.N.Y. 1991) (outlines elements of a privileged attorney-client relationship); United States v. Cooper, 2000 WL 135248 (D.D.C.) (crime fraud exception applies to marital communications).

will preserve their integrity for use later at trial.

Once the interception begins, the prosecutor and the lead agent will need to continue to advise the monitors, particularly any new monitors, about developments in the case of which they are not aware. For example, they will need to inform the monitors of: 1) patterns of innocent conduct that are developing and the need to minimize the interception of communications relating to it; 2) whether the subjects are involved in crimes that were not listed in the court's order; 3) whether new subjects have been identified; 4) whether a privileged relationship now exists involving any of the subjects; and 5) the identification of locations that may be used by the subjects to facilitate their crimes.

2. Submission of Progress Reports

When the government applies for an order to conduct electronic surveillance, the judge routinely orders the prosecutor to submit progress reports to him or her every ten days during the 30-day authorization period.[12] There is no standard format for progress reports but, typically, they include information about: 1) the total number of communications intercepted; 2) the number of communications that related to the crimes under investigation; 3) the number of innocent communications intercepted; 4) whether any new subjects have been identified; 5) whether there have been seizures of contraband or arrests of any of the subjects; 6) whether communications about crimes not listed in the order were intercepted; 7) whether there have been technical problems with the interception; and 8) why the government needs to continue the interception to meet its investigative goals.

Progress reports are meant to keep the judge apprised of developments and problems in an electronic surveillance investigation, thereby giving the judge the opportunity to exercise his or her discretion and terminate the interceptions if the judge determines that the investigative goals have been met, or that the government is not conducting the interceptions in a lawful manner.

3. Providing Legal Advice and Support

The prosecutor should be an active participant in the conduct of the electronic surveillance, by supervising and advising the law enforcement agents conducting the investigation. Often, problems will arise that require a legal opinion that the law enforcement officers are incapable of making because they lack the experience or training. Generally, the prosecutor's role is to ensure the admissibility of the evidence at trial, to ensure the development of the best evidence, and to make sure that the electronic surveillance is conducted properly. Consider the following examples.

Many times during a Title III investigation, the government will intercept communications about crimes that were not listed in the court's order. If the government wants to be able to use

[11] The monitors often use a procedure called "spot monitoring," whereby the monitor will listen to a telephone call or face-to-face conversation for a short period of time to determine if the communication is criminal in nature. If the call or conversation does not appear to be criminal, the monitor will cease interceptions for a brief period of time, and then resume listening to the call or conversation once again. This process may be repeated several times during the interception of a call or conversation.

[12] 18 U.S.C. §2518(6).

this evidence later, the prosecutor must apply to the court for an order allowing the government to use these communications in furtherance of its investigation, particularly in any court proceeding that may arise from the investigation.[13] For instance, if the court order authorized the interception of communications related to drug-trafficking, and telephone calls about prostitution were intercepted, the prosecutor must submit an application to the judge asking permission to be able to use the prostitution calls in its investigation of the subjects, and to disclose the contents of those calls at a subsequent trial of the subjects. In the investigation outlined above, it is likely that conversations about crimes related to the subjects' drug-trafficking activity will be intercepted. Given the subjects' propensity for violence, the government may intercept calls about attempts to commit acts of violence in connection with the subjects' drug business. Likewise, the government would have to obtain a court order allowing it to use these calls in its prosecution of the subjects. Alternatively, if the government wants to extend the electronic surveillance investigation beyond the first 30 days of interceptions, the government may seek to expand its investigation by including information about these new crimes in the application and affidavit in support of the extension order. The judge may then issue an order authorizing the government to continue to intercept communications about these crimes for a 30-day period.

It is also common during the course of an electronic surveillance narcotics investigation that the law enforcement agents will develop evidence about where drugs are being stored or how they are being transported, and the prosecutor must advise the agents how to seize that evidence legally, without compromising the ongoing electronic surveillance investigation. For example, the government may intercept calls indicating that a load of drugs will be transported in a vehicle from one location to another. Given drug traffickers' natural wariness that they could be under investigation, the prosecutor and the agents must decide when and how to seize the drugs without alerting the subjects of the ongoing electronic surveillance investigation. In this scenario, the prosecutor could advise the agents to give a description of the vehicle to the local police, telling them that the vehicle may contain drugs,[14] and ask them to stop the vehicle on a pretext, such as a traffic infraction.[15] The police officer could then ask the driver of the vehicle to consent to a search of the car. If the driver does consent to the search, which is common, the officer could discover and seize the drugs.

When contemplating this action, the prosecutor must consider whether to advise the local police to arrest the driver if drugs are found. An arrest and subsequent prosecution of the driver may require divulging the existence of the ongoing electronic surveillance investigation before the government's investigative goals have been met, because the primary reason the vehicle was stopped was based on information from the wiretap that the vehicle contained drugs. In the investigation outlined herein, there is another, more sinister risk. Given Gerard's propensity for violence, he may take retaliatory action against the driver, if the driver cannot show that the drugs were seized

[13] 18 U.S.C. §2517(5).

[14] 18 U.S.C. §2517(1).

[15] Arkansas v. Sullivan, 121 S.Ct. 1876 (2001) (pretext stops are permissible).

by law enforcement. Gerard, suspecting that the driver kept the drugs for himself, may harm him.

C. The Role Of The Judge

When Congress enacted Title III, it contemplated, by permitting or requiring the judge to assume certain responsibilities, that the judge who issued the order authorizing the electronic surveillance would be an active participant in the investigation. Specifically, as discussed above, Title III permits the judge to require that the prosecutor submit progress reports during the 30-day interception period. In addition, if the government intercepts communications about crimes not authorized for interception in the order, the government must obtain permission from the judge to use those communications in its investigation and prosecution. Additionally, the judge must order the recordings of the communications sealed for safekeeping, and direct the government's efforts to notify those persons who were intercepted during the course of the electronic surveillance investigation that they were the subject of a wiretap.

Not only does Title III encourage a judge's active participation in an electronic surveillance investigation, but appellate courts are more forgiving of government mistakes or missteps in an electronic surveillance investigation if the supervising judge was aware of, and condoned, the government's actions.[16]

[16] United States v. Bascaro, 742 F.2d 1335 (11th Cir. 1984) (court authorized interceptions to continue over a telephone with a different telephone number); United States v. Ozar, 50 F.3d 1440 (8th Cir. 1995) (court approved the government's minimization procedures).

V. TERMINATION OF THE INVESTIGATION

A. Policy Considerations

In every investigation, a tension always exists between tolerating ongoing criminal activity known to have a devastating effect on individuals and the community at large, and the need to accumulate enough evidence to dismantle the criminal organization and to prosecute the subjects successfully. For instance, in a drug investigation, the intercepted communications and the accompanying physical surveillance show that cocaine is being sold on a daily basis from an abandoned building near a school, and that this activity is putting children at risk. In alien smuggling investigations, there is evidence that the illegal aliens are being subjected to dangerous conditions that might result in their death. Child pornography investigations may reveal that a pedophile is contacting potentially hundreds of children a month. In the scenario set forth above, drug trafficker Gerard has exhibited a willingness to use violence in connection with his drug trafficking activities, and retaliatory action by unknown persons resulted in additional deaths.

Occasionally, during an electronic surveillance investigation, communications may be intercepted where the subjects are planning to kill someone. Most of the time, the intended victim is another criminal. In that instance, the law enforcement agency has an obligation to warn the intended victim, offer protection, and continue to monitor the situation through the interception of communications and other investigative techniques. Other times, the intended victim may be a law enforcement officer or an innocent bystander, and there may or may not be prior notice of the crime.

In one investigation of a group of drug traffickers, the government learned that the subjects were planning the murder of a law enforcement officer who had been instrumental in the conviction of one their co-conspirators. The government wanted to continue to the electronic surveillance investigation of the subjects' drug-trafficking activities while it attempted to thwart the threat against the officer's life. Through the use of a confidential informant, the government was able to fake the officer's death to the satisfaction of the subjects, and it continued its investigation into the subjects' drug activity until it accumulated enough evidence to convict every member of the conspiracy.

In a public corruption investigation that was conducted several years ago, the FBI intercepted calls over a cellular telephone used by a corrupt local police officer. During one call, the FBI intercepted a conversation between the police officer and a co-conspirator, wherein the officer ordered the co-conspirator to kill a woman who had filed a complaint against him. The call, however, did not reveal enough details about the intended murder victim or where the murder was to occur. The FBI learned later that the co-conspirator killed the woman shortly after the call ended. The electronic surveillance investigation was terminated soon thereafter, and the police officer and his co-conspirators were arrested. At some point, the risk of further investigation outweighs the benefit of accumulating additional evidence against the subjects.

B. Legal Requirements And Practical Considerations

Title III requires that an electronic surveillance investigation must be terminated when the government's defined investigative goals have been met, i.e., the identification of a drug supplier, sufficient evidence of a fraud conspiracy, or the interception of a particular criminal event.[17] When the government is ready to end the electronic surveillance investigation, it must perform certain administrative tasks required by Title III, and formulate a plan that will result in the greatest number of arrests and seizures of evidence.

1. Administrative Tasks

At the end of every electronic surveillance investigation, the government must seal the recordings of the intercepted communications, and notify the subjects that they were the targets of the wiretap.

As to sealing the recordings, Title III requires that the government seal the original recordings of the communications immediately upon the termination of the electronic surveillance investigation in order to protect their authenticity and integrity for use at trial.[18] In order to seal the recordings, the government makes the recordings available to the judge for inspection.[19] If the judges waive inspection of the tapes, or after he or she inspects them, the tapes are placed in containers and sealed. After the containers are sealed, the judge, the prosecutor, and the lead investigative agent initial and date each container. The judge then issues an order, directing the law enforcement agency to maintain the sealed tapes in a secure location. Sealing of the recordings can be an arduous undertaking if the electronic surveillance investigation has involved numerous

[17] 18 U.S.C. §2518(5).

[18] 18 U.S.C. §2518(8)(a).

[19] United States v. Abraham, 541 F.2d 624 (6th Cir. 1976); United States v. Kincaide, 145 F.3d 771 (6th Cir. 1998).

telephones and locations, and spanned several months. If the government fails to seal the tapes or fails to seal them in a timely manner, and cannot offer a satisfactory explanation for the delay or failure to seal, the court may find that either the defendant was prejudiced by the government's actions or that the tapes were tampered with, and exclude the evidence from the trial.[20]

With regard to the notification requirement, Title III and related judicial opinions mandate that the government notify the subjects of the electronic surveillance that they were either named as subjects in the court order or that their communications were intercepted during the electronic surveillance investigation.[21] Specifically, the government informs the subjects whether the court granted its application to conduct the surveillance and, if so, the date of the court order, when the interceptions occurred, and whether their communications were intercepted. Occasionally, the government may not be able to identify all of the persons who were intercepted during the course of the electronic surveillance and, therefore, cannot provide them with notice. In the investigation outlined above, "J-Boy" may never be identified by his true name, and if he was intercepted during the investigation, he may never receive notice of it. Of course, if the government cannot identify him, he will not be prosecuted for his role in the conspiracy.

[20] United States v. Gangi, 33 F. Supp.2d 303 (S.D.N.Y. 1999) (two-day delay in sealing the tapes was legally acceptable); United States v. Wilkinson, 53 F.3d 757 (6th Cir. 1995) (court found no prejudice to the defendant, tampering with the recordings, or any effort to gain a tactical advantage by failure to seal the recordings in a timely manner).

[21] 18 U.S.C. §2518(8)(d).

2. How and When to Terminate the Investigation

The type of criminal organization under investigation will dictate how and when the subjects are arrested and when locations are searched for contraband or documentary evidence. In cases involving drug organizations, gangs, and alien smuggling, for example, it is imperative to coordinate the arrests and the searches on the same day, even if the criminal organization is a nationwide one with persons and locations in different parts of the country. Once the existence of the investigation has become known, subjects are more likely to flee and destroy evidence. Therefore, the largest number of arrests and seizures of evidence will occur if they are done simultaneously. To facilitate the "takedown" of a case, it is often helpful to continue the electronic surveillance investigation after the individuals have been arrested. It is not uncommon to intercept communications about the identities of subjects not previously known to law enforcement or locations where contraband is being stored during the period after the takedown. Under American jurisprudence, continuing to intercept the communications of those persons who have been arrested does not violate the individual's constitutional rights against self-incrimination or right to counsel.[22]

VI. TRIAL PREPARATION

A. Evaluating The Evidence

Once the electronic surveillance investigation has been terminated, the prosecutor must evaluate the evidence and review how the investigation was conducted. The prosecutor must

[22] United States v. Poeta, 455 F.2d 117 (2d Cir. 1972); United States v. Wong, 40 F.3d 1347 (2d Cir. 1994); Patterson v. Illinois, 487 U.S. 285 (1988).

determine if all of the technical requirements of Title III were met and, if not, whether the technical violations are fatal to the case. It is the general rule that if the government acted in good faith and without a reckless disregard for the statute, wiretap evidence will not be suppressed as long as the defendant was not prejudiced by the errors.[23] On rare occasions, the courts have suppressed evidence when the affidavit supporting the government's request for the wiretap contained misleading statements,[24] or when law enforcement agents made a conscious decision not to comply with certain provisions of Title III.[25]

B. Discovery Obligations Under Title III

Under 18 U.S.C. §2518(9), the government must provide the defendant with a copy of the application and order under which the electronic surveillance was approved ten days before the trial, hearing, or proceeding, at which evidence of the communications will be introduced.[26] The purpose of this provision is to give the defendant "an opportunity to make a pretrial motion to suppress" the evidence.[27] It is within the court's discretion to order the government to provide any other documentation, including the recordings of the communications themselves, to the defendant at this time.[28]

While section 2518(9) provides the defendant with a right to the application, order, and related documents, section 2518(8)(b) makes it clear that the defendant is entitled to only that evidence which is relevant to his or her defense and is not protected from disclosure by some other right or privilege. In some instances, courts have ordered information redacted from the application and order before those documents were provided to the defendant.[29]

With regard to the recordings of the communications, general rules of discovery require that the government provide the defendant with copies of those recordings which are relevant to his or her defense. Typically, the government will provide copies of all of the recordings

[23] United States v. Donovan, 429 U.S. 413 (1977); United States v. Ozar, 50 F.3d 1440 (8th Cir. 1995) (inadvertent interception of attorney-client communications); United States v. Estrada, 1995 WL 577757 (S.D.N.Y) (inaccurate summaries of conversations was careless but there was no intentional disregard for the truth); United States v. Velazquez, 1997 WL 564674 (N.D. Ill.) (mistake in initial identification of a subject did not constitute a knowing false statement and a reckless disregard for the truth).

[24] United States v. Aileman, 986 F. Supp. 1228 (N.D. Cal. 1997).

[25] United States v. Luong, No.CR-94-0094 MHP (N.D. Cal. 7/14/98) (unpublished) (law enforcement officer admitted that he did not perform the check for prior applications as required by 18 U.S.C. §2518(1)(e) because it would have taken too much time.).

[26] In re Grand Jury Proceedings, 841 F.2d 1048 (11th Cir. 1988) (the terms "application" and "order" include other related documents, such as the affidavit and progress reports).

[27] United States Senate Report No. 1097, 90th Congress, 2d Session, 1968.

[28] 18 U.S.C. §2518(10)(a); United States v. Orena, 883 F. Supp. 849 (E.D.N.Y. 1995).

[29] United States v. Yoshimura, 831 F. Supp. 799 (D. Hawaii 1993) (when revelation of the information is not necessary to the defense and may jeopardize the safety of confidential informants, it does not have to be revealed to the defendant); United States v. Brown, 539 F.2d 467 (5th Cir. 1976) (privacy rights of third parties who may be affected by the disclosure of the information must be considered); United States v. Buckley, 586 F.2d 498 (5th Cir. 1978) (same).

to the defendant to forestall any later argument by the defendant that the government withheld evidence that might have been exculpatory or helpful to the defendant's case.

VII. CONCLUSION

As demonstrated herein, electronic surveillance is a valuable technique to use to combat crime. Congress, while allowing law enforcement to use this very invasive technique, has proscribed the manner in which it can be used, attempting to design a legal regime that protects the individual from unnecessary invasions into privacy and according the individual certain due process rights to challenge the evidence against him or her.

ATTACHMENT A

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

IN THE MATTER OF AN
APPLICATION FOR AN ORDER
AUTHORIZING THE INTERCEPTION
OF WIRE COMMUNICATIONS

APPLICATION FOR INTERCEPTION OF WIRE COMMUNICATIONS

Lois Lane, an Assistant United States Attorney, District of Columbia, being duly sworn, states:

1. I am an investigative or law enforcement officer of the United States within the meaning of Section 2510(7) of Title 18, United States Code, that is, an attorney authorized by law to prosecute or participate in the prosecution of offenses enumerated in Section 2516 of Title 18, United States Code.

2. This application is for an order pursuant to Section 2518 of Title 18, United States Code, authorizing the interception of wire communications until the attainment of the authorized objectives or, in any event, at the end of thirty (30) days from the earlier of the day on which the investigative or law enforcement officers first begin to conduct an interception under the Court's order or ten (10) days after the order is entered, of Gene Blum, Robert Gerard, Katrina Karr, Nancy Prim, "J-Boy," and others as yet unknown to and from the telephone bearing the number (202) 514-1234 and ESN 12CE568L, and subscribed to by Julio Iglesias, 123 Main Street, N.W., Washington, D.C., (hereinafter, the "Target Telephone") concerning offenses enumerated in Section 2516 of Title 18, United States Code, that is, offenses involving violations of Title 21, United States Code, Sections 841, 843, and 846, that are being committed by Gene Blum, Robert Gerard, Katrina Karr, Nancy Prim, "J-Boy" (hereinafter the "Target Subjects"), and others as yet unknown.

3. Pursuant to Section 2516 of Title 18, United States Code, the Attorney General of the United States has specially designated the Assistant Attorney General, any Acting Assistant Attorney General, any Deputy Assistant Attorney General or any acting Deputy Assistant Attorney General of the Criminal Division to exercise the power conferred on the Attorney General by Section 2516 of Title 18, United States Code, to authorize this Application. Under the power designated to him by special designation of the Attorney General pursuant to Order Number 2407-2001, dated March 8, 2001, an appropriate official of the Criminal Division has authorized this Application.

4. I have discussed all of the circumstances of the above offenses with Special Agent Clark Kent of the Federal Bureau of Investigation, who has directed and conducted this investigation and have examined the Affidavit of Special Agent Kent, which is attached to this Application and is incorporated herein by reference. Based upon that Affidavit, your

applicant states upon information and belief that:

a. there is probable cause to believe that the Target Subjects and others as yet unknown have committed, are committing, and will continue to commit violations of Title 21, United States Code, Sections 841, 843, and 846.
b. there is probable cause to believe that particular wire communications of the Target Subjects concerning the above-described offenses will be obtained through the interception of wire communications. In particular, these wire communications will concern the distribution of cocaine and heroin, the identities of co-conspirators, the sources of supply for the drugs, and the methods by which the Target Subjects carry out their illegal activities. In addition, the communications are expected to constitute admissible evidence of the commission of the above-stated offenses;
c. normal investigative procedures have been tried and failed, reasonably appear to be unlikely to succeed if tried, or are too dangerous to employ, as is described in further detail in the attached Affidavit;
d. there is probable cause to believe that the Target Telephone is being used and will continue to be used in connection with the commission of the above-described offenses.

5. The applicant is aware of no previous applications made to any judge for authorization to intercept the oral, wire or electronic communications involving any of the same persons, facilities, or premises specified in this application.

WHEREFORE, your applicant believes that there is probable cause to believe that the Target Subjects and others as yet unknown are engaged in the commission of offenses involving Title 21, United States Code, Sections 841, 843, and 846, and that the Target Subjects and others yet unknown are using the Target Telephone in connection with the commission of the above-described offenses; and that wire communications of the Target Subjects and others yet unknown will be intercepted over the Target Telephone.

Based on the allegations set forth in this application and on the affidavit of Special Agent Kent, attached, the applicant requests this court to issue an order pursuant to the power conferred upon it by Section 2518 of Title 18, United States Code, authorizing agents of the Federal Bureau of Investigation, and officers of the Metropolitan Police Department and the Prince George's County Police Department, and contract personnel under the supervision of a federal agent, to intercept wire communications to and from the Target Telephone until such communications are intercepted that reveal the manner in which the Target Subjects and others unknown participate in the specified offenses and reveal the identities of their coconspirators, places of operation, and nature of the conspiracy, or for a period of 30 days measured from the day on which the investigative or law enforcement officers first begin to conduct the interception or ten days from the date of this order, whichever occurs first.

IT IS REQUESTED FURTHER that the authorization given be intended to apply not only to the target telephone number listed above, but to any changed telephone number subsequently assigned to the instrument bearing the same

electronic serial number (ESN) as the Target Telephone within the thirty (30) day period. It is also requested that the authorization be intended to apply to background conversations intercepted in the vicinity of the target telephone while the telephone is off the hook or otherwise in use.)

IT IS REQUESTED FURTHER, pursuant to Title 18, United States Code, Section 2518(3), that in the event that the Target Telephone is transferred outside the territorial jurisdiction of this Court, interceptions may take place in any other jurisdiction within the United States.

IT IS REQUESTED FURTHER that this Court issue an order pursuant to Section 2518(4) of Title 18, United States Code, directing Killion Communications, an electronic communications service provider as defined in Section 2510(15) of Title 18, United States Code, to furnish and continue to furnish the Federal Bureau of Investigation with all information, facilities and technical assistance necessary to accomplish the interceptions unobtrusively and with a minimum of interference with the services that such provider is according the persons whose communications are to be intercepted, and to ensure an effective and secure installation of electronic devices capable of intercepting wire communications over the above-described telephone. The service provider shall be compensated by the Applicant for reasonable expenses incurred in providing such facilities or assistance.

IT IS REQUESTED FURTHER, to avoid prejudice to this criminal investigation, that the Court order the provider of electronic communication service and its agents and employees not to disclose or cause a disclosure of this Court's Order or the request for information, facilities, and assistance by the Federal Bureau of Investigation or the existence of the investigation to any person other than those of their agents and employees who require this information to accomplish the services requested. In particular, said provider and its agents and employees should be ordered not to make such disclosure to a lessee, telephone subscriber, or any participant in the intercepted communications.

IT IS REQUESTED FURTHER that this Court direct that its Order be executed as soon as practicable after it is signed and that all monitoring of wire communications shall be conducted in such a way as to minimize the interception and disclosure of the communications intercepted to those communications relevant to the pending investigation, in accordance with the minimization requirements of Chapter 119 of Title 18, United States Code. The interception of wire communications authorized by this Court's Order must terminate upon attainment of the authorized objectives or, in any event, at the end of thirty (30) days measured from the day on which investigative or law enforcement officers first begin to conduct an interception or ten (10) days after the Order is entered.

Monitoring of conversations must immediately terminate when it is determined that the conversation is unrelated to communications subject to interception under Chapter 119 of Title 18, United States Code. Interception must be suspended immediately when it is determined through voice identification, physical surveillance, or otherwise, that none of the named subjects or any of their confederates, when identified, are participants in the conversation unless it is determined

during the portion of the conversation already overheard that the conversation is criminal in nature.

IT IS REQUESTED FURTHER that the Court order that either the applicant or any other Assistant United States Attorney familiar with the facts of the case provide the Court with a report on or about the tenth, twentieth, and thirtieth days following the date of this Order showing what progress has been made toward achievement of the authorized objectives and the need for continued interception. If any of the aforementioned reports should become due on a weekend or holiday, it is requested further that such report become due on the next business day thereafter.

IT IS REQUESTED FURTHER that the Court order that its Order, this application and the accompanying affidavit and any other orders, and all interim reports filed with the Court with regard to this matter be sealed until further order of this Court, except that copies of the Order(s), in full or redacted form, may be served on the Federal Bureau of Investigation and the service provider as necessary to effectuate the Court's Order as set forth in the proposed order accompanying this application.

DATED this 13th day of August, 2001.

Lois Lane
Assistant United States Attorney

SUBSCRIBED and SWORN to before me this13th day of August, 2001.

UNITED STATES DISTRICT COURT
JUDGE
DISTRICT OF COLUMBIA

ATTACHMENT B

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

IN THE MATTER OF THE APPLICATION OF THE UNITED STATES OF AMERICA FOR AN ORDER AUTHORIZING THE INTERCEPTION OF WIRE COMMUNICATIONS

AFFIDAVIT IN SUPPORT OF APPLICATION

Introduction

Clark Kent, being duly sworn, deposes and states as follows:

1. I am a Special Agent with the Federal Bureau of Investigation ("FBI"), United States Department of Justice. I have been so employed by the FBI since August 1994. Since becoming a Special Agent, I have participated in numerous criminal investigations, including investigations into suspected narcotics trafficking. For the past five years, I have been assigned to the Washington, D.C., resident agency of the FBI, where I am responsible for investigations focusing on the distribution of narcotics by violent drug trafficking organizations. In that time, I have participated in the execution of numerous search warrants and arrests, and have been the affiant on three previous affidavits submitted in support of the authorization to intercept wire communications. As such, I am familiar with the operation of illegal drug trafficking organizations, and the methods used to distribute narcotics.

2. I am an investigative or law enforcement officer of the United States within the meaning of Section 2510(7) of Title 18, United States Code, and am empowered by law to conduct investigations and to make arrests for offenses enumerated in Section 2516 of Title 18, United States Code.

3. This affidavit is submitted in support of an application for an order authorizing the interception of wire communications occurring to and from a cellular telephone bearing the number (202) 514-1234, electronic serial number ("ESN") 12CE568L, and subscribed to by Julio Iglesias, 123 Main Street, N.W., Washington, D.C., 20005 (hereinafter referred to as "the target telephone"). As will be set forth below, the investigation has revealed that this phone is being used by Gene Blum, aka "Little G."

4. I have participated in the investigation of the offenses set forth below. As a result of my personal participation in this investigation, through interviews with and analysis of reports submitted by other Special Agents of the FBI, as well as other state and local law enforcement personnel, I am familiar with all aspects of this investigation. On the basis of this familiarity, and on the basis of other information which I have reviewed and determined to be reliable, I allege the facts to show that:

   a. there is probable cause to believe that GENE BLUM, aka "Little G," ROBERT GERARD, KATRINA KARR, aka "Kay Kay," NANCY

PRIM, aka "Sweet Nancy," First Name Unknown (FNU) Last Name Unknown (LNU), aka "J-Boy," (hereinafter referred to as "the target subjects") and others as yet unknown have committed, are committing, and will continue to commit offenses involving the distribution of, and possession with intent to distribute narcotics, including cocaine and heroin, the use of communications facilities to facilitate narcotics offenses, and conspiracy to commit the above offenses, in violation of Title 21, United States Code, Sections 841, 843(b), and 846.

b. there is probable cause to believe that particular wire communications of Gene Blum, Robert Gerard, Katrina Karr, Nancy Prim, "J-Boy," (hereinafter referred to as the "interceptees"), and others as yet unknown, concerning the above offenses will be obtained through the interception of such communications to and from the target telephone.

5. In particular, these communications are expected to concern the specifics of the above offenses, including (i) the nature, extent and methods of the narcotics distribution business of the target subjects and others; (ii) the nature, extent and methods of operation of the drug trafficking business of the target subjects and others; (iii) the identities and roles of accomplices, aiders and abettors, co-conspirators and participants in their illegal activities, including sources of supply for the narcotics; (iv) the distribution and transfer of the contraband and money involved in those activities; (v) the existence and location of records; (vi) the location and source of resources used to finance their illegal activities; (vii) the location and disposition of the proceeds from those activities; and (viii) the locations and items used in furtherance of those activities. In addition, these wire communications are expected to constitute admissible evidence of the commission of the above-described offenses.

6. The statements contained in this affidavit are based in part on information provided by Special Agents of the FBI, on conversations held with detectives and officers from the Metropolitan Police Department of Washington, D.C., and the Prince George's County Police Department, on information provided by confidential sources and a named source, and on my experience and background as a Special Agent of the FBI. Since this affidavit is being submitted for the limited purpose of securing authorization for the interception of wire communications, I have not included each and every fact known to me concerning this investigation. I have set forth only the facts that I believe are necessary to establish the necessary foundation for an order authorizing the interception of wire communications.

PERSONS EXPECTED TO BE INTERCEPTED

7. Gene Blum: As set forth in more detail below, Blum, the user of the target telephone, has been identified through source information as being a member of Robert Gerard's drug distribution "crew." The FBI has conducted controlled narcotics purchases with Blum.

8. Robert Gerard: Gerard has been identified through source information, set forth below, as the leader of a Washington, D.C.-based narcotics distribution network that sells multi-kilogram quantities of cocaine and heroin. Gerard resides in the Keeney Heights area of Washington, D.C., and is believed to be responsible for the murder of one of his narcotics customers, who had failed to pay a drug debt. At this time, Gerard's narcotics suppliers are unknown.

9. Katrina Karr: In December 1994, Karr was convicted of possession of cocaine with intent to distribute in Raljon, Maryland, and was sentenced to two years incarceration and five years probation. Karr is currently on probation. Karr has been identified by confidential sources as a member of Gerard's narcotics distribution "crew."

10. Nancy Prim: Prim has been identified through source information, as set forth below, as a member of Gerard's "crew." Prim has also been observed accompanying Gerard and Blum to the Starlight Motel, which Gerard and Blum use as a location to conduct narcotics transactions.

11. FNU LNU, aka "J-Boy": Several confidential sources have stated that J-Boy, who has not yet been identified, is a narcotics distributor for Gerard.

FACTS AND CIRCUMSTANCES

12. On February 22, 2001, your affiant interviewed a confidential informant ("CI-1"). CI-1 has provided reliable information in other investigations, and in those investigations, bought drugs and introduced undercover agents to the targets of those investigations. CI-1's information has been used previously in arrest and search warrants. The information that CI-1 has provided in this case has been corroborated by physical surveillance of the subjects, information from other, reliable confidential informants, and the analysis of telephone records. CI-1 has a prior conviction for possession of cocaine, and is cooperating with the FBI in this investigation in hopes of gaining leniency for a family member who has pending drug charges.

13. During the interview on February 22, 2001, CI-1 told your affiant that Robert Gerard and members of his drug crew distribute cocaine and heroin in the Keeney Heights area of Washington, D.C., and that CI-1 bought cocaine from "J-Boy," a member of Gerard's crew, in December 2000. CI-1 identified the following other persons as members of Gerard's crew: "Little G," "Kay Kay," and "Sweet Nancy." Your affiant showed CI-1 some driver's license photographs and he was able to identify Little G as Gene Blum, Kay Kay as Katrina Karr, and Sweet Nancy as Nancy Prim.

14. On March 30, 2001, your affiant learned that Fred Hendricks was murdered that day in Gerard's neighborhood in Keeney Heights. Your affiant reviewed reports made by the local police officers investigating the murder. Based upon those reports, your affiant learned that Gene Blum, Bridget Lynn, and Natasha Spencer were present at the scene. The local police questioned each individual about the murder, and it was learned that Blum was seen trying to leave the scene on a motorcycle. Blum was detained and

he volunteered to answer some questions. During the questioning, Blum advised the police that there was a quantity of cocaine inside a locked compartment in the motorcycle. Blum gave the keys to the compartment to the officer. Later that day, the police obtained a search warrant for the motorcycle compartment. The next day, the search warrant was executed and approximately one quarter of a kilogram of cocaine was found inside. Blum was never charged with any drug offenses. Spencer and Lynn claimed to know nothing about the murder.

15. On April 5, 2001, Gerard's house was burned to the ground. Your affiant reviewed police reports of the incident and learned that three unidentified males entered the house carrying gasoline, and set the house on fire. Two persons, one of whom was an infant male, were inside the house when the fire was set, and they died as a result. Gerard was not at home at the time of the fire.

16. On April 25, 2001, your affiant interviewed Stephen Simon, who has been indicted on charges of distributing cocaine. Simon agreed to provide the following information as part of a plea bargain in his pending case. Simon told your affiant that he was a member of a rival drug gang, and he stated that he knows Gerard and Blum. Simon stated that Gerard had given Hendricks two kilograms of cocaine on consignment, and when Hendricks failed to pay Gerard for the cocaine, Gerard had Hendricks killed. Simon stated that he learned of this information from Natasha Spencer, his girlfriend, who was at the scene of the murder. Simon stated further that Gerard receives large shipments of cocaine every few months, and that he sells cocaine for $17,500 per kilogram.

17. On May 5, 2001, the local police interviewed an individual who was willing to provide information about Gerard's drug trafficking activities. This person ("CI-2") has never provided information to law enforcement before and, therefore, his reliability is unknown. CI-2 stated that Gerard and Blum are heavily involved in trafficking and are very violent. On May 11, 2001, CI-2 told the local police that Gerard and members of his crew were at the Starlight Motel in Raljon, Maryland. Based on this information, local police officers established surveillance at the motel. During the surveillance, officers saw Gerard, Blum, and several unidentified males come and go from two motel rooms.

18. On May 20, 2001, CI-2 told the local police that Gerard and Blum were at the Starlight Motel, and that they were selling drugs from a room there. That day and the following day (May 21, 2001), surveillance agents observed Gerard and Blum coming in and out of room 123. In addition, throughout the day, several unidentified males were seen entering room 123, staying a few minutes and then leaving the room.

19. On May 25, 2001, CI-2 stated that Blum had gone to the Starlight Motel again to sell drugs. The local police conducted surveillance of the motel and saw Blum exit room 178. Blum entered a Chevy Suburban truck that was being driven by a female. Surveillance agents later identified this female from photographs as Nancy Prim. One hour later, agents

saw the Chevy Suburban return to the motel. Blum exited the car and entered room 178.

20. Shortly after May 5, 2001, an undercover police officer ("UC") was sent to the Starlight Motel to seek employment there as a maintenance worker. On May 25, 2001, the UC was working at the motel, when someone from room 178 called the front desk to complain about a maintenance problem. The UC went to room 178 to fix the problem and observed Blum and two unidentified males inside the room. When the UC arrived, he overheard Blum refer to one of the males as "J-Boy." While in the room, the UC used the telephone to make a call to another police officer. During the call, the UC mentioned going to a party and getting some cocaine to take to the party. Blum overheard the UC's call and offered to sell the UC some cocaine. The UC, who was wearing a recording device, recorded his conversation with Blum. During the conversation, Blum stated, "I can get you all the coke you want. How much do you want?" The UC stated that he wanted an ounce. Blum told the UC to call him later at the motel. The UC then left the room.

21. That evening, the UC called the telephone in room 178 and spoke to Blum. The UC recorded his conversation with Blum. The UC and Blum agreed to a purchase price of $1,100 for one ounce of cocaine. Blum gave the UC his pager number and told the UC to page him at that number when the UC was ready to conduct the drug deal.

22. On May 26, 2001, at 9:15 a.m., the UC paged Blum at the number he was given, and input the telephone number of his cellular telephone. At 9:20 a.m., the UC received a call from Blum. The caller identification device on the UC's cellular phone revealed that Blum was calling from a cellular telephone with the number (202) 514-1234. During this conversation, the UC told Blum that he was ready to buy some cocaine from Blum. Blum instructed the UC to meet him at room 178 at the Starlight Motel at 10:30 a.m. Blum then ended the call. The FBI later obtained telephone records for Blum's phone, (202) 514-1234 (hereinafter, referred to as the "target phone"). Those records show that immediately after Blum ended the call with the UC, the target phone was used to call a pager. The FBI obtained records for the pager and learned that it is subscribed to in the name of Dorothy Gerard, Gerard's mother. At 10:30 a.m., the UC arrived at the motel and met Blum in room 178. The UC bought one ounce of cocaine from Blum in exchange for $1,100. Meanwhile, surveillance agents were outside the motel. After the transaction, the UC left the motel room, followed by Blum. Blum entered a white Ford Navigator sports utility vehicle and drove away from the motel. Surveillance agents followed Blum as he drove away. The agents followed Blum to Interstate Highway 95. At one point, Blum slowed down and was driving along side of the surveillance agents. Blum waived to the agents and then sped off. Realizing that they had been detected, the agents discontinued surveillance of Blum.

23. On June 2, 2001, the UC attempted to contact Blum at the pager number Blum had given the UC. The UC never received a call back from Blum.

24. On June 22, 2001, a local police officer contacted your affiant and advised that she had been contacted by a confidential informant ("CI-3"). The police officer advised your affiant that CI-3 was reliable, and that CI-3 had provided credible information to him in the past. The police officer advised that CI-3, who is associated with many gang members, knows that Blum uses the target phone to conduct his drug business.

25. On June 28, 2001, your affiant learned of another confidential informant working for the local police ("CI-4"). CI-4 has never provided information before, but knows Blum and has bought cocaine from Blum on several occasions within the last six months, most recently in the beginning of June 2001. CI-4 stated that he has never bought cocaine from Gerard, but knows that Blum works for Gerard as a drug distributor. CI-4 indicated that he would be willing to contact Blum to buy cocaine, but that he was not willing to record any of his conversations with Blum.

