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and

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UNAFEI

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INTRODUCTORY NOTE

It is with pride that the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) offers to the international community the Resource Material Series No. 66.

This volume contains the Annual Report for 2004 and the work produced in the 126th International Senior Seminar that was conducted from 13 January to 12 February 2004. The main theme of this Seminar was, "Economic Crime in a Globalizing Society ~ Its Impact on the Sound Development of the State".

Rapid economic globalisation has brought with it an increase in global economic crime. In addition to conventional types of economic crime, such as corruption and embezzlement, new types have emerged facilitated by the rapid spread of new technologies, such as the internet. These new types of crimes, and new methods of perpetrating conventional crimes, have become more complicated and in turn more difficult to combat. Economic crime distorts market forces and can thus have a very detrimental effect on a country's economy; due to its transnational nature it is important for the international community as a whole to act together to combat this menace.

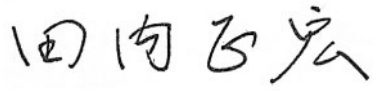
The United Nations recognizes that the prevention of crime is a crucial factor for the establishment of international order and has recently placed priority on tackling economic crime. The U.N. 11th Congress on Crime Prevention and Criminal Justice, held in Thailand in April this year, included the agenda item "Economic and Financial Crimes: Challenges to Sustainable Development". UNAFEI, as a United Nations regional institute, and the Swedish National Economic Crimes Bureau organized a workshop at the 11th Congress on "Measures to Combat Economic Crime, Including Money Laundering". In view of the importance of this issue, and our involvement in the above mentioned workshop, UNAFEI decided to focus on economic crime for this 126th International Senior Seminar.

In this issue, papers contributed by visiting experts, selected individual presentation papers from among the Seminar participants, and the Group Workshop Reports are published. I regret that not all the papers submitted by the Seminar participants could be published.

I would like to pay tribute to the contributions of the Government of Japan, particularly the Minister of Justice and 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. 66, Mr. Simon Cornell (Linguistic Adviser).

September 2005



Masahiro Tauchi
Director of UNAFEI

PART ONE

ANNUAL REPORT FOR 2004

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UNAFEI

MAIN ACTIVITIES OF UNAFEI
(1 January 2004 - 31 December 2004)

I. ROLE AND MANDATE

The United Nations 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.

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 43 years of existence, UNAFEI has conducted a total of 128 international training courses and seminars, in which approximately 3122 criminal justice personnel have participated, representing 107 different countries. UNAFEI has also conducted a number of other specialized courses, both country and subject focused, in which hundreds of other participants from many countries have been involved in. 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 126th International Seminar

1. Introduction

From 13 January to 12 February 2004, 21 participants from 16 countries attended the 126th International Seminar to examine the main theme of "Economic Crime in a Globalizing Society ~ Its Impact on the Sound Development of the State".

2. Methodology

Firstly, the Seminar participants respectively introduced the current position regarding the role and function of criminal justice agencies in their country in regard to the main theme. The participants were then divided into three group workshops. Each group was given the same topics to be discussed as below. All the groups, representing six countries in each, were requested to summarize the current situation and the problems of serious economic crime in their countries (I), and select at least one topic from the following (II, III and IV) to be discussed in its group workshop.

I. The Current Situation and the Problems of Serious Economic Crime in Participating Countries

II. Problems and Countermeasures in Regard to the Investigation and Trial of Economic Crime

A. The Investigative Apparatus
B. Collection of Information in Order to Initiate the Investigations
C. Collection of Evidence and Securing an Appropriate Adjudication

III. Prevention of Economic Crime
A. Regulations of Economic Activities
B. Corporate Governance
C. Establishment and Implementation of a Corporate "Compliance Programme"
D. Establishment of a System to Monitor Economic Activities
E. Public Awareness and Others

IV. Strengthening the Legal Framework and Countermeasures of Economic Crime
A. Criminalization of New Types of Harmful Economic Activities
B. Ratification and Utilization of International Standards such as UN Conventions
C. Corporate Sanctions
D. Review of the Criminal Procedure and/or Evidential Law
E. Recovery of Damage

Each group elected a chairperson, co-chairperson, rapporteur and co-rapporteur in order to facilitate the discussions. During Group Discussion the group members studied the designated topics and exchanged their views based on information obtained through personal experience, the Individual Presentations, lectures and so forth. Later, 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, 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.

3. Outcome Summary

Economic crimes in this globalizing society have expanded from the conventional types such as embezzlement, fraud, corruption and breach of trust to include more modern crimes such as collusive bidding cartels, insider trading, market manipulation, financial crimes and computer crimes. They are rapidly becoming more diversified, complicated and sophisticated. This new wave of crimes has the characteristics such that the perpetrators and or the damage done cannot be easily identified or measured. However, this is not to say that the losses are not significant. In fact, it is quite the opposite, in that they erode investors' confidence and threaten the country's ability to compete.

Corruption is not only a crime in itself, but it also acts as a catalyst in promoting other types of criminal activities and often aids in concealing them. In some instances there are large variations between each participant country's legal framework, preventive measures, sanctions, recovery of assets, international cooperation and so on because of the differences of each country's culture, politics and economic situation, etc. At the same time however, all participant countries have common problems and need common countermeasures for tackling serious economic crimes; such as a need for cultivating a strong political will, securing independence of the investigative authorities and adequate resources, development of personal skills and capacity building of the investigators.

It is therefore imperative that we put in place the necessary infrastructure, such as an efficient investigative apparatus, equipped with sound preventive measures, regulations/legislation and monitoring systems. Each country should move towards the establishment of a separate, independent, new criminal justice system to fight serious economic crimes in this globalizing society. Such as the establishment of a 3rd eye (an independent body to monitor the public affairs handled by government officials) These measures will ensure the principles of good governance are observed so that an atmosphere of integrity, transparency, accountability and equity can prevail.