26. On August 1, 2001, at 1:20 p.m., CI-4 paged Blum and input the telephone number where CI-4 could be reached. At 1:45 p.m., Blum called CI-4. Phone records for the target phone show that at approximately 1:45 p.m., the target phone was used to call CI-4's telephone. According to CI-4, he told Blum that he wanted to buy an ounce of cocaine. Blum told CI-4 to meet him at a gas station in one hour. One hour later, CI-4 went to the gas station. Before CI-4 arrived at the gas station, Agent Kent searched CI-4 for contraband, with negative results, and gave CI-4 $1,100 in pre-recorded government funds. Surveillance agents then observed CI-4 approach the gas station. A short while later, Blum arrived at the gas station in a red Lexus vehicle. Blum got out of his car and walked over to CI-4. Agents saw CI-4 hand something to Blum. Blum returned to his car, reached inside, and returned to CI-4. Blum handed an object to CI-4. CI-4 left the gas station and Blum drove off. CI-4 rendezvoused with Agent Kent and gave him one ounce of a substance that later tested positive for the presence of cocaine.

ANALYSIS OF TELEPHONE RECORDS

27. On August 5, 2001, your affiant obtained telephone records for the target phone. A review of those records show that between July 2, and August 2, 2001, the target phone was used to make and receive a total of 1,144 calls. Specifically, those records reflect the following pertinent contacts:

    a. 34 calls to Gerard's pager, with the most recent call on August 1.
    b. 22 calls to and from a telephone subscribed to by Dorothy Gerard at a residence located at 1253 Corey Lane, N.W. The most recent call to this telephone was on July 23, 2001. Agents conducting physical surveillance have seen Robert Gerard entering this residence on several occasions since the fire at his home. Your affiant believes that Blum calls this telephone to speak with Robert Gerard.
    c. 19 calls to a phone located at the Starlight Motel, with the most recent call on July 28, 2001. Based on physical surveillance and source information, your affiant believes that Gerard, J-Boy, Prim,

and Blum use that motel as a location to conduct narcotics transactions. Surveillance agents saw J-Boy at the Starlight Motel on July 28, 2001.

NEED FOR INTERCEPTION

Based upon your affiant's training and experience, and based upon all of the facts set forth herein, it is your affiant's belief that the interception of wire communications is the only available technique that has a reasonable likelihood of securing the evidence necessary to prove beyond a reasonable doubt that the target subjects and others as yet unknown are engaged in the above-described offenses. In addition, information recently obtained from C1-2 indicates that Gerard is expecting to receive a large shipment of heroin during early September 2001. It is hoped that the interception of wire communications over the target phone will help to reveal further information about this shipment.

Your affiant states that the following investigative procedures, which are usually employed in the investigation of this type of criminal case, have been tried and have failed, reasonably appear to be unlikely to succeed if they are tried, or are too dangerous to employ.

ALTERNATIVE INVESTIGATIVE TECHNIQUES

Physical Surveillance

Physical surveillance has been attempted on numerous occasions during this investigation. Although it has proven valuable in identifying some activities and associates of the target subjects, physical surveillance, if not used in conjunction with other techniques, including electronic surveillance, is of limited value. Physical surveillance, even if highly successful, has not succeeded in gathering sufficient evidence of the criminal activity under investigation. Physical surveillance of the alleged conspirators has not established conclusively the elements of the violations and has not and most likely will not establish conclusively the identities of various conspirators. In addition, continued surveillance is not expected to enlarge upon information now available; rather, such prolonged or regular surveillance of the movements of the suspects would most likely be noticed, causing them to become more cautious in their illegal activities, to flee to avoid further investigation and prosecution, to cause a real threat to the safety of the informants, or to otherwise compromise the investigation.

Physical surveillance is also unlikely to establish conclusively the roles of the named conspirators, to identify additional conspirators, or otherwise to provide admissible evidence in regard to this investigation because the subjects appear to be extremely surveillance conscience. For example, as set forth above, Blum detected law enforcement surveillance on May 26, 2001. While surveillance agents have attempted to follow Blum and Gerard while they were driving, both Blum and Gerard tend to drive very erratically by slowing down or speeding up with little warning, turning without signaling, and stopping on the side of the road unexpectedly to watch cars as they go by. Such counter-surveillance techniques have made it difficult, if not impossible, to maintain effective surveillance of Blum or Gerard. Furthermore, Blum lives on a cul-de-sac in a very close-knit neighborhood. Neighbors are often on the porches, and appear to be watching the activity in the

neighborhood. On February 10, 2001, surveillance agents attempted to conduct surveillance near Blum's residence by parking just outside the entrance to the cul-de-sac. However, agents observed a neighbor appear to be watching the vehicle from her porch. The neighbor eventually began walking towards the vehicle, as if to confront the agents. At that time, the agents drove away.

In my opinion, further surveillance would only serve to alert the suspects of the law enforcement interest in their activities and compromise the investigation.

Use of Grand Jury Subpoenas

Based upon your affiant's experience and conversations with Assistant United States Attorney Lois Lane, who has experience prosecuting violations of criminal law, your affiant believes that subpoenaing persons believed to be involved in this conspiracy and their associates before a Federal Grand Jury would not be completely successful in achieving the stated goals of this investigation. If any principals of this conspiracy, their co-conspirators and other participants were called to testify before the Grand Jury, they would most likely be uncooperative and invoke their Fifth Amendment privilege not to testify. It would be unwise to seek any kind of immunity for these persons, because the granting of such immunity might foreclose prosecution of the most culpable members of this conspiracy and could not ensure that such immunized witnesses would provide truthful testimony. Additionally, the service of Grand Jury subpoenas upon the principals of the conspiracy or their co-conspirators would only (further) alert them to the existence of this investigation, causing them to become more cautious in their activities, to flee to avoid further investigation or prosecution, to threaten the lives of the informants, or to otherwise compromise the investigation.

Confidential Sources

Reliable confidential sources have been developed and used, and will continue to be developed and used, in regard to this investigation. However, CI-1 is merely a purchaser of narcotics from J-Boy, and has not had any direct contact with Blum or Gerard. Although CI-1 is aware that J-Boy obtains narcotics from Gerard, J-Boy has never made any attempts to introduce CI-1 to Gerard, or to any other possible sources of supply. While CI-1 can continue to make controlled purchases of narcotics from J-Boy, it is not believed that further purchases would help to reveal the identities of Gerard's sources of supply, or help to reveal the full extent of the organization's narcotics trafficking activities. Although CI-1 is willing to testify if necessary, CI-1 has expressed a fear for his safety and for that of his family should his cooperation with law enforcement become known. CI-1 has stated that he knows the organization to be very violent, and that he has seen J-Boy carrying a gun.

CI-2 has provided useful information regarding Gerard's and Blum's narcotics trafficking roles, and has also been able to advise law enforcement of the approximate dates when narcotics transactions have occurred. However, CI-2 has not been able to provide any specific information about Gerard's narcotics suppliers or couriers. In addition, CI-2's reliability is unknown, because he has never provided information to law enforcement in the past.

CI-3, who has provided useful background information about violent

gangs in the Keeney Heights area of Washington, D.C., and has confirmed that Blum uses the target phone, has only limited contact with Gerard. CI-3 has seen Gerard with Blum, but CI-3 cannot provide any direct information about Gerard's drug trafficking activities, and does not know who Blum's or Gerard's narcotics suppliers are.

CI-4 has been used to make a controlled purchase of narcotics from Blum. CI-4 has also been able to provide useful information about Blum's role as one of Gerard's narcotics distributors. While CI-4 can be used to make additional controlled narcotics purchases from Blum, CI-4 is not in a position to purchase narcotics directly from Gerard. In addition, it is unlikely that Blum or Gerard will introduce CI-4 to their narcotics suppliers or to other narcotics distributors of Gerard. Furthermore, CI-4 has refused to permit the FBI to record any of his conversations with Blum and has refused to testify against Blum for fear for his safety.

Undercover Agents

Undercover agents have been unable to infiltrate the inner workings of this conspiracy due to the close and secretive nature of this organization. As detailed above, during May 2001, an undercover agent obtained employment at the Starlight Motel, and was able to conduct a narcotics purchase from Blum. However, during that meeting, Blum said that he rarely conducts transactions with "anyone new," and that he agreed to meet with the undercover agent because he knew him from the Starlight Motel. The undercover agent was unable to obtain any information about Blum's narcotics supplier. In addition, after Blum observed surveillance agents after his drug deal with the agent, he has not returned any of the agent's calls. Accordingly, the FBI is unable to conduct any additional narcotics transaction with that undercover agent. Your affiant believes that there are no undercover agents who can infiltrate the conspiracy at a high enough level to identify all members of the conspiracy or otherwise satisfy all the goals of this investigation. Furthermore, given the violent nature of Gerard's organization, there are concerns for the safety of any undercover agent who participates in drug deals with the organization.

Interviews of Subjects or Associates

Based upon your affiant's experience, I believe that interviews of the subjects or their known associates would produce insufficient information as to the identities of all of the persons involved in the conspiracy, the source of the drugs, the location of drugs, and other pertinent information regarding the named crimes. Your affiant also believes that any responses to the interviews would contain a significant number of untruths, diverting the investigation with false leads or otherwise frustrating the investigation. Additionally, such interviews would also have the effect of alerting the members of the conspiracy, thereby compromising the investigation and resulting in the possible destruction or concealment of documents and other evidence, and the possibility of harm to cooperating sources whose identities may become known or whose existence may otherwise be compromised. When the police interviewed Natasha Spencer and asked her about the murder of Fred Hendricks, she denied knowing anything about it. However, her boyfriend, Stephen Simon indicated to your affiant that Spencer knew that Gerard ordered Hendricks' murder. As to Simon, he knows of Gerard's and Blum's activities

only through his own past drug dealings in the same neighborhood where Gerard and Blum operate. Given that Simon is currently incarcerated, he can provide no further information about the drug activities of Blum and Gerard.

Search Warrants

The execution of search warrants in this matter has been considered. However, use of such warrants would, in all likelihood, not yield a considerable quantity of narcotics or relevant documents, nor would the searches be likely to reveal the total scope of the illegal operation and the identities of the co-conspirators. While some members of Gerard's crew use the Starlight Motel as a location to sell narcotics, it is not believed that members of that crew use that location to store a large portion of their narcotics. The search warrant executed on the motorcycle driven by Blum yielded a quantity of cocaine, but that evidence in and of itself is not sufficient to prosecute and convict all of the members of this conspiracy. At this time, it is unknown where Blum or Gerard store their narcotics. Further, it is unlikely that all, or even many, of the principals of this organization would be at any one location when a search warrant was executed. The affiant believes that search warrants executed at this time would be more likely to compromise the investigation by alerting the principals to the investigation and allowing other unidentified members of the conspiracy to insulate themselves further from successful detection.

Phone Records

Pen register and trap and trace information has been used in this investigation, including a pen register and trap and trace on the target telephone, as described above. The pen register and trap and trace information has verified frequent telephone communication between the target telephone and telephones suspected of being used by co-conspirators. Pen registers and traps and traces, however, do not record the identity of the parties to the conversation, cannot identify the nature or substance of the conversation, or differentiate between legitimate calls and calls for criminal purposes. A pen register and trap and trace cannot identify the source or sources of the controlled substances, nor can it, in itself, establish proof of the conspiracy. Telephone toll information, which identifies the existence and length of telephone calls placed from the target telephone to telephones located outside of the local service zone, has the same limitations as pen registers and traps and traces, does not show local calls, and is generally available only on a monthly basis.

PRIOR APPLICATIONS

Based upon a check of the records of the Federal Bureau of Investigation and the Drug Enforcement Administration conducted on or about August 1, 2001, no prior federal applications for an order authorizing or approving the interception of wire, oral, or electronic communications have been made involving the same persons, premises or facilities named herein.

MINIMIZATION

All interceptions will be minimized in accordance with the minimization requirements of Chapter 119 of Title 18, United States Code, and all interceptions conducted pursuant to this Court's Order will terminate upon attainment of the authorized objectives or, in any event, at

the end of thirty (30) days measured from the earlier of the day on which investigative or law enforcement officers first begin to conduct an interception under the Court's Order or ten (10) days after the Order is entered. Monitoring of conversations will terminate immediately when it is determined that the conversation is unrelated to communications subject to interception under Chapter 119 of Title 18, United States Code. Interception will be suspended immediately when it is determined through voice identification, physical surveillance, or otherwise, that none of the named interceptees or any of their confederates, when identified, are participants in the conversation, unless it is determined during the portion of the conversation already overheard that the conversation is criminal in nature. If a conversation is minimized, monitoring agents will periodically spot check the conversation to insure that the conversation has not turned to criminal matters.

Clark Kent
Special Agent, Federal Bureau of Investigation

Sworn to before me this 13th day of August, 2001.

UNITED STATES DISTRICT COURT
JUDGE
DISTRICT OF COLUMBIA

ATTACHMENT C

U.S. Department of Justice
Criminal Division
Washington, D.C. 20530

MEMORANDUM

TO: Jimmy Olson, Director
Office of Enforcement Operations
Criminal Division

FROM: Perry White
Assistant Attorney General
Criminal Division

SUBJECT: Authorization for Interception Order Application

This is with regard to your recommendation that I, an appropriately designated official of the Criminal Division, authorize an application to a federal judge of competent jurisdiction for an order under Title 18, United States Code, Section 2518, authorizing for a thirty (30) day period, the original interception of wire communications occurring to and from the cellular telephone bearing the number (202) 514-1234, subscribed to by Julio Iglesias, 123 Main Street, N.W., Washington, D.C., in connection with an investigation into possible violations of Title 21, United States Code, Sections 841, 843, and 846, by Gene Blum, Robert Gerard, Katrina Karr, Nancy Prim, "J-Boy," and others as yet unknown.

By virtue of the authority vested in the Attorney General by Section 2516 of Title 18, United States Code, the Attorney General of the United States has by Order Number 2407-2001, dated March 8, 2001, designated specific officials in the Criminal Division to authorize applications for court orders authorizing the interception of wire or oral communications. As a duly designated official in the Criminal Division, this power is exercisable by me.

WHEREFORE, acting under this delegated power, I hereby authorize the above-described application to be made by any investigative or law enforcement officer of the United States as defined in Section 2510(7) of Title 18, United States Code.

The authorization given is intended to apply not only to the target telephone number listed above, but also to any other telephone numbers subsequently assigned to the instrument bearing the same electronic serial number used by the target telephone within the thirty (30) day period. The authorization is also intended to apply to background conversations intercepted in the vicinity of the target telephone while the telephone is off the hook or otherwise in use.

Perry White
Assistant Attorney General
Criminal Division

Date

ATTACHMENT D

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

IN THE MATTER OF THE APPLICATION OF THE UNITED STATES OF AMERICA FOR AN ORDER AUTHORIZING THE INTERCEPTION OF WIRE COMMUNICATIONS

ORDER AUTHORIZING THE INTERCEPTION OF WIRE COMMUNICATIONS

Application under oath having been made before me by Lois Lane, Assistant United States Attorney, District of Columbia, an investigative or law enforcement officer of the United States within the meaning of Section 2510(7) of Title 18, United States Code, for an Order authorizing the interception of wire communications pursuant to Section 2518 of Title 18, United States Code, and full consideration having been given to the matter set forth therein, the Court finds:

a. there is probable cause to believe that Gene Blum, Robert Gerard, Katrina Karr, Nancy Prim, "J-Boy," (hereinafter, the "Target Subjects") and others as yet unknown have committed, are committing, and will continue to commit violations of Title 21, United States Code, Sections 841, 843, and 846.

b. there is probable cause to believe that particular wire communications of the Target Subjects and others as yet unknown concerning the above-described offenses will be obtained through the interception for which authorization has herewith been applied. In particular, there is probable cause to believe that the interception of wire communications to and from the telephone bearing the number (202) 514-1234, and ESN 12CE568L, and subscribed to by Julio Iglesias, 123 Main Street, N.W., Washington, D.C. (hereinafter, the "Target Telephone") will concern the specifics of the above offenses, including the manner and means of the commission of the offenses;

c. it has been established that normal investigative procedures have been tried and have failed, reasonably appear to be unlikely to succeed if tried, or are too dangerous to employ; and

d. there is probable cause to believe that the Target Telephone has been and will continue to be used in connection with commission of the above-described offenses.

WHEREFORE, IT IS HEREBY ORDERED that Special Agents of the Federal Bureau of Investigation ("FBI"), officers of the Metropolitan Police Department and the Prince George's County Police Department, and contract personnel who are under the supervision of the FBI, are authorized, pursuant to an application authorized by a duly designated official of the Criminal Division, United States Department of Justice, pursuant to the power delegated to that official by special designation of the Attorney General and vested in the Attorney General by Section 2516 of Title 18, United States Code, to intercept wire communications to and from the Target Telephone.

PROVIDED that such interception(s) shall not terminate automatically after the first interception that reveals the manner in which the alleged co-conspirators and others as yet unknown conduct their illegal activities, but may continue until all communications are intercepted which reveal fully the manner in which the above-named persons and others as yet unknown are committing the offenses described herein, and which reveal fully the identities of their confederates, their places of operation, and the nature of the conspiracy involved therein, or for a period of thirty (30) days measured from the day on which investigative or law enforcement officers first begin to conduct an interception under this order or ten (10) days after this order is entered, whichever is earlier.

IT IS ORDERED FURTHER, pursuant to Title 18, United States Code, Section 2518(3), that in the event that the Target Telephone is transferred outside the territorial jurisdiction of this court, interceptions may take place in any other jurisdiction within the United States.

IT IS ORDERED FURTHER that the authorization apply not only to the target telephone number listed above, but to any changed telephone number subsequently assigned to the instrument bearing the same electronic serial number as the Target Telephone within the thirty (30) day period. It is also ordered that the authorization apply to background conversations intercepted in the vicinity of the Target Telephone while the telephone is off the hook or otherwise in use.

IT IS ORDERED FURTHER that, based upon the request of the Applicant pursuant to Section 2518(4) of Title 18, United States Code, Killion Communications, an electronic communication service provider as defined in Section 2510(15) of Title 18, United States Code, shall furnish the FBI with all information, facilities and technical assistance necessary to accomplish the interceptions unobtrusively and with a minimum of interference with the services that such provider is according the persons whose communications are to be intercepted, with the service provider to be compensated by the Applicant for reasonable expenses incurred in providing such facilities or assistance.

IT IS ORDERED FURTHER that, to avoid prejudice to the government's criminal investigation, the provider of the electronic communications service and its agents and employees are ordered not to disclose or cause a disclosure of the Order or the request for information, facilities and assistance by the FBI, or the existence of the investigation to any person other than those of its agents and employees who require this information to accomplish the services hereby ordered. In particular, said provider and its agents and employees shall not make such disclosure to a lessee, telephone subscriber or any Target Subject or participant in the intercepted communications.

IT IS ORDERED FURTHER that this order shall be executed as soon as practicable and that all monitoring of wire communications shall be conducted in such a way as to minimize the interception and disclosure of the communications intercepted to those communications relevant to the pending investigation. The interception of wire communications must terminate upon the attainment of the authorized objectives, not to exceed thirty (30) days measured from the earlier of the day on which

investigative or law enforcement officers first begin to conduct an interception of this order or ten (10) days after the order is entered.

Monitoring of conversations must terminate immediately when it is determined that the conversation is unrelated to communications subject to interception under Chapter 119, Title 18, United States Code. Interception must be suspended immediately when it is determined through voice identification, physical surveillance, or otherwise, that none of the Target Subjects or any of their confederates, when identified, are participants in the conversation unless it is determined during the portion of the conversation already overheard that the conversation is criminal in nature. If the conversation is minimized, the monitoring agent shall spot check to insure that the conversation has not turned to criminal matters.

IT IS ORDERED FURTHER that Assistant United States Attorney Lois Lane or any other Assistant United States Attorney familiar with the facts of this case shall provide this Court with a report on or about the tenth, twentieth, and thirtieth days following the date of this Order showing what progress has been made toward achievement of the authorized objectives and the need for continued interception. If any of the above-ordered reports should become due on a weekend or holiday, IT IS ORDERED FURTHER that such report shall become due on the next business day thereafter.

IT IS ORDERED FURTHER that this Order, the application, affidavit and any related orders, and all interim reports filed with this Court with regard to this matter, shall be sealed until further order of this Court, except that copies of the orders, in full or redacted form, may be served on the FBI and the service providers as necessary to effectuate this order.

UNITED STATES DISTRICT COURT
JUDGE
DISTRICT OF COLUMBIA

Dated this13th day of August, 2001.

ATTACHMENT E

MINIMIZATION INSTRUCTIONS FOR WIRE COMMUNICATIONS

MEMORANDUM

TO: Monitoring Personnel

FROM: AUSA Lois Lane

RE: Minimization Instructions

DATE: August 14, 2001

1. All agents and monitoring personnel must read the affidavit, application, order and these instructions and sign these instructions before monitoring.

2. The Order of August 13, 2001, only authorizes the interception of conversations between the Target Subjects and others occurring to and from the telephone number (202) 514-1234, subscribed to by Julio Iglesias, 123 Main Street, N.W., Washington, D.C., regarding offenses involving Title 21, United States Code, Section 841, 843, and 846.

3. Personnel may monitor for a reasonable period not to exceed two minutes to determine whether a subject is participating in a conversation.

4. If, during this monitoring, it is determined that additional individuals are engaged in a criminal conversation, intercepts may continue despite the fact that a named subject is not engaged in the conversation, until the conversation ends or becomes non-pertinent. If individuals other than a subject are participating in the criminal conversation, continue to monitor and advise the case agent or supervisor immediately. If these individuals can be identified, provide this information also.

5. If a subject is engaged in conversation, interception may continue for a reasonable time, usually not in excess of two minutes, to determine whether the conversation concerns criminal activities.

   a. If such a conversation is unclear but may be related to the drug trafficking offenses, interception may continue until such time as it is determined that the conversation clearly no longer relates to that topic.
   b. If such a conversation is unclear but may relate to other criminal activities, interception should cease after about two minutes unless it can be determined within that time that the conversation does in fact relate to other criminal activities, in which case interception may continue.

6. The above instructions regarding the number of minutes of permissible interception will vary once experience has been gained. If experience shows that conversations between certain people are invariably innocent, interception of such conversations should be ended sooner. If experience shows that other individuals always discuss criminal activities, a longer interception may be justified. This is especially true for individuals who can be identified as participants with the subjects in possessing and distributing controlled substances.

Read all of the logs of the interceptions on a continuing basis and notify the case agent if patterns develop.

7. No conversation may be intercepted that would fall under any legal privilege. The four categories of privileged communications are described below:

   a. Attorney-Client Privilege: Never knowingly listen to or record a conversation between a subject and his or her attorney when other persons are not present or are not participating in the conversation. Any time that an attorney is a party to a conversation, notify the case agent immediately. If it is determined that a conversation involving an attorney constitutes legal consultation of any kind, notify the case agent, shut off the monitor and stop recording, unless you are able to determine from the interception of any conversation involving an attorney that third parties who are not involved in the legal matters being discussed are present. If such third parties are present, and only if they are present, may you intercept such conversations following the above-described rules of minimization. In any event, notify the case agent immediately.
   b. Parishioner-Clergyman Privilege: All conversations and conduct between a parishioner and his or her clergyman are to be considered privileged. An electronic surveillance order could not be obtained to listen to a subject confess his or her sins to a priest in a confessional booth; similarly, a subject discussing his or her personal, financial or legal problems with his or her priest, minister, rabbi, etc. may likewise not be intercepted. Thus, if it is determined that a clergyman is a party to a communication being intercepted and that the communication is penitential in nature, turn off the monitor, stop recording, and notify the case agent.
   c. Doctor-Patient Privilege: Any conversation a patient has with a doctor relating to diagnosis, symptoms, treatment, or any other aspects of physical, mental or emotional health, is privileged. If it is determined that a person is talking to his or her doctor and that the conversation concerns the person's health (or someone else's health), turn off the machine and notify the case agent.
   d. Husband-Wife Privilege: As a general rule, there is also a privilege covering communications between lawfully married spouses. Monitoring should be discontinued and the case agent notified if it is determined that a conversation solely between a husband and wife is being intercepted. If a third person is present, however, the communication is not privileged and that conversation may be monitored in accordance with the previously described rules of minimization. If the conversation is between the named subjects and their respective spouses, the conversation may be monitored in accordance with the previously described rules of minimization regarding monitoring these individuals' conversations to determine whether they are discussing crimes. If the nature of

the conversation is criminal, monitoring may continue; otherwise, it may not be monitored.

8. Abstracts or summaries of each conversation are to be made at the time of interception and are to be included in the logs and the statistical analysis sheet. If the conversation is not recorded entirely, an appropriate notation should be made indicating the incomplete nature of the conversation and why the conversation was not recorded completely (e.g., "non-pertinent" or "privileged").

9. The logs should reflect all activity occurring at the monitoring station concerning both the intercepted conversations as well as the equipment itself (e.g., "replaced tape," "malfunction of tape recorder," "no conversation overheard"). These logs will be used ultimately to explain the monitoring agent's actions when intercepting communications. It is important to describe the parties to each conversation, the nature of each conversation, and the action taken. All monitoring agents will record the times their equipment is turned on and off.

10. All conversations that are monitored must be recorded.

11. The Log
    The monitoring agents should maintain a contemporaneous log, by shifts, of all communications intercepted, indicating location of each communication on the cassette tape or computer disc; the time and duration of the interception; whether the telephone call was outgoing or incoming; the telephone number called if the call was outgoing; the participants, if known; and a summary of the content of the pertinent conversations. Any peculiarities, such as codes, foreign language used, or background sounds, should also be noted. When the interception of a communication is terminated for purposes of minimization, that fact should be noted. This log should record the names of the personnel in each shift and the function performed by each, malfunctions of the equipment or interruptions in the surveillance for any other reason and the time spans thereof, and interceptions of possibly privileged conversations or conversations relating to crimes not specified in the original interception order. Each entry in the log should be initialed by the person making it.

12. Protection of the Recording
    The following procedure should be followed during the period of authorized interceptions:

    a. Either during or at the end of each recording period, copies of the recorded conversations should be made for the use of the investigative agency and the supervising attorney;
    b. The original recording should be placed in a sealed evidence envelope and kept in the custody of the investigative agency until it is made available to the court at the expiration of the period of the order; and
    c. A chain of custody form should accompany the original recording. On this form should be a brief statement, signed by the agent supervising the interception, which identifies:

(i) the order that authorized the recorded interceptions (by number if possible);
(i) the date and time period of the recorded conversations; and
(i) the identity (when possible) of the individuals whose conversations were recorded.

d. The form should indicate to whom the custody of the original recording was transferred and the date and time that this occurred. Each subsequent transfer, including that to the court, should be noted on the form.
e. The case agent should mark a label attached to the original tape reel/cassette/computer disc in order to identify it as corresponding with accompanying chain of custody forms. The date of the recording should also be marked on the label and this should be initialed by the agent.
f. Each agent or other person signing the chain of custody form should be prepared to testify in court that the original tape, while in his or her custody, was kept secure from the access of third parties (unless noted to the contrary on the form) and was not altered or edited in any manner. It is the responsibility of the investigative agencies to ensure that original recordings in their custody will be maintained in such a way as to ensure their admissibility in evidence at trial over objections to the integrity of the recording.

13. Procedure When No Recording Can be Made
In those unusual instances when no recording of the intercepted conversations can be made, the following procedure should be used:

a. The monitoring agent should make a contemporaneous log or memorandum that is as near to a verbatim transcript as is possible;
b. The log or memorandum should close with a brief statement signed by the agent indicating the date, time, and place of the intercepted conversation. The order authorizing the interception should be identified. The agent should indicate that the log or memorandum contains the contents of the intercepted communication which he or she overheard. This should be followed by the agent's signature; and
c. This log should be treated by the investigative agency as if it were an original recording of the intercepted communication.

14. If the conversation occurs in a language other than English that no one at the monitoring post understands, the entire conversation should be monitored and recorded and then minimized by a person familiar with the investigation, but who is not actively involved in it, in accordance with the minimization rules set forth above.

15. If any problems arise, please call the case agent or the AUSA. Several telephone numbers will be posted at the monitoring post.

Assistant United States Attorney
Lois Lane

PARTICIPANTS' PAPERS

CURRENT SITUATION OF ORGANIZED CRIME IN HONDURAS

*Gina Antonella Ramos Giron**

I. THE SPECIAL OFFICE AGAINST ORGANIZED CRIME

The special office against organized crime was created in July 1999, as a response to the Honduran's call for the development of new modalities to tackle crime that threatens the internal security of the country.

In Tegucigalpa, the capital, the main office is located, but they have created two more offices against organized crime, one in the north zone of the country and another in the south, which are in charge of handling all the organized crime cases. All the attorneys have been trained in these specific areas, such as investigation methods, prosecution, special legislation, etc.

This special office has five sections:

1. Section against drugs
   This section handles all the cases to do with drug trafficking, e.g. people that sell drugs in small amounts, etc.
2. Section against kidnapping
   This also handles firearms trafficking and illegal immigration, where illegal people pass through the country where their final destination is to get into the United States.
3. Stolen vehicles section
4. Bank robbery, which has increased in the last few months in Honduras
5. Money laundering section
   All these sections have special attorneys, and also investigators that manage all of the investigations. These investigators come under the Security Minister and there are two branches; the uniform police and the investigation division, that also have sections with certain specializations such as organized crime. They help the attorneys to get all the evidence that they need for the prosecution of the cases.

The office itself has an intelligence section that is in charge of taking the information from all the sections and putting it together so they can recognize the different organized groups. Much of the time, the same people that are bank robbers are also kidnappers and car thieves. This section helps a lot in solving cases; they have internet access and they share information with other police departments, and a telephone system where they can access the telephone company system and find out the name and the address of the owner of that number.

One of the difficulties that we have is that we have a very small budget, so we do not have enough cars, not enough attorneys, at the moment, but we hope in the near future we will get more help from the government, and also we work really closely with other countries too, such as the American Embassy. They help us a lot in sharing information about drugs, with DEA (Drug Enforcement Agency) people, with the Immigration

* Public Prosecutor, Department against Organized Crime Public Ministry, Honduras

Department about illegal trafficking of persons, etc. and with other governments such as Japan. This kind of course helps a lot in the training of attorneys and enables them to share information with other countries.

II. ACTUAL SITUATION OF ORGANIZED CRIME IN HONDURAS

Organized crime in Honduras has increased in the last 5 years. We started having many bank robberies and, for the first time, ransom kidnappings. Automobile theft has always occurred, but not as much as in the last few years. Now the criminals have become more professional and steal cars to commit other crimes. At present, we only have two cases of money laundering that are active in court, because the special law against drugs covers money laundering but only that related with drugs. Money sometimes comes from drug trafficking and we know that money has not necessarily come from drugs, it could also have come from stolen vehicles, bank robberies etc. The attorneys that work in the money laundering section right now are working on a new money laundering law that will regulate money laundering crime. We hope this law will be approved by the national congress very soon.

A. Situation of Drug Trafficking

Drug trafficking has increased in Honduras in the last years also. Honduras has a very good geographic location, having two oceans and the trafficking comes from both sides.

In the south of the country we have trafficking coming from Nicaragua and El Salvador, that enters the country through the borders, most of the time with cocaine and marijuana hidden in big containers and small cars. We found a large amount of cocaine of about 30kg in the roof and trunk of a small car and more than 100kg in containers.

In the north of the country we have two ports that have more active drug trafficking, the port of La Ceiba on the north coast and the port of Roatan in the Bay Islands. Usually drugs come from Colombia, because Roatan, as an island, has small docks where any boat can stop and nobody would know about.

In La Ceiba we caught this speedboat coming from Colombia with more than 200kg of cocaine. We arrested two Colombians and this has been one of the biggest loads coming in that way.

Also in the Bay Islands we have these cruise ships that come from Houston or Miami, and sometimes the crew of these ships buy cocaine to take back to the U.S. When I was working there we had several such cases.

We can imagine that on the north side of the country people use more drugs, more than in central and southern areas.

The selling of marijuana and cocaine in small amounts have become very popular in Honduras lately, we can find a number of small houses in the middle of the city where people come at night to buy two or three cigarettes of marijuana or 2 or 3 grams of cocaine. Also in some discotheques people can find cocaine. Society is really concerned about this because we never saw this kind of situation before, but we know it is very common, so as a result, the investigators that work against drugs have more work to do, trying to close these businesses and searching houses, and conducting a lot of undercover investigations.

B. Actual Situation of Kidnappings

Since 1995 we started having an increased incidence of this crime in Honduras. One of the first kidnappings for money was when these criminals kidnapped the son of a presidential candidate, he is also a big business man who used to be the president of the central bank. Since we had that case, kidnappings have become very common, sometimes we finally arrest the people and get the victim to safety, but in some cases we have not been that lucky and we have found the victims dead, and the family had already paid the amount of money demanded.

Most of the above cases happened in the north zone. These are the most complicated cases because they are committed by very well organized groups, that are also the groups that steal cars. In the west we had a lot of kidnappings also but most of the time we do not know about them because the victims families do not inform the police. They pay the money for the rescue and the victims are set free. In this area, we had a lot of farmers that work with coffee so they have a lot of money, so that is the reason kidnappers choose this area of the country.

The families of the victims now are very afraid that their relatives might get killed, so that is why sometimes they prefer to pay the money and ask the police not to interfere in the negotiation and in the rescue. About 1 month ago we had a case where they kidnapped a very rich lady in the city of Tegucigalpa, and her family paid three million six hundred thousand lempiras (Honduras currency) to set her free the next morning. The police did not interfere at all because the family asked them not to because they wanted her mother alive.

But in other cases we have found the victims and rescued them without paying the money. As you can imagine when we have this type of case, a lot of people work on it for a long time; uniformed police, investigators, attorneys, etc.

In 2000 we had 26 kidnappings in Honduras, that is a lot, and in 2001 until August we have had, at the moment, 18. Most of them occurred in the north zone and we have had some cases where the victims have disappeared and we have not found them yet.

C. Actual Situation of Firearms Trafficking

In Honduras we have had firearms trafficking since we had the war with El Salvador and the contra of Nicaragua. So much of the time the guns come from Nicaragua. In the north zone, close to the border with Nicaragua, we had these places where Nicaraguan soldiers hide the guns, and cover them with bombs, so we have to localize these places, and we are working on getting some bomb experts to recover those guns. That takes time, and they have to be very careful. Firearms trafficking is closely related with drug trafficking because some Central Americans, (Hondurans, Nicaraguans, etc.) make deals with people from south America and they exchange the guns for drugs, so this is another king of organized crime.

Three months ago we had a case where we arrested a Lieutenant from the uniformed police with 88 AK-47 rifles. He was transporting them from the south to the north, he was wearing his uniform, and the investigators arrested him with the guns. Also, the car that he was driving had been stolen in Guatemala. As you can see we have corruption too, and this is a very dangerous situation for the country.

The problem that we have right now with this crime is that our law does not talk to much about gun trafficking, the legislation only covers cases when guns are used for terrorism purposes. They can pay bail and then have to be released. We are trying to get higher punishments for these crimes.

Other big cases that we have had involve gangs, because they manufactured their own guns, home-made guns. Almost all juveniles that are part of gangs carry one of these home-made guns, and also commit crimes with them. We usually make searches in their houses, but this is very difficult to control because they can manufacture more.

Most of the time we do not have many complaints about these crimes, so the investigators have to do a lot of undercover work to try to identify these people trafficking in firearms.

D. Situation of Illegal Immigration

In Honduras we do not have too many cases of organ or children trafficking. Most cases that we have is the trafficking of people to the United States. There are very well organized groups from south America to Mexico, who traffic people from South America and pass them through Central America to Mexico and then enter into the United States illegally.

We have had big cases with people from India and Cuba, but the biggest problem is with Chinese people. A lot of Chinese enter the country and then try to get into the United States. We have many Chinese restaurants, and hotels, where they keep people, and which are used as offices. The immigration office has a lot of work, they go to hotels to inspect everyday and they always find Chinese that are living in those hotels, staying illegally in Honduras and waiting for the right moment to leave for the United States. Sometimes they are lucky and get an American visa, but most of the time they go by car to Mexico to enter the United States.

These Chinese groups are also very well organized, and they can protect their people a lot. In my office we had a lot of these cases related with Chinese gangs and some of their some members are in jail. But most of the time we deport them from Honduras back to China, because there is no sense in putting them in jail; they have no family in Honduras and the people we need to arrest are the people that create the procedures and ask them for money. They provide them with a Honduran passport so that it is easier for them to get a visa to enter the United States.

E. Situation of Bank Robberies

Bank robbery has been a very common crime in Honduras. Almost every week we have a bank raid where robbers steal millions of Lempiras and it is found that they are also kidnappers and car thieves.