In addition, consideration should be given to alternative administrative sanctions and regulatory measures, because it is accepted that criminal punishment alone has only a limited effect on the offenders or offending corporations, where corporate crimes are concerned. We must therefore, *'hit them where it hurts - in their pockets'*, by putting in place a framework for confiscation and forfeiture of illegal proceeds and

ensure that it is thoroughly enforced. This will lead to asset recovery and sharing, which can in turn be factored back into the fight against economic crimes.

Victims of economic crime were naturally most concerned with whether they would be able to recover their lost assets. It is therefore necessary to strengthen the legal framework for the recovery of damage. Subject to the individual State's circumstances, to encourage reconciliation, settlements should be recorded in court; evidence and findings of criminal courts should be adopted in civil courts; law enforcement personnel should be encouraged to concentrate on the seizure of property; and a legal aid system should be introduced.

In light of the foregoing observations there should be a review of existing legal procedures as follows:

(i) Empower criminal courts to make compensation orders as is appropriate and equitable based on the evidence adduced. In addition, for a time and cost effective approach, the criminal courts should encourage negotiations or settlement between the parties, especially where the defendant pleads guilty. However, the court should take due cognizance of the interest of other victims who may not be listed in the indictments.
(ii) Keep civil and criminal actions as independent and separate processes, particularly where civil action by a victim precedes the criminal litigation. Where the existing criminal procedures are favourable, a consolidation of the criminal and civil action should be encouraged.
(iii) Institute a legal support system for victims who have limited financial means to procure the services of counsel in a civil action.
(iv) Countries should further facilitate access to international legal assistance in civil matters for victims of massive economic crimes who are compelled to take civil action against perpetrators who may have crossed borders. To overcome the complex procedure involved in executing civil judgments and pursuing illegal proceeds abroad, States should be encouraged to ratify the existing international instruments relevant to recovery of damages, e.g. the United Nations Convention against Corruption and the United Nations Convention against Transnational Organized Crime.
(v) To overcome delays in the recovery of damage process arising out of appeals by defendants, the courts should be empowered to make provisional execution orders as it deems appropriate for recovery.

Appropriate legal measures and resources (physical, financial, human and others), should be allocated to those involved in investigating, prosecuting and bringing to justice the perpetrators. Because influential politicians, high ranking public officials, financiers and powerful businessmen are often involved in economic crimes the independence of the investigative agencies should be secured, so as not to be influenced by them. Law enforcement officials should also take advantage of the new technological capabilities to enhance their investigative techniques. Moreover, the whistle-blowing system, which has proved to be very effective in other parts of the world, can be implemented and or the granting of immunity for persons cooperating in investigations relating to economic crimes.

Cooperation and the timely exchange of information by all stakeholders are vital elements for success. It is also important that this be done in a well-coordinated manner, at the national, regional and international levels. This can be achieved by networking and sharing the tremendous benefits from the experiences of our counterparts and implementing the required international standards, such as UN Conventions.

However stringent the laws of a country are, if they are confined only to the paper on which it is printed, the economy and the public cannot be protected from the evil of economic crime. In order to achieve the purpose of implementation of countermeasures to prevent economic crime, it is essential to create and arouse the public awareness. When the public are aware of their vulnerability to victimisation they will willingly involve themselves in the crime prevention mechanism and will give effect to the countermeasures in a more meaningful manner. Furthermore, this awareness of the public also perhaps would result in applying pressure on the government or on the policy makers to introduce effective countermeasures to combat economic crime.

B. The 127th International Training Course

1. Introduction

UNAFEI conducted the 127th International Training Course from 17 May to 25 June 2004 with the main theme, "Implementing Effective Measures for the Treatment of Offenders after Fifty Years of United Nations Standard Setting in Crime Prevention and Criminal Justice". This Course consisted of 27 participants and 2 observers from 15 countries. It was hoped that the participants of this Course would come up with solutions that would enable their countries to implement U.N. Standards and Norms more effectively.

2. Methodology

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 three groups to discuss the following topics under the guidance of faculty advisers:

Group 1: Promotion of Alternatives to Imprisonment
Group 2: Administration of Penal Institutions
Group 3: Promotion of Effective Treatment Programmes for Offenders

The three groups elected a chairperson, co-chairperson, rapporteur and co-rapporteur to organize the discussions. The group members studied the designated subtopics and exchanged their views based on information obtained through personal experience, the Individual Presentations, lectures and so forth. During the course, 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 the 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.

3. Outcome Summary

(i) Promotion of Alternatives to Imprisonment

(a) All criminal justice systems should incorporate a clear mission in their sentencing policies that advocates the extensive use of non-custodial measures. This has to be achieved by adopting a holistic approach involving the offender, the victim and society. In doing so, countries should pay heed to their social, cultural and criminal policy situation.

(b) Real change can only come about by public acceptance of the rationale for the wider use of effective non-custodial measures. Re-socialization of offenders requires public awareness of the need to rehabilitate and reintegrate offenders. Policy makers and politicians, who have better access to the mass media, should be the agents for standard setting in the better treatment of offenders.

(c) Non-custodial treatment like rehabilitation programmes can only flourish within an effective framework that streamlines such treatment. Criminal justice systems must pay attention to the detailed management of the release and rehabilitation of offenders in society. Some areas that should be looked at are:

- Comparative availability of alternatives at each stage of the criminal justice system.
- Maximum utilization of community services.
- An integrated and cooperative network between voluntary sectors and public community-based services.
- Periodic review of domestic laws to ensure non-custodial alternatives are viable.
- Transparency/accountability in the non-custodial process at all levels.