In CCTV videos of the banks, we recognize a lot of gangs, and one man that was arrested for kidnapping was identified in the video of two bank raids. This is a very serious crime, because these men are really dangerous and they do not care if they kill somebody. Another problem is that some managers or cashiers do not like to testify because they are afraid of them. The thieves are very well organized groups and they are very professional. These crimes are committed all over Honduras, even in the small towns, and also on the islands, where they have speed boats ready to escape. These are the biggest gangs that we have in Honduras.

F. Situation of Stolen Vehicles

There are a very well organized groups. First, this crime happened only on the north cost and the west, but now it is all over the country. They steal more pick up trucks and luxury cars. They take them, most of the time, to Guatemala over the border in the north and over the borders of Nicaragua and El Salvador in the south. They manufacture false invoices, registration documents of the vehicle and the license plates.

Other times they steal the cars and then use them during a bank robbery or a kidnapping. Later we find these cars abandoned by the roads. We have a lot of fancy cars that have been stolen in other countries, they change the color and then they sell them here. We send cars back to other countries from which they have been stolen, mostly from El Salvador, Guatemala and Nicaragua.

The investigators and attorneys that work in stolen vehicles are the ones that have the most work to do, trying to find cars and identifying gangs, the average number of stolen cars is about 20 cars a day and we are not that lucky to find all of them. We recover about 50% of them.

G. Situation of Money Laundering

As I mentioned before, money laundering as a crime in Honduras is only related to drug trafficking. Before 1993, money laundering crime did not exist, it was only mentioned in one article of the drug law, that was in 1998 when the money laundering law was created but only in relation with drug trafficking. The attorneys that actually work with that crime are working on some reforms of that law and they are trying to establish money laundry provisions related to other crimes such as stolen vehicles, kidnappings, bank robberies, human trafficking, etc.

At this moment we only have three big cases of money laundering, the biggest of which is one of a Colombian organized crime group that came to Honduras to launder money. Three of the Colombians began a business selling home appliances and domestic electrical goods. The investigators began an investigation of the business, because it was strange that these places were not open to the public, people needed to use a doorbell to get in. Also, the Colombian police sent the Honduran investigators information about them because they found out that some drug dealers that were located in the sea on boats had communication with a cell phone number in Honduras. So we started an intensive investigation, and finally found probable cause to present in court. The business and their houses were searched and all these people have been arrested or have arrest warrants. During the search, we found about 60 bank account books, check vouchers where they have paid pilots, they had bought boats, and paid the boat captains, and there was nothing related to the domestic electrical goods business. The judge ordered the arrest warrants and confiscated about 8, 2001-model luxury cars, froze all bank accounts and also all the houses that they were building at a cost of over 2 million lempiras.

When the investigators were doing the investigation they noticed that in some accounts people received large amounts of money. This money was in the bank for 5 days and in the next week all the money was gone, and the money transfer was very often from banks in Honduras to other banks, most of them in Miami, New York, Panama and Mexico.

The total money that they uncovered was several million dollars, and further investigation revealed bank accounts with other banks in Central, South and

North America, and even in Spain and Thailand.

We already know the people that send and receive money in Colombia and we are working with assistance from the legal authorities in Colombia.

III. INVESTIGATION TECHNIQUES

According to the criminal procedure law, investigators are not allowed to carry out electronic surveillance. They do this type of investigation but it is not allowed to be used as evidence. We present this but only as an illustration to the judge. We now have a new law and it will be implemented by next February. Electronic surveillance will then be admissible as evidence at future trials.

A. Undercover and Electronic Surveillance Investigation

In drug trafficking investigations, the detectives use a lot of undercover methods. In the smaller cases they go and buy the drugs and when the transaction is done they arrest the people on the spot. The people and the drugs are presented in court for trial.

With the bigger cases, undercover investigators infiltrate drug organizations using microphones, calculators, pencils, etc. A micro video camera can identify the dealers. They take part in the negotiations and when the day and hour is set for the controlled delivery they arrest the criminals at that moment. The undercover agents are allowed to escape police movement, or sometimes we arrest the undercover agent also. Later he and any informants are then released. To do this type of cases we, as attorneys, have to talk in advance with the judge and let him know what is going on so we avoid any problem of illicit evidence.

B. Investigative Techniques in Kidnappings

In kidnapping cases we have to use a lot of people and time for the investigation. Sometimes the case is solved quickly but other times we can spend a lot of time trying to find the victim.

Much of the time when we have a kidnapping, two investigators go to the victim's house to be there and tell the family how they have to act, tell them about the negotiation and how to ask for proof that the victim is still alive. The family can be nervous and confused and forget to ask for proof of life, also how and how much to offer the kidnappers is discussed, because we always offer less than the amount the kidnappers demand. Only in cases where the kidnappers do not want to negotiate will the family accept the amount demanded. Also the time that they spend in negotiation helps the investigators to try to get more information about them, listen to the phone calls and try to locate the place where they are and also the place where the victim is hidden.

We have had cases in which we located the kidnappers, the phone number and their location, then we follow them all the time, because much of the time they go to the place where the victim is being held, so in that way we can discover the location and search in that location to rescue the victim.

Other ways of doing this is at the delivery moment when we locate the place where they choose to make the delivery of the money, and when the family goes to leave the money we wait until the kidnapers pick it up. In some cases we wait until they release the victim, in other cases we arrest the kidnappers at that moment.

C. Other Types of Investigation

In other cases, such as stolen vehicles, the investigators work most of the time with informants. They can provide good information about cars, because every gang has their own area of operation, which means that a member of a gang cannot enter and steal a car from another area that does not belong to them.

Also they have a list of all the places that the car thieves bring the cars to change the color of different parts, to make the car look different. Also in these places they change the VIN (Vehicle Identification Number). Investigators work with some chemicals which they can apply to reveal the real VIN number.

The investigators share a lot of information with other police agencies, and also with Interpol, and they have a list of all the stolen cars in Central America. When they find a car that they think that could be stolen, they check it out on the system and they know if it is stolen or not.

With bank robberies it is very important to make a very good study of the crime scene because in that manner we can know the *modus operandi* of the gang and, in this manner, perhaps recognize the gang. Also the video cameras help a lot in these cases, to show to the judges, and, most of the time, they grant the arrest warrants.

IV. LEGISLATION

The criminal law in Honduras regulate car crime, kidnappings and bank robberies. The Congress has improved the punishment for these organized crimes.

We have a special law against drugs and money laundering, with very severe punishment. With drugs, for example, if a person is found with an amount that is considered more than would be for personal use, then it is considered to be trafficking and the punishment is 15 to 20 years in jail, plus a 1 to 5 million lempira fine.

We are trying to make some changes in that law because sometimes we arrest people that, for example, sell marijuana in small amounts and during a search we will find about 10 to 50 pounds, and most of the time they are poor people that sell drugs to live. We agree that they should receive punishment, but 15 years in jail is considered too harsh for 10 pounds of marijuana and the fine is more than they can pay. As attorneys, we try to find a way to help people, asking them to tell us about who gave them the drugs, so we can catch the big players and we offer to talk with the judge to obtain a more lenient punishment.

TRANSNATIONAL ORGANIZED CRIME: THE INDIAN PERSPECTIVE

*Shankar Pratap Singh**

I. A BRIEF OVERVIEW

Today, a criminal considers the world as his field of operation. He commits a crime in one country, deposits the money derived from criminal activities in an offshore bank in another country and takes refuge in yet another country. The widespread political, economic, social and technological changes as well as variations in legislation, procedures and policies in different countries on mutual assistance in criminal matters have allowed organized crime groups to become increasingly active in the international arena. International criminal organizations are taking full advantage of globalization of world markets, dismantling of trade barriers, the increased ease of international travel, liberalized emigration policies, high-tech communications equipment and sophisticated money laundering techniques to enhance and further their criminal efforts and to forge alliances with other criminal groups. They are engaged in such felonious activities as illicit drug trafficking, money laundering, the use of violence and extortion, acts of corruption, trafficking in women and children, illicit manufacturing of and trafficking in firearms, environmental crime, credit card fraud, computer related crime, illegal trafficking of stolen vehicles, industrial espionage and sabotage, maritime piracy, etc. The problems raised by the current acceleration of the globalization process cannot be brought under control unless various governments coordinate the strategies and policies at the national level with the strategies, policies and regulations issued at the international level.

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II. ORGANIZED CRIME—THE INDIAN PERSPECTIVE

Criminal gangs have been operating in India since ancient times. There is no firm data to indicate the number of organized criminal gangs operating in the country, their membership, their *modus operandi* and the areas of their operations. Thousands of organized criminal gangs operate in the countryside. Their structure and leadership patterns may not strictly fall in the classical Italian Mafia module. They may sometimes be operating in loose structures, but the depredations of such criminal gangs are too well known to be recounted. However, the purpose of organized crime in India, as elsewhere in the world, is monetary gain and this is what makes it a formidable force in today's socio-political set up.

In India, organized crime is at its worst in Mumbai, the commercial capital of the country. The first well-known organized gang to emerge in recent times was that of Varadharajan Mudaliar in the early sixties. His illegal activities included illicit liquor, gold smuggling, gambling, extortion and contract murders. Three other gangs emerged shortly thereafter, namely, Haji Mastan (gold smuggling),

Yusuf Patel (gold smuggling) and Karim Lala (drug smuggling). During the emergency in 1975, when there was a crackdown on the Indian Mafia, new gangs emerged. Dawood Ibrahim, the most successful, came in conflict with the Pathan gangs of Alamzeb and Amirzada which led to bitter internecine gang warfare. The Pathan gangs were liquidated to leave the field free for Dawood Ibrahim. In 1985, there was increased police pressure which made Dawood Ibrahim flee the country. In March 1993, Dawood Ibrahim was behind the serial bomb blasts in Mumbai in which 257 persons died and 713 were maimed. Public and private property worth several million rupees was destroyed. Investigation revealed the transnational character of the conspiracy, the objective of which was to cripple the economy, create communal divide and spread terror in the commercial capital of India. Dawood Ibrahim, Tiger Memon and Mohammed Dosa are presently reported to be operating from Dubai. Their field of activity primarily extends to extorting money from builders and film producers, mediating in monetary disputes, and undertaking contract killings. The other major gangs of Mumbai indulging in organized crime are those of Chhota Rajan (Drug Trafficking and Contract Killings), Arun Gawli (Contract Killings and Protection Money), Late Amar Naik (Protection Money) and Choota Shakeel.

Organized crime exists in other cities too, though not to the same extent as in Mumbai. There are several gangs operating in Delhi from neighboring State of Uttar Pradesh indulging in kidnapping for ransom. Om Prakash Srivastava, alias Babloo Gang of Uttar Pradesh, has been responsible for organizing kidnappings in Delhi and Mumbai in which ransom amounts were paid in foreign countries through "Hawala". Land Mafia has political connections and indulges in land grabbing, intimidation, forcible vacation, etc. Of late, the ganglords of Mumbai have started using Delhi as a place for hiding and transit. Chhota Rajan group is strengthening its base in Delhi.

Ahmedabad city has been a hotbed of liquor Mafia because of a prohibition policy (banning of liquor). The Mafia became synonymous with the name of Latif, who started in the mid-seventies as a small time bootlegger and grew up to set up a 200 strong gang after eliminating rivals with intimidation, extortion, kidnappings and murders. He won municipal elections from five different constituencies with strong political patronage. He was killed by the police in an encounter in 1997.

A boom in construction activities in Bangalore city has provided a fertile breeding ground for the underworld. Builders are used for laundering black money. Forcible vacation of old disputed buildings is a popular side business for the underworld. The local gangsters in the State of Karnataka have connections with the underworld of Mumbai. One of the Mumbai gang operations here is the Chhota Rajan gang.

Brief profiles of three major transnational organized criminal groups are as follows:

A. Dawood Ibrahim Gang

Dawood Ibrahim group is the most dreaded mafia gang with countrywide network and foreign connections. He has stationed himself in Dubai since 1985 and has indulged in drug and arms trafficking, smuggling, extortion and contract killings. His brother Anees Ibrahim looks after smuggling, drugs and

contract killings, Noora looks after film financing and extortion; and Iqbal is in charge of the legitimate business which includes stock broking in Hong Kong. Anees is in legitimate business too, managing the Mohd. Anees Trading Company in Dubai. His business interests in India are shopping centres, hotels, airlines and travel agencies in Mumbai with an annual turnover of about Rs.20000 million. Extradition of offenders from Dubai has not been possible since there is no extradition treaty with Dubai. Moreover, some of these offenders have strong social links with politicians and other top personalities in Dubai.

B. Chhota Rajan Gang

Chhota Rajan was a member of the Dawood gang but parted company after the 1993 serial bomb blasts in Mumbai. He raised his own gang in 1994–95 which is reported to have a membership of several hundred persons today. Chhota Rajan himself is in a foreign country to avoid elimination by the Dawood gang. His gang indulges in drug trafficking and contract killings. In collaboration with another local gang, he organized the killing of a trusted leader of the Dawood Ibrahim gang, Mr. Sunil Samant, in Dubai in 1995.

C. Babloo Shrivastava Gang

Om Prakash Shrivastava in Babloo Shrivastava is facing 41 cases of murder, kidnappings for ransom, etc. He was arrested in Singapore in April 1995 on the basis of a Red Corner Notice issued by INTERPOL and extradited to India in August 1995. He has since been in jail but his gang continued to indulge in organized kidnappings and killings. The ransom amount is received by them in foreign countries through hawala (alternative non-banking remittance channel). The power of this gang has dwindled after his arrest.

III. ILLICIT DRUG TRAFFICKING

Illicit drug trafficking is the most significant transnational organized crime which has become a serious issue confronting both developing and developed countries. In most countries, despite years of drug suppression and prevention efforts, the cycle of drug trafficking and drug abuse continues. If allowed to remain unabated, the drug menace will considerably destroy the quality of life of people and hamper countries in their social, economic and cultural development.

India is a vast country with land borders extending over more than 15000 kilometers and a sea coast line of over 7000 kilometers. India's narcotic problem needs to be visualized from its geographical situation. India is flanked on either side by two regions which are internationally acknowledged as major sources of illicit opiates namely, South-West Asia (Afghanistan and Pakistan) and South-East Asia (Myanmar, Laos, Thailand). Additionally, Nepal, a traditional producer of cannabis, both herbal and resinous, fringes the country in the North.

India is a traditional producer of licit opium for medicinal and scientific purposes. It is grown in three states, namely, Uttar Pradesh, Rajasthan and Madhya Pradesh under official control of Narcotics Commissioner. A part of the licit opium enters the illicit market in different forms. Although opium production is strictly under Government control in India, illicit poppy plantations have been reported in some places. Besides, there is illicit cultivation of opium in the hill tracks of some states.

India has a large presence of chemical industries producing precursor materials like acetic anhydride, acetyl anthranilic acid, etc. for lawful purposes. These chemicals are also utilized for processing and manufacturing heroin. The illicit cultivation of opium as well as the precursor chemicals can be used for the manufacture of heroin. For the last several years, India has also become a base for the manufacture of heroin, particularly in and around the opium producing districts of Uttar Pradesh, Madhya Pradesh and Rajasthan.

The illicit drug trade in India has centered around five major narcotic substances namely heroin, hashish, opium, herbal cannabis and methaqualone. The Indo-Pak border has traditionally been the most vulnerable to drug trafficking. Drug trafficking through India consists of hashish and heroin from Pakistan, hashish from Nepal, white heroin from Myanmar and heroin from Bangladesh. In the early eighties, the Border State of Punjab became affected with narco-terrorism with the smuggling of narcotic drugs and arms from across the border. This was also the time when the drug Mafia emerged in Golden Crescent countries.

Although the use of India by the drug traffickers as a transit country has resulted in an increase in drug abuse due to the spill-over effect, drug addiction in India has not assumed such a serious magnitude as in some of the western countries, but there are no grounds for complacency. There have been reports of drug use among the students of universities in Delhi, Mumbai, Calcutta and Chandigarh. Indian society is not agitated too much. It is customary in some places to consume Bhang (crushed leaves of the cannabis plant) on the popular festival of Holi. There is no such tolerance for charas or ganja which also derived from the same cannabis plant.

1. Quantities of the most common drugs and precursors seized in India during the years 1997 to 2000

Name of the drug/precursor	Quantities seized in kilograms			
	1997	1998	1999	2000
Opium	3,316	2,031	1,635	2,524
Morphine	128	19	36	37
Heroin	1,332	655	861	1,198
Ganja	80,886	68,221	40,113	94,682
Hashish	3,281	10,106	3,391	4,923
Cocaine	24	1	1	0.08
Methaqualone	1,740	2,257	474	1,095
Acetic Anhydride	8,311	6,197	2,963	1,337

2. Details of significant seizures of narcotic drugs and psychotropic substances made during 2001

(i) On 5 January 2001, the Directorate of Revenue Intelligence, Amritsar Regional Unit seized 17,900 kg heroin from a truck at octroi post. The suspected source of the seized drug was Pakistan and it was concealed in three packets kept in a

cabinet in a driver's cabin and 15 packets in an LPG cylinder lying in the tool box on the roof of the truck.

(ii) On 8 February 2001, the Narcotics Control Bureau, Mumbai Zonal Unit seized 1423.690 kg of mandrax tablets from a truck at the premises of M/s High Point Industries, MIDC, Taloja.

(iii) On 17 April 2001, the Directorate of Revenue Intelligence, New Delhi seized 17.000 kg of heroin at National Highway No.8, opposite Shiva temple, Delhi-Gurgaon Road when the occupants of two vehicles were transferring the drug from one vehicle to another. The suspected source of the seized heroin was South-West Asia.

(iv) In the first week of August, 2001, the Directorate of Revenue Intelligence, New Delhi seized two tonnes of hashish from two godowns in Mordabad, near Delhi. It is the biggest ever seizure in Northern India. The hashish was brought from Nepal, where it was processed initially for over a period of 2 to 3 months. The bundles of 200 to 300 kgs of hashish were brought hidden in a mini luxury bus over a period of 3 to 4 months, and stashed away in a godown in Mordabad. The bundles were then covered in polythene bags, wrapped with aluminum foils, vacuum-packed and the bundles shifted to another godown nearby. The machine used in vacuum packing was also recovered. A total of 4,000 packets, each containing 500 gms of hashish in cake form, were recovered. The vacuum-packed hashish concealed in packages of handicrafts was to be transported to Mumbai docks and then shipped to the United States.

The Government of India have taken various legislative, administrative and preventive measures to counter drug trafficking in the country. Among the prominent legislative measures are the provisions of deterrent punishment under the NDPS Act, 1985, applications of preventive detention of drug traffickers under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA), notification of certain chemicals like acetic anhydride as a 'specified item' under the Customs Act, 1962 and India's land border with Myanmar falling within the territories of the States of Arunachal Pradesh, Nagaland, Manipur and Mizoram having been declared as 'specified areas' under the said Act for the purpose of checking illegal trafficking across the border. The creation of the Narcotics Control Bureau as an apex coordinating and enforcement agency at the national level is one of the prominent administrative measures taken by the Government.

The Narcotic Drugs & Psychotropic Substances (NDPS) Act, 1985, which was enforced with effect from 14 November 1985, provides for a minimum punishment of 10 years' rigorous imprisonment and a fine of one hundred thousand Rupees extendable to 20 years rigorous imprisonment and a fine of two hundred thousand Rupees. In respect of repeat offenses, the Act provides for the death sentence in certain circumstances. In remaining cases, a minimum punishment of 15 years rigorous imprisonment and a fine of Rs.1.5 hundred thousand, which is extendable up to 30 years rigorous imprisonment and fine of three hundred thousand Rupees. The courts have been empowered to impose fines exceeding the above limits for reasons to be recorded in their judgments.

The N.D.P.S. Act also provides for:

(i) Constitution of a National Fund for Control of Drug Abuse to meet the expenditure incurred in connection with the measures for combating illicit traffic and preventing drug abuse.
(ii) Control over chemical substances which can be used in the manufacture of narcotic drugs and psychotropic substances through appropriate licensing and deterrent punishment for violation thereof.
(iii) Total ban on suspension, remission or commutation of sentences under the penal provision.
(iv) Forfeiture of all illegally acquired properties derived from or attributable to illicit trafficking. All enforcement agencies have been empowered to trace and freeze/seize such property as are liable to forfeiture under the Act, subject to confirmation within a period of 30 days by the competent authority appointed under this Act. The law applies to all properties and assets of traffickers acquired within a period of six years immediately preceding the date on which such a trafficker is charged with an offense under this Act.

India is one of the few countries in which an adequately deterrent penal system has been developed with regard to drug trafficking. This is in conformity with the UN Resolutions of 1961, 1971 and 1988 on Narcotic Drugs and Psychotropic Substances.

IV. ILLEGAL FIREARMS TRAFFICKING

Firearms trafficking is a global phenomenon and generally resorted to for generating profit, purchasing narcotics and supporting illegal activities of organized criminal groups.

In India, the states of Punjab which were affected by terrorist activities during the 1980s and Jammu & Kashmir have been particularly vulnerable to arms trafficking across the border. India has a long border with Pakistan, Nepal, Bhutan, China, Myanmar and Bangladesh. The Border Security Force, which guards the borders, continues to seize large quantities of AK Series rifles, heavy machine guns, pistols and revolvers, rocket launchers, rifles, magazines and ammunition.

In 1993, a consignment of AK-56 rifles, magazines, live rounds and hand grenades was sent from a Gulf country by land at the cost of Dighi Jetti in the State of Gujarat. Subsequently, huge quantities of arms, ammunition and explosives were smuggled into India by sea route at Shekhadi in District Raigad. These were used for bomb blasts in Mumbai on 12 March 1993, which caused terror, widespread damage, loss of 257 lives and maiming of 713 persons. During investigation, some of the arms recovered included 62 AK-56 rifles with 280 magazines and 38,888 rounds, 479 hand grenades, 12 pistols of 9 mm make with ammunition, 1100 electronic detonators, 2313 kgs. of RDX, etc.

The Police Authorities in the state of Madhya Pradesh in central India recovered 24 AK-56 rifles, 5250 cartridges, 81 magazines and 27 hand grenades on 4 November 1995.

On 17 February 1996, Delhi Police recovered 361 pistols of 0.30 caliber with the inscription "Made in China by Norinco", 728 magazines and 3738 live rounds in a cavity in the undercarriage of a caravan bus. In this case, a Swiss

national and an Iranian national living in Pakistan since 1981, were detained and the investigation disclosed that this in fact was the second consignment, the first one having been successfully smuggled into India in 1995. 22 persons including five foreign nationals have been prosecuted in the court of law in this case.

A sensational case called the Purulia arms drop case was an example of illicit arms trafficking by air. On 17th December 1996, an Antonov 26 aircraft dropped over 300 AK47/56 rifles and 20,545 rounds of ammunition, dragnov sniper weapons, rocket launchers and night vision devices in Purulia village in West Bengal. The aircraft was bought from Latvia for US$2 million and chartered by a Hong Kong registered company Carol Airlines. Payments were made mostly from foreign bank accounts. The aircraft picked up a consignment of arms from Bulgaria using end-users certificate issued by a neighboring country. The arms were airdropped over Purulia in the state of West Bengal.

This case was investigated by the Central Bureau of Investigation and a charge sheeted in the City Sessions Court, Calcutta. After trial, the court found the accused persons guilty of offenses under the Indian Penal Code, Explosive Substances Act, Arms Act, Explosives Act, and the Aircraft Act and sentenced Mr. Peter James Gifran Van Kalkstein Bleach (British National), Mr. Alexander Klichine, Mr. Igor Moskvitine, Mr. Oleg Gaidash, Mr. Evgueni Antimenko, Mr. Igor Timmerman (all Latvian nationals) and Mr. Vinay Kumar Singh (Indian national) to various terms of rigorous imprisonment on 2 February 2000.

V. HUMAN (WOMEN AND CHILDREN) TRAFFICKING

Emigration of human beings from one country to another for trade, commerce, religious and other purposes is as old as human civilization itself. However, the word 'traffic in human beings' implies illegal movement of people from one country to another in violation of existing national laws and procedures. The countries of the West have become highly vulnerable on this count as they are attracting hoards of illegal emigrants mainly because of their relative economic prosperity. Illiterate, innocent and gullible persons from under developed and developing countries, in their urge to earn more money from overseas employment, fall easy prey to unscrupulous and unauthorised agents. Such activities in India have turned into a lucrative business as the agents induce/ make the immigrants part with large sums of monies towards their commission/service charges, expenses on journeys as well as for arranging passports, visas and statutory clearance. Often the travel documents are not valid and sometimes they are simply dumped into foreign lands without giving them promised employment.

India has also been significantly affected by such immigrants. India is found to be both the country of origin and destination for trafficking in women. According to intelligence reports, about 1200 thousand emigrants from Bangladesh have settled in the border States of West Bengal and Assam after independence. The problem, however, has spread as far wide as Mumbai, Rajasthan and Delhi, which have an estimated 300 thousand emigrants from Bangladesh. Similarly, a large number of Indians are working abroad, particularly in the Gulf region. A number of young girls from

southern India have been sent to the Gulf countries. There have also been reports that India has served as a transit point for trafficking of young virgins from Nepal, Myanmar and Bangladesh to the Middle East, mostly Dubai.

An estimated 5,000 to 7,000 Nepali girls are annually sold into brothels in India for prostitution. According to a press report, 9 Nepalese girls aged between 14 and 25 years, were rescued at Nepal-India border point at Kakarbhitta in Eastern Nepal in September, 2000. The rescued girls said that they were lured by the agents on the pretext of getting them married or obtaining jobs for them in India. According to another press report, the Nepal police arrested one Dhan Bahadur Gurung in November, 2000 on charges of selling more than 300 women and girls. He is accused of luring them into prostitution by falsely promising marriage and jobs in the circuses in India. In early 2001, an emigration racket, in which a nexus of policemen deployed at the Hyderabad airport and travel agents facilitated more than 3,000 people sneaking out on fake papers, came to light when nearly 40 women mostly illiterate were being sent to the Gulf countries from Hyderabad airport on fake papers.

Paedophiles now have a titillating new tool—the Internet. It allows them to access pornographic photographs of children, enter their homes, and 'groom' them for rape. The first case of paedophilia appears to have come to light in India in April, 1991 when the police raided the house of Father Freddy Peat, who had been running an orphanage in Goa, and recovered drugs and 2,305 photographs of children forced into sexual acts. Peat was arrested and later sentenced for life. It is believed that copies of a large number of pictures seized from Peat in 1991 have made their way onto the Web.

On December 16, 2000, a Swiss couple William and Loshier Marty, who were part of an international paedophile racket with operations in the West, Thailand, Sri Lanka and India were arrested at a resort in Madh Island, Mumbai with two minor girls. According to the police sources, photos of the couple's victims—some as young as seven—were supplied to paedophiles rings and were also posted on the Web. The internet has facilitated the organization of paedophiles, who can now easily down load pictures, forward them to friends, enter chat rooms and pick out targets and eventually lure them into a meeting.

Another site came into the focus of CBI's Cyber Crime Investigation Cell during routine surfing. The site sold itself as a platform for those who would like to buy or sell sex slaves. In business since 1998, it offered members a sickening variety of slaves: virgin, black, teen, pregnant and more. A membership fee could be waived if a person tortured a slave and sent in photographs. The CBI set up a decoy customer and were promptly offered a teenage girl. The site's pimp was learnt to be operating from cybercafes in Delhi. At the last minute, however, he backed out of the deal and remained untraceable.

India's first case of child porn on the Net came to notice last year. The site in question had a deceptively innocent homepage. But persist with the links and the site brought out 27 files with titles such as "Little bitches on the beach" and "All in the family". By paying a little more one could watch the "VIP series" and customized videos. Most of the girls featured were under 10 and South Asian. Investigation reveals that the site was

created in Lima, Peru. But its domain server was being provided by Arvind Shyam Jagdam from Hyderabad. Jagdam was arrested in September, 2000. Information was sought from Peru police but the response is still awaited. An interesting fact revealed during investigation was that the naked children shown on the site were missing from their homes.

Child-porn sites showcase India as a paedophile's paradise. However, most Indians still discount child porn on the net as a western perversion. Paedophilia and more so its prevalence online is still not a priority crime for the police in India. The Indian mind set is such that few are willing to accept that their children can be at such risk.

India has sufficient legislation to deal effectively with the problem of Suppression of Immoral Traffic as well as illegal emigration out of India. The Suppression of Immoral Traffic in Womens and Girls Act, 1956 to deal with these offenses, was re-enacted under the name of Immoral Traffic (Prevention) Act, 1986 to rectify some lacunae in the earlier Act.

The National Commission for Women reviews laws, conducts inquiries for redressal of complaints, undertakes promotional research for policies, advises the Government and ensures custodial justice for women. The Commission enjoys the powers of a Civil Court by virtue of Section 10(4) of National Commission for Women Act, 1992. It has formed an Expert Committee and has formulated a 10-year National Plan of Action (1997–2006) to coordinate with the 9th and 10th Indian Five Year Plans.

The law relating to emigration of citizens of India was consolidated and amended by enacting the Emigration Act, 1983 which repealed the earlier Act of 1922. In order to protect and aid, with advice, all intending emigrants, a provision was made for the appointment of a Protector-General of Emigrants and Protector of Emigrants by the Central Government. The Act prohibits a recruiting agent to commence or carry on the business of recruitment except under, and in accordance with, a certificate issued on that behalf by the Prosecutor-General of Emigrants or any other officer notified as registering authority under the Act. It further prohibited an employer to recruit any citizen of India for employment in any country or place outside India except through a recruiting agent competent under the Act to make such recruitment or in accordance with a valid permit issued on this behalf under the Act.

The Act provides for a punishment of imprisonment for a term which may be extended to two years and with a fine which may extend to two thousand rupees for contravening the above provisions or collecting, from an emigrant, any charges in excess of the limits prescribed under the Act or cheating any emigrants, etc. All offenses under the Emigration Act, 1983 are cognizable.

V. MONEY LAUNDERING

Crime pays and criminals naturally want to be able to enjoy their profits without worrying about the police or the courts. This is not a new economic or sociological problem. However, geo-political developments over the past 50 years together with economic globalization have meant that the international movement of money has increased. The rapid expansion of international financial activity has gone

hand-in-hand with the development of transnational crime, which takes advantage of political borders and exploits the differences between legal systems in order to maximise profits. The groups involved are genuinely multinational and pose a direct threat to the financial stability of economic systems. They destabilise democracy because they are backed by clandestine networks subject to the law of the underworld.

Money laundering cannot be disassociated from other forms of crime. It is a fact that it thrives on corruption. Corrupt people use financial techniques to hide their fraudulently obtained assets and the continued successful application of these techniques depends on the involvement of influential accomplices. Money laundering is therefore at the centre of all criminal activity, because it is the common denominator of all other criminal acts, whether the aim is to make profits or hide them.

Laundering operations are, in fact, intended more to conceal the origin of the money than its criminal nature, in other words to hide the traffic from which it is derived rather than the general criminal activity which actually generated it. It is therefore essential to move the money in order to scramble the route it takes. The operation is wholly successful when the nature of the money is also concealed and it is impossible to establish a link with any criminal activity because the different circuits taken give it the appearance of legitimate income.

The Indian "Hawala" or "Hundi" system can be explained as a transfer of money through unofficial channels, normally outside the banking channels used by businessmen. The money so transferred often includes the money derived from criminal activities or in violation of the country's legislation. Underground banking which conveys a sense of a system may not strictly cover misuse of banking channel. It may refer to, in a restricted manner, a system of rendering services which are similar to banking services, the most important in this context being the transmission of money. Hawala represents such services.

As a developing nation, India feels seriously concerned not only because money laundering, including compensatory payments known as HAWALA transactions, have been threatening the economy but also because such practices contribute to the country's illicit drug trafficking and terrorist and subversive activities leading to large scale violence.

Of late, an impression is gaining ground that India is becoming increasingly vulnerable to money laundering activities and is becoming a transit point for drug traffickers and other criminals from the Golden Crescent i.e. Pakistan, Afghanistan and Iran and the Golden Triangle i.e. Burma, Thailand and Laos. The Economic Intelligence Council meeting of August, 1993 also observed that money laundering is now a major issue and has become a means of financial clout and strength of economic offenders and drug traffickers. India is fast becoming a conduit for the South East, Middle East, Far East and Latin American countries. The Indian hawala system or underground banking is used extensively for drug trafficking and remittances of money by both non-resident Indians and resident Indians.

In 1992–93, there were press reports on the U.S. State Department's investigations into the possible use of Indian Banking Channels for laundering

drug money, including the possibility of links with the securities irregularities of 1992. An article in the London Times of May, 1993 had suggested that India, more specifically Bombay, was attracting huge amounts of Narcotics money from drug cartels in Columbia.

There were also, in 1994, reports in the press that the private sector in India is making its presence felt in the area of quick transfer of cash across continents. Travel agents and courier companies are targeting Indians living abroad who want to repatriate money. As no minimum/ maximum limits are prescribed, the time taken to transfer money is much less. As such private companies do not fall within the direct control of the banking system, it could perhaps lead to the facility being used by money launderers, though there is no such case reported so far.

The high tax rate and the Exchange Control Regulations (though now considerably liberalised) have been the major reasons for hawala and other economic crimes in India. The Indian hawala system or underground banking is used extensively for drug trafficking and remittances of money by both non-resident and resident Indians. It is the Hawala where the economic offenders and the launderers meet. These offenders easily become prey for money launderers, or it can be said that these offenders on the one side and the money launderers on the other side close the circle.

In India, money laundering is also indulged in by some corporate houses to evade taxes as well as by the organized criminal groups to launder dirty money. Money laundering techniques include smurfing, establishment of front companies, acquisition of commercial and non-commercial properties, remittances through Hawala (non-banking channels), over-invoicing and double invoicing legitimate business and foreign remittances. Non-resident Indians have been given some special banking facilities. These facilities are misused to bring back the money as white money. For example, a portfolio account is opened in a foreign country and the money is laundered back to be invested in the stock markets. Another *modus operandi* is to launder the money through bogus exports. The conversion of black money is done by over-invoicing the products. Some shell companies are setup to issue bills or invoices accompanied by bogus transport receipts in order to obtain funds against these documents from bank/financial institutions and then divert major parts of such proceeds by issuing cheques in the names of non-existent front companies of cheque discounters. The cheque discounters then hand over cash immediately to the party after deduction of their commission. The cheque discounters are generally associated with commodities markets where fake transactions in commodities can largely go unnoticed. The cheque discounters also issue fake Letters of Credit and false bills. The cheque discounters file income tax returns in which the commission is shown as taxable income.

Money laundering *per se* has not been made a criminal offence in India so far. Certain activities like diversion of funds, submitting false statements relating to inventories, multiple financing etc. which could serve as means towards the end of money laundering are also not considered as crimes. The problem had so far been dealt with mainly under the Foreign Exchange Regulation Act, 1973, but with effect from June 2000, FERA has been replaced by the Foreign Exchange Maintenance Act. A bill to enact a money laundering law to be named 'The

Prevention of Money Laundering Bill' has been introduced in Parliament by the Government of India but the same still remains to be enacted as law. Money laundering has been proposed as a cognizable crime punishable with rigorous imprisonment of 3–7 years which could be extended to 10 years and a fine of up to Rs. 0.5 million. The acquisition, possession or owning of money, movable and immovable assets from crime, especially from drug and narcotic crimes, would be tantamount to money laundering. Concealment of information on proceeds or gains from crime made within India or abroad is proposed to be an offence. An adjudicating authority is proposed which would have powers to confiscate properties of money launderers. An administrator may be appointed to manage the confiscated assets. An appellate tribunal is proposed to be set up with three members to hear appeals from the orders of the adjudicating authority. The rulings of the adjudicating authority would thus not be contestable in the local courts. Financial institutions are expected to maintain transaction records and furnish these to the adjudicating authority. Failure to do so would be punishable too.

However, at present, there is certain legislation to deal with such offenders. Such legislation is specifically intended to deprive offenders of the proceeds and benefits derived from the commission of offences against the laws of the country. Besides, such legislation also provides for the confiscation or forfeiture of the proceeds or assets used in connection with the commission of certain crimes. In the offences relating to narcotic drugs and psychotropic substances in particular, the very act of acquisition of property derived from or used in illicit trade and in relation to which proceedings for forfeiture have been initiated has been made punishable, also as a distinct offence (Sec. 68-Y of NDPS Act, 1985).

To deprive persons of the proceeds and benefits derived from the commission of an offence against the law of the land including forfeiture or confiscation of such property, Indian legislation also include the following Acts:

(i) Criminal Law (Amendment) Ordinance, 1944;
(ii) Customs Act, 1962 (Secs. 119 to 122);
(iii) Code of Criminal Procedure, 1973 (Sec.452);
(iv) Smugglers & Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976;
(v) Narcotic Drugs & Psychotropic Substances Act, 1985 (Secs. 68-A to 68-Y);
(vi) In addition, Indian statutes also contain provisions for preventive detention of foreign exchange racketeers under the Conservation of Foreign Exchange and Prevention of Smuggling Activities (COFEPOSA) Act, 1974, and of the drug traffickers under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances (PITNDPS) Act, 1988.

In one of the cases of money laundering dealt with by the Central Bureau of Investigation, an organized group of Hawala dealers operating from London and Dubai used to receive remittances from foreign banks for transferring the same to India. A telephonic message in coded words would be passed to agents in India to pay money in Indian currency. The remittances so received by the above mentioned persons in Dollars or Pounds Sterling at London and Dubai were used for purchase of gold, drugs, arms, ammunitions and explosives through the

underworld. The arms, ammunitions and explosives were used to be smuggled into India and sold to various criminal/ terrorist groups while the drug used to be distributed to the traffickers.

VII. CYBER CRIME

The exponential growth of computer-related crime commensurate with the increasing dependence of computers in our day-to-day lives has posed new challenges to the law enforcement agencies in India. With the physical growth of the Internet over the past few years, a number of new generation crimes affecting the LAN, WAN and Internet have created extraordinary situations. Hacking, computer network breaches, copyright piracy, software piracy, child pornography, password sniffers, credit card frauds, cyber squatting are some of the new terms in the average criminal investigator's dictionary. Highly intelligent persons commit these new generation crimes leaving hardly any trace and making investigation highly difficult and complicated. Recently, one of the hurdles in the investigation of computer-related crimes in India was overcome by the enactment of legislation in the form of the Information Technology Act, 2000, which came into force on October 17, 2000.

The Act delineates two separate types of penal provisions: contraventions and information technology offences. While contravention results in monetary penalty, the IT offences may result in the offender being imprisoned or paying a fine or both. Tampering with computer source codes, obscenity, hacking, unauthorized access to a protected system, misrepresentation before authorities, breach of confidentiality and privacy, publication of false particulars in digital signature certificates, etc. have been listed as criminal offences under this Act. Amendments have also been made to the Indian Penal Code, Indian Evidence Act, the Bankers' Book Evidence Act and Reserve Bank of India Act to facilitate investigation and prosecution of cyber crime.

The Central Bureau of Investigation has recently created a Cyber Crime Research & Development Unit which maintains close liaison with international agencies like the FBI, Interpol and other foreign police agencies to share skills and techniques in investigating cyber crimes. The officers of CBI associated in this exercise share their expertise with the State police forces through regional training programmes held periodically.

VIII. CURRENCY COUNTERFEITING

Currency counterfeiting is one of the organized white collar crimes which has assumed serious proportions globally. It not only causes serious setbacks to the world's economy but also jeopardizes the genuine business transactions. Nowadays, the counterfeiting of currency notes is done with the help of modern equipment such as colour scanners, colour copiers and printers, as well as by offset process. Most of the security features are copies from genuine notes by using modern techniques to produce the counterfeit currency notes very close to genuine currency notes. For achieving the required finish in the art of counterfeiting, the advance computer technology provides them with sophistication and perfection.

There has been an upsurge in the incidents of supply of counterfeit Indian currency notes from across the border of India especially from the Indo-Pakistan border and Indo-Nepal border. During

the year 1999, counterfeit Indian currency notes valued at Rs.18.4 million were seized as compared to Rs.6.5 million during 1998 indicating a threefold increase. During the year 1999, the three States of Uttar Pradesh, Bihar and West Bengal accounted for almost 40% of the total seizures. There are two recent cases of recovery of counterfeit Indian currency notes which have international ramifications:

(i) In January, 2001, the Uttar Pradesh Police, with the arrest of a suspected ISI agent, identified as Abal, from Muzaffarnagar District, busted a gang responsible for circulating fake currency notes across Western Uttar Pradesh, Delhi, Haryana, Rajasthan and Punjab. Currency notes worth Rs.17,000/- in the denominations of Rs.500/- and Rs.100/- were seized from Abal.
(ii) In March, 2001, the Mumbai Police, in one of the biggest hauls, seized counterfeit currency notes worth Rs.15 million in two separate cases. Ten persons linked to a Dubai-based notorious ISI agent Aftab Batki, were arrested. The counterfeit notes were of Rs.500/- denomination. The consignment had arrived from Dubai by air a couple of weeks ago. The notes were concealed in water dispensers and TV sets. After being smuggled into Mumbai, these were handed over to the Dawood gangsters for circulation. The interrogation of the arrested accused revealed that they worked for Aftab Batki. The police recovered from them a separate consignment of fake currency notes worth Rs.9 million meant to be supplied to certain businessmen in Mumbai.

India, as a signatory to the Geneva Convention, 1929, is committed to extend full cooperation to all other countries for eliminating or containing to the furthest extent possible, the counterfeiting of domestic as well as foreign currencies. Indian laws and enforcement measures are in full conformity with the principles laid down in the Convention. The Indian Penal Code provides for punishment of life imprisonment or imprisonment for up to 10 years for counterfeiting any currency note or bank note, using as genuine, forged or counterfeit currency notes or bank notes and making or possessing instruments or materials for forging or counterfeiting currency notes. It also provides for punishment of imprisonment up to 7 years for possession of forged or counterfeit currency notes or bank notes. The making or using of documents resembling currency notes or bank notes is also an offence punishable with a fine. The investigation of cases involving counterfeit currency is done by specially trained staff of the State Police. At the national level, the Central Bureau of Investigation has created a separate unit to take up the investigation of offences of counterfeit currency which have inter-state or international ramifications.

IX. SPECIAL INVESTIGATIVE TOOLS TO COMBAT TRANSNATIONAL ORGANIZED CRIME

The use of traditional investigative methods to combat transnational organized crime has proved to be both very difficult and ineffective. This demands that law enforcement agencies utilise special investigative tools such as controlled delivery, undercover operations and electronic surveillance (wiretapping, communications interception etc.) to effectively fight transnational organized crime. However, the use of these tools are often

surrounded with controversy because there is always public fear that they might infringe on human rights to privacy or are likely to be misused by the government to oppress citizens.

A. Controlled Delivery

Controlled delivery techniques have proven an important enforcement tool in identifying the principles involved in drug trafficking and other major smuggling offences. It is particularly important in countering the criminal activities of drug traffickers who, by the use of couriers, creation of false documents and other deceptive practices, carefully disassociate themselves and try to be remote from the drug trafficking operations.

The United Nations Conference for the adoption of a Convention against illicit traffic in narcotic drugs and psychotropic substances has defined controlled delivery as follows:

> *"Controlled delivery" means the technique of allowing illicit or suspect consignments of narcotic drugs, psychotropic substances, substances in Table-I and Table-II annexed to this Convention, or substances substituted for them, to pass out of, through or into the territory of one or more countries, with the knowledge and under the supervision of their competent authorities, with a view to identifying persons involved in the commission of offences established in accordance with Article 3, paragraph-1 of the Convention."*

Further, Article 11 of the Convention, covering controlled delivery, reads as follows:

> *"1. If permitted by the basic principles of their respective domestic legal systems, the Parties shall take the necessary measures, within their possibilities, to allow for the appropriate use of controlled delivery at the international level, on the basis of agreements or arrangements mutually consented to, with a view to identifying persons involved in offenses established in accordance with Article 3, paragraph 1, and to taking legal action against them.*
>
> *2. Decisions to use controlled delivery shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the Parties concerned."*

Section 4 of the Indian Narcotic Drugs and Psychotropic Substances Act, 1985 provides:

1. Subject to the provisions of this Act, the Central Government shall take all such measures as it deems necessary or expedient for the purpose of preventing and combating abuse of narcotic drugs and psychotropic substances and the illicit traffic therein.
2. In particular and without prejudice to the generality of the provisions of subsection (I), the measures which the Central Government may take under that subsection include measures with respect to all or any of the following matters, namely:
   a. .....
   b. Obligations under the International Conventions;
   c. Assistance to the concerned authorities in foreign countries

and concerned international organisations with a view to facilitating coordination and universal action for prevention and suppression of illicit traffic in narcotic drugs and psychotropic substances.

The above provisions thus enable the drug law enforcement agencies in India to use the controlled delivery technique as an effective tool of investigation against organized syndicates, nationally and internationally. However, before adopting this technique, the originating country and the recipient country should discuss in detail the entire operation, maintain surveillance simultaneously in both the countries, keep close surveillance on the movement of drugs either through cargo or through couriers, and time the final strike operation simultaneously in both the countries to achieve maximum results. It will also be necessary to authenticate the evidence gathered in both the countries for successful prosecution of the traffickers.

In India, the Narcotics Control Bureau, the nodal agency for enforcement of laws concerning narcotic drugs and psychotropic substances, has undertaken controlled delivery operations with a number of countries from time to time both on its own initiative or when suitable cases are brought to its notice by other enforcement agencies.

The operation of controlled delivery is very difficult and complicated, particularly when it involves many countries and there is a difference in their legal systems and practices. In using this technique, there is always a fear that the consignment of illicit drugs may be lost during transit. The uniformity of legislation and close cooperation amongst the law enforcement agencies of different countries are necessary make this technique effective.

B. Electronic Surveillance

Electronic surveillance covers wiretapping, communications interception, etc. Telephone interception and the monitoring of all electronic communications are the most controversial aspects of electronic surveillance. Yet these are very useful in assisting law enforcement agencies to combat transnational organized crime. Wiretapping or telephone interception is defined simply as the interception of a telephone conversation between parties without their knowledge, using equipment that is inserted into the electronic circuit between the transmitter and the receiver.

In India, interception of messages, transmitted or received by any telegraph is covered under subsection 2 of section 5 of the Indian Telegraphic Act, 1885, when it is necessary or expedient to do so in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with a foreign country or for preventing incitement to commission of an offence. The issue of constitutional validity of this provision came under scrutiny of the Supreme Court of India in a writ petition filed by the People's Union for Civil Liberties. The Supreme Court passed a judgment on 18th December, 1996, upholding the constitutional validity of the Act but laid down certain guidelines prescribing that the order for interception will be issued by the Home Secretaries at the Centre and in the States. A copy of the order should be sent to the Review Committee within a week. The order will cease to have an effect after two months unless renewed. The Review Committee will review the order passed by the authority concerned within two months of the passing of the order.

The total period shall not exceed six months.

The Government of India has made a legal provision in the licensing conditions formulated along with the cellular operators to make it mandatory on the part of the cellular companies to provide parallel monitoring facilities for all communications being received and emanating from a particular mobile set. Cellular operators operating in four metropolitan cities of Mumbai, Kolkata, Delhi and Chennai have made this facility available whereas others are bound to provide this facility within three years of the initiation of the mobile network.

C. Undercover Operations

The law enforcement agents, through undercover operations, are able to infiltrate the highest levels of organized crime groups by posing as criminals when real criminals discuss their plans and seek assistance in committing crimes. In India, there is no legislation or regulations to undertake undercover operations.

D. Immunity Systems

Immunity refers to the process of exempting from prosecution a co-accused, in order to maximise the potential of witness co-operation as a tool for combating transnational organized crime. The testimony of a person, who is party to a crime is very reliable because of his relationship to any co-accused. During investigation, a co-accused can reveal the true identities of other suspects, assist the police in locating the victim of a crime, or point out the *corpus delicti* or body of the crime. It is a very effective tool in prosecuting terrorists or members of criminal organisations.

Section 306 of Code of the Criminal Procedure, 1973, provides for the obtaining of evidence of an accomplice by tender of pardon subject to his voluntarily making a full disclosure of the facts and circumstances relevant to the offence for which the accomplice and co-accused are being charged with or investigated for. This provision is applicable in offences punishable with imprisonment of seven years or more.

E. Witness and Victim Protection Programmes

There is no legislation in India at present for protection of witnesses and the members of their families. Section 171 of the Criminal Procedure Code prohibits police officers to carry the complainant or witness to court. The intention of such legislation appears to be to ensure independence of evidence given by the witnesses without any influence from the police.

X. CONCLUSION

National strategies are inherently inadequate for responding to challenges that cross multiple borders and involve multiple jurisdictions and a multiplicity of laws. The rapid growth in transnational organized crime and the complexity of their investigations requires a global response. At present, the measures adopted to counter organized crime are not only predominantly national, but these measures differ from one country to another. It is absolutely imperative to increase cooperation between the world's law enforcement agencies and to continue to develop the tools which will help them effectively counter transnational organized crime.

In India, the Extradition Act, 1962 deals with extradition of fugitive

criminals. Extradition can be made if the offence is an extraditable offence, i.e., an offence provided for in the extradition treaty with a State which is a treaty state and for other countries, an offence which is specified under the Second Schedule of the Act. Under this schedule, there are 18 types of offences. India has extradition treaties with Nepal, Belgium, Canada, Netherlands, the United Kingdom, the United States of America, Switzerland, Bhutan and Hong Kong and extradition arrangements with Sweden, Tanzania, Australia, Singapore, Sri Lanka, Papua New Guinea, Fiji and Thailand. Extradition treaties with Russia, Germany, UAE, Bulgaria, Thailand, France, Ukraine, Romania, Oman, Spain, Kazakhstan, Greece, Egypt, Malaysia and Mauritius are under finalisation.

India has entered into Mutual Legal Assistance Agreements/Treaties in criminal matters with the United Kingdom (1992 agreement concerning the investigation and prosecution of crime and the tracing, restraint and confiscation of the proceeds and instruments of crime, including currency transfer and terrorist funds), Canada (1994), France (1998), Russia (1993), Kyrgyzstan, Kazakhstan (all Mutual Legal Assistance Agreements in Criminal Matters), Egypt, China, Romania, Bulgaria and Oman. Mutual Legal Assistance Treaties have been negotiated with United Arab Emirates but is yet to be ratified. Negotiations are continuing for signing treaties on Mutual Legal Assistance in Criminal Matters with countries such as Australia, Norway, Mongolia, Turkmenistan, Bulgaria, Hong Kong, Ukraine, Uzbekistan and Azerbaijan.

Section 166 of the Criminal Procedure Code deals with reciprocal arrangements regarding processes. A court in India can send summons or warrants in duplicate to a court in a foreign country for service or execution and the said foreign court will cause the service or execution. Section 166-A of the Criminal Procedure Code provides for letters of request to the competent authority for investigation in a foreign country. A criminal court in India may issue a letter of request to a court or a competent authority to examine orally any person supposed to be acquainted with the facts and circumstances of the case, to record his statement made in the course of such examination and also to require such person or any other person to produce any document or thing. Similarly, Section 166-B provides for letters of request from a country or place outside India to a court or an authority for investigation in India. Under this provision, the Central Government may forward the letter of request received from a foreign country to a magistrate who may summon such person and record his statement. The Central Government can also send the letter to a police officer who will investigate the offence.

India is a signatory to the South Asia Association for Regional Cooperation (SAARC) Convention for Suppression of Terrorism. SAARC consists of India, Pakistan, Bangladesh, Nepal, Sri Lanka, the Maldives and Bhutan. Pursuant to the SAARC Convention, India enacted the SAARC Convention (Suppression of Terrorism) Act. Extraditable crimes include unlawful seizure of aircraft; unlawful acts against the safety of civil aviation; crimes against internationally protected persons; common law offences like murder, kidnapping, hostage taking; and offences relating to firearms, weapons, explosives and dangerous substances, etc. when used as a means to perpetrate indiscriminate violence involving death or serious injury, or serious damage to property.

CURRENT SITUATION OF AND COUNTERMEASURES AGAINST TRANSNATIONAL ORGANIZED CRIME IN RELATION TO CORRUPTION IN MALAYSIA

*Sazali Bin Salbi**

I. INTRODUCTION

Corruption has existed ever since antiquity as one of the worst and, at the same time, most widespread forms of behaviour, which is inimical to the administration of public affairs. Corruption can occur in various form. Klaus M. Leisinger divides forms of corruption into 'petty' corruption, gift and 'big' corruption.

'Petty' corruption is defined as small payment to get someone empowered to take and enforce decisions to see to it that something he or she is duty bound to do is actually done within a reasonable period of time. These payments are used as stimulus or nothing would happen or it happens with some delay. The word 'petty' in petty corruption refers to both the size of the financial transaction and the size of the obligation the transaction buys. In some societies, petty corruption pervades almost every public service institution like the police and customs department.

Gifts are another type of corruption. In many societies gifts, including an invitation to dinner or other favors, are considered as something to respect which will strengthen a friendly relationship. Refusing them would be an offence. In other societies, accepting gifts may be close to corruption. The problem lies not only in the intention behind offering the gift but in the value of the gifts themselves. If their values are too high, they are likely to be ethically suspect. The intention of the giver is also relevant. If the gift is intended to motivate the receiver to do or not to do a certain thing within a period of time in the interest of the giver, it will be a corrupt practice.

A more serious type of corruption is 'big' corruption. One of the usual practices in this type of corruption is getting 'commission'. In many developing countries, big construction schemes, purchases of armaments and other equipment like telecommunications and commercial planes, the tenders who won the bids had to give commissions to the people in the authority concerned. Since the commissions are high, they are one of the major attractions for political leaders and top ranking public officials who want to increase rapidly their personal wealth.

In which ever way one defines corruption, the effect toward one's society due to the practices of corruption are devastating in the way it:

- erodes the moral fabric of every society;
- violates the social and economic rights of the poor and the vulnerable;
- undermines democracy;
- subverts the rule of law which is the basis of every civilized society;
- retards development; and,
- denies societies, and particularly the poor, the benefits of free and open competition.

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In view of the seriousness of the effect of corruption in all societies, delegates of the 8th International Anti-Corruption Conference held in Lima, Peru from 7–11 September 1997 adopted that:

- fighting corruption is the business of everyone throughout every society
- the fight involves the defence and strengthening of the ethical values in all societies;
- it is essential that coalition be formed between government, civil society and the private sector;
- a willingness to enter such a coalition is a true test of an individual government's commitment to the elimination of corruption;
- the role of civil society is of special importance to overcome the resistance of those with stake in the status quo and to mobilize people generally behind meaningful reforms;
- there must be a sustained campaign against corruption within the private sector as, with greater privatization and deregulation, it assumes a greater role in activities traditionally performed by the state;
- that top leadership sets the tone in all societies, as "You clean a staircase by starting at the top".

II. ANTI-CORRUPTION AGENCY MALAYSIA

A. Perspective

The Anti-Corruption Agency (ACA) Malaysia is one of the agencies under the Prime Minister's Department. It was officially established on 1st October 1967. The setting up of the ACA is closely linked to the hopes and intentions of the government to create an administration which is clean, efficient and trustworthy. In line with this aim, it is the role and responsibility of the ACA to eradicate corruption and the abuse of power.

B. Objective

The elimination of all forms of corruption and abuse of power prohibited by Government regulations and the laws of the country.

C. Vision

1. Toward the creation of a Malaysian society free from elements of corruption and based on high spiritual and moral values, led by a Government which is clean, efficient and trustworthy;
2. To make the ACA a professional, world class agency dedicated to the eradication of corruption, guided by principles of justice, resoluteness and integrity.

D. Mission

The eradication of corruption and the abuse of power in an integrated, ongoing manner in which:

1. All agencies and major institutions of the Government are fully involved in the enforcement of the relevant laws and regulation in a just and firm way in order to ensure the sovereignty of the law and to protect the national and public interest;
2. All levels of leadership, political, administrative, corporate, religious and non-governmental agencies are involved in the task of nurturing and internalizing the highest moral values until there is a consensus in Malaysian society that corruption is abhorrent and must be wiped out.

E. Function

1. To detect and ascertain the commission of corruption and the abuse of powers based on information and complaints obtained through

accurate, comprehensive and efficient covert and open investigations;
2. To procure and compile concrete and comprehensive evidence to prove commission of corruption, abuse of power and disciplinary misconduct through prompt and effective investigation;
3. To ensure that public interest and justice are continually safeguarded under the guidance of the relevant national laws and regulations through legal counsel and fair trial in cases of corruption and abuse of power;
4. To assist heads of public and private sectors in handling disciplinary action against officers who have violated work regulations and the code of ethics based upon comprehensive ACA reports;
5. To curb roots and opportunities for corruption and abuse of powers due to apparent weakness in the system of management that have been ascertained from ACA investigation results and analytical reports;
6. To assist in ensuring that only candidates who are not involved in corruption and abuse of powers are confirmed based on the ACA's expeditious and accurate vetting of:
   (i) The promotion, optional retirement, conferment of prestigious awards and titles including filling-up vacancies for important posts in the public sector; and,
   (ii) The filling of important posts in certain institutions as well as conferment of prestigious awards and titles in the private sector;
7. To enhance participation and garner undivided and continuous support from leaders, influential groups and the general public in efforts to counter corruption as well as the abuse of power;
8. To ensure that actions taken by the ACA in intelligence gathering, investigations and prevention of corruption and abuse of powers are executed with discipline through its relationship and cooperation with relevant agencies at the national and international levels;
9. To create values of excellence by enhancing expertise and professionalism and fostering the spirit of solidarity amongst ACA officers through dedicated and dynamic leadership as well as planned and systematic training programmes;
10. To enhance the leadership capability and departmental management quality of ACA officers at all levels through development programmes in human resources, information technology and systematic work processes.

F. Strategy

The ACA has identified the following three principal strategies to achieve its stipulated Vision and Mission.

1. Reinforcement Strategy

To enhance the effectiveness of the ACA, this strategy focuses on reinforcing the professionalism of its officers as well as enhancing co-operation with other international anti-corruption law enforcement agencies and the mass media.

2. Encouragement and Prevention Strategy

This strategy emphasizes unwavering efforts to inculcate noble value, prevent corruption and improve the supervision system when enforcing laws and regulations.

3. Enforcement Strategy

New laws to enhance the powers of the ACA so that they will include aspects of mandatory punishment, burden of proof on the accused found in possession of property in excess of known legal income, seizure of property where no satisfactory explanation of its source is provided as well as the ability to deploy agent provocateurs in its investigations. These aspects seek to generate a deterrent effect on the offender.

III. CURRENT SITUATION OF CORRUPTION IN MALAYSIA

To have a clearer current situation of corruption in Malaysia, figures and statistics for the year 1999 will be used in place of figures and statistics for the year 2000 which are still in the process of gathering and analysis.

A. Information

For the fiscal year 1999 ACA Malaysia received a total of 7,829 complaints and reports through various sources as indicated in Table 1.

Table 1

No.	Source of Information	Total	%
1	Anonymous letters	2674	34.16
2	Official letters from individuals	1963	25.07
3	ACA officers	1921	24.54
4	Personal visits	434	5.54
5	Telephone call	405	5.17
6	ACA aerogramme	114	1.46
7	Electronic media (homepages, e-mail, facsimile)	106	1.35
8	Letters from private companies	69	0.88
9	Letters from government department/statutory bodies	43	0.55
10	Police	42	0.54
11	Printing media	40	0.51
12	Letters from political parties	11	0.14
13	Official letters from government companies	4	0.05
14	Public Complaint Bureau	3	0.04
Total		7829	100

After being processed and assessed, only 3,526 or 45.05% of the information received contained elements of corruption capable of open and covert investigations while 2,205 or 28.16% contained only general complaints in connection to the services and administration of certain departments or private companies. The information was then referred to the respective departments or private companies for their internal action. No action taken on the rest of the 2,098 complaints or 26.80% as they had no basis for investigation.

B. Investigation

In 1999, 413 Investigation Papers (IP), 157 Preliminary Inquiry Papers (PIP), 2,282 Intelligence/Surveillance Papers (SP) and Project Papers were opened in respect of the 3,526 complaints. Other action such as making secret observations together with opened IPs/ PIPs/SPs were taken on the remaining 674 complaints.

From 413 complaints investigated in 1999, a total of 406 involved offences under the Anti-Corruption Act 1997 while the remaining 2, 1 and 4 complaints involved the Prevention of Corruption Act 1961, the Emergency (Essential Powers) Ordinance No. 22 of 1970 and the Penal Code respectively. Table 2 shows a statistical breakdown of the total IP(s) opened by types of offence under the relevant laws.

Table 2

No.	Type of Offence	1999
1	Prevention of Corruption Act 1961	
	Sec. 4 (c) - using of claims containing false particulars.	2
2	Anti-Corruption Act 1997	
	Sec. 10 (a) (aa) - Offence of accepting benefits from members of the public.	23
	Sec. 10 (a) (bb) - Offence of accepting benefits on account of being a public servant.	7
	Sec. 10 (b) (aa) - Offence of giving benefits by members of the public.	2
	Sec. 11 (a) - Offence of accepting benefits by an agent.	201
	Sec. 11 (b) - Offence of giving benefits to an agent.	61
	Sec. 11 (c) - Using claims containing false particulars.	82
	Sec. 15 (1) - Offence of using office/position for benefit.	29
	Sec. 29 (b) - Obstruction of inspection and search.	1
3	Emergency (Essential Power) Ordinance No. 22 of 1970	
	Sec. 2 (1) - Offence of using an office/position for benefit.	1
4	Penal Code	
	Sec. 165 - Public servant accepting an item of value without consideration.	1
	Sec. 193 - Fabricating evidence in court.	2
	Sec. 409 - Criminal breach of trust by a public servant.	1
Total		413

C. Arrest

By the end of the year 1999, a total of 289 persons have been arrested, of which 21 were detained for offences under the Prevention of Corruption Act 1961, 241 for offences under the Anti-Corruption Act 1997, 5 under the Ordinance No. 22/ 70 and the remaining 22 for offences under the Penal Code. The total amount of gratification gleaned from the arrests was RM 39,063,674.54 while the comparison of arrests according to categories of person is shown in Table 3.

Table 3
Comparison of Arrests According to Categories of person in the year 1999

No.	Category	Total
1	Management & Professional	18
2	Support staff/group	136
3	Members of public/private sector	127
4	Politicians	2

From the figures and statistics above, it's safe to say that the general public in Malaysia is well aware of the existence of ACA and it's function as an agency which is responsible to eradicate corruption and abuse of powers. This is clearly shown by the amount of information received by ACA, excluding information gathered by ACA officers, totaling 5,908. Although more than half of the information received from the public does not contain elements of corruption or abuse of power, it does reflect the general obligation of the public to fight, hand-in-hand with the ACA, to eradicate corruption and abuse of power in Malaysia.

The statistics from Table 2 show that most offences of corruption in Malaysia are related to accepting of benefits by an agent. An 'agent', under Section 2 of the Anti-Corruption Act 1997 means:

> *"any person employed by or acting for another, and this includes an officer of a public body or an officer serving in or under any public body, a trustee, an administrator or executor of the estate of a deceased person, a sub-contractor, and a person employed by or acting for such trustee, administrator or executor, or sub-contractor",*

As such it shows that most of the IP(s) open for investigation under the offence of accepting benefits involve agents of a certain body, whether public or private sector. Mostly the accepting of benefits which are investigated under Section 11 (a) of the Anti-Corruption Act 1997 is regarded as 'stimulus', as stated by Klaus M. Leisinger, or inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to the agent's principal affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to the agent's principal affairs or business.

The second most investigated offence in relation to the Anti-Corruption Act 1997 for the year 1999 is in relation to Section 11 (c) in which 82 IP(s) were open. Section 11 (c) stated that:

> *"any person knowingly gives to an agent, or if an agent knowingly uses with intent to deceive his principal, any receipt, account or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal".*

Looking at the above given figures and statistics, it is not wrong to say that the larger portion of corruption offences that occur in Malaysia are those that could be categorized as 'petty' corruption. The act of corruption is done more on the basis of one's personal gains. Although many of

the offences are done by one person, it can not be denied that there exists syndicated or organized corruption. The nearest example that could be put forward is the investigation in the year 2000 against officers of the Forestry Department which is said to receive large benefits from illegal loggers. Also there was an investigation against officers of the Road And Transport Department and driving school instructors with regard to the issuing of driving licenses without the applicant going through the normal driving test conducted by the department.

Whatever it is, petty or syndicated, corruption in Malaysia is basically an internal problem that has to be dealt with by all segments of society. In view of this, the government, public agencies, private sectors, non-government agencies, political parties and the public have a role to play.

IV. COUNTERMEASURES AGAINST CORRUPTION IN MALAYSIA

A. Anti-corruption Act, 1997

1. Efforts in combating corruption started in the colonial days of the British administration with the setting up of a commission which is responsible to investigate malpractices in the public service sector. When Malaysia achieved its independence, the government setup the Anti-Corruption Agency in 1967 which is equipped with the Prevention of Corruption Act 1961 and the prescribed laws as its weapon in combating corruption.
2. Having considered the past trends and current challenges, the Malaysian Government, has carried out a comprehensive evaluation of the circumstances and symptoms of corruption and its effect at the national and international level. As a result, a new Anti-Corruption Act has been passed by the Parliament in 1997 to combat corruption and related crimes. In this act, several new provisions to widen and enhance the scope of the Anti-Corruption Agency and the Public Prosecutor's functions in areas of detection, enforcement and punishment of corruption, abuse of public position or powers and related crime which are lacking under the old Prevention of Corruption Act, 1961.
3. Among the important aspects of this new Act was the inclusion of provisions pertaining to the forfeiture of property and the explanation of excessive properties acquired or held. The ACA 1997 doesn't have a specific provision which has a "money laundering" word in it or specifically spells out the offence of "money laundering". Nevertheless, Section 18 of the act provides a provision which makes it an offence for any person whether within or outside of Malaysia to be involved in any dealing in relation to any property which is the subject matter of the corruption offence.
4. As with any other legislation that intends to penalize the criminals, the ACA 1997 provides the Agency with several provisions which are to be used for the purpose of "asset tracing", seizure and forfeiture. Among the provisions of the ACA 1997 are as follows:

(i) *Dealing in Property (Laundering)*

No	Provision	Effect	Offence or Non-Compliance (NC)
1	S. 18 Dealing in property	Besides the accused person, this provision also allows investigation and prosecution of any person who assists or abets the accused.	Fine < RM50,000 or Jail < 7 years or both

(ii) *Investigation Powers in Relation to "Asset Tracing"*

No	Provision	Effect	Offence or Non-Compliance (NC)
1	Officer's Powers (Direct) S. 22 (1)(b) Order to produce documents.	Compel any person to produce documents without having to conduct a search.	NC—S. 22 (10) and punishable by S.58. Fine < RM10,000 or Jail < 10 years or both
2	S.22 (8) Recording of witness' statement	Witness shall not refuse or answer questions which are incriminating. Used as a source of information pertaining to property acquired/ held, details of incomes/expenditure, network analysis, etc. Statement to be admissible as evidenced for forfeiture of property.	S. 19—giving false statement or a misleading one. Fine < RM100,000 or Jail < 10 years or both
3	S. 23 (3) Search without DPP's Order	Search can be done immediately and as such reduce the possibilities of documents or properties being destroyed.	S. 29—obstruction and punishable by S. 58. Fine < RM10,000 or Jail < 2 years or both

No	Provision	Effect	Offence or Non-Compliance (NC)
4	S. 45 (3) Recording of accused's statement	Compel the accused to give his defence or else if he holds back until in court, then he/she will be less likely to be believed by the court. Used as a source of information pertaining to property acquired/ held, details of incomes/expenditure, network analysis etc.	
5	Officer's Powers (through DPP) S. 23 (1) Search with DPP's Order	Search done with a written authorization from DPP.	S. 29—obstruction and punishment by S. 58. Fine < RM10,000 or Jail < 2 years or both
6	S. 27 (1) Solicitors to disclose information by High Court order.	Overcome 'privileged information' barrier in respect of dealing of properties under investigation.	NC—S. 27 and punishable by S. 58 Fine < RM10,000 or Jail < 2 years or both
7	S. 31 (1) Order allowing investigation of any bank account.	Supersede banking secrecy provision. Banking documents are used to trace movements of money and to ascertain *modus operandi*.	NC—S. 31 (4) Fine < RM10,000 or Jail < 2 years or both
8	S. 32 (1) Notice for declaring assets to the accused or any person, and to the bank for disclosure of any account of the above party.	An avenue for investigators to have detailed information pertaining to any property owned/held within or outside Malaysia.	NS—S. 32 (2) Mandatory Jail > = 14 days < 20 years and fine < RM100,000

No	Provision	Effect	Offence or Non-Compliance (NC)
9	S. 32 (3) Explanation on excessive properties (only for officer of a public body)	The accused or any person to furnish a detailed explanation on how properties are owned/held.	Failure to explain satisfactorily. Mandatory Jail >= 14 days < 20 years and fine >= 5 times the value of the excess or RM10,000 whichever higher. NS—S. 32 (4) Mandatory Jail >= 14 days < 20 years and fine >= 5 times the value of the excess or RM10,000 whichever is higher

(iii) *Seizure*

No	Provision	Effect	Offence or Non-Compliance (NC)
1	Officer's Powers (Direct) S. 23 (1) Seizure of movable property (except under bank's custody.	Allows property to be seized for further due course.	S. 29—obstruction and punishable by S. 58. Fine < RM10,000 or Jail < 2 years or both
2	DPP's Powers S. 33 (1) Seizure of movable property under bank's custody.	Allows seizure/restraining order on bank accounts for further due course.	NC—S. 33 (3) Fine < 2 times the amount paid out in contravention of the order or RM50,000 whichever is higher and mandatory Jail < 2 years

No	Provision	Effect	Offence or Non-Compliance (NC)
3	S. 34 (1) Seizure of immovable property.	Allows seizure/restraining order on property for further due course.	NC—S. 33 (3) Fine < 2 times the value of the property or RM50,000 whichever higher and mandatory Jail < 2 years
4	S. 35 Property outside Malaysia (by High Court order)	Prohibit any dealing on property owned/held overseas.	NC—S. 57 and punishable by S. 58. Fine < RM10,000 or Jail < 2 years or both

(iv) *Forfeiture*

No	Provision	Effect	Offence or Non-Compliance (NC)
1	S. 36 Forfeiture upon prosecution (application to High court)	Allow property to be forfeited whether the offence is proved or not.	
2	S. 37 Forfeiture without prosecution (application to High Court)	Allow property to be forfeited without prosecuting the accused (within 12 months of seizure).	

(v) *Evidence*

No	Provision	Effect	Offence or Non-Compliance (NC)
1	S. 43 Evidence of unexplained wealth	Any evidence of unexplained wealth shall corroborate any evidence relating to the commission of the offence under the Act.	

No	Provision	Effect	Offence or Non-Compliance (NC)
2	S.44 Evidence of an accomplice and agent provocateur	Evidence of an accomplice and agent provocateur shall be admissible in court.	
3	S. 46 Admissibility of statements and documents of the dead or untraceable person	Statements or documents given by a person who died later or is untraceable shall be admissible in court.	

B. Integrity Management Committees

To complement and in tandem with the new legislative anti-corruption measure, the Prime Minister's Directive No. 1 of 1998, provides that the Special Cabinet Committee On Management Integrity, be entrusted with more functions and wider scope of duties to oversee and monitor the activities of similar Integrity Management Committees (IMC) setup at Ministerial, Federal Department, even at state and district levels. This directive is to consolidate a further integrity system of administrative management of the Government of Malaysia to enable efforts in combating corruption and malpractices among civil servants to be enhanced by agencies of the Government of Malaysia internally, comprehensively, systematically and continuously.

The objective of the IMC is: "to create a Government and Public Administration that is efficient, disciplined and imbued with the highest integrity through enhanced inculcation of moral values over and above tackling problems and weakness particularly in the areas of Government financial management, public administration, handling of disciplinary referrals, corruption, abuse of powers and malpractices prohibited by regulation, laws and religion."

C. Anti-Money Laundering Act

As a member of Asia Pacific on Money Laundering Group (APG) since May 2000, Malaysia have seriously taken steps to met the 40 Recommendations of the Financial Action Task Force on Money Laundering (FAFT). Malaysia have made a commitment to implement legislation and other measures based on the 40 FATF Recommendations. As such, Malaysia, as a member APG, is committed in providing a regional focus for co-operation against money laundering, especially in the implementation of the 40 FAFT Recommendations in legal, financial and law enforcement sectors.

By that Malaysia has responded to the call of the international community by enacting the Anti-Money Laundering Act 2001 expeditiously. It is hoped that the law, with 119 serious offences including drug trafficking, corruption, kidnapping, robbery, human trafficking, gambling and fraud, will provide a strong foundation for Malaysia's efforts in

countering money laundering. The Act provides comprehensively for prevention, detection, investigation and prosecution of money laundering and forfeiture of property derived from, or involved in, money laundering activities. In addition, the law incorporates the requirement of customer identification, record-keeping and reporting of suspicious transactions by reporting institutions. With the new law Malaysia has adopted the majority of the FAFT's 40 Recommendations.

V. CONCLUSION

The fight against corruption involves the defence and strengthening of ethical values in all societies. The lack or absence of the element of accountability and responsibility is a frightening symptom of moral decadence and the real threat of increasing economic crimes, corruption, violence and crimes of all sorts in every part of the world. Mankind, therefore, should seriously start looking beyond codes of ethics, criminalized or otherwise. No laws, regulations or codes of ethics, no matter how good and comprehensive they are, unless effectively enforced, can wholly eradicate crime, greed, corruption, incompetence or sin. For this reason again we have to fall back on religion and that god is the source of correct principles and that our conscience should be guided by the divinely-inspired values, principles ethics and norms.