(d) Countries must be committed to set a time frame for the implementation and assessment of non-custodial measures. The model of non-custodial alternatives in other countries can be modified/ adapted to the domestic situation. The role of all agencies involved in implementing non-custodial alternatives should be clearly defined. Victim redress and alternative offence resolution mechanisms, offender classification,

categorized treatment and broad-based community participation should be developed as some of the key components of alternative treatment.

(e) Research and study are essential to ensure that non-custodial measures work and continue to remain relevant. Systematic evaluation of alternative treatment programmes on evidence-based practice provides vital information as to the efficacy of these programmes. An evidence-based practice approach enables the use of alternatives to withstand public scrutiny.

(f) All countries should use the benchmark of The Tokyo Rules as the standard for the promotion of alternatives. An easy strategy would be to infuse small incremental changes in the social/ justice system to eventually blend in non-custodial alternatives. Socio-economic inequalities should be addressed to strengthen community-based programmes. Effective alternatives can complement the ultimate aim of criminal justice policies i.e. the reduction of crime in society. Consequently, obvious and lasting improvements will be seen in the persistent problem of prison overcrowding.

(ii) Administration of Penal Institutions

Prison administrations are confronted with issues and problems that hinder the full and effective implementation of the rules laid down by the UN Standard Minimum Rules for the Treatment of Prisoners, the following recommendations are made in order that they may be fully implemented.

(a) The full utilization of existing facilities by transferring prisoners can alleviate overcrowding of some institutions. However, in order to fully counter the problem of overcrowding, increased use of alternatives to imprisonment is inevitable.

(b) More recreational activities should be considered to reduce the stress level of the inmates due to overcrowding.

(c) Separation of inmates is important in any situation and when separate facilities could not be provided, separate sections should, at least, be considered.

(d) Dialogues must be conducted with the health department or private medical organizations/associations to improve prison medical services. Every country must ensure that the health care of the prison population is at least equal to the medical health service provided to the general population.

(e) Audio-visual aids should be used in imparting information to prisoners. Prison administrations should consider the use of audio-visual aids in informing the prisoners of their rights, privileges, responsibilities, application of prison rules and regulations and the conditions of their imprisonment.

(f) Maintaining contact with family and friends play an important role in the rehabilitation process of prisoners. There is a need, therefore, to incorporate the latest communications technology such as e-mail and a video visit system. However, these forms of communication must be strictly monitored when necessary.

(g) Certain basic features of natural justice, as in criminal trial proceedings, should be observed in disciplinary proceedings to ensure transparency and fairness. Human rights issues should also be taken into consideration in procedures pertaining to prison disciplinary punishment.

(h) Mediation could have a role in reducing prison tension and building social and conflict resolution skills for inmates.

(i) Effective prison and inmate management must be employed to reduce prison incidents. Suicide and other prison incidents such as escape, conflicts and disturbances are serious. Inmates having a particular high risk of suicide, escaping and causing a disturbance must be given greater attention.

(j) Establishment of independent bodies to inspect prisons may be considered. Prisons, being closed institutions, need an independent body or person from outside who will conduct an independent inspection of all the aspects of prison administration and make necessary recommendations for the improvement of the treatment of prisoners and the effective administration of penal institutions.

(k) Active community involvement in certain prison affairs must be encouraged to ensure transparency and accountability. The prison administration should disclose as much information as possible in order to gain the confidence of the community.

(l) Outsourcing of certain functions of prison administration to the private sector may be considered under certain suitable conditions in order to effectively utilize available

resources. However, it must be ensured that the rules and regulations for prison management are determined by the government, including disciplinary action.

There is no single or easy solution to the problems confronting the prison administrations. Prison management must continue to explore and consider measures, both short-term and long-term, in resolving their problems. In this connection, it is important for prison management to initiate and use forward planning; this means that management must not be reactive, its plans and programmes must be based on clearly developed objectives and be able to anticipate issues and problems.

To fully realize the objectives of the penal system, changes in the attitude of the people from within and outside the prison must simultaneously take place. Efforts must be directed not only towards improving the attitude of the prison officers/staff and prisoners but also the attitude of policy and decision makers, members of the business sector, academia, media and the individual members of the community. Prison reforms in the administration of penal institutions and the improvement of the treatment of prisoners can only be achieved through the concerted efforts of all sectors of society.

(iii) Promotion of Effective Treatment Programmes for Offenders

(a) Archaic prison facilities should be improved or replaced to improve prisoners' living conditions.
(b) Additional facilities should be acquired and additional personnel such as experts in psychology and psychiatry should be recruited for therapeutic programmes.
(c) A review and improvement of the existing classification system should be made to reflect the actual rehabilitation programmes existing in the prisons.
(d) There should be a review of the existing system and the introduction of a more practical progressive stage system in all prisons.
(e) There should be a review of stage gratuity (stage earnings) to increase the amount of money paid so it is equivalent to the value of the prisoner's actual work.
(f) Industries with real work potential in outside industries should be introduced in prisons for the benefit of prisoners on release.
(g) Suitable work should be available in all prisons to prevent the prisoner's deterioration.
(h) Prison legislation should be reviewed to incorporate provisions for prisoners' education.
(i) All prisons should be fully fledged with integrated rehabilitation programmes, including education.
(j) The frequency and duration of visits should be increased to a desirable standard subject to provision of adequate visiting facilities and staffing.
(k) A mechanism should be in place between the prison department and probation department to co-ordinate after care programmes.
(l) An evaluation mechanism should be implemented in all prisons to evaluate the success or otherwise of their rehabilitation programmes.

The Government in various countries should take the lead in committing resources to improve the conditions of prison facilities and introduce rehabilitation programmes that are holistic which would ensure the promotion of effective treatment programmes for offenders so that the rate of recidivism is reduced.