TRANSNATIONAL ORGANIZED CRIME IN THAILAND

*Sittipong Tanyapongpruch**

I. INTRODUCTION

Crime is unwanted in every society, but it seems that crime inevitably exists in every country. No matter how hard we try to suppress, prevent or eliminate crime, we still hear reports of crimes every day everywhere in this modern world. Moreover, some of the criminals nowadays have changed their activities and taken advantage from the progress of easy communication and transportation. They organize and build up their networks and spread their activities across the borders of countries. Only minor crime seems to happen in individual countries while serious crime has become borderless and transnational in nature. Thus, the impact of their activities is greater than before and usually involves more than one country.

Organized criminal groups in Thailand exist in many forms and engage in many activities. Thai criminals join with foreign criminals and operate illegal activities in Thailand which have a impact in other countries. They are well organized and difficult to detect. The examples of such transnational organized crime activities in Thailand are as follows.

II. SPECIFIC CRIMES IN THAILAND

A. Drug Related Crimes

The most serious criminal problem in Thailand is illegal drugs trafficking. Thailand is one of the countries that encounters the full scale of criminal activities in the illegal drug trade, from producing, trading, smuggling and the wide use of illegal drugs among Thai people. Illegal drugs and narcotics popularly used in Thailand are methamphetamine or "speed pills", heroin, cannabis, opium, ecstasy and cocaine. Heroin is the most dangerous drug and is very popular. However, the Narcotic Suppression Office has tried very hard to arrest and prevent the trafficking and smuggling of heroin. In recent years we have seen the decreasing significance in the trafficking of heroin but we have seen an increase in producing and trafficking of methamphetamine or speed pills instead. The reasons are that speed pills are easier to produce and more difficult to catch. With a simple machine easily found in markets and a vehicle like a minivan which can be modified to be a mobile factory. To make the situation much worse, people tend to have a wrong attitude that speed pills are not as dangerous as heroin. All of these factors allow speed pills to penetrate schools and universities and every section of society. Students use speed pills, believing that they can stay up all night long preparing for examinations and they will never become addicted to them. Truck drivers use speed pills in order to be able to work all day long without exhaustion. Thus, there is news of methamphetamine traffickers having been arrested everyday with more than one hundred thousand pills seized at a time. The manufacturing plants for speed pills are located along the Thai-Burma border. The chemical, namely "Ephedrine" used as the

* Judge, Central Intellectual Property and International Trade Court, Thailand

precursor, is smuggled from the Southern border of China down to the Thai-Burma border. The Thai intelligence service estimates 600–700 million speed pills would be produced this year (2001) inside Burma. Forty million methamphetamine pills are ready for gradual smuggling into Thailand. On July 13, 2001 the Thai Army patrolling the border clashed with the smugglers, seizing about 2.6 million pills. One Thai soldier was killed in the clash. Meanwhile, the narcotics police seized 74 kilograms of heroin and seized nearly 90 million baht ($2 million) in cash and bank deposits. The drugs were smuggled from laboratories in Pangsang, Burma's Northern Shan State, through Laos to Chiang Saen district in Chieng Rai, Thailand. The drugs were seized in Bangkok and were believed to be destined for the United States. The suspects were placed under police surveillance for some time before the arrest. They were also known by the Thai and US Drugs Enforcement Administration to have close ties with Wei Hsueh-kang, a fugitive drugs warlord, who heads methamphetamine production in the United Wa State Army in the Shan State.

B. Prostitution

The expansion of the city and changing of the Thai society from an agricultural to industrial society has accelerated the practice of prostitution. Many of the women and children have been lured to be prostitutes in the big city such as Chiengmai, Ubonrathchatanee, Hatyai, Pattaya and Bangkok. However, many foreign women from Eastern European countries are also coming voluntarily to work as prostitutes in Thailand.

On the other hand, there is also a gang supplying Thai women to foreign countries for prostitution. On July 18, 2001 three Thai men posing as parliamentary officials were arrested on charges of falsifying and using official documents to smuggle Thai women to Hong Kong for prostitution.

C. Illegal CD Copying

Copyright infringement is also another practice that many people are involved in and can get very good rewards. The cost of producing an infringed CD is just only 20 baht or almost 50 cents but it can be sold at 150 baht or almost US$3. Moreover, the machines and materials to produce the infringed CDs are not difficult to obtain while the CDs can be produced in a large number in a rather short period of time. The infringed CDs are sold not only in Thailand but also in the neighboring countries, such as Laos, Cambodia, Burma and Malaysia. Recently, the police and customs officers have seized the infringed CDs disguised as export goods to Mexico.

D. Money Laundering

The Office of Anti-Money Laundering has been set up after the Money Laundering Control Act B.E. 2542 (1999) came to effect. After only 9 months of operation, the amount of money it has confiscated is more than 240 million baht. It is believed that much more money is being laundered in Thailand.

E. Illegal Firearms Trafficking

Geographically, Thailand is located among the neighbor countries that have political unrest in their countries i.e. Burma and Cambodia. In the past 10 years, a number of firearms have been smuggled in and out of Thailand into those two countries. Firearms control in Thailand seems to fail. Many of the 400,000 handguns imported since 1995 were brought in on fake import licenses. Guns imported on fake licenses were mainly sold to third parties. This illicit but highly profitable business was a

major obstacle to the suppression of crimes.

F. Human Trafficking

The growth and development of Thailand in the past 10 years, compared to neighboring countries, have induced foreign people to make every effort to migrate to Thailand. Some of them, mostly Chinese, try further to make their way to a third country illegally with the help of organized crime gangs. Firstly, the criminal networks that help send people into a third country will send their people into Thailand to operate as a travel agency in order to disguise their operations. The travel agency, then, brings in foreign tourists, mostly Chinese who later on will jump their visa, stay in Thailand and wait for a new passport. The travel agency will get the real passports from many countries, e.g. Singapore, Japan, Thailand, Taiwan, etc. in the amount of 15,000–35,000 baht per passport. For someone who already has a visa the cost is about 100,000–200,000 baht. Then, the travel agent will change the photos in these passports into the photos of the immigrants. Each immigrant needs to study Japanese, English or the Korean language depending on what passport he shall get. Then, a group of immigrants is ready to travel to the destination country. Obviously, the proceeds in this activity are quite large.

G. Smuggling of Stolen Vehicles

Many vehicles, particularly pick-up vans and motorcycles, in Thailand are stolen everyday and have been smuggled to Cambodia, Burma and Laos. The stolen vehicles are sold at a very cheap price. The vehicles are stolen at night and are driven to the border the next morning with fake license plates and then they are taken across the border. However, there are reports that some vehicles stolen from Malaysia and Singapore have been smuggled for sale in Thailand.

H. Financial and Securities Fraud

On July 26, 2001, a total of 85 foreigners and 17 Thais were arrested at the offices of the Brinton Group and Benson Dupont Capital Management, two companies accused by securities regulators of running unlicensed securities services and defrauding foreign investors. Total damages incurred by foreign investors were estimated at 300 million Australian dollars or 6.9 billion baht. The raids were led by the Securities and Exchange Commission, Anti-Money Laundering Office, economic crime suppression police, immigration and labor officials with the co-operation in investigation of the US Federal Bureau of Investigation and the Australian Federal Police. The foreign suspects included 30 Englishmen, 14 Americans, 10 Irish nationals, 10 Australians, 6 Filipinos, 5 Canadians, 2 Singaporeans, and one person each from Burma, Jamaica, Liberia, New Zealand, Malaysia, Spain, Scotland and India. This is the largest case of its kind in Thailand.

The criminal nowadays is getting more complex in terms of activity and organization. People involved in an organized criminal group are of many nationalities. They may plan in one state to take action in another state. However, every domestic law of every country is applicable within its jurisdiction only. It is almost impossible for one state alone to combat against such transnational organized crimes. In Thailand there are many laws and regulations which are outdated and have not been amended to deal with this new kind of organized criminal group. A lack of sharing information among law enforcement agencies has been seen as one obstacle

where our officers need to improve their performance.

II. MEASURES TAKEN TO STEP UP INTERNATIONAL COOPERATION

A. Cooperation in Criminal Matters Among States

A better way of combating organized crime is to prevent it from occurring instead of suppressing it. To guarantee successful crime prevention, the accuracy of information is a vital part of the operation. Since each law enforcement agency in every country still works independently within its jurisdiction, combating transnational organized crimes shall never be successful without co-operation between the states in sharing information and other matters needed to get the criminals brought to justice.

The Act on Mutual Assistance in Criminal Matters B.E. 2535 (1992) has been enacted in order for law enforcement to be able to co-operate with foreign authorities in these matters when requested. The "Assistance" means assistance regarding investigation, inquiry, prosecution, forfeiture of property and other proceedings relating to criminal matters. The Office of the Attorney General shall be the central authority that has the authority and function to be the coordinator in providing assistance to a foreign state or in seeking assistance from a foreign state under this Act.

The duties of the central authority are as follows:

1. To receive the request for assistance from the Requesting State and transmit it to the Competent Authority;
2. To receive the request seeking assistance presented by the agency of the Royal Thai Government and deliver to the Requested State;
3. To consider and determine whether to provide or seek assistance;
4. To follow and expedite the performance of the Competent Authorities in providing assistance to a foreign state for the purpose of expeditious conclusion;
5. To issue regulations or announcements for the implementation of this Act;
6. To carry out other acts necessary for the success of providing or seeking assistance under this Act.

The assistance that may be rendered is as follows:

1. Taking statements from persons, providing out of court documents, articles and evidence;
2. Serving documents, searching and seizing of documents or articles;
3. To locate a person;
4. Taking the testimony of witnesses;
5. Forfeiture or seizure of properties;
6. Transfer of persons in custody for testimonial purposes;
7. Request for initiating criminal proceedings.

B. Extradition

To prevent any criminal from escaping from justice, no matter how far the criminal runs, the law shall be able to get him brought back to justice. The most effective tool to get the runaway criminal from another state is to ask the authority in such state to send him back home for trial. This is known as extradition. Thailand has had an Extradition Act since B.E. 2472, since 1929. The person accused or convicted of crimes committed within the jurisdiction of other States may be sent to such States, provided that by the law of Thailand such crimes are

punishable with imprisonment of not less than 1 year. In addition, Thailand also has bilateral agreements with Belgium, the Philippines, Indonesia, the United Kingdom and the United States of America. Thailand has extradited one Thai politician alleged of sending tons of cannabis to the US. Recently, Thailand has requested the extradition of one executive of a financial company alleged to have committed financial fraud in Thailand from the UK but the result was not successful.

III. MEASURES TAKEN TO IMPROVE RELATED LAWS AND REGULATIONS

A. Measures Against Drug Trafficking

The Act on Measures for the Suppression of Offenders in Offences Relating to Narcotics B.E. 2534 (1991) is enacted with the objective to cut the growing trade in narcotics by seizing any property related to the narcotic offences and any tools, machines, transportation vehicles and properties used for committing narcotics offences. Property related to narcotics offences means money, proceeds received in relation with the narcotic offences including any property derived from such proceeds or money. All of the seized properties and proceeds shall go to the Narcotic Suppression Fund for use in the suppression of such crimes.

B. Anti Money-Laundering Law

In 1999, the parliament enacted the "Money Laundering Control Act B.E. 2542 (1999)" in order to combat money laundering practices. The Act requires the financial institutions to report every transaction in the amount exceeding 2 million baht to the Office of the Money Laundering Control for investigation. The Office also has the power to gather evidence for the purpose of taking legal proceedings against offenders of predicate offences, which is any offence:

1. relating to narcotics;
2. relating to sexuality in respect of procuring, seducing or taking away for an indecent act a woman and child for sexual gratification of others, offence of taking away a child and minor;
3. relating to public fraud;
4. relating to misappropriation or fraud or exertion of an act of violence against property or dishonest conduct under the law governing financial institutions;
5. of malfeasance in office or judicial office;
6. relating to extortion or blackmail committed by claiming an influence of a secret society or criminal association;
7. relating to smuggling under the customs law.

C. Capital Punishment

On July 26, 2001 the Criminal Court sentenced 19 drug traffickers to death and two others to life in five different cases involving over 2 million methamphetamine pills and 9 kilograms of heroin. Only 5 days later, the Criminal Court sentenced another 14 drug traffickers to death. They were charged with the possession of methamphetamine to the total of 450,000 pills and 30 kilograms of heroin. The death penalty has been a hot issue for debate among lawyers in Thailand about its justification for combating crime. It is not so long ago that the government amended the narcotics law by changing methamphetamine from a stimulant substance to a narcotic. The result is that the traffickers shall face capital punishment. It is submitted that the

death penalty is still useful in Thailand although it is argued by the human rights activity groups that there is no concrete evidence that the death penalty helps decrease crime.

D. Plea Bargaining

The concept of "Plea bargaining" is quite a new legal concept in Thailand. It is believed that one who commits the crime deserves to be punished at a certain level. However, since criminal activities are getting more complex as they are organized into groups and their activities go beyond the geographical border of the state, therefore, the defendant who has been arrested may hold some useful information from their groups which, once revealed, may be useful to law enforcement to be able to arrest the ring leader. Recently, there is a discussion of how we shall implement the plea bargaining concept into Thai laws. There are several studies and seminars about the appropriate solution to implement plea bargaining practices in criminal proceedings. It is felt that there are some difficulties, since the Thai criminal procedure allows an injured party to file criminal cases in court. The use of plea bargaining might have some affect on such injured parties. Therefore, it is felt that plea bargaining shall be used only in illegal drug cases where the state is the injured party.

E. Witness Protection Scheme

Witnesses in criminal cases normally try to refuse to testify in court against influential suspects, including organized criminal groups, in fear of danger to themselves and their families which result in the dismissal of cases. Every year, 20% of all criminal cases are thrown out of court because the prime witnesses are too afraid to take the stand. The Ministry of Justice has proposed the "Witness Protection Bill" in order to overcome such fear. Under the draft bill, protection will be the responsibility of the police to carry out this task until the Witness Protection Office is established. There shall be general and special measures for witness protection. In general cases, the investigator or prosecutor, with the request of the witness, may ask the Witness Protection Office to order protection for up to 30 days subject to necessity in the case. However, in an emergency situation, the investigator or prosecutor would be empowered to order the police protection for their witness for up to 5 days at a time. The special measures are designed to apply to cases involving trading in narcotics, women and children. The Minister of Justice may order special measures for witness protection. The measures include relocation of a witness residence, changing of witness identity and records, as well as providing the living allowances job training for up to 2 years. Both general and special measures can be extended to the witness's spouse, parent, children and person in close relationship with such witnesses. Although there is a worry about the shortage of budget, this witness protection programme is inevitably necessary to combat organized crime. Moreover, the use of modern technology in trials are also being introduced. To reduce the fear of witnesses taking the witness stand and confronting the defendant who may be an influential person or member of an organized crime gang, the use of video conferencing where witnesses testify in front of the video camera in a room separate from the trial room should be used instead of the ordinary method. This should make the witnesses feel more relaxed and comfortable to tell the whole truth. The proposed bill to amend the Thai Criminal Procedure Code for allowing the use of

video conferencing is at the scrutiny of the Office of the Council of State.

IV. CONCLUSION

Transnational organized crime has spread and done harm to many countries. The cooperation of every state to suppress such crime is important and needs to be established as soon as possible. Moreover, the need of harmonizing the domestic laws in order to make cooperation possible is also vital.

REPORTS OF THE COURSE

GROUP 1
PHASE 1

ANALYSIS OF CURRENT SITUATION OF ILLICIT DRUG TRAFFICKING

Chairperson	Ms. Gina Ramos	(Honduras)
Co-Chairperson	Mr. Bechem Eyong-Eneke	(Cameroon)
Rapporteur	Mr. Saad Imtiaz Ali	(Pakistan)
Co-Rapporteur	Mr. Takahiro Satou	(Japan)
Members	Mr. Bulatov Timur	(Kyrgyzstan)
	Mr. Miguel Moran	(Peru)
	Ms. Mayumi Ichikawa	(Japan)
	Ms. Reiko Ota	(Japan)
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	Prof. Sue Takasu	(UNAFEI)
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I. INTRODUCTION

Ordinarily, drugs should be used to treat or control diseases. To this end, the use of drugs is entirely lawful and poses no problem. The problem, however, arises when the drugs are used abusively, for example, to intentionally activate such a degree of ecstasy in the subconscious that it leads to negative degeneration and devastation of the social fabric.

Illicit drug trafficking is accelerating at an unprecedented pace, spreading very rapidly across the globe, as a result of rapid globalization. The IT revolution has reduced the world to a small village and has made communication exceptionally fast and easy. The drug trafficker has found very useful tools to reach his desired destination with ease and with a high degree of secrecy, speed and specificity (three S).

Illicit drug trafficking is one, if not, the biggest of all transnational organized crimes. A large variety of drugs are involved, leading amongst which is cannabis (marijuana and hashish), opiates (opium and heroin), stimulants and cocaine. According to the United Nations Office for Drug Control and Crime Prevention, cannabis continues to be widely cultivated and trafficked. More than 155 countries reported seizures of cannabis in 1999. In the Central Asian Republics, fields of cannabis cover several thousands of hectares and these constitute the major source of supply for the illicit Russian drug market. Indoor cultivation of cannabis continues to develop especially in the Netherlands, Canada and the U.S.A. Opium production was, however, in decline in the year 2000 in some countries. It is mainly produced in Afghanistan, Myanmar, Laos, Thailand, Colombia and Mexico.

In spite of the versatile countermeasures taken by the various countries of the world to fight illicit drug trafficking, the trade continues to grow. Several reasons have been advanced to explain the survival of this heinous and illicit business. Corruption of government officials apart, the drug traffickers employ a wide range of other means to establish and expand their trade through various trafficking modes which include concealment in "double-bottom" bags; hide-outs in sea vessels, trains, cargo containers, aircraft, vehicle fuel tanks and tyres; using children as innocent carriers, the list is exhaustive. It is thus difficult to stop this illicit drug trade. But it is the view of this group that consumer countries, in order to stop production, must take all necessary measures not to allow this material to reach their countries and if it does reach it should not be distributed. All this can be done by persuasion through various media and groups. This will not only discourage the traffic in narcotics but also the distribution and even the users of these drugs.

II. CURRENT SITUATION

A. Global Situation

The recent increase in the scope, intensity and sophistication of crime around the world threatens the safety of citizens everywhere and hampers countries in their social, economic and cultural development.

Drug abuse is a global phenomenon. It effects almost every country, although its extent and intensity differ from region to region. Drug abuse trends around the world, especially among youth, have started to rise over the last few decades. Criminal groups have established international networks to carry out their activities more effectively through sophisticated technology and by exploiting today's open borders, in some countries.

Illicit cultivation of opium and coca bush is now mostly concentrated in the territories of two and three counties respectively. The year 2000 recorded a decline in global opium production and a stabilization in cocoa production. The total increase in cultivation in the year 2000 is due to a 19,200 ha increase in cultivation in Myanmar, partly offset by a 8,400 ha decrease in Afghanistan and a 3,500 ha decrease in Laos.

In the year 2000, close to 50% of the global illicit poppy cultivation areas were located in Myanmar, 36% in Afghanistan, and 10% in other Asian countries. The Americas, Colombia and Mexico accounted together for 4% of global cultivation. Overall, the cultivation of cocoa bush, the production of cocoa leaf and the potential production of cocaine remained more or less stable in the year 2000 due to (1) continued eradication in Bolivia; (2) a decline of cultivation in Peru; (3) some increase in Colombia. In the absence of reliable information on global cannabis cultivation, seizures seem to confirm that cannabis continues to be widely cultivated and trafficked.

According to Interpol, "the indoor cultivation of cannabis continued to develop during the year 2000, especially in the Netherlands, Canada and the U.S.A. An increasing amount of cannabis from Colombia and Jamaica made its way to Europe during the year. The Central Asian Republics, where vast fields of cannabis cover several hundreds of hectares, remain for the time being a major source of supply for the illicit Russian market.

Cannabis ranked first, both in terms of numbers of seizure cases and amounts seized. Large scale seizure cases of cocaine, notably when it is trafficking by sea, are more likely than heroin or amphetamine-type stimulants.

The most significant increases in seizures in 1999 were reported for amphetamine-type stimulants (ATS), reflecting increasing levels of trafficking and law enforcement activities in East and South-East Asia. Seizure of opiates, expressed in heroin equivalents, grew by 14%, largely reflecting the 1999 bumper harvest in Afghanistan.

The estimates show that worldwide the most widely consumed substances are cannabis (144 million people), followed by amphetamine-type stimulants (29 million people), cocaine (14 million people) and opiates (13.5 million people of whom some 9 million are taking heroin). The total number of drug users was estimated at some 180 million people, equivalent to 3% of the global population or 4.2% of the population age 15 and above.[1]

B. Country Specific Situation

1. Cameroon

Cameroon is in a region where drug trafficking is expanding. It is more of a transit than a producing country. It however produces a very insignificant quantity of marijuana when compared with the volume of production of the world. Much of what is consumed in the country is smuggled into it from the neighbouring countries, especially from Nigeria. Cameroon does not grow cocaine.

The illicit drug traffickers employ a wide range of *modus operandi* to go ahead with their illegal business. These include, *inter alia*, the concealment in double-bottom bags, hide-outs in sea vessels, cargo containers, aircraft and vehicles. Women may have it hidden in their plaited hair. In some cases, children may be innocent carriers on the understanding that they are generally less suspected. In extreme cases, the traffickers take the risk to swallow small water-proof balls of the drug. Some others have had incisions in some parts of their bodies on which the drug is placed and the broken portion of the body stitched. Here, medical people are involved in the illegal business.

For now, there are no known groups in the illicit drug business in Cameroon.

2. Honduras

Drug trafficking in Honduras has increased in the last few years because it has a very good geographical location, i.e, it lies in the heart of Central America and, adjacent to two oceans. That is an advantage for the drug traffickers.

In the south of the country the drugs are smuggled in by land, most of the time from Nicaragua and El Salvador, and in the north of the country the trafficking is more often carried out by sea, and drugs from Colombia reach Honduras via speed boats.

Honduras is not only a transit country but it also has a lot of consumers. The trafficking is not only inside the country but there is international trafficking among the countries of South and Central America. Traffickers use Honduras as a transit country to the final destination, that is, the U.S.A.

(i) *Drugs more currently used*

The drugs more currently used in Honduras are:

[1] Global Illicit Drug Trends 2001, UNODDCCP

- Marijuana (Cannabis)
- Powder cocaine
- Crack cocaine
- Heroin
- Amphetamines

(ii) *Principal countries*

Based on the experience and analyzing the current situation of the countries in the area we can say that the principal countries related with drugs are:

Producing:	Colombia and Mexico
Transit:	Central America
Market	U.S.A.

(iii) *Modus operandi*

The *modus operandi* more frequently used is bringing the cocaine from Colombia in speed boats or by plane. The traffickers drop it in Honduras, either in the water or on the land where there is usually someone waiting to collect it by boat or by car and take it to the borders in Guatemala and then Mexico. From where it goes into the U.S.A. Another way is by bringing the drugs in big containers from Nicaragua, which go across Honduras to the borders with Guatemala, and Mexico and finally to the U.S.A.

(iv) *Organized Groups*

In Honduras, there are many organized groups, inside the country and abroad. Police have identified three major organized groups inside the country that deal only with Marijuana, and also two big international organized groups that have members from Colombia, Nicaragua, El Salvador and Mexico.

3. Japan

The most frequently abused drugs in Japan are stimulant drugs (mostly metamphetamine) and the second is cannabis. In the year 2000, the seizure of Stimulant drugs totaled 1,026.9 kg. Arrests made in violations of the Stimulant Drug Control Law totaled 18,942. The seizure of dried cannabis amounted to as much as 306.4 kg.

The main sources of stimulant drugs are traced to China and North Korea. Most of the cannabis came from the Philippines, Thailand and the Netherlands.

Each smuggling case has come to involve a large amount of drugs. On a beach in Kagoshima prefecture in October 1999, police and concerned authorities seized 564.6 kg, the largest single seizure ever. While most of the illicit drugs in circulation in Japan have been smuggled from abroad by international drug and criminal syndicates, visiting foreign nationals have been found operating as consignees.

These illicit drugs have been smuggled by vessels or cargo aircraft disguised as bona fide articles. Some arrivals were found carrying parcels of illicit drugs concealed about their persons or in their carry-on luggage. Approximately 76% of the total volume seized was in smuggling incidents using vessels in 2000. It appeared that there were also criminal acts that attempted to unload substances from regional ports as well as coastal areas outside the ports by methods including the transfer of cargo from mother ship to small boats and concealment in trading vessels.

Boryokudan, traditional organized criminal groups, were quick to realize that the stimulant drug trafficking yielded huge profits because of the significantly large margins between the wholesale coasts and retailing prices. Moreover, a stable demand could be expected as abusers develop dependency for the drug. Boryokudan groups smuggled in the stimulant drug in

partnership with transborder drug syndicates and dominated domestic traffickers, thus contributing to the spread of abuse.

In 2000, a quarter of arrested Boryokudan members were Stimulant Drug Control Law violations. And this figure accounts for 40.8% of the total stimulant drug offender's arrests. Boryokudan members often use sophisticated methods, for example, using cellular phones with a system of prepaying charges for calls to be made in which the users can remain anonymous and conclude drug sales without meeting the buyers.[2]

4. Kyrgyzstan

In Kyrgyzstan the most common abused drugs is opiates (opium and heroin). Cannabis is gradually increasing. A small amount of stimulant drugs such as ecstasy are also abused.

Opium is produced in Afghanistan. Most of the opium is transferred to Europe and the USA through Russia, and the rest are consumed in Kyrgyzstan. Cannabis is produced in Kyrgyzstan. Approximately 90% of cannabis is exported to Russia, and the rest is consumed in Kyrgyzstan. Stimulant drugs like ecstasy are produced in Europe, and trafficked to Kyrgyzstan through Russia and consumed in Kyrgyzstan.

The world center of illegal drug production is shifting from the so-called Golden Crescent (area of Iran, Afghanistan, Pakistan and northern part of India) to Afghanistan intensively. It has resulted in an increase of drug trafficking in its neighboring countries, mainly in Central Asia. The mass production of illegal drugs in Afghanistan has led to a decline of price in the world drug market. It also has a great influence on Kyrgyzstan, and drug abusers have increased more than before.

At present there are four major routes to smuggle drugs from Tajikistan to Kyrgyzstan:

Route 1: Kyzyl-Art, covering Osh-Khorog highway and peripheral zones, bordering Mt. Badakhshan.
Route 2: Altyn-Mazar, which begins at Raushan plateau of Zaalay mountain range and spreads to the Chon Alai valley.
Route 3: Batken, including mountain routes, used to cross through Jergital and Garm rayons to Batken and Kadamjai rayons of Osh Oblast.
Route 4: Leninabad, including all of the highways, starting with Laylak rayon and adjoining areas of Uzbekistan and oblast centers.

Automobiles can be used in route 1 and route 4. Therefore, drugs are hidden inside the containers of vegetable and fuel tanks loaded on large size trailer trucks. Route 2 and route 3 are located in the high mountain areas, thus, drugs are transferred by horses and people.

No stable organized groups are recognized in the country.

5. Pakistan

(i) *Illicit Drug Trafficking*

Drug trafficking is presently, in most probability, one of the biggest illegal national and transnational activities

[2] White Paper on Police 2001,National Police Agency Government of Japan, and Japan Coast Guard Annual Report 2001, Japan Coast Guard

earning titanic profits (and generating other transnational crimes) and threatening the present and future economies and generations.

The drugs situation in Pakistan has improved almost miraculously so much so that by 1999–2000 only 16.8 tons of heroin yield was possible as compared to 800 tons in 1979–1980. Pakistan is thus struck off the list of producer countries and on the other hand has become a victim and a transit country.

The increase in poppy cultivation in Afghanistan since 1993 and growth in the sophistication of the Afghan drug trade is putting enormous pressure on the GOP's (Government of Pakistan) border control efforts and Pakistani society. Successful interdiction operations occur, but traffickers have superior fire power and faster vehicles, the territory is enormous and law enforcement is widely dispersed, with little mobilization capacity. This means more problems in fighting this crime.

Both Afghan origin cannabis and opiates transit through Pakistan. Afghanistan produced an estimated 3656 metric tons of opium in 2000. However drug abuse escalated after the introduction of heroin in 1980, (Soviet invasion of Afghanistan). Since, it has affected every class, every age group and every income bracket all over Pakistan. According to a rough survey there are about 4 million addicts half of whom are heroin addicts as against only 5000 in 1981. The social impact is of course immeasurable.

Presently, Drug law enforcement is done by a number of agencies. These include the Anti-Narcotics Force, Pakistan customs, Pak. Rangers, Frontier constabulary, Pakistan Coast Guard, Frontier corps NWFP and Balochistan, Provincial Police Forces, and the Airport Security Force (ASF). However the principal agency is the Anti-Narcotics Force (ANF), whose only mandate is to coordinate and control drug trafficking.

Acetic Anhydride, the essential chemical required for conversion of opium into heroin, was previously on the "free list" for purpose of import in the licit industry. But it has been placed on the "Restricted list" and its import is allowed to legitimate industrial consumers, after due verification.

Pakistan is a signatory to the major instruments on international drug control of 1961, 1972 and 1988, and to the UN convention on TOC, December 2000.

Pakistan is a victim state in that it has become a transit and a consumer country for Afghan opiates and cannabis. GOP's cooperation with the world is viewed as excellent by the U.S.A. and other developed countries. Intensive law enforcement efforts by the ANF have forced the narcotic traffickers to adopt a low profile. Interdiction of heroin increased to 85% and several major traffickers have been arrested. The GOP has prevented the re-emergence of large heroin processing laboratories. As apparent from the above, the main drugs of abuse in Pakistan are heroin, hashish (chars) and opium. Other countries involved in the region are Afghanistan, India, Iran, China, Central Asean States and Myanmar.

(ii) *Organized Groups*

As per the latest reports released there are no well known organized groups in Pakistan involved in drug trafficking. In Pakistan the scenario is a bit different, being not a producing country, but being

used mainly as a transit country and to some extent a market country.

In Pakistan transit is being helped to reach its destination by individuals who are called Narco-barons. They usually belong to the tribal areas of the NWFP province. The infrastructure of their activities does not fit into the definition of an organized group. Groups have equal partners, a hierarchy, specializations assigned and even research being done. Then they have alliances with each other, globally known organized groups like the Boryokudan, Colombian cartels, Nigerian criminal organization, Turkish drug trafficking organization, Ukrainian criminal syndicates, Polish criminal groups, Dominican criminal organizations, etc. while individual drug or Narco-barons in Pakistan, e.g. Rehmat Shah Afridi, has his own chain of employees who act as his agents or subordinates and carry out orders of the boss through managers. It is not known, neither could it be proved till now that these Narco-barons of Pakistan have very strong bonds, partnerships, linkages, etc. to the known organized groups in other countries.

(iii) *Modus Operandi*

The common modes to transport drugs used in Pakistan are through airports and shipping camouflaged containers. They use different airlines operating in Pakistan. PIA has often been suspected of being involved but it has never been proved according to reports.

Other common methods used include body wraps, use of false bottoms of luggage, concealment in imported equipment, concealment in hidden compartments of vehicles, ships and containers as mentioned above, delivery by courier services, installing it in human body by operations or human babies.

(iv) *Due to usage of these Modes—the Arrests, Extradition and Freezing of Assets etc. carried out to date*

So far, by using one or more of the *modus operandi* 21 Narco-barons or drug traffickers (transit helpers) of Pakistan have been extradited to the U.S.A. from 1991–2000. Seven are yet to be arrested, four cases are pending in court and two are out of the country. The total amount of frozen assets of drug traffickers from 1999 to April 2001 is Rs.4718.76 million, and the total value of assets forfeited is Rs.305.75 million and the total number of cases registered during the above period is 141. In addition, to foil any designs of traffickers to take advantage of refuge in another country by manipulating its laws or due to an absence of specific laws there, Pakistan has extradition treaties with 27 countries to date and is a party to several regional and bilateral agreements pertaining to drug traffic controls.[3]

6. Peru

In Peru, the most frequently abused drugs are cocaine and marijuana. However lately, heroin and ecstasy appear in the drug scenario.

In South America, producers of cocaine are from Colombia, Peru and Bolivia. Peru produces marijuana for domestic consumption.

The principal routes of exporting drugs are Colombia, Panama, El Salvador, Honduras, Mexico, the U.S.A., Europe and Asia. Another route is Chile to Europe and Brazil to Europe.

The *modus operandi* most used is air mail. Also drugs are transferred to the U.S.A from Peru through Colombia and Mexico. By sea, drugs are hidden inside

[3] Saad Imtiaz ALI, UNAFEI Individual Presentation, 21 September 2001

containers on the ships sailing to the U.S.A., Europe, Spain, Italy and Mexico.

Organized groups of drug trafficking are Mexican cartels, Colombian cartels, Peruvian groups and Bolivian groups. The activities of the Mexican cartels and the Colombian cartels extend throughout the world. These cartels run plantations, process the drugs, package them, put their original logos on the product and deliver to many countries, just like running big companies. The activities of the Peruvian groups and Bolivian groups are domestic.

III. CONCLUSION

After analyzing the current situation with special reference to our respective countries, we can say that drug trafficking is a gigantic concern, specially when we have such well organized groups that really threaten the internal security of the countries and the world.

The analysis further shows that formerly transit countries are progressively becoming consuming countries. The *modus operandi* of transporting these drugs is changing day by day both in scope and complexity and it often requires devising new methods of detection and adequate controls.

1999 seizures show that about one third of all drugs were seized in North America, a quarter in West Europe, a fifth in Asia and a tenth in South America. 1999 interception rates (quantities seized/quantities produced) were 39% for cocaine and 15% for opiates.

UNDCP estimates 180 million people consume illicit drugs (annual prevalence in the late 1990s) this includes 144 million for cannabis, 29 million for ATS, 14 million for opiates (of which 9 million for heroin). These numbers are not cumulative because of poly-drug use. The strongest increases recorded in 1999 were for cannabis and ATS consumption. At the regional level, cocaine consumption remained stable in North America (though significantly down compared to the mid-1980s), but increased in West Europe, as in a number of countries in South America in 1999.[4]

To reduce or eliminate drug abuse, Governments and UNDCP need up-to-date statistics on who is taking drugs and why. Drug abuse cuts across age, class, ethnic and gender lines. People with drug abuse problems have different needs. Women, the young, the poor, refuges and ethnic and religious minorities need easier access to early intervention and services. Once in treatment, drug abusers may need job training and referral, assistance in finding housing and reintegrating into society. Drug abusers who commit crimes require alternative treatment in order to break the cycle of drug abuse and crime.

[4] Global Illicit Drug Trends 2001, UNODDCCP

GROUP 2
PHASE 1

ANALYSIS OF CURRENT SITUATION OF ILLEGAL FIREARMS TRAFFICKING AND HUMAN (WOMEN, CHILDREN AND MIGRANTS) TRAFFICKING

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I. INTRODUCTION

Although this planet has many beautiful things for us to enjoy, in the dark side of it still exists the unpleasant activities of transnational organized criminal groups. Their operations exist in various forms, including but not limited to, illegal firearms trafficking and human trafficking.

Illegal firearms trafficking has recently developed to be a serious problem. It is not only posing dangers to the countries concerned but also the global community as a whole. Many of the firearms are mainly smuggled, to be used for the internal purposes of one nation. However, there are a certain amount of firearms that have been smuggled by the criminal groups for making profits as well as for fueling the operations of international terrorism. Illegal firearms trafficking has a direct impact on the world economy and social values. Moreover, it has indirectly damaged the democratic institutions.

Human trafficking especially women, children and migrants is another area that recently has increased in terms of volume and practice. The International Organization for Migration (IOM) estimated that the global human trafficking industry generates up to US$8 billion each year from this "trade on human misery." Nearly 2 million children are abused and trafficked globally every year. South Asia and South East Asia take the lead in the volume of trafficking in children for sexual exploitation. Understanding how these activities operate is a vital part before an appropriate countermeasure is taken.

Thus, this paper is a production of an effort to point out and analyze some

current situations of illegal firearms trafficking and human trafficking which occur in some parts of this world.

II. ILLEGAL FIREARMS TRAFFICKING

The term "illegal trafficking" includes any form of transfer where firearms, parts, components or ammunition move from one country to another without the approval of the countries concerned. Basically there are three categories of country involving in this trafficking as follows:

(i) Illegal manufacturing countries
(ii) Transit countries
(iii) Effected countries

A. Global Perception of Firearms Trafficking

Firearms trafficking is committed internationally by organized criminal groups and it poses a significant threat not only to the lives of people but also to the security and development of each country. Some trafficked firearms are considered illegally manufactured or surpluses from military conflicts. For example, it is estimated that America's proxy war with Russia has left approximately 3 million weapons of all kind unused (packed and greased) on Afghanistan's soil.

[An estimated $6–8 billion were allocated by Washington for the supply of light weapons only {Chalk, Peter; Focus}. The International Institute of Strategic Studies (I.I.S.S) in London estimate the illicit global market at $5 billion a year (Focus, Vol. 3, No. 13).]

1. African Continent

In Uganda, small arms come from neighboring countries that are faced with civil wars. These countries are Sudan, Somali, Congo and Rwanda.

The Karamojong, a nomadic tribe in the Northeastern part of Uganda has in its possession about 200,000 guns, mainly from Sudan and Somali, and they are using the arms for cattle rustling. The firearms originally imported by the Government of Somalia eventually find their way out of the country. Rebel groups and criminals are using these arms in Uganda to commit atrocities.

In Tanzania, the illegal firearms come from its neighboring countries which are Rwanda, Burundi, Uganda, Congo, Mozambique and Somali. These guns find markets in Tanzania and they are used in committing offences or are taken to other countries for illegal use.

In Nigeria, the Nigerian Civil War, between 1967–1970, exposed the country to an influx of firearms. The illegal firearms trafficking to Nigeria from neighboring countries has fueled ethnic/ religious armed conflicts and armed robbery in the country.

2. Asian Continent

In the Islamic Republic of Pakistan certain categories of weapons are illegally manufactured in its tribal area. These illegal weapons are sold on profit inside of Pakistan and gets into the hands of certain sectarian organizations—who in turn use them for terrorist purposes inside the country. More over some of these weapons trickle down to neighboring countries such as India, Afghanistan and Iran.

But Pakistan is also an effected country. The reason being the period from 1979–1988, when the people of Afghanistan fought a war with the former Soviet Union, many categories of

weapons entered this country. These weapons were supplied almost all by western countries, especially the U.S.A and its allies, moreover to this were also added countries like Egypt, Saudi-Arabia and other Muslim countries who were against the communist ideology of the USSR. This brought in its wake a culture known as the "Kalashnikov-culture".

Organized criminal groups therefore made good money by selling and smuggling them to other countries like India, Iran and Kashmir, where already certain internal discord existed, and the demand by terrorist groups existed. These weapons were supplied by both land and sea routes.

As far as Nepal is concerned, this is an effected country. Due to an increase in Maoist activities internally and terrorism by Tamil-Nadu, in Sri-Lanka, the trafficking of arms has increased to dangerous levels. In Nepal firearms are mainly smuggled for the purpose of Dacoits and political activities from the neighboring countries. It is said that Nepalese Maoist (political party) has many types of firearms which have been illegally kept and used.

Whereas in India, the state of Punjab was affected by terrorist activities during the 1980's and Jammu and Kashmir have been particularly vulnerable to arms trafficking across the border. India has a long border with Pakistan, Nepal, Bhutan, China, Myanmar and Bangladesh.

Thailand is geographically located among the neighboring countries that have political unrest in such countries as Burma and Cambodia. In the past 10 years, a number of firearms has been smuggled in and out of Thailand into those two countries. A total number of 400,000 firearms have been imported since 1995 and were brought in on fake import licenses. Those illegal firearms were then sold to the third parties/ countries. Thailand is found to be a transit and effected country.

In the Philippines these activities works in two ways. The organized crime groups smuggled the U.S made firearms into the countries and these firearms are used by the rebel groups in fighting against the government. On the other hand, locally made handguns manufactured in the Province of Cebu, in Central Philippines, are smuggled to other countries, particularly Japan, Taiwan and other ASEAN countries through air and sea. The Philippines is an illegal manufacturing and effected country.

Firearms trafficking is not considered a serious problem in Malaysia and many criminals fear the mandatory death sentence that they are liable to face if arrested with a firearm. For the past two years (till June 2001) statistics show that only 413 such firearms comprising mostly pistols, revolvers and shotguns were seized and the number of arrests were about 461. In 1999, a few have been shot dead in East Malaysia but they were rather foreigners who were involved in activities such as piracy. Investigation shows that most of the firearms are smuggled from neighboring countries such as Thailand and the Philippines either by organized groups or individuals where they can be obtained quite cheaply and easily. It is very easy to bring in firearms into the country via the borders, especially land and sea where it is next to impossible for the authorities to conduct thorough observations. Firearms are used mainly in committing crime. It is estimated that the actual number of firearms made in this country could be 20

times or even more than the firearms seized. Malaysia is an effected country.

Papua New Guinea is also faced with the increase of illegal firearms trafficking. Reports indicate that firearms trafficking occur in areas like the highlands where people have been using them in their tribal fights. High-powered firearms are also being used in the cities of Port Moresby and Lae as well as in Bougainville. It is evident that firearms trafficking in Bougainville were conveyed from the Solomon Islands and Indonesia. It is noted that firearms are smuggled into PNG by shipping cargo containers, light aircraft, parcel port, fishing trawlers, and small boats, crossing the Solomon and Indonesian border. Papua New Guinea is considered an effected country.

In Japan, the possession of firearms is strictly controlled by the Firearms and Swords Control Law. Strict regulations contribute to the relatively low rate of firearms-related crimes in Japan, and it is almost impossible to produce firearms illegally inside Japan. However, it is also the fact that occasionally firearms are used in crimes, especially in robbery cases. In 1999, police seized 837 authentic handguns (down 92 from the year before) and the majority of them were trafficked into Japan from foreign countries by crime syndicates. The countries where they were made range from the U.S, the Philippines, Thailand, to Russia, Korea, China, Brazil, and Turkey. They are cunningly brought into Japan by such means as being taken into pieces and hidden in containerized cargo. In these contexts, Japan could be categorized as one of the effected countries by trafficking of firearms.

3. Latin American Continent

In countries such as Argentina and Venezuela, illegal firearms trafficking is a new problem to them. The weapons of Syrian origin have been smuggled to Argentina. However there is no record on any organized crime group involved in those two countries.

Likewise in Honduras, the problem of firearms trafficking started since their war with El Salvador and the Contra of Nicaragua. The weapons come from Nicaragua through their boundaries in the northern zone. There is a record where some of the firearms trafficking have been linked with drugs trafficking because some Hondurans make deals with organized crime groups in South Africa where they exchange weapons with drugs. The situation becomes worse where a few organized gangs in Honduras have a capability in manufacturing their own hand made guns and almost all the juveniles in those groups have one each and they often use them in committing crime. Honduras authorities find it hard to control this because more hand made guns can be manufactured any time.

Brazil also has the same problem where weapons have been smuggled from Paraguay through the Port of Rio de Janeiro and Santos in Sao Paulo. Firearms are used by members of organized criminal groups to commit crimes of threat and murder. There is also evidence that a group involved in illicit drug trafficking in Brazil have exchanged firearms for cocaine with terrorist groups from other neighboring countries.

III. HUMAN (WOMEN, CHILDREN AND MIGRANTS) TRAFFICKING

Trafficking in human beings implies illegal movement of people from one

country to another country in violation of existing national laws and procedures. In human trafficking activity, the attention has been paid mostly to women and children because they are more often the victims. Basically, there are 2 categories of country involved in this human trafficking as follows:

(i) Source countries
(ii) Destination counties

Focusing on the trafficked person, there are two types of human trafficking:

Some persons, mainly women and children, are forced to engage in labor including prostitution in exchange for money and are exploited. Thus, they are so called forced laborers. On the other hand, some persons voluntarily engage in illegal work with the purpose of getting money. Thus, they are so called illegal immigrants.

A. Global Perceptions of Human Trafficking

1. African Continent

Apart from South Africa and Libya, the other countries in Africa are source countries of human trafficking.

Nigeria is a source, transit and destination country for trafficked persons. The majority of trafficking from Nigeria involves females destined for Europe. Italian authorities estimate that 10,000 Nigerian prostitutes work in Italy and many of them are victims of trafficking. Nigerians, primarily women and children are trafficked to work on plantations in other African countries, including Gabon, Cameroon, Equatorial Guinea and Benin. Other significant destination countries for trafficked Nigerians include the Netherlands, the Czech Republic, Spain, France and countries in the Middle East. Nigeria also serves as a transit hub for trafficking in West Africa and to a lesser extent a destination point for young children from nearby West African countries. Women and children are also trafficked within Nigeria. There are illegal syndicates operating within and outside Nigeria doing human trafficking. The entire business is shrouded in secrecy and some of the victims are transported outside Nigeria in the guise to pursue education and gainful employment. The traffickers employ subtle force, coercion, fraud and outright deceit to accomplish their objectives.

Mali is a source and destination country for trafficked persons, primarily children. Children from Mali are trafficked to Ivory Coast to work on cotton and cocoa plantations or for domestic servitude. Women from Nigeria are trafficked to Mali for sexual exploitation.

Due to the prevailing civil war in the northern part of Uganda, the country has become a source of trafficked persons, primarily women and children. The Lords Resistance Army (an antigovernment rebel group) based in Sudan has kidnapped about 10,000 persons from Uganda to southern Sudan; and forced them to become soldiers, forced laborers and sex slaves. Also some women are being taken to Europe and the Middle East by organized groups for purposes of prostitution. Some of the children taken to Sudan are sold into slavery to Sudanese Arabs or exchanged for guns.

The Democratic Republic of Congo is a significant source country for trafficking in persons. Women are trafficked to Europe, mainly France and Belgium, for sexual exploitation; and boys are

trafficked by rebel groups within Congo for forced military services.

Ugandan and Rwandan soldiers, in addition to Congolese for Democracy Rebels, reportedly in the recent past have abducted many Congolese women and girls from the village they raided and forced them into sexual servitude.

South Africa is a destination country for trafficked persons. Women are trafficked within South Africa and from other African countries (e.g. Angola, Zimbabwe, Lesotho, Swaziland, Zambia, Cameroon, Malawi and Rwanda), Asia (specially Thailand and Taiwan), Eastern Europe, Russia and the new independent States. South Africa is also a transit point for trafficking operations between developing countries and Europe, the United States and Canada.

Generally, human trafficking networks in Africa are often informal and secretive in nature, which makes the identification of networks and traffickers extremely difficult.

2. Asian Continent

Many people seeking gainful employment from underdeveloped and developing countries travel on unusual routes to reach their destination where there is relative economic prosperity (developed countries). Laos has had this problem since 15 years ago.

Some countries are also found to be both countries of origin and destination for human trafficking such as India, China, Thailand, etc.

The growth and development of Thailand in the past 10 years compared to the neighboring countries have induced foreign people to migrate to Thailand. Persons from Burma, Cambodia and Laos are the primary trafficked persons to Thailand to work in farms, industrial places and other sectors. A large number of Thai persons, especially young women and girls, have been trafficked internationally to Japan, Taiwan, Malaysia, Singapore, Europe and the United State chiefly for sexual exploitation and, to a lesser degree, sweatshop labor. Besides, Thailand has been used as a transit country and the number involved is obviously large. Persons especially from China are trafficked through Thailand to a number of developed countries and more prosperous neighboring countries. The organized crime groups bring them as tourists and later will arrange for forged visas and passports. Related foreign languages are arranged while waiting for those documents ready. With the co-operation of certain airline officers, they then traffic persons to the destination countries.

Malaysia is both a source and destination country for trafficked persons. Young women from Indonesia, Thailand and the Philippines are trafficked into Malaysia for sexual exploitation. Some, with the help of organized criminal groups, misuse their tourist visas while many have been cheated by these groups. They entered Malaysia without any valid travel document or through other illegal landing point and were forced to work until they pay the organized crime group substantial amounts of money, normally unaffordable figures, under threat of physical harm and under threat to expose their illegal alien status to the authorities. A number (3,625) of them have been arrested in the last two years and will be/are being sent back to their country of origin after undergoing punishment for violation/illegal entry to this country. Also, a small number of

young Malaysian women, primarily ethnic Chinese are trafficked to Japan, Canada, the United States and Taiwan also for sexual exploitation.

In the context of Nepal as a source country, the main reasons for children and women trafficking include natural disaster, poverty, illiteracy, divorce between the parents, death of parents, child labor, sexual abuse, unemployment, migration, child marriage, polygamy, violence in the family, etc. Most of the women and girls have been taken to many countries and sold to brothels for the purpose of prostitution. Organized criminal gangs have been found to be active behind such inhuman crime and cruelty. This type of crime is mostly committed outside the national boundary. It has become very difficult for the criminal justice authorities to arrest and punish the criminals. It is said that 5,000 to 7,000 women are sold every year from Nepal to other countries. They are trafficked either forcefully or on the pretext of finding a good job or marriage or false promise and also are sold as maids. In recent years some Nepalese girls, especially from rural areas, have been trafficked to the Middle East, East Asia and South East Asia for commercial sex purposes. Most of them would not know where they are taken until the people who brought them to strange places have slipped away and they are in the custody of some strangers who start to abuse them. Moreover, the children are trafficked for labor and begging purposes. Nepal has to face some illegal migrant problems from Tibet.

Pakistan's domestic flesh trade does not appear to be backed by powerful organized criminal networks as known in other countries of the world. Tiny operations are clandestine and behind the curtains.

In India and Pakistan the commercial sex trade is profitable. However women are kidnapped and end up as prostitutes domestically. A large number of Indian young girls from southern India have been sent to Saudi Arabia and Gulf countries for the same purpose of sexual exploitation. Moreover certain syndicates have been identified who indulge in sending men and children for purposes of labor to western and far eastern countries, including Japan and certain rich Arab countries.

After the break-up of the U.S.S.R., women trafficking in Iran increased in the sense that these two countries are acting as transit countries because of their close proximity. However, the trafficked women cannot stay for long in Pakistan and Iran because of stringent immigration laws and Islamic laws.

In Japan, although there are few instances of trafficking in the strict sense, there are many illegal immigrants (smuggling). However, trafficking in the broad sense is probably not rare because transnational crime organizations are involved in almost all these smuggling cases. The number of persons taken into custody involved in collective smuggling cases was 770 (44 cases) in 1999 and 90% of them were Chinese nationals. Most of the cases were linked to Chinese transnational crime organizations, Snake Head, which is a generic term applied to organizations in charge of smuggling Chinese people into Japan and other countries. Snake Head solicits would-be illegal immigrants and undertakes, in exchange for considerable amounts of payment, not only their transportation to Japan but also their shelter after their arrival in Japan and prepares forged passports and other necessary documents.

IV. ANALYSIS

A. Causes

1. Illegal Firearms Trafficking

Focusing on the causes of the above-mentioned two kinds of trafficking, some factors could be seen in common. Apparently, one of the common causes is the fact that these two kinds of trafficking could bring enormous sums of monetary benefit, both in cash and kind to the transnational crime organization.

In addition to that, there are some factors peculiar to each type of trafficking like warfare in the source country and effected country as well as demand for terrorist and crime activities in the effected country.

It is analyzed that illegal arms proliferation is a global phenomena. It has extracted a heavy toll in terms of human lives and socio-economic development of entire regions.

In Asia, especially Afghanistan, the death toll has passed 200,000 (dead and injured during the war) and is still rising. In India, Pakistan, Cambodia, Sri-Lanka and some African states, they continue to see conflict related deaths in hundreds.

In Latin American countries such as Argentina, Brazil, Honduras, etc. firearms were found to be exchanged for illegal drugs and money making. The relationship between arms and narcotics dealers overlap, thus creating a deadly combination.

It is analyzed that illegal trafficking of arms disturbs the public peace, tranquility and disturbs the balance of the economy—thus reducing reliance of the public on government organization, thus causing anarchy.

2. Human Trafficking

There are some factors peculiar to each type of trafficking, like economic imbalances between source country and effected country, social and political insecurity in the source country and demand in effected country.

It is analyzed that the favorite destinations of illegal migrants are the developed industrialized nations like the U.S.A., Japan, Canada, Germany and France. Most women from under developed countries wind up as sex slaves or maidservants in the above-mentioned countries.

The problem has increased in both size and seriousness by the growing involvement of organized crime groups. These groups have disrupted the immigration policies of the governments. Therefore, there are substantial humanitarian concerns and issues related to the global problem of alien smuggling. This also poses administrative problems to concerned countries.

For example, European criminal organizations may pay $6,000 to Asian Syndicates to buy Chinese men and women. The person may have to pay more than $15,000 to their employers to purchase their freedom. The profit is $9,000 plus free labor.

It is analyzed that at least 700,000 persons, especially women and children, are trafficked each year across international borders (UN Human Rights Report).

B. Modus Operandi

1. Illegal Firearms Trafficking

The *modus operandi* (hereinafter "m.o.") of the trafficking route is as follows:

a. Firearms arrive in receiving country as undeclared or misdeclared items and included with other goods, consigned to fictitious names and addresses;
b. Firearms can also be dismantled into pieces and included among metal items or machinery parts legally imported or exported in containerized cargo;
c. Firearms are sometimes thrown from vessels, boats, etc. at pre-arranged areas some distance from the shore where they are later picked up by small boats and brought to undisclosed places.

2. Human trafficking

The m.o. of the trafficking route is as follows:

a. Some persons arrive at the destination hiding in the container cargo. This sea route is the typical and traditional m.o;
b. Some persons take airlines with forged or altered passports and other necessary documents. This air route is a relatively new one.

C. Effect and Conclusion

Looking at the current situation we analyzed in our Group Work Shop, it is indispensable to take necessary countermeasures urgently against trafficking in firearms and humans. These crimes have tremendous harmful effects on each country involved. Firearms trafficking cause even social and political instability, and human trafficking results in the disruption of families in source countries and economic and social disorder in effected countries as well as violations of human rights of victims, especially women and children. International law and other legal frameworks have regrettably been insufficient to combat these crimes. Law enforcement in each country and international cooperation in this field seems to have been ineffective and inefficient so far. Taking into due consideration such a situation, the U.N. Convention against Transnational Organized Crime and the Protocol against trafficking in persons, especially women and children, and the Protocol against the smuggling of migrants were adopted in November 2000. The Protocol against Illicit Trafficking, Parts, Its Components and Ammunition was also adopted in May 2001. All agencies involved in criminal justice have to make every effort to eradicate trafficking in firearms and humans by fully utilizing these new legal tools.

GROUP 3
PHASE 1

ANALYSIS OF CURRENT SITUATION OF MONEY LAUNDERING

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I. A BRIEF OVERVIEW

Money laundering briefly means "making dirty money look clean." It can be defined as, "the processing of the criminal proceeds to conceal their illegal origin." The objective of the money launderer is to disguise the illicit origin of substantial profits generated by criminal activity, so that such profits could be used as if they were derived from a legitimate source.

Money laundering is at the center of all criminal activity, because it is the common denominator of predominantly all other criminal acts. Since it cannot be disassociated from other forms of crime, money laundering becomes an integral part of any transnational organized crime. The transnational criminal organizations have resorted to money laundering in different countries in an effort to legitimize the proceeds of crime.

It needs to be emphasized that money laundering is not a new economic, sociological or legal problem. However, geo-political developments over the last few decades, together with increased economic globalization have resulted in increased international movement of money. The rapid expansion of international financial activity has gone hand in hand with the development of transnational organized crime, which takes advantage of political borders and exploits the differences between the legal systems in order to maximize profits. The organized criminal groups involved are genuinely multinational and pose a very serious threat to the financial stability of all economic systems *viz*, the underdeveloped, the developing and also the highly developed nations of the world.

The extent of money laundering is difficult to estimate since it is an illegal activity for which no exact data or

statistics are available. However, the International Monetary Fund (IMF) has estimated that the aggregate size of money laundering in the world could be somewhere between two to five percent of the world's gross domestic product (GDP). Using 1996 statistics, this would translate into approximately US $590 billion to US $1.5 trillion, which reflects the magnitude of the problem.

In view of the fact, that the goal of the predominant majority of the criminal acts is to generate profits for the individual or the group which carries out the criminal act, the process of the criminal proceeds to disguise their illegal origin becomes essential. It enables the criminal to enjoy the profits derived from crime without jeopardizing their source. Since the activities of organized crime, including drug trafficking, trafficking in illegal firearms, smuggling, prostitution, etc., can generate huge amounts of money, they create an incentive to "legitimize" the ill-gotten gains through money laundering. When criminal activity generates substantial profits, the individuals or groups involved must find a way to control the funds without attracting attention to the underlying criminal activity or the persons involved. Criminals do this by disguising the sources, changing the form or moving the funds to a place where they are less likely to attract attention.

Experience in different countries shows that the general techniques employed to launder money are as follows:

(i) investing dirty money in legitimate business either through shell or fictitious companies or in genuine companies under a false identity;
(ii) acquisition of assets by paying the requisite taxes;
(iii) deposit of money in tax heavens or in banks in non-cooperative countries and remittances back to the host country through normal banking channels;
(iv) use of the underground banking channels for transfer of money;
(v) over invoicing of goods in an apparently normal exports business transaction;
(vi) routing of money through safe tax heaven countries.

Experience further discloses that a money laundering operation basically consists of three phases or stages. The first phase is the "placement", i.e. where cash enters the financial system. The second phase consists of "layering", i.e. where the money is routed through a number of transactions so that any attempt to trace the origin of money is lost. The last or the third phase consists of "integration", i.e. the money is brought back into the economy with the appearance of legitimacy and thus, integrated within the lawful economy leaving no trace of the illegal money to the various law enforcement agencies of the different countries.

II. GLOBAL CONCERN

Realizing the gravity of the problem, the United Nations (UN) adopted the Vienna Convention, 1988 against the Illicit Traffic in Narcotics, Drugs, and Psychotropic substances which, *inter-alia*, incorporated incrimination of money laundering in an international treaty for the first time.

The Financial Action Task Force (FATF) was founded in 1989 by the G7 summit in Paris, to examine methods to combat money laundering. It published its report in 1990, in which the Forty Recommendations were made to combat

the menace of money laundering. The UN saw it's convention against Transnational Organized Crime adopted in November 2000 and this was opened for signature by member states in December 2000. It requires member countries to further intensify and fortify their efforts against money laundering.

The above convention suggests a series of measures to combat the evil of money laundering, including attempts to define the definition and scope of the subject incorporated in Article 6 and 7.

III. LEGISLATION

The current situation with regard to money laundering, as it presently exists in the member countries of the participants attending the course, is very briefly summarized as follows:

In *Japan*, in order to enforce the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which was adopted in 1988 at the UN Drug Committee Treaty Conference, and the Forty Recommendations suggested by FATF in 1990, the "Law Concerning Special Provisions for the Narcotic and Psychotropic Control Law, etc., and Other Matters for the Prevention of Activities Encouraging Illicit Conducts and Other Activities Involving Controlled Substances Through International Cooperation" (hereinafter, the Special Narcotics Law) was concluded on October 2, 1991 and enforced from July 1, 1992. Furthermore, the "Law for the Punishment of Organized Crime and the Control of Criminal Earnings" (hereinafter, the Law for the Punishment of Organized Crimes) was concluded on August 12, 1999, and enforced from February 1, 2000, after the Forty Recommendations were made more comprehensive.

This law widens the predicate offenses and provides the provisions for the laundering of illicit proceeds generated from not only drug-related crimes but also other major offenses which have not been covered under the Special Narcotics Law.

The Special Narcotics Law and the Law for the Punishment of Organized Crimes include the following features:

1. Provisions concerning punishments for money laundering and the disposal of illicit proceeds generated from crimes;
2. Confiscation of intangible property such as bank accounts;
3. A system to secure the subject property so as to ensure forfeiture and collection of equivalent value;
4. Cooperation in conducting confiscation trials in foreign countries;
5. Provisions requiring financial institutions to report suspicious transactions, as countermeasures against money laundering of illicit proceeds generated from crimes.

In *Malaysia*, before the introduction of the Anti-Money Laundering Act 2001, the country did not have any specific law on money laundering. However there are various substantive laws making it an offence for 'laundering' of illegally obtained money or assets. One of the most effective legislation is the Dangerous Drug (Forfeiture of Property) Act 1988 (the FOP Act). Drug abuse and drug trafficking is regarded as the most severe and grave crime in Malaysia since 1983.The government of Malaysia felt that individuals or groups of people involved in this criminal activity should not be allowed to enjoy the benefit of their

ill-gotten gains. Although there is no definition or usage of the term "money laundering" under the FOP, but there is a provision which states that it is an offence for any person either by himself or on behalf of another, to commit the act of laundering of illegally obtained property.

One very important legislation which is related to money laundering activities is the Anti-Corruption Act 1997. Under this legislation, officers of the enforcement agency, that is the Anti-Corruption Agency, have been given the powers, either directly or indirectly through the Public Prosecutor or the High Court, to act in relation to any dealing in property (laundering), seizure and forfeiture of property which are regarded as proceeds from corruption offences.

Another country in the Asia region, *Indonesia*, also pays serious attention to this matter. The Government of the Republic of Indonesia is truly concerned regarding money laundering, as is reflected by its ratification of some of the following important conventions connected with Money Laundering, such as:

1. Ratification of Convention on Psychotropic Substances 1971 (by Law No. 8 Year 1996);
2. Ratification of United Nations Convention Against Illicit Traffic and Psychotropic Substances (by Law No. 7 Year 1997).

The draft of the Anti-Money Laundering Act is still at the discussion stage in the legislature but implicitly already exists in The Criminal Code Article 39, 480 and 481 and within Draft of Criminal Code Revision chapter 601 and 604 which generally puts restriction on anyone who possesses, saves, transfers, invests, pays, buys, deposits suspicious crime-resulted funds and its violation could result in imprisonment and fines.

In *Thailand*, the Money Laundering Control Act BE 2542 (1999) was introduced with the setting up of the Office of Anti-money Laundering by the Government of Thailand. During the first 9 months of it existence the office managed to confiscate a total of more than 240 million bahts. Under the above Act, financial institutions are required to report every transaction of the amount exceeding 2 million bahts to the Office of Anti-money Laundering for investigation. The office also has the power to gather evidence for the purpose of taking legal proceeding against the offenders of predicate offence, which are:

1. relating to narcotics;
2. relating to sexuality;
3. relating to public fraud;
4. relating to misappropriation or fraud or exertion of an act of violent against property or dishonest conduct;
5. of malfeasance in office or judicial office;
6. relating to extortion or blackmail by claiming an influence of a secret society or criminal association;
7. relating to smuggling under the custom law.

In *Nepal*, the extent of money laundering is very difficult to estimate. It is an illegal act for which no statistics are available.

In *India*, money laundering is indulged in both by businessman and corporate business houses to evade taxes as well as by the organized criminal groups to launder dirty money. Money laundering techniques include smuggling, establishment of front companies,

acquisition of commercial and non commercial properties, remittances through *Hawala* or *Hundi*. Over invoicing and double invoicing of goods through foreign remittances and through trading in stock and shares.

The Indian "*Hawala*" or "*Hundi*" system of transaction can be explained as transfer of money through unofficial and non banking channels. The money so transferred often includes the money derived from criminal activities in violation of the country's legislation. As a developing nation, India feels seriously concerned because *Hawala* transactions not only undermine the nation's economy, but also seriously jeopardizes the country's security through terrorist and subversive activities which are often funded from the proceeds of illegal drugs and arms trafficking.

It needs to be emphasized, that at present there is no specific money laundering law in operation in India. A bill to enact the money laundering act "The prevention of Money Laundering Bill" has been introduced in Parliament by the Government of India but the same still remains to be enacted as Law. However, at present there is already a set of legislation existing in India intended to deal with the economic offenders. Such laws/legislation are specifically intended to deprive the offenders of the proceeds and benefits deprived from the commission of offences against the laws of the country.

Besides, such legislation also provides for the confiscation or forfeiture of the proceeds or assets of certain crimes. These include:

(i) Criminal Law (Amendment) Ordinance, 1944
(ii) Customs Act, 1962
(iii) Code of Criminal Procedure, 1973
(iv) Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976
(v) Narcotic drugs & Psychotropic Substance Act, 1985
(vi) In addition, Indian Statutes also provide preventive detention of foreign exchange racketeers under the conservation of foreign exchange and prevention of smuggling activities (COFEPOSA) Act, 1974
(vii) And the preventive detention of drug traffickers under the prevention of Illicit traffic in Narcotic drugs and psychotropic substances (PITNDPS), Act 1988.

In *Argentina*, the new legislation (Law enacted on March 5, 2000) considers money laundering as an autonomous crime. It means that the laundering of assets is not only penalized when it is obtained from the traffic of narcotics, but also includes other illegal activities such as terrorism, traffic of weapons, of human beings or other human organs, crimes against the Public Administration, and such other offences where the Penal Code provides punishment with a minimum of 3 years in jail. The same law includes the obligation on the part of certain people, that the text specifically mentions, of denouncing operations and/or suspicious activities.

In *Venezuela*, the anti drugs law was enacted and made more comprehensive on September 30, 1993. This law was made to adapt to the current problem relating to drugs and it includes the procedure in cases of money laundering, their prevention, control and inspection of the bank and financial entities by the authorities. With this enactment of the anti-drug law all of those that have benefited from drug trafficking and other crimes are penalized. Besides the

trafficker, it also penalizes the persons that direct the operation, who finance it and those who facilitate the traffic of drugs in any way. The reform was made to article 37 which now penalizes laundering.

The Venezuelan national assembly has also discussed the future enactment of a law that would fight against organized crime. The police, who can carry out operations as hidden agents, can investigate the laundering of money and the traffic of drugs. Equally, it also imposes on banks the obligation of informing the authorities when there is suspicion of an operation of money laundering. The punishment for the crime of money laundering is imprisonment between 15 and 25 years. An anti-corruption law that penalizes the offences relating to public officials has also been provided in Venezuela.

In *Peru*, the Law only punishes money laundering when it emanates from the illicit trafficking of drugs. When the money relates to other offences like corruption, fraud, kidnapping, robbery, etc. it is not covered by money laundering. Thus, in Peru, the activity of money laundering is confined only to the case where drug money is involved. It is also incorporated by law (ordinance legislative) of April 10, 1992, that banks report any unusual or suspicious transaction above ten thousand dollars to the authorities in each case.

Money laundering in *Honduras* is only related to drug trafficking. Before 1993 the money laundering law did not exist. It was only mentioned in one article of the drug law. Since 1998 the money laundering law has been enacted, but it only relates to drugs. However, the attorneys that deal with the said crime are working on some reforms in the law. They are trying to establish a money laundering law related also to other crimes such as stolen vehicles, kidnappings, bank robberies, human trafficking etc.

Uganda is a developing country with a low economic base. Because of this criminals finds it easy to invest their proceeds from illegal activities in Uganda. Since the government needs investors to uplift the economy, little scrutiny is done to establish the origin of huge amounts of money. Currently, there is no legislation in place to cater to money laundering. This is a new concept. However, there is an anti-money laundering committee consisting of experts from the Uganda Revenue Authority, police, immigration, commercial banks and Bank of Uganda. The committee is charged with drafting a law on money laundering. In East Africa, a training workshop on combating money laundering was held in Arusha, Tanzania in August 1999 and has led to the creation of a National Anti-Money Laundering Committee, which are affiliates of the Eastern and Southern Africa Anti-Money Laundering Group (E.A.S.A.A.M.L.G.).

IV. INSTITUTION OF STRs/FIUs

As far as *Japan* is concerned, the Suspicious Transaction Report (STR) system was first introduced into Japanese legislation by the enactment of the Special Narcotics Law. Subsequent to this, the Law for the Punishment of Organized Crimes was enacted in 2000, which introduced a comprehensive STR system. The scope of predicate offenses of money laundering was expanded to almost all organized crimes. Based on the above law, the Japan Financial Intelligence Office (JAFIO) was established in the Financial Agency as

the Japanese Financial Intelligence Unit (FIU).

At present, depository institutions (banks), insurance companies, securities brokers and other non-bank financial institutions are covered in the STR system. However, non-financial institutions or other relevant professionals (so-called "gatekeepers") are not covered. Compliance by financial institutions is mandatory but no legal sanction is provided for non-disclosure of STRs.

The records of the Narcotics Division of the *Malaysia Police Department* reveal that the traffickers in Malaysia are mostly individuals or small groups who capitalize on drug trafficking industry for personal gains. Drug proceeds are sometimes concealed within the proximity of their home or invested in other illegal activities such as loan-sharking and book markings.

Taking into consideration the Forty Recommendations of the FATF on money laundering, the government of Malaysia in the middle of the year 2001 introduced the Anti-Money Laundering Act 2001. It is hoped that the law, with 199 serious offences including drug trafficking, corruption, kidnapping, robbery, human trafficking, gambling and fraud, will provide a strong foundation in countering money laundering in or outside Malaysia.

In *Indonesia*, the Criminal Proceeding Act, 1981 provides that Investigators shall be:

a. an official of the state police of the Republic of Indonesia;
b. a certain official of the civil service who is granted special authority by law.

Referring to this statement, in practice, the police official is an investigator for general crimes such as murder, theft, robbery and so forth. A public prosecutor is also authorized to be the investigator for special crimes such as corruption cases.

In corruption cases, the Attorney General's Office has successfully handled a lot of corruption cases, and saved a large amount of the state's assets.

In *India*, a number of law enforcement agencies (primarily operating under the Ministry of Finance, Government of India) are engaged in collection of intelligence and also investigation of economic offences and frauds, including money laundering. Some of the prominent agencies are as follows:

(i) The Directorate of Revenue Intelligence (DRI)
(ii) The Directorate of Enforcement
(iii) The Economic Intelligence Bureau (EIB)
(iv) The Central Board of Direct Taxes (CBDT)
(v) The Central Board of Excise & Customs (CBEC)

In addition to the above agencies, functioning directly under the Ministry of Finance, the Government of India, the Economic Offences Wing (EOW) of the premier police investigating agency in the country, *viz*, the Central Bureau of Investigation (CBI) also specializes in handling complex investigations relating to economic and financial frauds, including money laundering.

Argentina contemplates setting up a Commission for dealing with activities relating to money laundering (Unidad de Información Financiera — U.F.I. — Financial Information Unit). U.F.I. forces

certain people and corporations or companies to inform of diverse data that looks suspicious. The promulgation of this Law has proved to be very significant for Argentina, which has incorporated most of the Forty Recommendations of the FATF.

In *Venezuela*, the penal action is carried out by the District Attorney (D.A.) of the Public Ministry and it is the D.A. who directs the investigation, giving instructions to the Police in relation to the investigation of the crimes. Since the above law is not as yet approved by the National Assembly, Venezuela does not yet have a legislative instrument to combat money laundering and the criminal organizations involved.

V. PROFILE OF MONEY LAUNDERING CASES PROSECUTED IN JAPAN

In Japan, as a result of enacting the Special Narcotics and the Law for The Punishment of Organized Crimes, the prosecution of money laundering cases has developed increasingly. However, it is difficult to evaluate the effectiveness of money laundering measures because there are only about ten cases utilizing those laws as indicated below:

1. Cases of the Special Narcotics Law

a. In November, 1992, an accused got 7,000,000 yen after handing over stimulant drugs to someone, and deposited this money into an account under an assumed name in a bank in Gifu-city, to disguise the acquisition of illegal profit.
b. In December, 1995, an accused entrusted an acquaintance to remit to the bank account of the acquaintance in Tokyo 800,000 yen as the proceeds of stimulant drug sales, to disguise the acquisition of illegal profits.
c. From June, 1995 till October, 1996, an accused, who was the boss of a gang named "Kokuryuukai" got 290,000 yen every day from stimulant traffickers in his sphere of influence or territory. So he received a total of 147,900,000 yen in illegal profits.
d. From April till June, 1997, an accused got 52,752,500 yen as the proceeds from stimulant drug sales and he remitted the money to a bank account in the United Arab Emirates using the name of his brother to disguise the illegal profit. This case was the first prosecution example in Japan for the act of the overseas remittance of illegal profits.
e. From October, 1997 till March, 1998, an accused got 31,180,100 yen in proceeds from stimulant drug sales, and he remitted the money under an assumed name to a bank in the Islamic republic of Iran, addressed to his mother, to disguise the acquisition of illegal profits.
f. From December, 1998 till July, 1999, an accused got 25,068,000 yen as the proceeds for the sale of regulation drugs (i.e. stimulant drugs) and deposited the money into the account in his common-law wife's name in a bank in Shizuoka Prefecture, to disguise the crime profits.
g. In July, 1999, the accused let his customer remit to a bank account in Higashiosaka-city, held under a false name 55,000 yen as the proceeds of stimulant drug sales.

2. Cases of the Law for the Punishment of Organized Crimes

a. An accused got 3,920,000 yen in proceeds after he handed some obscene videos over to someone and deposited the money into an account with a false name which he established at a post office in Osaka-city.

b. An accused let his customer, remit to a bank account held in a false name in Tokyo 5,907,720 yen as the proceeds for an obscene CDR.
c. An accused runs an enterprise of the corporation by using illegal profit. The accused undertook new stock of Taisyo Life Insurance Company (hereinafter "Taisyo"), by using of property that he got through fraud. The accused and Claremont Capital Holding Co. Ltd. (which the accused acted as Representative Director of) acquired the position of stockholder in Taisyo and he ruled over about 66.8% of Taisyo's published stock. Then, the accused used his authority as a stockholder of the company, in a general meeting of the stockholders of the company held on April 3, 2000, with the purpose of influencing the management of Taisyo to appoint him and three others as director of the company.