C. The 128th International Training Course

1. Introduction

From 30 August to 7 October 2004, UNAFEI conducted the 128th International Training Course with the main theme, "Measures to Combat Economic Crime, including Money Laundering". This Course consisted of 24 participants from 15 countries. The purpose of this Course was to offer participants an opportunity to share information on the current situation of economic crime, and the challenges faced by each country. At the same time the course offered participants the opportunity to explore more effective measures and strategies to meet these challenges.

2. Methodology

The 128th Course endeavoured to explore the best means to effectively combat Economic Crime, including Money Laundering. The participants comprehensively examined measures to prevent Economic Crime, and studied ways in which Money Laundering could be detected and prevented. This was

accomplished primarily through a comparative analysis of the current situation and the problems encountered in tackling these issues. The participants' in-depth discussions enabled them to put forth effective and practical solutions.

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. To facilitate discussions, the participants were divided into three groups and given a hypothetical case to base their discussions around.

Each group elected a chairperson, co-chairperson, rapporteur and co-rapporteur to organize the discussions. The group members studied the situation in each of their countries and the hypothetical case and exchanged their views based on information obtained through personal experience, the Individual Presentations, lectures and so forth.

Plenary Meetings were later 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.

3. Outcome Summary

Economic crimes are mostly committed by organized criminal groups. Moreover, these crimes are often committed beyond national borders and therefore pose difficulties to national investigative authorities. The international standards prescribed in the 2000 UN TOC Convention are a firm foundation on which to explore effective measures to combat economic crime including money laundering. All countries should be strongly encouraged to ratify or accede to this Convention. In order to do so, they should enact or amend their domestic laws and regulations in accordance with the articles of the TOC Convention. In addition the 40 Recommendations adopted by the FATF in June 2003 should be respected by all governments.

Given the fact that the TOC Convention gives due consideration to diversities of the legal and financial system of member states and allows each state party to exercise discretionary power to a certain degree, it is feared that economic crimes, including money laundering, may target countries with lenient legal provisions and international criminal organizations may end up setting a strong foothold in these countries, even if every state accedes to the Convention. In order to dispel such concerns states parties should be encouraged to apply article 34 paragraph 3 of the TOC Convention which stipulates "each state party may adopt more strict or severe measures than those provided for by this Convention for preventing and combating transnational organized crime".

(i) Criminalization of the Laundering of Proceeds of Crime

Countries must have anti-money laundering laws in place. In criminalizing money laundering, countries should seek to apply such laws to the widest range of predicate offences and should include as predicate offences all serious crimes as in conformity with the TOC Convention Article 6 and Article 2(b).

(ii) Regulatory and Supervisory Regime

Each state should enact laws to institute a comprehensive domestic regulatory and supervisory regime for financial institutions, including banks, in accordance with Article 7 of the TOC Convention. The financial institutions, telephone carriers and internet service providers should take responsibility for preventing their services from being misused as criminal tools, specifically:

(a) Personal identification requirements should be rigorously enforced in financial institutions through know your customer identification norms and sanctions imposed on financial institutions for breach. The selling, purchasing and transferring of bank accounts should be criminalized.

(b) Regulations should be introduced to prevent the use of cell phones for criminal acts and sanctions imposed on cell phone companies when the regulations are violated.

(c) Regulations should be introduced to prevent usage of the Internet for criminal acts and sanctions imposed on Internet service providers when the regulations are violated.

(iii) Investigation, Prosecution, Adjudication and Sanctions

We need to explore ways to improve laws and practices in investigation, prosecution, adjudication and sanctions in order to combat economic crime including money laundering more effectively. Each state should take the necessary measures to allow for the appropriate use of special investigative techniques such as electronic surveillance and undercover operations in accordance with Article 20 of the TOC Convention.

Records of all known economic criminals should be kept; this will assist in sentencing them once they are arrested for repeatedly committing these economic crimes. Each individual country should be able to maintain data on statistics for and trends in economic crime, in line with Article 28 of the TOC Convention in order to assist in designing and implementing policing strategies. Investigative agencies and prosecutors must make every effort so that the courts impose stiffer sentences on criminals who have committed serious economic crime including money laundering (see the TOC Convention Article 11).

Law enforcement authorities within the country should closely cooperate with each other. Any sense of turfdom embedded in the criminal justice system of each country should be removed. Information sharing among investigative authorities is central to the successful and effective investigation of complex economic crimes, including money laundering.

(iv) International Cooperation

Paragraph 14 of Article 16 of the TOC Convention provides the safeguard against the extradition of a person for the purpose of prosecuting or punishing the person on account of his/her "political opinions". However, such safeguard should be applicable only when the requested State has "substantial grounds" for believing that that is the case.

Each country should afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to economic crime including money laundering in accordance with Paragraph 1 of Article 18 of the TOC Convention. Each state also should consider the possibility of concluding bilateral or multilateral agreements or arrangements on this matter as provided in Paragraph 30 of this Article. In case where a country does not have such agreements or arrangements, the law enforcement authorities of that country should endeavour to explore all possible measures, including using diplomatic channels to request and obtain assistance from a foreign country.

In accordance with Article 27 of the TOC Convention, each country should cooperate closely with one another to enhance the effectiveness of law enforcement action to combat economic crime including money laundering and should, in particular, adopt effective measures to enhance and establish channels of communication between law enforcement authorities. Since official procedures often take time informal channels can also used to obtain necessary information and evidence, simultaneously or before the use of diplomatic channels. In this connection, investigators should always bear in mind the issue of admissibility of evidence in criminal courts. Novel modus operandi of or trends in economic crime would be worth sharing internationally.

(v) Other Measures

As provided in Article 29 of the TOC Convention, each country should initiate, develop or improve specific training programmes for its law enforcement personnel in order to keep them updated on the rapid evolution of economic crime including money laundering.