VI. PROFILE OF MONEY LAUNDERING CASES IN HONDURAS

At the moment Honduras has three big cases of money laundering, the biggest of which is one of a Colombian organized group. Those members came to Honduras to launder money there, three of them Colombians. They began a business of selling home appliances and electrical domestic equipment. The investigators began an investigation of those businesses, because it was strange that these places were not open to the public, people needed to use a bell door to get in. Also, the Colombian police sent the Honduran investigators information about them, because they found out that some drug dealers that were located in the sea on boats had communication with a cell number in Honduras, so they started a very deep investigation. Finally they found the probable cause to present in court, they began to make searches in the business and in their houses. People got arrested and in the search they found about 60 bank account books, check vouchers where they had paid pilots, they had bought boats, and paid the boat captains, nothing related with the domestic electrical appliance business, so the judge ordered the arrest warrants and confiscated about 8 luxury cars. They froze all the bank accounts and also all the houses that they were building with a cost of over 2 million lempiras. When the investigators were doing the investigation they noticed that in some accounts people received a big amount of money, this money was in the bank for 5 days and in the next week all the money was gone, so the money transfer was very often from these banks in Honduras to the other banks, most of them in Miami, New York, Panama and Mexico. The total amount involved runs into several millions of dollars, and with a further investigation they related bank accounts with other accounts in Central, South and North America, even in Spain and Thailand.

VII. CONCLUSION

In summation, it can be safely stated that national strategies are inherently inadequate in responding to the challenges posed by transnational organized crime, including money laundering, since they cross multiple borders, involve multiple jurisdictions and a multiplicity of laws.

The rapid growth in transnational organized crime and the complexity of the investigation requires a truly global response. At present, the measures adopted to counter organized crime are not only predominantly national, but also different from one country to another. It

is, thus, absolutely imperative to increase global cooperation between the world law enforcement agencies and to continue to develop the tools which will help them effectively counter the transnational organized crime, including money laundering.

GROUP 1
PHASE 2

TOOLS FACILITATING THE INVESTIGATION OF ILLICIT DRUG TRAFFICKING

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I. INTRODUCTION

The use of traditional investigative methods to combat illicit drug trafficking has proved to be very difficult and ineffective. This state of affairs therefore calls for the use of special investigative tools such as controlled delivery, undercover operations and electronic surveillance (wiretapping, communications interception, etc.) by law enforcement agencies to effectively control illicit drug trafficking.

However, there is controversy surrounding the use of these techniques and thus, to a certain extent, discouragement for the law enforcement agencies to utilize them. Their abuse may affect the rule of law, may lead to infringement of human rights. There is a fear that governments may use them to oppress citizens under the guise of national interest. Their use therefore often sparks off politically sensitive debates.

The biggest question, therefore, is how to use these techniques consistent with the rule of law and respect of human rights. The answer to this cannot be universally obtained and this will depend on the legal system, practice and culture of each country. There is a need therefore, to strike an agreement as to what extent the privacy rights of individuals can be respected and at the same time keeping people safe from the effects of transnational organized crime.

The use of these techniques varies from country to country, for this reason the group had to focus on them individually. However the group has adopted the definition of controlled delivery that is contained in Article 2 of the United Nations Convention Against Transnational Organized Crime, 2000.

The Electronic Surveillance investigative method was the theme of a lot of discussions in the group, since every country has its own methods and devices, but one thing that all the participants are aware of is the fact that criminal investigations are becoming increasingly more difficult as criminal techniques become even more sophisticated. The challenge for criminal investigators is to keep pace with crime *modus operandi*; by using increasingly sophisticated investigative techniques. One of them that has been extremely successful is the electronic surveillance, including both silent video surveillance and interception of wire, oral, or electronic communications.

Although the concept of undercover operations is the same but the practice is quite different in foreign countries *vis-a-vis* the concept represented by the group from Japan. In foreign countries, undercover operations mean an investigation involving a series of related undercover activities over a period of time by an undercover employee.

In that vein, this paper seeks to analyze these tools with emphasis on the current situation, problems as well as proposed solutions, in every participant country.

II. CONTROLLED DELIVERY

CD, as an anti-drug trafficking technique, has been divided into 3 categories in our group, namely:

A. Country in which it is stipulated by law; (Japan)
B. Country in which it is in the process of being stipulated by law; (Honduras)
C. Country in which it is not stipulated by law; (Cameroon, Kyrgyzstan and Pakistan)

A. Country in Which Anti-Drug Trafficking Technique of CD is Stipulated by Law

1. Current Situation

Japan signed the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances on December 20, 1988 at the United Nations Drug Committee Treaty Conference. In order to enforce this treaty in Japan, a special law concerning narcotics was enacted on July 1, 1992. This law enabled law enforcement officers to utilize transnational live/clean CD.

The number of CD cases carried out is 24 cases in 1995, 19 in 1996, 19 in 1997, 29 in 1998, and 19 in 1999.

2. Problems and Solutions

LCD has a risk of losing control and spreading drugs into civil society. On the other hand, CCD involves the risk of failure in arresting the receiver, because exchanging contents may cause a change of the appearance of the drug container. Also, delay of delivery of drugs may make drug traffickers nervous and cautious. That means investigators that do not have enough time. If investigators try to arrest the receivers too fast, they tend to deny realization of the contents. On the other hand, if it is too late, it gives them a chance to conceal the drugs or to run away. In addition, it is important to identity the sender and receiver, to analyze the breakdown of bank accounts used by these traffickers, telephone calls from or to them, etc.

So it must be encouraged to train staff members and cooperate internationally.

B. Country in Which Anti-Drug Trafficking Technique of CD is Semi-Stipulated by Law

Honduras has adopted a definition of controlled delivery as given in Article 2 of the United Nations Convention Against Organized Crime.

The technique is used for allowing illicit or suspect consignments to pass out of, through or into the territory of one or more states, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence.

1. Current Situation

Honduras uses the investigative technique as a very useful tool against illicit drug trafficking.

Most of the time, this technique involves the Central American countries, such as El Salvador and Nicaragua, but also with the United States, when people from Honduras take some amount of drugs inside the United States, under the supervision of the authorities, to identify all the people involved.

2. Problems

To use this investigative technique, police agencies must have some budget, because investigators have to travel out of the country and with the help of the Police of the destination country make the surveillance and also conduct further investigation.

That is one of the problems that Honduras is facing right now, because this technique is not contemplated in the Honduran Law.

3. Solutions

Honduras had received a lot of help from the U.S. government, more specifically from the Drug Enforcement Administration (DEA), and with their help Honduras has successfully conducted some investigations.

In the new Penal Procedures law this kind of Investigation is included as "special investigative methods" and it will be held under the supervision of the Judge.

C. Countries in Which Anti-Drug Trafficking Technique of CD is Not Stipulated by Law

1. Current Situation

Cameroon, Pakistan and Kyrgyzstan do not have a specific law to deal with controlled delivery and in that sense CD there is not formalized or institutionalized by law. CD is used as a part of the normal police practical work including all other investigation/detection techniques.

All these countries are not destination but transit countries for other nations, e.g. Pakistan is mainly a transit for Afghan opiates and Cameroon is a transit mainly for cocaine from Asian countries, and through Kyrgyzstan opiates from Afghanistan is the main transit drug. In Pakistan, under the law, CD can be used by the Intelligence Bureau (IB) and Inter Services Intelligence (ISI) and this has been sanctioned under an ordinance. But the main mandate of these agencies is the responsibility for the internal and external security of the state and hence they seldom deal with CD cases.

In the case of Pakistan however it is signatory to many bilateral and regional agreements in which it has agreed to support the signatory countries to help in

CD operations if they are through Pakistan territory if requested.

2. Problems and solutions

The problems being faced and the viable solutions for the three countries are as follows:

(i) There is no specialized training imparted to custom and especially police officers which they can implement in the workplace efficiently and effectively. A change in training curriculum including the teaching of these techniques at length including CD is a viable solution for this problem.
(ii) Secondly, the biggest problem confronting the three countries and probably all developing and underdeveloped countries is inadequate finances for affording these latest anti-drug trafficking techniques. The solution to this problem is obviously provision of optimum finances to the pertinent agencies. This will enable them to utilize the money for new training initiatives, purchase/procure the inevitable technology and equipment for CD operations and other latest techniques like electronic surveillance, etc.
(iii) Thirdly, the main problem is that these practices, including CD, have up till now not yet been formalized or institutionalized. By doing so it would become easier, from the legitimacy perspective, for all pertinent agencies to use them without fear or favour as is the case now in Japan.

III. ELECTRONIC SURVEILLANCE

With the exception of wire-tapping, which has been stipulated by law in Japan, Japanese law enforcement officers like their counterparts in Cameroon, Honduras, Kyrgyzstan and Pakistan generally carry out electronic surveillance as part of their practical work in the course of investigations.

A. Cameroon

1. Current Situation

The use of electronic devices to track down or watch or record the activities of criminals may well be described as electronic surveillance. This anti-drug trafficking technique is also used by the law enforcement officers in Cameroon as part of their normal routine duty in the criminal investigation process.

The law enforcement officers may resort to wire-tapping to secretly follow up or monitor unlawful arrangements, between criminals on target telephones. The instant case calls for the indispensable assistance of the Posts and Telecommunications Department. The phone or the location would require to be monitored 24 hours a day, seven days a week and, perhaps even much longer. Equipped with micro cameras, video cameras and micro tape recorders of all sorts, the law enforcement officers equally obtain or record vital information from criminals without alerting them.

2. Problems and Solutions

(i) Wire-tapping improperly used would amount to an unlawful interference with the constitutional protection of an individual's communications. Similarly, the abusive use of spy cameras would violate the citizen's constitutional rights to his privacy.
(ii) Lack of adequate trained personnel to conduct electronic surveillance for the process requires manpower intensive operation. Such personnel should have people who can speak

many languages and also have the skills to interpret coded language.
(iii) Lack of adequate finances to train the required personnel and to purchase sophisticated equipment.
(iv) No legislation in force to tightly control the use of this and other tools of anti-drug trafficking to avoid abuse of the techniques and to protect individual privacy, as constitutionally required.

B. Honduras

The police agencies in Honduras, mainly those that investigate illicit drug trafficking, have a series of electronic devises that are indispensable tools for the electronic surveillance, among them we can mention:

1. Tools Used
(i) Intervention of phone conversations (wire tapping)
(ii) Micro video cameras (pencils, calculators, sun glasses, wallets, etc.)
(iii) Wireless microphones in miniature
(iv) Night vision

2. Problems

The big problem that the police of Honduras now face is that electronic surveillance is not contemplated in legislation and so for a video or a recording to have probatory validity the judge should authorize it previously.

In addition, these agencies have scarce equipment, since enough microphones, cameras, etc. are not available. In addition the whole personnel are not trained to use this equipment. Another important thing is that these tiny devises have high costs which the concerned agencies cannot afford within their limited budgets.

Using these devices implies the investment of time and of human resource and the scarcity of personnel and the great quantity of cases is another problem.

3. Solutions

Next February, the new penal procedure will come into force which includes the use of this type of equipment when it refers to the special procedures of investigation.

It is hoped that the government will lend adequate economic support. This would solve in great measure the logistical problems and with the requisite recruitment of personnel in the concerned agencies the problem of lack of human resources is expected to be overcome soon.

C. Japan

1. Tools Used

In Japan, interception of telephone or other electric communications (wiretapping including e-mail tapping, etc.), video taping and audio tapping using microphones are the main tools of electronic surveillance.

The Law Concerning Interception of Communications came into effect in August 2000. Before this law was enacted, the interception of electronic communications was conducted on the basis of the interpretation of the Code of Criminal Procedure. By enacting the above law, strict requirements, procedures, etc., for the interception of electronic communications related to the perpetration of offenses have been stipulated. In this law, “communication” means telephone or other electronic communication made in whole or in part through the use of wire between the point of origin and the point of reception, or communication using a switching station between the point of origin and the point of reception. In this law, “interception”

means the reception of live communication between third parties, conducted for the purpose of acquiring its contents without the consent of either party. If one member of a party agrees, investigators can conduct wiretapping or e-mail tapping etc., of course, but it is not based on this law. This law covers particular crimes, such as drug-related offences, firearm-related offenses, smuggling of immigrants in groups, and organized homicide. But there is no actual case carried out that is based on this new law yet as of October 2001.

Video taping and audio tapping using microphones are not governed by a specific law but by interpretation of the Code of Criminal Procedure Law. These methods are often conducted to gather information or to collect evidence.

2. Problems and Solutions

(i) Interception of telephone or other electronic communications
The new law covers only particular types of crime. As mentioned above. There should be continuous examination on coverage and best practice of this new law.
Also, training staff to conduct this new method is important.

(ii) Audio tapping by using micro phones, video taping
These methods have to be carried out suitably according to necessity because they may cause an invasion of privacy.

D. Kyrgyzstan

1. Current Situation

In wire tapping the bugging of rooms and living space takes place.

These measures are realized in two ways:

(i) Listening to the crime plan via instruments.

(ii) Listening is also used for gathering evidence. The difference between these two forms is,
- Information received by the first method could not be used as evidence in the court.
- Secondly, by sanction of the district procurator. The information received can be used as evidence in the court. These methods of electronic surveillance help operative units of law enforcement agencies with the technical support of special units.

E. Pakistan

1. Tools Used

The following tools are used for conducting electronic surveillance in Pakistan.

(i) Wire tapping or phone bugging
(ii) Video camera
(iii) Audio tapping
(iv) Laser beams for bugging
(v) Still camera while following the suspects
(vi) Mobile surveillance of the suspects
(vii) Electronic bugging by plugs, pens etc.

2. Problems

(i) Financial constraints
The problem in the main is inadequate funds for electronic surveillance (ES). All the equipment is costly and sometimes cannot be repurchased when old and obsolete.

(ii) Labour Intensive
Wire tapping is quite labour intensive and we have a shortage of operating staff.

(iii) Video camera and audio aids
This is again costly equipment and enough of these equipment is not

available. In addition there is always the chance of it being abused.

(iv) Mobile surveillance and still camera
Both of these ES techniques are labour intensive and time consuming. In addition there are not enough incentives for the employees who operated them.

(v) Decoding and language problems
Often the traffickers use coded language or some foreign language. It is very difficult for staff to decode the coded language or understand the foreign languages.

3. Solutions

(i) There should be adequate budget and if possible some reserves also for the ES infrastructure.

(ii) Shortage of strength of staff etc. should be fulfilled by recruitment.

(iii) There must be sufficient motivation/ incentives for the staff/employees.

(iv) If abuse of ES is detected, an exemplary punishment should be awarded to deter others and make the work job-oriented and not for fulfillment of personal needs.

(v) Experts in requisite languages are needed who can also translate them into the desired language.

(vi) Staff or employees dealing with decoding should be sent for specialized training in established institutions at home and abroad.

IV. UNDERCOVER OPERATIONS

All countries represented in this group do not have any special legislation on Undercover Operations. Notwithstanding, their law enforcement officers, use the Undercover Operations as an essential investigative tool.

A. Cameroon

1. Current Situation

Law enforcement officers are known to use trickery and deception to arrest persons involved in a criminal activity. Undercover operations embrace both trickery and deception. This anti-crime control and prevention technique is used in cases involving big organized criminal operations. For example, the technique may be used in drug controlled delivery operations.

Undercover operations are commonly used by the law enforcement officers in Cameroon for a wide variety of offences. Frequently, a civilian agent is used to cover up the criminal activities of the criminal group. In some cases, a trained officer is used as an agent. The agent gets into the organized crime group with the primary intention to study its operations and to furnish all relevant and vital information to the law enforcement department. To do this, he gets to be identified by the members of the crime group as one of theirs; live and behave like them. This role apart, he may be used generally by the low enforcement department as an agent provocateur.

When satisfied that sufficient information has been received from the agent, officers of the law enforcement department would arrest the criminals and would pretend to arrest the agent if, at the time of carrying out the arrest, he was amongst the gang. At the hearing of the case against the criminals, the agent is used as a prosecution witness.

Undercover operations demand a sizeable number of law enforcement officers and are generally time consuming. A complex and sophisticated crime network may take quite a reasonable amount of time to investigate,

using, besides, a large number of officers and agents. Equally, it is worth mentioning the risk to life posed by these operations involving very dangerous crime groups.

2. Problems and Solutions

(i) Inadequate personnel. Undercover operations need more personnel and are time consuming.
(ii) Improperly used undercover operations may assist a criminal design. Here a case built from such operations is likely to collapse on the ground of entrapment and other related defenses.
(iii) Risk to life. Some of these operations involve very high risk to the lives of the officers and their agents, during and, even after the hearing and conviction of the offenders. Hence, they need protection.
(iv) Legislation. There is need for special legislation in this country to define, lay down general procedure of, protection of officers, agents and, the rights of individuals under the constitution.

B. Honduras

1. Current Situation

In Honduras, the undercover operations mean a police agent or investigator getting inside of an organized group to identify the suspects and also getting to know all the illegal activities that the organized group is actually involved in.

In Honduras, the police agencies use this technique, but only in big cases or when it is extremely necessary, because it involves a lot of resources, a lot of time and it is also very dangerous.

2. Problems

One of the biggest problems is that it takes a lot of time, because the undercover agent has to become a member of the group, and he/she needs time to get to know the whole operation and also try to gain the suspects confidence, so most of the time the operation takes weeks and even months.

The undercover agent has to be very well trained with a lot of experience, and having the ability of acting or responding properly in any dangerous situation, that is why police agencies do not have enough agents to do this kind of job. Because after an undercover agent has finished his job, he can not continue doing the same job, so only if the new case is in a different city, far away from the first and in a different organized group, but this is also highly risky.

In addition, another agent has to work from outside and take care of the personal security of the undercover agent.

3. Solution

Police agencies are now training new agents to do this kind of job. Honduras is getting a lot of assistance from neighboring countries, and also from the United States, in training investigators and exchanging, concerned personnel.

C. Japan

1. Current Situation

Japan does not have general provisions concerning undercover operation. However, article 58 of the Narcotics and Psychotropics Control Law provides that a narcotics agent can receive a narcotic drug from any person "under the permission of the Minister of Health, Labor and Welfare". There is a similar regulation in Article 45 of the Opium Law, and also, Articles 27-3 of the Firearms and Swords Control Law which provides that, under the permission of the Prefectural Public Safety Commission, a

police officer or a Coast Guard officer can receive or borrow guns or their parts, or receive live cartridges of guns from any person. According to judicial precedent, the courts have decided each case of undercover operations whether it was legitimate or not according to the degree of necessity and suitability.

Generally speaking, offering the chance to commit an offense to the person who has already had the intention to commit it may be legal, but that implanting an idea to commit an offense in the mind of an innocent person and inducing him/her to commit the offense may be illegal.

2. Problems and solutions

In order to conduct undercover operations, masterful skills in investigative techniques are required and since the investigator must play an undercover role, there is significant danger involved. Training of investigators is needed.

D. Kyrgyzstan

Undercover operations in the Kyrgyzstan Republic have no legislative basis. Therefore, undercover operations are regulated by secret departments in every law enforcement organization, for example in national security service, that is the ministry of internal affairs. Information acquired through undercover operations is not legal evidence and cannot be used in court.

E. Pakistan

1. Current Situation

The technique's common uses are to collect information about criminal gangs, their methods of operation and their future plans for drug smuggling. Through such operations the law enforcement agencies are able to infiltrate the highest levels of organized groups.

Nevertheless we visualize that the Afghan internal war with the Northern Alliance and the air attacks on Afghanistan by the U.S.A. may increase illegal drug trafficking by organized gangs to a considerable extent. Therefore the Taliban followers involved in this lucrative trade will try to smuggle out their stockpiles of drugs to generate funds for the on going internal and external war. Such a large scale of expected smuggling may be difficult to handle by our agent due to resources and other constraints.

2. Problems

(i) Understaffing
Enough staff is not present to comprehensively handle undercover operations so consequently, there is shortage of strength.

(ii) Lack of incentives
Inadequate financial and other incentives which motivates the workers.

(iii) Dangerous for agents and their families
These operations can be fatal if the agent is exposed, due to versatile reasons e.g. lack of proper training etc. and most probably his family would be in danger too.

(iv) Inadequate budget
As with all other techniques insufficient finances is the main and most crucial issue. This hinders the operations from every aspect.

3. Solutions

(i) Recruitment
Adequate recruitment on merit is probably the best solution for understaffing.

(ii) Provision of incentives
Sufficient and attractive benefits

should be given to the personnel to instill motivation and diligence, which are one of the keys to success.

(iii) Specialized training
The pertinent personnel must be given specialized training in these techniques to enable them to achieve maximum results without being exposed or putting their families at risk. The standardized, recognized and required level of training can be imparted in domestic and overseas institutions.

(iv) Allocation of budget
The allocation of requisite budget for undercover operations, which are quite costly, is the only way to remove the titanic obstacle to smooth, effective and efficient working.

(v) International co-operation
To overcome the problems, for the present, international co-operation with Pakistan in the form of assistance is inevitable. The assistance can be in the form of overseas training of our concerned personnel, provision of requisite equipment, sending experts to transfer skills etc. This assistance can be rendered more effectively by the developed/affluent and also affected countries.

V. GROUP VISION

From the foregoing presentation it is important to note that all three investigative tools pose common problems and require common solutions for the countries represented in the group.

1. Problems

(i) Lack of adequate trained personnel
(ii) Inadequate finances to train and equip their personnel
(iii) Labor intensive and time consuming
(iv) No existing legislation
(v) No efficient international cooperation, especially with regard to CD.

2. Solutions

(i) Countries to train specialized personnel
(ii) Provision of optimum finances to train and agencies that will provide adequate equipment.
(iii) Formulation of special legislation to define all terms, lay down general procedure of protection of officers agents, and the rights of individuals.
(iv) Encourage international cooperation.

VI. CONCLUSION

In conclusion, employment of the new investigative tools is highly necessary to fight against the ever growing threat of TOC. *Undercover operations*, *controlled delivery* and *electronic surveillance* stand out as the most effective investigative tools against TOC and given the fact that where they have been used, they have exhibited a high level of ability to deliver good results. However, like all new innovations, the use of these tools has to overcome a lot of problems, ranging from lack of ineffective legislation, lack of trained manpower, challenges from civil society and admissibility of evidence obtained through their application. Governments and enforcement agencies therefore need to establish proper guidelines and controls on their application by agents to avoid abuse.

We emphasize the relevance and effectiveness of these techniques, we need our states to review domestic arrangements for these techniques and to facilitate international cooperation in these fields, taking account of human rights.

GROUP 2
PHASE 2

CRIMINALIZATION OF PARTICIPATION IN AN ORGANIZED CRIMINAL GROUP AND CONSPIRACY, IMMUNITY SYSTEM, AND WITNESS AND VICTIM PROTECTION PROGRAMMES

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I. INTRODUCTION

Nulla poena sine lege (no person may be punished except in pursuance of a statute which prescribes a penalty)[1] is a well established criminal law concept which is followed by the majority of the world community. However, to bring the members of organized crime groups to justice is more difficult than one can expect. Organized criminal groups do exist in some countries for a certain period of time, and the authorities in such countries try every effort to cope with them. Efforts have been made by applying the concept of "conspiracy" and/or creating the new offence of "participation in an organized criminal group" in order to get the culprits to justice. Once the suspect has been arrested, the legal proceeding then begins, and, the final stage of criminal proceeding is to prove beyond reasonable doubt that such crimes have been committed by certain defendants.

Against this background, the United Nations Convention against Transnational Organized Crime (hereinafter "TOC Convention") requires State Parties to ensure that their laws criminalize either conspiracy or participation in an organized criminal group, or both in Article 5 (see appendix). It is basically understood that this provision offers the State Parties two options and comes from the preceding arguments and practices of the European Union.

In addition, organized criminal groups' activities are not easy to detect. Generally, the witness may be an insider

[1] Jerome Hall, General Principles of Criminal Law, 2nd edition, Bobbs-Merrill Company, Inc. 1960.

or accidentally witness the crime. However, they have the tendency to avoid involvement in any legal proceedings for fear of their safety. Therefore, special tools, namely an Immunity System and Witness and Victim Protection Programmes, carefully constructed to ease this obstacle is indeed important. Hence, this report is the production of efforts of the members of Group 2 to try and explore some difficulties in applying the concept of "conspiracy" and "participation" as well as making these two tools available in the members' jurisdictions.

II. CRIMINALIZATION OF PARTICIPATION IN AN ORGANIZED CRIMINAL GROUP AND CONSPIRACY

In effectively tackling the threat of transnational organized crime, in particular, criminal justice authorities have a need to intervene as soon as possible in order to prevent crime, break up criminal organizations and apprehend the offenders. It is ideal that they should be able to arrest offenders before an offence has been committed. Otherwise, there is the considerable risk that the offenders will be able to carry out the offence and escape across national borders, thus evading justice.[2]

In civil law countries, the concepts of attempt and incitement are widely recognized, but conspiracy is not. The general position in civil law countries is that mere planning of an offence, without an overt act to put the plan into operation, is not criminal. For example, mere planning of a robbery, and even such preliminary stages as an examination of the premises, arrangement for a getaway car or the recruiting of assistants, do not constitute criminal conduct. The offenders may be arrested and brought to trial only when they have gone so far.

The concept of conspiracy arose in common law during the 1600s in England, from where it spread to other common law countries. According to English common law, the mere agreement to commit an offence constitutes conspiracy. In addition, several civil law countries have enacted legislation directed at more tightly defined forms of participation or conspiracy in the case of particularly serious offences. Finally, several civil law countries have enacted legislation that criminalizes active participation in an organized criminal group.

It was this joint action which contributed to the definition adopted in the TOC Convention.

A. TOC Convention

Article 5 is one of only four criminalization obligations contained in the TOC Convention adopted at Palermo, Italy. As mentioned above, it requires State Parties to ensure that their laws criminalize either conspiracy or participation in an organized criminal group, or both.

Conspiracy is thus defined as:

- Intentionally agreeing with one or more other persons,
- To commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit and,
- Where required by domestic law, involving an act undertaken by one of

[2] Group 2 is much indebted to visiting expert, Dr. Matti Joutsen. He contributed greatly to our discussion by participation in our group discussion as well as giving us lectures and papers.

the participants in furtherance of the agreement or involving an organized criminal group.

Participation is defined as:

- Conduct by a person who,
- With knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question,
- Intentionally takes an active part in:
  Either the criminal activities of the organized criminal group or
  Other activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the above-described criminal aim.

B. Analysis of Current Situation

In Laos, Malaysia, Pakistan and Uganda, the concept of conspiracy has been adopted. In addition to that, under the Pakistan Penal Code, participation in an offence in any capacity is criminalized under Section 34, 149, 120 and 120A of the Pakistan Penal Code. Moreover, according to Section 120B of the Malaysia Penal Code, whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for a term of 2 years or upwards, shall be punished in the same manner as if he had abetted such an offence.

In Nepal, neither the concept of conspiracy nor participation has been adopted so far. In Japan, the situation is the same as Nepal in principle, although there are several conspiracy provisions exceptionally as regards some extremely serious offences in the Penal Code and some laws such as Subversive Activities Prevention Act and Explosive Control Act, and only preparation is also punishable regarding some serious offences. In addition, in Japan, Anti Boryokudan Law prohibits designated criminal organization from coercing people to join the Boryokudan and obstructing voluntary withdrawal from membership, or demand money for withdrawal. If a member of designated organization violates the prohibition, the police may issue an order not to do so. They can be punished if they do not obey the order.

In Thailand, the concept of participation has been adopted.

C. Benefits

As expected, the application of the above mentioned concepts has brought lots of benefits as follows:[3]

a. The criminal justice authorities would have the possibility of intervening at an earlier stage of the criminal activity;
b. All people concerned could be charged with conspiracy or participation even if their roles had been marginal;
c. The prosecutor need not prove complicity in each and every act of crime;
d. The concepts of conspiracy and participation allow, in effect, double punishment: one for conspiracy or participation, and one for the offences committed in furtherance of the conspiracy or participation;
e. Legislation referring to conspiracy and organized criminal groups could provide the framework for the use of civil measures in addition to punishment;
f. The citizens could be kept away from criminal acts and organized criminal groups (deterrent effect).

[3] Dr. Matti Joutsen's lecture (except f)

D. Drawbacks

Through the experience and practice of EU countries, drawbacks are pointed out as follows:[4]

a. The concepts are ambiguous and confusing, in particular if juries are involved. The legal practice has shown that the concepts can be confusing even to trained lawyers;
b. There is a possibility that the concepts might violate the principle of legality, which requires definition of precisely what acts or omissions constitute criminal conduct;
c. This ambiguity raises concerns regarding legal safeguards, such as ensuring that the defendant knows exactly what conduct he or she is charged with having committed;
d. The ambiguity also raises concerns that the concepts will be used to expand the scope of criminal behavior to an unacceptable extent; and
e. The concept of conspiracy has been used, in the view of some, to "convert innocent acts, talk and association into felonies". The discussion within the European Union regarding the joint action requiring Member States to criminalize participation in an organized criminal group shows that these same qualms exist regarding this latter concept. The concern here is that the concepts may be abused by over-zealous prosecutors.

III. IMMUNITY SYSTEM

Effective investigation and successful prosecution play an important role in the system of criminal justice administration. Evidence is the most important factor to convict the criminals and the court will always seek concrete evidence to convict a criminal which plays a significant role in the court of law. So the testimony of some persons such as police, general witnesses, the victims and sometimes the accused also is essential to prove the charge to other accused or a suspect or a member of a criminal group. In general, immunity refers to the process of exempting or omitting from prosecution of some accused.

A. TOC Convention

Article 26 of the TOC Convention (see annex) is particularly encouraged with the measures to enhance co-operation of the accused with law enforcement authorities. There are various reasons why immunity is suggested. Principally, the statement of a person who is involved in crime is very reliable because of his relationship with his co-accused. If any statement obtained from him has the credibility and materiality, it can always strengthen a case. At the time of investigation, a state witness can reveal the identity of other suspects which leads to further investigation to arrest the criminal, seize and forfeiture of crime proceeds, etc. In such a situation his statement can also assist the investigator for investigation.

B. Analysis of Current Situation

In Pakistan and India (according to the Penal Code), this system has been provided by law in the High Court and Court of Sessions according to the tenure of imprisonment.

In Pakistan, according to Sec. 337 of the Penal Code, in the High Court or in the Court of Sessions, the tender of pardon can be given as to any offence punishable with imprisonment extending to 10 years or any offence punishable under Sec. 211 of the Code with imprisonment extending to 7 years.

[4] Dr. Matti Joutsen's lecture

Likewise, in India, Sec. 306 of the Code of Criminal Procedure 1973 provides for obtaining evidence of an accomplice by tender of pardon subject to his voluntarily making a full disclosure of the facts and circumstances relevant to the offence for which the accomplice and co-accused are being charged with or investigated for. This provision is applicable for an offence punishable with imprisonment of 7 years or more.

Whereas in Japan this system has not been adopted in legislation, in some cases the court has reduced the punishment on the accused by considering his/her willingness to co-operate with the prosecution. Moreover, in Japan, there is a precedent that a confession is not admissible if it was induced by the promise made by the authorities that they would not indict him/her. Thus, because the grant of immunity seems to be inconsistent with this rule, much consideration would be needed to introduce this system in Japan.

In Laos, Malaysia, Nepal, Thailand and Uganda, the immunity system has not been applied. In these countries only the mitigation of punishment for some accused persons can be considered if the accused assists the investigator to investigate the crime.

C. Benefits

Granting immunity from prosecution has actually led to solving many serious crimes. The victim may also benefit from this system if it is properly used. The investigator can investigate the crime easily. Organized criminal groups and organized crime may decrease from this world.

D. Drawbacks

The possibility the criminal can escape from his/her liability is very high in this system. If prosecutors abuse his/her power to grant immunity, it may increase negative perceptions of criminal justice in the general public. It is also violation of equality and rule of law of the country. The citizen may not have confidence in the judiciary and law enforcement authorities of that country.

As for the unjust evasion of criminal responsibility, for example, the federal immunity statute in the U.S. is construed as "use and derivative-use immunity", that is to say, the federal government must be prohibited from making any use of immunized testimony and its fruits in any later prosecution against him/her, and therefore, as long as all evidence is wholly derived from legitimate independent sources, he/she may be subjected to future prosecution. In particular, in case the offence involved was heinous and some important evidence was found independently after he/she had given immunized testimony, it can be said that he/she deserves to be prosecuted and punished from the viewpoint of the interests of justice. In light of the effectiveness of immunity in obtaining credible testimony, there is some argument that witnesses are less willing to testify if immunity is not complete and he/she might be faced with subsequent prosecution. On the other hand, proponents of immunity say that such immunity can rather encourage the witnesses to provide as much detail as possible in order to make it difficult to prove that prosecutors make no use of that testimony in any subsequent prosecution.

Regarding the possibility of abuse of power, any appropriate procedure should be required. For example, in the U.S., the United States Attorney Manual describes some factors to be considered when granting immunity in order to make sure

it meets the public interest. On the other hand, as mentioned previously, in Pakistan, the role of judges in making such decisions is more active, which might also be advisable for other countries.

IV. WITNESS AND VICTIM PROTECTION PROGRAMMES

The courts go by evidence on record to establish the guilt of the accused. Because of the violent nature of organized crime/terrorism, witness intimidation is a significant problem as many witnesses are reluctant to testify in open court for fear of reprisal at the hand of criminal groups/terrorists. Cases of threat or criminal intimidation on potential witnesses are often recounted and in some instances, some of them have even been killed by related criminal organized groups/terrorists. In Thailand for example, every year, 20% of all criminal cases are dismissed because the prime witnesses are too afraid to take the stand.

A. Need for Reform

It is essential to protect witnesses from the wrath of criminal groups. Hence legal, physical and financial protection should be provided to important witnesses especially in sensitive cases so that they can feel comfortable without any fear in the court. It is not only to prevent threats/violence to the witnesses but also as a guarantee to gain the confidence of witnesses in supporting the prevention and detection of organized crime. Article 25 of TOC Convention (see annex) encourages nations to adopt measures which will guarantee the protection of witnesses from threats, intimidation, corruption or bodily injury in relation to testimony given in cases involving transnational organized crime.

B. Analysis of Current Situation

After discussion, Group 2 realized that the Witness Protection Programme could be categorized as:

- Countries with Witness Protection Programmes in their legislation
- Countries with Witness Protection Programmes annexed as a new article in an existing Act
- Countries that are still in the process of drafting the Bill
- Countries that are still considering the implementation of a Witness Protection Programme

The United States started their Federal Witness Security Programme in 1970 which sought to guarantee the safety of witnesses who agreed to testify for the government in organized crime cases. Witnesses are admitted to the programme when they are able to supply significant evidence in important cases and there is a perceived threat to their security. From 1970 to 1998, a total number of 6,818 witnesses with 8,882 of their families were given this protection and US$75,000 per witness per year and US$125,000 per family has been spent.[5] Even though the programme is costly, the result has made it worth the cost. Over 10,000 defendants have been convicted through the testimony of witnesses and it is said that after the enactment of this Act, the authority could secure the conviction of several notorious mafia leaders.

In Brazil, the national programme for the protection of victims and witnesses took effect in August 1999. The persons who may benefit from this programme

[5] Frank J. Marine, "Response to the Threats Posed by Transnational Crime and Organized Crime Group", Visiting Expert, 108th International Course.

are those without decreed imprisonment and their relatives who live with them. The programme includes the following measures:

- Transferring the residence of the witness;
- Monthly financial aid for each witness;
- Supply of food and clothing;
- Police protection when traveling;
- Helping the witness find a job in the work market;
- Retention of benefits by a public employee who is removed from the service;
- Social, psychological and medical assistance; and
- Change of identity.

Italy has enacted legislation which specifically provides for witnesses protection and relocation.

In the Philippines, the Witness Protection, Security and Benefit Act (Republic Act No. 6981) was enacted on 21 April 1991, with the Department of Justice as the lead implementing agency. As a result of admission into the Witness Protection and Benefit Programme (WPP), which (in addition to the above mentioned benefits) has a substantial budgetary allocation, the witness shall enjoy the following benefits:[6]

- Secure housing facility until he has testified or until the threat, intimidation or harassment disappears or is reduced to a manageable or tolerable level;
- Travel expenses and subsistence allowance during the inquiry;
- Burial benefits, in case of death due to his participation in the WPP; and
- Free education for children, from primary to college level in any State or private school, college or university, if the witness dies or becomes permanently incapacitated to work.