In accordance with Article 40 of the TOC Convention, all countries should make concrete efforts in coordination with each other and with international and regional organizations to enhance their cooperation with developing countries, with a view to strengthening their capacity to prevent and combat economic crime. Enhancing financial, material and technical assistance to support the efforts of developing countries to implement the TOC Convention is also essential.

With regard to measures against corruption, in line with Article 7 of the United Nations Convention against Corruption, each country should endeavour to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants that promote adequate remuneration and pay scales, in order to ensure that they are not corrupted.

It is important to educate employees of financial institutions, non-financial institutions and independent professions in order to strengthen their cooperation with law enforcement agencies (See Paragraph 2 of Article 31 of the TOC Convention). To promote public awareness on the modus operandi of economic crime is also essential in order to warn people who are vulnerable.

Economic crime including money laundering is an international menace and all countries should work together and establish laws that conform to the 2000 UN TOC Convention and respect the FATF 40 recommendations. The few countries that have not yet criminalized money laundering must ensure that they have because all the proceeds of economic crime are laundered at the end of the day. Developed countries should support developing countries in their training programmes and allocation of resources, because without expertise and without resources, these developing countries cannot tackle modern forms of sophisticated economic crime, including money laundering. Joint efforts made by each country in developing a reliable strategy of vigorous domestic enforcement of law, as well as international cooperation, is the most effective means to cope with problems related to economic crime, including money laundering.

D. Special Seminars and Courses

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

The Ninth Special Seminar for Senior Officials of Criminal Justice of the People's Republic of China, entitled "Effective Criminal Justice Administration in Accordance with UN Standards and Norms: The Proper Way for the Protection of Rights and Punishment of Crimes", was held from 23 February to 11 March 2004. Thirteen senior criminal justice officials and the UNAFEI faculty comparatively discussed contemporary problems faced by China and Japan in relation to the above theme.

2. Third Seminar on the Judicial System for Tajikistan

The Third Seminar for officials involved in criminal justice from Tajikistan was held from 1 March to 18 March 2004 at UNAFEI. The Seminar was entitled "The Juvenile Justice System and the Treatment of Juvenile Offenders". Fifteen criminal justice officials and the UNAFEI faculty comparatively discussed contemporary problems faced by Tajikistan and Japan in relation to the above theme.

3. The Second and Third Seminar on the Revitalization of the Volunteer Probation Aid System for the Philippines

The Second seminar exposed the Parole and Probation Officers from the Philippines to the administration of the Japanese Volunteer Probation officer System, to help them improve their own volunteer programme. This seminar was conducted from 22 to 29 March, 2004 at UNAFEI for six Parole and Probation officers. The Third Seminar was held on 6 to 14 December 2004 which was attended by ten participants from the Philippines, including the Administrator of the PPA, PPOs and two VPAs.

4. Special Course for Indonesia

A special course for Indonesia entitled "Comparative Study on the Judiciary System (Efficient Legal and Judiciary Systems for Civil Dispute Settlement) Legal and Judicial Systems for their Reform" was held from 31 May to 2 July 2004 by the International Cooperation Department, Research and Training Institute, Ministry of Justice of Japan in collaboration with UNAFEI.

5. First Training Course on Support for Anti-Corruption Management for Thailand

UNAFEI held the First Training Course on Support for Anti-Corruption Management for Thailand for twenty officials from the Office of the National Counter Corruption Commission (ONCC), Thailand. Through the Training programme, participants discussed various problems relating to corruption control, expanding their technical and juridical knowledge of the suppression of corruption and asset investigation. The Course was held from 28 June to 22 July 2004.

6. Fifth Training Course on the Juvenile Delinquent Treatment System for Kenyan Criminal Justice Officials

UNAFEI conducted the Fifth Training Course for Kenyan criminal justice officials who are working for the prevention of delinquency and the treatment of juvenile delinquents in their country. The Course was held from 12 October to 4 November 2004. The Course 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. They also developed a plan for the establishment of a network between the Police, the Courts, Department of Corrections, Probation Services and the Children's Department.

7. Seventh International Training Course on Corruption Control in Criminal Justice

UNAFEI conducted the Seventh International Training Course on Corruption Control in Criminal Justice entitled "Corruption Control in Criminal Justice" from 18 October to 11 November 2004. In this course thirteen foreign and three Japanese officials engaged in corruption control comparatively analyzed the current situation of corruption, methods of corruption prevention and suppression, and measures to enhance international cooperation in this regard.

8. Third JICA-NET Seminar on the Revitalization of the Volunteer Probation Aid System for the Philippines.

A video teleconference was held from 30 November to 2 December 2004 to facilitate the development of the Philippine VPA system. Fifty participants from the Parole and Probation Administration of the Philippines took part and interacted with Japanese VPOs and PPOs.

III. TECHNICAL COOPERATION

A. Regional Training Programmes

1. Short-Term Experts in Kenya

From 26 July to 18 August 2004, three UNAFEI Professors were dispatched to Kenya to assist the Children's Department of the Vice-President of the Ministry of Home Affairs and National Heritage of Kenya in a project to develop nationwide standards for the treatment of juvenile offenders.

2. Research on Criminal Justice System Reform in Latin American Countries

In August 2004, two UNAFEI Professors travelled to Argentina, El Salvador and Costa Rica to carry out research for the seminar to be held from 2005 to 2007 with ILANUD on Criminal Justice System Reform in Latin American Countries.

B. Preparation for the 11th Congress

UNAFEI and the Swedish National Economic Crimes Bureau have undertaken to organize a workshop on "Measures to Combat Economic Crime, Including Money Laundering" for the 11th Congress to be held in Bangkok, Thailand in 2005. From 16 to 18 September 2004 UNAFEI held a preparatory meeting for the Workshop inviting experts from various countries and international organizations, including UNODC. The Australian Institute of Criminology will also participate in the Workshop.

C. First In-Country Training Course on Support for Anti-Corruption Management for Thailand

UNAFEI in cooperation with the National Counter Corruption Commission (NCCC) of Thailand held an In-Country Training Course in Bangkok, Thailand from 22 to 25 November 2004. Sixty participants from Thailand attended the Course. The purpose of the Course was to develop and enhance the capacity and efficiency of the ONCC (which supports the activities of the NCCC) in the field of suppression, inspection and prevention of corruption.

IV. 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. In June of 2003 UNAFEI sent questionnaires on the treatment of drug abusers to 8 Asian countries, by the end of the year 6 countries had replied. In 2004 UNAFEI analyzed the results and conducted a comparative study which will be published as a report in 2005.

V. 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.

VI. 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 2004, the 62nd, 63rd and 64th edition of the Resource Material Series were published. Additionally, issues 113 to 115 (from the 126th to the 128th respectively) of the UNAFEI Newsletter were published, which included a brief report on each course and seminar and other timely information. These publications are also available on UNAFEI's web site http://www.unafei.or.jp/english.

VII. OTHER ACTIVITIES

A. Public Lecture Programme

On 30 January 2004, 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 126th 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, Mr. Peter Kiernan (Assistant Director, Serious Fraud Office, London) and Dr. Deepa Mehta (Inspector General of Police, Delhi Metro Rail Corporation) were invited as speakers to the programme. They presented papers on "The Role and Responsibilities of the Serious Fraud Office in Fighting Fraud within the United Kingdom" and "Tackling Corruption: An Indian Perspective", respectively.

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

Ms. Tamaki Yokochi (Professor) and Ms. Shinobu Nagaoka (Staff) visited the Philippines with 9 Volunteer Probation Officers from 21 to 27 January 2004 to conduct interaction meetings with Filipino Volunteer Probation Aids at Cabuyao, Laguna and Cebu.

Mr. Keisuke Senta (Professor) and Mr. Horoyuki Shinkai (Professor) visited Bangkok, Thailand from 21 to 28 January 2004 for a consultation with the National Counter Corruption Commission of Thailand concerning a technical cooperation project with UNAFEI.

Mr. Takafumi Sato (Professor) visited Yangon, Myanmar to attend the FATF Seminar as an expert in the field of mutual legal assistance from 9 May to 13 May 2004.

Mr. Kunihiko Sakai (Director) and Mr. Keisuke Senta (Professor) visited Bangkok, Thailand to attend the Regional Preparatory Meeting for the 11th U.N. Congress on Crime Prevention and Criminal Justice from 28 March to 1 April 2004.

Mr. Kunihiko Sakai (Director) and Mr. Keisuke Senta (Professor) visited Vienna, Austria to attend the 13th Session of the U.N. Commission on Crime Prevention and Criminal Justice from 10 May and 21 May 2004.

Mr. Kunihiko Sakai (Director) and Mr. Keisuke Senta (Professor) visited Stockholm, Sweden to attend the preparatory meeting for the 11th U.N. Congress Workshop on Measures to Combat Economic Crime, including Money Laundering from 22 May and 26 May 2004.

Ms. Tamaki Yokochi (Professor) visited Cagayan de Ora, the Philippines to attend and give a lecture at

the 9th National Convention and 7th National Training Institute of the Probation and Parole Officers League of the Philippines Inc. from 5 to 12 June 2004.

Ms. Tomoko Akane (Deputy Director), Mr. Masato Uchida (Professor) and Ms. Tamaki Yokochi (Professor) visited Kenya to assist them in enhancing the services of the Children's Department of the Ministry of Home Affairs and National Heritage from 26 July to 18 August 2004.

Mr. Takafumi Sato (Professor), Mr. Kei Someda (Professor), Mr. Yoshihiro Miyake (Chief of General and Financial Affairs) and Ms. Tsuburu Miyagawa (staff) visited China to carry out research on the Chinese Criminal Justice System and meet with Chinese officials from 1 to 8 August 2004.

Mr. Keisuke Senta (Professor) visited Canberra, Australia to attend and speak at the Bali Regional Ministerial Meeting on Counter Terrorism and Legal Issues Working Group from 1 to 6 August 2004.

Mr. Motoo Noguchi (Professor) and Mr. Iichiro Sakata (Professor) visited Argentina, El Salvador and Costa Rica to carry out research for the seminar to be held in 2005 with ILANUD on Criminal Justice Reforms in Latin America from 8 to 28 August 2004.

Mr. Motoo Noguchi (Professor) visited Korea to speak at the Congress on Asian Prosecution from 5 to 11 September 2004.

Mr. Hiroyuki Shinkai (Professor) visited the United Kingdom to carry out research on Drug Treatment in Criminal Justice from 12 to 26 September 2004.

Mr. Kei Someda (Professor) visited Australia to carry out research on Drug Treatment in Criminal Justice, from 21 September to 7 October 2004.

Mr. Masato Uchida (Professor) visited Singapore to attend the 24th Asian and Pacific Conference of Correctional Administrators, from 2 to 9 October 2004.

Mr. Hiroyuki Shinkai (Professor) visited Myanmar, to meet with officials from the Ministry of Foreign Affairs and speak at their human rights seminar, from 5 to 8 October 2004.

Mr. Keisuke Senta (Professor) and Mr. Masaki Iida (Deputy Chief of Secretariat) visited Kuala Lumpur, Malaysia from 10 to 14 October, 2004 to attend the Second Anti-Corruption Agency Forum.