The protection could be extended to any member of the witness' family.[7] However, a witness admitted into the programme shall have the duties and responsibilities, such as, to testify before and provide information to all appropriate law enforcement officials concerning all appropriate proceedings in connection with or arising from the activities involved in the offense charged, to avoid the commission of a crime, to comply with legal obligations and civil judgments against him, etc.[8]

In Japan, the Witness Protection Programme has been embodied in the Code of Criminal Procedure (CCP), Rule of Criminal Procedure, Constitution, Penal Code and Anti-organized Crime Law. For example, exception to bail (a request for bail may be rejected when there are reasonable grounds for suspecting that the defendant may injure the body or damage the property of the witness or his relative, or threaten them as stipulated in Article 89(5) of the CCP; Order for the defendant to leave the courtroom (Article 281-2 of the CCP), Order for the spectator to leave the courtroom (Article 202 of the Rule of Criminal Procedure), Trials conducted privately (Article 82 Clause 2 of the Constitution), Intimidation of a witness (Article 105-2 of the Penal Code, Article 7(3) of the Anti-Organized Crime Law).

[6] Section 8, the Witness Protection, Security and Benefit Act (Republic Act No. 6981)

[7] Section 3, the Witness Protection, Security and Benefit Act (Republic Act No. 6981)

[8] Section 5, the Witness Protection, Security and Benefit Act (Republic Act No. 6981)

A presiding judge may control any questions asked by persons concerned in the trial, if the questions relate to the dwelling or the office of a witness or his/her relative, where he/she or they are usually staying and there are reasonable grounds for suspecting that they or their property may be damaged (Article 295 Clause 2 of the CCP). However, the information to identify witnesses may be seen as the constitutional rights of the defendants, so he/she can have the full opportunity to examine all the witnesses, so it could be difficult to hide completely all information to identify the witness from the defendant.

Article 157-4 Clause 1(3) of the CCP provides that a court may, if it deems necessary, according to the circumstances of the crime and the witness, examine the witness with a video link system. The method involves taking the witness to another room and examining him by means of audio-visual tools.

Article 157-3 Clause 1 of the CCP provides the court may, where the court believes a witness would be unable to testify fully with the pressures of being before the defendant and according to the circumstances of the crime and the witness, order a screen to be set up between the witness and the defendant to make the witness invisible during the examination. Moreover, Clause 2 of the above article also provides that a court may order a screen to be set up between the witness and the public gallery.

Article 4 of the Law Concerning Measures Accompanied with Criminal Procedure for Protection of Victims provides that a victim can request the court in criminal cases to record the mutual consent between him/her and the defendant in the record of trial in order to obtain compensation.

The Law to Provide Compensation for the Victims of Crime provides that state compensation may be supplied to the victims of crime whose relatives have been killed, or who have suffered serious injuries from a criminal act.

In Thailand, the Witness Protection Bill proposed by the Ministry of Justice is under discussion at the Parliament. Under the draft bill, the protection will be the responsibility of the police to carry out this task until the Witness Protection Office is established. There shall be general and special measures for witness protection. In general cases, the investigator or prosecutor, with the request from the witness, may asked the Witness Protection Office to order the protection for up to 30 days subject to the necessity of the case. However, in an emergency situation, the investigator or prosecutor would be empowered to order the police protection for their witness for up to 5 days at a time. The special measures are designed to apply to cases involving trading in narcotics, women and children. The Minister of Justice may order the use of special measures for witness protection. The measures include relocation of witness residence, changing of witness identity and record, as well as providing living allowances and job training for up to 2 years. Both general and special measures can be extended to the witness's spouse, parent, children and person in close relationship with such witness. Although there is the worry about the shortage of budget, this witness protection programme is inevitably necessary to combat organized crimes. Moreover, to reduce the fear of witnesses in taking the witness stand and having to confront the defendant whom may be an influential person or a member of an organized crime group, the use of video conferencing where a witness testifies in front of the video camera in a room

separately from the trial room is also introduced. This should make the witness feel more relaxed and comfortable to tell the whole truth. The proposed bill to amend the Thai Criminal Procedure Code for allowing the use of video conferencing is being scrutinized by the Office of the Council of State.

We learned that Nepal is now considering utilizing the Witness Protection Programme. Anyhow there are still many countries that do not have this programme.

C. Benefits

Witness and Victim Protection Programmes will encourage the co-operation of people in the fight against transnational organized crimes, since they are assured that in giving evidence their life, property or that of their family will be safe from the criminal organization in question. The protection can be given during the time of investigation, proceeding or thereafter. Therefore the witness may be either the accused who is granted immunity, the victim or a third party.

D. Drawbacks

Due to the large amount of finances required and human resource constraints to devise or even implement this programme, many countries may fail to adopt it.

It is also difficult to define the scope of the witness protection. It is not clear as when and for how long the witness should be provided with this protection programme. A question also arises as to whether the protection should be limited only to the witness or should be extended to his family. It is also not clear as to how much assistance should be provided.

V. CONCLUSION

All states should be required to ensure that their legislation criminalizes conspiracy and/or participation in an organized criminal group. The definition of participation was drawn to require 'active participation.' It was this joint action which contributed to the definition adopted in the TOC Convention in Article 5.

Furthermore, in responding to the threat of transnational crime, criminal justice authorities have felt it necessary to intervene as soon as possible in order to prevent crime, break-up criminal organizations and apprehend offenders before they make good their escape. States parties are also required to carefully choose the best options, keeping in mind their domestic legal and social systems.

Immunity generally refers to the process of exemption from prosecuting a person accused of a crime. It seems that immunity from prosecution has actually led to the solving of many serious crimes in countries such as Pakistan and India. Detailed immunity systems of other countries like Malaysia, Uganda and Thailand were also discussed. In Japan the system is not legislated. The absence or existence of an immunity system depended on a country's culture, history, national sentiment and their domestic laws.

Regarding witness and victim protection, we identified participant states into 4 categories as above mentioned. It was appreciated that the statement of accomplices has proved useful in prosecution involving organized crime cases, as it helps law enforcement agencies to penetrate such gangs. In response to this, some countries have

found it advantageous to enact legislation to protect witnesses and/or oblige witnesses to testify truthfully, and provide sanctions if they refuse to do so.

It was identified that although some countries currently have no serious problems with transnational organized crime, the state of affairs may change in view of the rapid and continuing spread of it. It is therefore important to establish lines of communication and shared understanding of common goals throughout the world.

These strategies have been endorsed by the TOC Convention since the year 2000. Since the TOC Convention provides and covers all effective countermeasures against transnational organized crime for us, it is imperative to ratify and implement the Convention as soon as possible, taking into due account harmony with the domestic legal system of each country.

APPENDIX

Article 5

Criminalization of participation in an organized criminal group

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
   (a) Either or both of the following as criminal offences distinct from those involving the attempt or completion of the criminal activity:
      (i) Agreeing with one or more other persons to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement or involving an organized criminal group;
      (ii) Conduct by a person who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes an active part in:
         a. Criminal activities of the organized criminal group;
         b. Other activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the above-described criminal aim;
   (b) Organizing, directing, aiding, abetting, facilitating or counselling the commission of serious crime involving an organized criminal group.
2. The knowledge, intent, aim, purpose or agreement referred to in paragraph 1 of this article may be inferred from objective factual circumstances.
3. States Parties whose domestic law requires involvement of an organized criminal group for purposes of the offences established in accordance with paragraph 1 (a) (i) of this article shall ensure that their domestic law covers all serious crimes involving organized criminal groups. Such States Parties, as well as States Parties whose domestic law requires an act in furtherance of the agreement for purposes of the offences established in accordance with paragraph 1 (a) (i) of this article, shall so inform the Secretary-General of the United Nations at the time of their signature or of deposit of their instrument of ratification, acceptance or approval of or accession to this Convention.

Article 25

Assistance to and protection of victims

1. Each State Party shall take appropriate measures within its means to provide assistance and protection to victims of offences covered by this Convention, in particular in cases of threat of retaliation or intimidation.
2. Each State Party shall establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by this Convention.
3. Each State Party shall, subject to its domestic law, enable views and concerns of victims to be presented

and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

Article 26

Measures to enhance cooperation with law enforcement authorities

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in organized criminal groups:
   (a) To supply information useful to competent authorities for investigative and evidentiary purposes on such matters as:
      (i) The identity, nature, composition, structure, location or activities of organized criminal groups;
      (ii) Links, including international links, with other organized criminal groups;
      (iii) Offences that organized criminal groups have committed or may commit;
   (b) To provide factual, concrete help to competent authorities that may contribute to depriving organized criminal groups of their resources or of the proceeds of crime.
2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.
3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.
4. Protection of such persons shall be as provided for in article 24 of this Convention.
5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

GROUP 3
PHASE 2

COUNTERMEASURES AGAINST MONEY LAUNDERING

Chairperson	Mr. Shankar Pratap Singh	(India)
Co-Chairperson	Mr. Masakazu Ameku	(Japan)
Rapporteur	Mr. Jan Samuel Maringka	(Indonesia)
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I. INTRODUCTION

In view of the fact that money laundering is at the center of predominantly all other criminal acts, it becomes an integral part of any transnational organized crime. Hence, any genuine effort to combat transnational organized crime has to necessarily address the serious issue of adopting countermeasures to fight the menace of money laundering.

Since the goal of a large number of criminal acts is to generate a profit for the criminal that carries out the act, the processing of the criminal proceeds through money laundering assumes critical importance, as it enables the criminal to disguise their illegal origin and helps him in enjoying the proceeds of his crime without any threat. Thus, money launderers are continuously looking for new methods and routes for laundering their ill-gotten proceeds from crime. The criminals do this by effectively exploiting the differences between the national anti-money laundering systems and tend to move their networks to countries and financial systems with weak or ineffective countermeasures. Therefore, the possible social and political consequences of money laundering, if left unchecked or dealt with ineffectively, can be very grave and serious for any country.

Most fundamentally, since money laundering is inextricably linked to the underlying criminal activity that generated it, targeting the money laundering aspect of criminal activity and depriving the criminal of his ill-gotten proceeds of crime would automatically mean hitting him where it hurts the most, i.e. where he becomes financially most vulnerable. Without a usable profit, the criminal activity cannot continue.

This, inevitably brings to the fore the need for having an effective and organized system to deal with money

laundering by adopting suitable countermeasures in the legislative systems and law enforcement mechanism of various countries. In a broader sense, some of the countermeasures would include making the act of money laundering a crime; giving the investigative agencies the authority to trace, seize and ultimately confiscate the proceeds derived from criminal activity and building the necessary framework for permitting the agencies involved to exchange information amongst themselves and their counterparts in other countries. It is, therefore, critically important that all countries should develop a national anti-money laundering programme. This should, *inter alia*, include involving the law enforcement agencies in establishing a financial transaction reporting systems, customer identification system, record keeping system and also a method for verifying compliance.

However, it needs to be emphasized that national strategies by themselves would prove inherently inadequate in responding to the challenges posed by transnational organized criminal groups in their activity relating to money laundering since they cross multiple borders, involve multiple jurisdictions and multiplicity of laws. Hence, the countermeasures to combat money laundering calls for a truly global response making it absolutely imperative for increased global cooperation between the law enforcement agencies of different countries in effectively dealing with the menace of money laundering by the transnational organized criminal groups.

II. THE GLOBAL RESPONSE

Realizing the gravity of the problem, the international comity of nations has tried to come up with a global response. The United Nations adopted the Vienna Convention, 1988 against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which, *inter-alia*, incorporated the incrimination of money laundering activity as a criminal act in an international treaty for the first time.

In response to the mounting concern over money laundering, the Financial Action Task Force On Money Laundering (FATF) was established by the G-7 Summit held in Paris in 1989. The FATF was given the responsibility of examining the money laundering techniques and trends, reviewing the actions which had already been taken at the national and international level and the further measures which were required to be taken to combat money laundering. In April 1990, FATF issued a report containing a set of the Forty Recommendations which provided a detailed plan of action needed to combat money laundering. The Forty Recommendations were further revised and made more comprehensive by the FATF in 1996.

Thus, drafted in 1990 and revised in 1996, the Forty Recommendations of the FATF provide a very detailed and comprehensive blue print for action in the fight against money laundering. The Forty Recommendations cover the criminal justice system and law enforcement, the financial system and its regulation and more importantly the intrinsic need for international cooperation to combat money laundering. The Forty Recommendations of the FATF have come to be recognized as the international standard with regard to anti-money laundering programmes. The Forty Recommendations of the FATF set out the basic framework for anti-money laundering efforts and are designed to be

of universal application. However, it was recognized at the outset, that different countries have diverse legal and financial systems and therefore could not take identical measures. The Recommendations, therefore, only lay down the basic principles for different countries to implement, within their constitutional frameworks and thus allow the countries a degree of flexibility. The measures suggested by the FATF are found to be absolutely essential for the creation of an anti-money laundering framework.

III. THE FORTY RECOMMENDATIONS

The Forty Recommendations of the FATF, apart from the general framework, can be broadly classified under three major heads *viz*:

A. The existence or creation, within the legal framework of each country, a law criminalizing the act of money laundering, as defined by the Vienna Convention of 1988 on NDPS.
B. The existence or creation or strengthening of the legal and financial systems in different countries, which would provide the law enforcement and investigating agencies effective tools to combat money laundering.
C. Strengthening of the International Cooperation between different countries at all levels, so as to enable an organized and concerted effort of the various law enforcement agencies of the different countries, in successfully combating money laundering.

The gist of some of the very important recommendations, under the above referred three major heads, are enumerated as follows:

A.(i) Each country should take such measures as may be necessary, including legislative ones, to enable it to criminalize money laundering, as set forth in the Vienna Convention. Further, the offence of money laundering should not be merely confined to drug offences but should be extended to all serious offences which could be designated as money laundering predicate offences (R. 4).

(ii) The concept of knowledge relating to money laundering may be inferred from objective factual circumstances (R. 5) and that corporations themselves, and not only their employees, should be subject to criminal liability (R. 6).

B. The further perusal reveals that a predominant majority of the Forty Recommendations of the FATF falls within the ambit of major head (B). The gist of some of the very important recommendations are briefly summarized as follows:

(i) Countries should adopt measures, including legislative ones, to enable their competent enforcement authorities, to confiscate laundered property or the proceeds from the commission of any money laundering offence. This may also include confiscation of property of corresponding value of the offending party (R. 7).

The above recommendation further stipulates, that the measures should include the authority to (1) identify, trace and evaluate property which is subject to confiscation, (2) provide for measures such as freezing and seizing to prevent any dealing, transfer or disposal of such property and (3) take any

further appropriate investigative measures toward this end.

The FATF has made very specific recommendations with regard to the strengthening of the financial systems of different countries. The gist of some of the very useful and important recommendations can be summed up as follows:

(ii) Financial institutions of different countries should not permit opening of and operations in anonymous accounts or accounts in fictitious names. They should be necessarily required by law or regulation to establish the correct customer identity while opening an account, renting safe deposit lockers or while entering into large monetary transactions (R. 10).

(iii) Financial institutions in each country should maintain, at least for a period of five years, all necessary records relating to financial transactions, both domestic and international, so as to enable them to comply swiftly with information requests from the competent authorities. Such records should be sufficient to be used as evidence for prosecution, if required (R. 12)

(iv) Countries should pay special attention to money laundering threats inherent in new or developing technologies that might favour anonymity and take suitable measures, if required, to prevent their use in money laundering schemes (R. 13).

(v) Financial institutions in different countries should pay special attention to all complex and unusually large patterns of transactions which have no apparent lawful purpose. Such unusual transactions should be very closely examined and the findings should be made available to the law enforcement agencies (R. 14). If financial institutions suspect that funds emanate from a criminal activity, they should be required to report promptly their suspicions to the competent authorities (R 15).

(vi) The various functionaries of the financial institutions should be protected from criminal or civil liability for reporting suspicious transactions in good faith (R. 16). The financial institutions and their functionaries should not be allowed to warn their customers for having reported any suspicious transaction to the competent authorities (R. 17). Financial institutions should comply with instructions from the competent authorities (R. 18).

(vii) The financial institutions in different countries should develop programmes against money laundering including:
   a. the development of internal policies, procedures and controls,
   b. an ongoing employee training programme,
   c. an audit system to test the functioning of the actual implementation of the scheme (R 19).

In addition to the above, the FATF has also made certain further recommendations to avoid money laundering and to cope with countries having no or insufficient money laundering laws/measures. Some of the important recommendations in this regard are as follows:

(viii) Financial institutions should give special attention to business transactions with countries having no or insufficient anti-money laundering laws/ measures. There should be a very thorough scrutiny and monitoring of such transactions (R. 20 & 21).

(ix) Countries should try to implement suitable measures to detect and monitor physical transborder transaction of cash and bearer negotiable instruments (R. 22). They should try to implement a system of reporting all domestic or international currency transactions above a specified or fixed amount to a national central agency having a computerized data base. Such information should be made available to the competent law enforcement agencies of each country as and when required (R. 23). Countries should try to develop safe money management techniques including use of checks, payment cards, etc. to replace cash transactions or transfer of money (R. 24). They should ensure that the money launderers are not able to abuse 'shell corporations' and strengthen their systems to prevent any such unlawful misuse (R. 25).

(x) The competent authorities in different countries should ensure that adequate laws and regulations are in existence to provide safeguards against money laundering. They should also ensure that the enforcement authorities in each country have a very high level of co-operation and co-ordination amongst themselves in combating money laundering activity (R 26). They should ensure sufficient safeguards to protect taking over of control or acquisition of any financial institutions by criminals or their associates (R. 29).

C. The FATF has very heavily emphasized the strengthening of international cooperation between the different countries with a view to effectively deal with the criminals indulging in money laundering activities. Some of the very important recommendations in this regard are enumerated as under:

(xi) The first part of the 'Recommendation' pertains to greater and increased level of exchange of information, both general and those relating to suspicious transactions.

It states that countries should have a system of recording international cash flows, both inflows and outflows, in all currencies so that an estimate could be made with regard to movement of money which should be made available to the International Monetary Fund (IMF) and the Bank for International Settlements to facilitate international studies (R. 30). Further, the 'INTERPOL' and the 'World Customs Organization' should be given the responsibility for gathering and disseminating such information to the competent authorities indicating the latest developments in money laundering and money laundering techniques. The above exercise should also be done by the Central Banks and competent authorities in

different countries domestically (R. 31). Countries should further ensure that there is a system of a spontaneous or "upon request" exchange of information relating to suspicious transactions, persons and corporations involved between the different countries. This international exchange of information should be in conformity with the national and international provisions on privacy and data protection (R. 32).

The second part of 'Recommendations' emphasizes on other forms of co-operation at international level including those relating to confiscation, mutual assistance and extradition.

The FATF has suggested that differences in the laws and the understanding of the money laundering definition and activity in various countries should not prove to be a hindrance or obstacle in providing each other with mutual legal assistance (R. 33). International co-operation should be further strengthened by bilateral and multi-lateral agreements and arrangements with the intent to facilitate maximum mutual assistance between different countries (R. 34). Further, countries should try to ratify and implement relevant international conventions on money laundering including the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (R. 35).

(xii) The concluding part of the Forty Recommendations pertaining to enhancing international co-operation between different countries suggest some of the following important measures:

There should be increased co-operation, while conducting investigations between different countries including usage of the effective technique of controlled delivery related to assets known or suspected to be the proceeds of crime (R. 36). There should be procedures for providing mutual assistance in criminal matters, including production of records by financial institutions, the search and seizure of persons and premises for obtaining evidence in money laundering investigations and prosecutions (R. 37). An authority to take immediate action on requests from foreign countries to identify, freeze, seize and confiscate proceeds of crime or the underlying crime behind the money laundering activity (R. 38).

The FATF further suggested that conflicts relating to jurisdiction should be avoided and the accused should be prosecuted in the best venue, in the interest of justice, if more than one country is involved. Further, there should also be arrangements for coordinating seizure and confiscation proceedings, including sharing of confiscated assets (R. 39). It lastly suggested that different countries should have an arrangement for extradition, where possible, of individuals charged with a money laundering offence. All countries should recognize money laundering as an extraditable

offence and should try to simplify their legal framework relating to extradition proceedings. (R. 40).

IV. NON CO-OPERATIVE COUNTRIES AND TERRITORIES

The FATF continued to further review the Forty Recommendations from time to time with regard to their effectiveness in dealing with the crime relating to money laundering and also the implementation by the various countries of the recommendations made more comprehensive in 1996. On 22 June 2001, the FATF published its Twelfth Annual Report which outlines its main achievements, including the significant progress made in relation to work on Non Co-operative Countries and Territories (NCCTs). The FATF has revised and updated its list of NCCTs which now includes the following countries/ territories; Cook Islands, Dominica, Egypt, Guatemala, Hungary, Indonesia, Israel, Lebanon, Marshall Islands, Myanmar, Nauru, Nigeria, Niue, the Philippines,[1] Russia, St. Kitts and Nevis and St. Vincent and the Grenadines. The FATF has suggested that all countries should be especially vigilant in their financial dealings/transactions with the above mentioned 'NCCTs" and if necessary, take additional countermeasures.

V. THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME

The United Nations Convention against Transnational Organized Crime (TOC) 2000 has effectively combined many of the anti-money laundering mechanisms explored at the international level into one comprehensive legal instrument. The convention on TOC addresses a number of issues, raised through several international initiatives, which in many instances were earlier not legally binding, into an international legal instrument having force. The convention has recognized that a considerable amount of valuable work related to the fight against money laundering has been undertaken by a number of organizations and has suggested that countries should seek guidance from such initiatives.

The UN Convention on TOC borrows from the 1998 General Assembly Political Declaration and extends the definition of money laundering to include money derived from all serious crimes which are defined as those offences which are punishable by a maximum sentence of at least four years or more.

In its focus on issues more directly related to financial institutions, the convention requires member countries to establish comprehensive regulatory and supervisory regimes for banks and also non-banking financial institutions. It requires that such regimes should specifically address the issue of customer identification, record keeping and suspicious transaction reporting. It stresses the importance of the exchange of information at the national and international levels and in that context highlights the role of Financial Intelligence Units (FIU) for the purpose of collecting, analyzing and disseminating information. It also highlights the need for co-operation amongst the law enforcement, judicial and financial regulatory authorities of different countries.

[1] It needs to be emphasized that the Philippines has since enacted the Anti-Money Laundering Act on 29 September 2001.

For a fuller and more comprehensive understanding of the issue relating to money laundering, as adopted by the UN Convention on TOC, 2000, the complete reading of Article 6 and Article 7 and also articles 12, 13, and 14 is deemed imperative.

VI. SOME COUNTERMEASURES AGAINST MONEY LAUNDERING

The workshop, after having deliberated at length and in detail, highlight three subjects which are regarded to be very important in strengthening the implementation of the Forty Recommendations.

A. Knowing Your Customers

Money laundering is conducted by depositing proceeds of crime in financial institutions, hiding such proceeds of crime, and disguising them as if they originated from legitimate economic activity.

In order to detect money laundering in the most effective way, it is important to obtain illegal proceeds at an early stage. Therefore, the Forty Recommendations prescribe countermeasures, including identification of the person at the time of the opening of his or her bank account.

It was discussed, however, that the scope of the identity of the customer by the bank and other financial institutions should not be expanded. It is prescribed under law in most of the participant's countries that financial institutions identify the person by such means as his or her ID card at the time of the opening of his or her bank account. It was pointed out while it is effective to extend the scope of obligation for identification to the areas such as occupation, original capital and deposits, it may impose excessive burdens on the financial institutions.

Most of the participants, however, opined that the financial institutions obligations should be extended in order to control money laundering crime. It was discussed whether or not sanctions be imposed upon such financial institutions if and when they fail to meet the obligations on their part in order to ensure the practical effect of such obligations. On this point, some argued that it is not reasonable to impose sanctions upon the financial institutions. Most of the participants argued that some countries already have such sanctions and that it is useful to have provisions on sanction in order to achieve the most effective control over money laundering.

Another topic to keep in mind is that the crime of laundering assets is born as consequence of the seizure of earnings. The profits or instruments and the economic benefit must be confiscated. And this is the key to criminal politics on money laundering. We have to attack their economic interests, their results, and their earnings. The important thing for criminal organizations is not the crime itself but the earnings that they generate. Here, again we meet with another inconvenience from the legislative point of view.

In relation to the effective normative frame, and referring that is to say to the matter that concerns us, the financial system, diverse legislation is necessary for the identification of clients.

Also another regulation exists and it refers to the obligation of taking "accounting books" where the total operations are registered and banks may preserve the bank documentation for 10 years from the date of its registration.

Additionally other regulations are necessary to highlight, such us:

- Register payments of checks and make it an obligation to maintain registration on determined operations;
- Enforce financial entities to inform about certain transactions where specifically it is required for the "Prevention of money laundering coming from illicit activities";
- Regulations that include the Agencies and Offices of Change;
- To designate, in each entity, a responsible official for the specific topic of money laundering.

In relation to future perspectives, we should point out that the crime of money laundering should be considered as an international crime. It is necessary to have different tools that should accord with those that have already been implemented in other countries.

However, such laws must include an obligation on certain people to denounce operations and/or suspicious activities.

B. Asset Forfeiture System

An asset forfeiture system is a veritable tool for law enforcement and judicial criminal process to deprive criminals of illegally acquired proceeds, and plough back such proceeds to the community for the greater good of society.

The legal provisions regarding an asset forfeiture system differ from country to country. Generally they have this system in a criminal proceeding act. But especially in countries like Venezuela and Argentina, they have a forfeiture system in their Money Laundering Act, the same as in Malaysia relating to the Dangerous Drugs (Forfeiture of Property) Act which was enacted in 1988.

In Indonesia, the Anti Corruption Act, 1971 (amended in 1999) deals with the proceeds of crime. Such goods (from the proceeds of crime) can also be confiscated in the interests of the investigation.

The Japanese assets forfeiture system for organized crime is embedded in the Organized Crime Punishment Law, 1999. In this law, the system of confiscation and collection of equivalent value is provided, which is helpful for the asset forfeiture system. There is also provision for assets illicitly received in relation to property obtained by the parties during engagement in drug-related offences, if the value is deemed unreasonably large then such property or equivalent thereof is liable to be confiscated.

However, it is very difficult to confiscate effectively even for the countries which have a special forfeiture system against money laundering. In other words, one of the most serious problems that countries deal with, in the confiscation procedure, is where the 3rd party is disguised as bona fide to avoid seizure by the criminals.

It is hard to prove that a 3rd party has received illicit proceeds, knowing it was the product from crime. As a result, criminals keep their illicit proceeds. We should make a 3rd party prove he/she is bona fide.

Indonesia introduced this issue under the Anti-Corruption Law, 1999 about burden of proof. This article makes the defendant prove his innocence and to show that he is not conducting any corruption. This article contradicts the burden of proof regulation in the Criminal Procedure Code, which states that the burden of proof is in the prosecutor's hand. It is the prosecutor's duty to prove whether the defendant is guilty or not. The Anti-Corruption Law reversed this burden of proof in limited

circumstances, because the prosecutor still has to prove his indictment.

Thus, the transfer of the burden of proof can be an effective weapon for the law enforcement agent, but at the same time can also impose excessive burdens on a 3rd party. In case the money launderer has transferred the proceeds of crime to the 3rd party, the 3rd party receiver must prove that he/she has not known of the source of the money. In this sense, to prevent the burden of proof from being excessive, the scope and extent of such a burden should be adequately considered.

C. Gatekeepers

The process of laundering illegal money normally goes through three different stages, that's 'investment', 'layering' and 'integration'. Naturally these three stages are used by the launderers as a means to circumvent money laundering countermeasures through more complex schemes. This increase in complexity means that those individuals desiring to launder criminal proceeds must turn to the expertise of legal professionals, accountants, financial consultants, and other professionals to aid them in the movement of such proceeds. The types of assistance that these professionals provide are the gateway through which the launderers must pass to achieve the above stages. Thus the legal and accounting professionals serve as sort of 'gatekeepers' since they have the ability to furnish access (knowingly or unwittingly) to the various tools that might help the criminal move or conceal the funds.

The functions that are most useful to the potential launderers include:

- Creation of corporate vehicles or other complex legal arrangement (trusts, for example). Such constructions may serve to confuse the links between the proceeds of a crime and the perpetrator;
- Buying or selling of property. Property transfer served as either the funds (layering stages) or else they represent the final investment of these proceeds after having passed through the laundering process (integration stage);
- Performing financial transactions. Sometimes these professionals may carry out various financial operations on behalf of the launderers (for example, cash deposits or withdrawals on accounts, retail foreign exchange operations, issuing and cashing cheques, purchase and sale of stocks, sending and receiving international fund transfers, etc.);
- Financial and tax advice. A criminal with a large amount of money to invest may pose as an individual hoping to minimize his/her tax liabilities or desiring to place assets out of reach in order to avoid future liabilities.

In some of these functions, the potential launderer is obviously not only relying on the expertise of these professionals but is also using them and their professional status to minimize suspicion surrounding their criminal activities. In view of the vast services these professionals provide, these so called 'gatekeepers' would have access to important and useful information that could be used to implicate the launderer of an offence of money laundering. However to obtain such incriminating information from the gatekeepers is not an easy task due to the privilege of confidentiality between the 'gatekeeper' and their clients, in particular the legal

profession. This traditional professional confidentiality is now extended to other non-advocacy 'gatekeeper' functions.

One solution to overcome the above problem is to include these professional gatekeepers under the same anti-money laundering obligations as financial intermediaries when they perform their professional functions. In other words, these professional gatekeepers are required to identify the client with which they are dealing and to channel any suspicious transaction reports (STR) to the relevant authority/financial intelligence unit (FIU) or to face the penalties which come with failing to do so.

VII. CONCLUSION

It may, thus, be seen that the problem of money laundering is being seriously viewed by the international community with the concern it rightly deserves. Subsequent to the September 11 2001 terrorist attacks on the World Trade Center and the Pentagon in the USA, the issue of money laundering has suddenly assumed altogether a new dimension in terms of the funding of terrorist organizations all over the world and the predominant use of money laundering by terrorist criminal organizations in funding their activities. However, the global response to the challenge posed has been overwhelming, as is evident by the media coverage (CNN: October 23, 2001) where it has been reported that more than 140 countries from all parts of the world are co-operating in tracking down funds of criminal organizations and more especially terrorist funds which are suspected to be involved in money laundering activity at different stages in various countries. It is, indeed, very heartening to note, that out of the above 140 countries, seventy countries have actually gone ahead and frozen certain accounts in banks and financial institutions, which were believed to be involved in suspicious financial transactions. The intent behind the above exercise is to chase the 'money trail' used by the criminals/terrorists and after identifying such suspicious accounts, freeze, seize and finally confiscate the funds/assets involved so that organized criminal gangs/terrorist organizations are finally starved of funds.

It needs to be emphasized, however, that moving forward in the twenty first century is going to pose new threats and challenges to the law enforcement authorities in different countries with regard to combating organized crime, including money laundering. A case in point would be the financial frauds which can now easily be committed over the Internet. Certain instances of such financial frauds have already come to notice and preventive action needs to be taken as a priority.

The workshop, after having deliberated at length and in detail, is of the considered view that new challenges posed by the money launderers calls for new initiatives, techniques and tools to combat the menace of money laundering. To this end, the new techniques and tools would necessarily have to include 'controlled delivery', 'electronic surveillance' including 'wire tapping', whenever necessary, and also 'undercover operations'. It is the considered view of the workshop, that the domestic laws of different countries should provide for the usage of the above modern investigation techniques and tools, with the intent of effective enforcement of money laundering laws. However, the above specialized techniques are not meant to totally replace but only to strengthen and

supplement the existing investigation techniques and tools.

The workshop is also of the considered view that there should also be a provision in the domestic laws of each country for prosecution of the so called "gatekeepers" i.e. the legal professionals, accountants, financial consultants and other professionals who provide the requisite expertise, without which it would not be possible for the organized criminal groups to invest large sums of money without getting detected. Such professionals indulge in money laundering activity by way of providing professional accounting and legal advice to the criminal so as to enable him to conceal the origin of the illegal proceeds of crime. In the view of the workshop, such professionals also need to be simultaneously prosecuted with the criminal, in the same manner, for abetment of the offence of money laundering.

The workshop is also unanimously of the view that all the investigating and intelligence agencies within each country need to co-operate and interact more closely in the fight against money laundering. It is also felt desirable that for successfully combating the menace of money laundering, all investigating and intelligence agencies in different countries need to necessarily adopt a very pro-active attitude towards the collection of intelligence relating to money laundering, i.e. instead of just reacting, they need to actively act on gathering intelligence on the subject.

Lastly, with regard to international co-operation, there is total unanimity that it would be in the best interests of all countries to strengthen and enhance international cooperation at all levels, i.e. at the regional, inter-regional and international levels by way of bilateral, multi-lateral and international treaties providing for mutual legal assistance and extradition, where necessary.

In view of the workshop, there are still a lot of genuine impediments and difficulties being experienced by many countries in the implementation of the Forty Recommendations of the FATF and the TOC UN Convention, 2000. However, it is the genuine belief of the workshop that all such obstacles and hindrances could be, over a period of time, removed backed by the all important political will of the leadership of such countries.

APPENDIX

COMMEMORATIVE PHOTOGRAPHS

- *118th International Training Course*
- *119th International Training Course*

UNAFEI

The 118th International Training Course

Left to Right:

Above:

Dr. Leschied(Canada), Deputy Director Aizawa

4th Row:

Ms. Tsubouchi(Staff), Ms. Kuramochi(JICA), Ms. Matsushita(Staff), Ms. Saito(Staff), Mr. Koike(Staff), Mr. Iida(Staff), Mr. Suga(Staff), Mr. Kimura(Staff), Mr. Inoue(Staff)

3rd Row:

Mr. Kai(Staff), Mr. Nakayama(Staff), Mr. Kuwabara(Japan), Mr. Hosoi(Japan), Ms. Matshego(South Africa), Ms. Beckles(Barbados), Ms. Gunawardhana(Sri Lanka), Mr. Hosaka(Japan), Mr. Chen(China), Mr. Shimada(Japan), Ms. Kudou(Japan), Mr. Fukushima(Japan), Mr. Noda(Japan)

2nd Row:

Ms. Nagaoka(Staff), Mr. Tongamp(P.N.G.), Mr. Satakala(Fiji), Mr. Rana(Pakistan), Mr. Haque(Bangladesh), Mr. Acharya(Nepal), Mr. Teh(Malaysia), Mr. Sambas(Indonesia), Mr. Siva(India), Mr. Rabello(Brazil), Mr. Inabi(Palestina), Ms. Sakuma(Japan), Mr. Yoshioka(Japan), Ms. Duangporn(Thailand), Ms. Yoshida(Japna), Ms. Yoshida(Staff), Ms. Hayashi(Staff)

1st Row:

Mr. Eratt(L.A.), Mr. Miyamoto(Staff), Prof. Someda, Prof. Tsutomi, Prof. Tanabe, Prof. Miura, Ms. Phillips(New Zealand), Dr. Harachi(U.S.A), Director Kitada, Ms. Kamal (Singapore), Mr. Allen(U.K.), Prof. Tachi, Prof. Takasu, Prof. Teramura, Prof. Kakihara, Ms. Suzuki(Staff)

The 119th International Training Course

Left to Right:
Above:
Mr. Moran(Peru), Mr. Vlassis(U.N.), Mr. Joutsen(Finland)

4th Row:
Mr. Koike(Staff), Mr. Takagi(Chef), Mr. Kai(Staff), Mr. Inoue(Staff), Mr. Tanaka(Staff), Ms. Saito(Staff), Ms. Nagaoka(Staff), Ms. Yoshida(Staff), Ms. Tsubouchi(Staff), Mr. Suga (Staff), Ms. Ono(JICA)

3rd Row:
Mr. Nakayama(Staff), Ms. Misawa(Japan), Mr. Bulatov(Kyrgyz), Mr. Sazali(Malaysia), Ms. Ota(Japan), Mr. Muchwangali(Uganda), Mr. Kobashi(Japan), Mr. Nouphanh(Laos), Mr. Romero(Venezuela), Mr. Goyanes(Argentina), Mr. Kharel(Nepal), Mr. Ameku (Japan), Mr. Zafar(Pakistan), Ms. Ichikawa(Japana)

2nd Row:
Mr. Hayashi(Staff), Ms. Matsushita(Staff), Mr. Hataguchi(Japan), Mr. Satou(Japan), Mr. Yokoyama(Japan), Mr. Hamada(Japan), Mr. Takeda(Japan), Mr. Sittipong (Thailand), Ms. Ramos(Honduras), Mr. Maringka(Indonesia), Mr. Maruoka(Japan), Mr. Saad(Pakistan), Mr. Zainal Rashid(Malaysia), Mr. Singh(India), Mr. Bechem (Cameroon)

1st Row:
Mr. Suzuki(Staff), Prof. Kakihara, Prof. Teramura, Prof. Takasu, Prof. Miura, Dep. Director Aizawa, Mr. Gaña(Philippines), Ms. Gaña(Philippines), Director Kitada, Mr. Moynihan(U.S.A.), Mr. Shaw(U.S.A.), Prof. Tachi, Prof. Tranabe, Prof. Tsutomi, Prof. Someda, Mr. Miyamoto(Staff), Mr. Eratt(L.A.)