Mr. Keisuke Senta (Professor) and Mr. Masaki Iida (Deputy Chief of Secretariat) visited Bangkok, Thailand from 15 to 19 October 2004 to prepare for the In-Country Training Course under the three-year project on "Strengthening of Anti-Corruption Capacity in Thailand".

Mr. Hiroyuki Shinkai (Professor) visited Beijing, China from 24 to 29 October 2004 to participate in the 6th Annual General Meeting and Conference of the International Corrections and Prisons Association.

Ms. Tomoko Akane (Deputy Director), Mr. Keisuke Senta (Professor), Mr. Takafumi Sato (Professor) and Mr. Tatsufumi Koyama (International Training Course Specialist) visited Bangkok, Thailand from 18 to 27 November 2004 to coordinate and attend the In-Country Training Course under the three-year project on "Strengthening of Anti-Corruption Capacity in Thailand". This project is organized by UNAFEI, JICA and the NCCC (National Counter Corruption Commission of Thailand). Mr. Kunihiko Sakai (Director) joined them from 18 to 24 November 2004.

Mr. Motoo Noguchi (Professor) visited Hong Kong from 25 to 28 November to attend the International Association of Prosecutors, Second Asia and Pacific Regional Conference - "Dealing with Drug Offenders" and gave a presentation on "The Situation of Drug Abuse in Japan".

D. Assisting ACPF Activities

UNAFEI cooperates and corroborates with the ACPF to 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 consists of UNAFEI alumni, the relationship between the two is very strong. As an example of this cooperation the Director of UNAFEI Mr. Kunihiko Sakai visited Macau from 24 to 26 November to attend the ACPF World Conference and gave a presentation on the "Specific Objectives to be achieved at the Eleventh United Nations Congress in Bangkok".

VIII. 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 eleven professors are selected from among public prosecutors, the judiciary, corrections, probation and the police. 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. Toru Muira, formerly Professor of UNAFEI, was transferred to the Tokyo District Court on 1 April 2004.

Mr. Kenji Teramura, formerly Professor of UNAFEI, was transferred to the Yokohama Juvenile Classification Home on 1 April 2004.

Mr. Yasuhiro Tanabe, formerly Professor of UNAFEI, was transferred to the Tokyo District Public prosecutors Office on 1 April 2004.

Ms. Sue Takasu, formerly Professor of UNAFEI, was transferred to the Tokyo District Public Prosecutors Office on 1 April 2004.

Mr. Masato Uchida, formerly a Professor of the Training Institute for Correctional Personnel, joined UNAFEI as a Professor on 1 April 2004.

Mr. Takafumi Sato, formerly a Prosecutor at the Tokyo District Public Prosecutors Office, joined UNAFEI as a Professor on 1 April 2004.

Ms. Megumi Uryu, formerly a Prosecutor at the Tokyo District Public Prosecutors Office, joined UNAFEI as a Professor on 1 April 2004.

Mr. Iichiro Sakata, formerly a Judge with the Gifu District/Family Court, joined UNAFEI as a Professor on 1 April 2004.

IX. FINANCES

The Ministry of Justice primarily provides the Institute's budget. The total amount of the UNAFEI budget is approximately ¥314 million per year. Additionally, JICA and the ACPF provide assistance for the Institute's international training courses and seminars.

UNAFEI WORK PROGRAMMME FOR 2005

I. TRAINING

A. 129th International Seminar

The 129th International Senior Seminar, "Crime Prevention in the 21st Century - Effective Prevention of Crime associated with Urbanization based upon Community Involvement and Prevention of Youth Crime and Juvenile Delinquency" will be held from 11 January to 10 February 2005. The Seminar will examine the current situation and problems of urbanization, effective measures for the prevention of urban crime, effective measures for youth at risk, and the role of the community in a holistic approach and the effective establishment of multi-disciplinary collaboration.

B. 130th International Training Course

The 130th International Training Course, "Integrated Strategies to Confront Domestic Violence and Child Abuse" will be held from 16 May to 23 June 2005. The Course will comprehensively examine the current situation of domestic violence and child abuse and seek to find practical solutions through integrated strategies.

C. 131st International Training Course

The 131st International Training Course, "The Use and Application of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power - Twenty Years after of Its Adoption", will be held from 29 August to 6 October 2005. The Course will explore the various issues that relate to victims of crime and abuse of power, mainly in accordance with the Declaration.

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

The Tenth Special Seminar for Senior Criminal Justice Officials of the People's Republic of China, "Protection of Human Rights for Suspects and Defendants in Criminal Proceedings and Utilization of Non-custodial Measures in the Criminal Justice System" is scheduled to be held at UNAFEI from 23 February to 11 March 2005. Sixteen senior criminal justice officials and members of the UNAFEI faculty will discuss contemporary problems faced by China and Japan in relation to the above theme.

E. The First Seminar on Criminal Justice for Central Asia

UNAFEI will hold the first Seminar on Criminal Justice for Central Asia on "a Comparative Study on the Criminal Justice Systems of Central Asia and Japan - for the Establishment of a Fair and Efficient Criminal Justice System", will be held from 28 February until 17 March 2005. Sixteen criminal justice officials and members of the UNAFEI faculty will discuss contemporary problems faced by Central Asia and Japan in relation to the above theme.

F. Second Training Course on Support for Anti-Corruption Management for Thailand

UNAFEI will hold the Second Training Course on Support for Anti-Corruption Management for Thailand for twenty officials from the Office of the National Counter Corruption Commission (ONCC), Thailand. Through the Training programme, participants will discuss various problems relating to corruption control, expanding their technical and juridical knowledge of the suppression of corruption and asset investigation. The Course will be held from 27 June to 21 July 2005.

G. Sixth Training Course on the Juvenile Delinquent Treatment System for Kenyan Criminal Justice Officials

UNAFEI will hold the Sixth Training Course for Kenyan criminal justice officials who are working for the prevention of delinquency and the treatment of juvenile delinquents in their country. The Course will be held from 17 October to 10 November 2005. The Course will expose Kenyan officials to the workings of the Japanese juvenile justice and treatment systems through lectures and observation visits to relevant agencies.

H. Eighth International Training Course on Corruption Control in Criminal Justice

UNAFEI will conduct the Eighth International Training Course entitled "Corruption Control in Criminal Justice" from 24 October to 17 November 2005. In this course, foreign and Japanese 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.

I. Fourth JICA-NET Seminar on the Revitalization of the Volunteer Probation Aid System for the Philippines.

A video teleconference will be held on the Revitalization of the Volunteer Probation Aid System for the Philippines. The date has not been decided yet.

II. TECHNICAL COOPERATION

A. Costa Rica

In 2005, UNAFEI will be represented by two professors at a new training programme held in cooperation with JICA and ILANUD entitled "International Training Course on the Criminal Justice System Reforms in Latin America", in San Jose, Costa Rica. The participants of the training programme will be judges, prosecutors and attorneys (public and private, engaged in defence). The training programme will be held from 26 July to 3 August 2005.

B. Thailand

UNAFEI in cooperation with the National Counter Corruption Commission (NCCC) of Thailand will hold the Second In-Country Training Course on Support for Anti-Corruption Management for Thailand in Bangkok, Thailand from 28 November to 2 December 2005. The theme of the Course will be "A More Practical Approach towards Corruption Investigation and Asset Inspection". Sixty participants from Thailand are expected to attend.

C. Pakistan

UNAFEI will hold a Joint Seminar with Pakistan (National Police Bureau) in December 2005. The theme of the Joint Seminar has yet to be decided.

D. Others

In 2005, UNAFEI may embark on a research project concerning measures to combat high-tech crime, including identity theft.

APPENDIX

MAIN STAFF OF UNAFEI

Mr. Kunihiko Sakai	Director
Ms. Tomoko Akane	Deputy Director

Faculty

Mr. Keisuke Senta	Chief of Training Division, Professor
Mr. Masato Uchida	Chief of Research Division, Professor
Mr. Kei Someda	Chief of Information & Library Service Division, Professor
Mr. Motoo Noguchi	Professor
Mr. Takafumi Sato	Professor
Ms. Megumi Uryu	Professor
Mr. Iichiro Sakata	Professor
Ms. Tamaki Yokochi	Professor
Mr. Hiroyuki Shinkai	Professor
Mr. Simon Cornell	Linguistic Adviser

Secretariat

Mr. Kiyoshi Ezura	Chief of Secretariat
Mr. Masaki Iida	Deputy Chief of Secretariat
Mr. Yoshihiro Miyake	Chief of General and Financial Affairs Section
Mr. Ryousei Tada	Chief of Training and Hostel Management Affairs Section
Mr. Seiji Yamagami	Chief of International Research Affairs Section

AS OF DECEMBER 2004

2004 VISITING EXPERTS

THE 126TH INTERNATIONAL SEMINAR

Mr. Parmajit Singh	Assistant Director Commercial Affairs Department, Singapore Police Force, Singapore
Dr. Deepa Mehta	Inspector General of Police, Chief Vigilance Officer, Delhi Metro Rail Corporation, India
Mr. Peter Kiernan	Assistant Director Serious Fraud Office, London, United Kingdom
Mr. Dimitri Vlassis	Officer-in-Charge Crime Conventions Section, United Nations Office on Drugs and Crime, Vienna

THE 127TH INTERNATIONAL TRAINING COURSE

Prof. Nils Christie	Professor Institute of Criminology, Faculty of Law, University of Oslo, Norway
Ms. Cristina Rojas Rodriguez	Experta Asociada del ILANUD San José, Costa Rica
Mr. Michael Spurr	Director of Operations H.M. Prison Service, United Kingdom
Ms. Chomil Kamal	Deputy Director/Chief Probation Officer Probation Services Branch for Permanent Secretary (Community Development and Sports), Ministry of Community Development and Sports, Singapore

THE 128TH INTERNATIONAL TRAINING COURSE

Mr. Hans G Nilsson	Head of Division International Cooperation, Council of the European Union, European Union
Pol. Maj. Gen. Peeraphan Prempooti	Secretary-General International Affairs, Anti-Money Laundering Office, Thailand
Sir David Calvert Smith QC	Barrister Former Director of Public Prosecutions For England and Wales, United Kingdom
Mr. Henry N. Pontell	Professor Department of Criminology, Law and Society, School of Social Ecology, University of California, U.S.A

2004 AD HOC LECTURERS

THE 126TH INTERNATIONAL SEMINAR

Mr. Katsuhiko Hama	Attorney Civil Affairs Bureau, Ministry of Justice, Japan
Mr. Katsutaka Tomioka	Deputy Director Consumer and Environmental Protection Division, Community Safety Bureau, National Police Agency, Japan
Mr. Kensaku Iuchi	Director Special Investigations Department, Tokyo District Public Prosecutors Office, Japan
Mr. Nobuo Gohara	Deputy Director Tokyo District Public Prosecutors Office, Hachioji Branch, Japan
Mr. Toshihide Endo	Director Enforcement Division, Securities and Exchange Surveillance Commission, Japan

THE 127TH INTERNATIONAL TRAINING COURSE

Mr. Satoshi Tomiyama	Special Assistant to the Director of the General Affairs Division Correction Bureau, Ministry of Justice
Prof. Nisuke Ando	Professor, Doshisha University

2004 UNAFEI PARTICIPANTS

THE 126TH INTERNATIONAL SEMINAR

Overseas Participants

Ms. Prudence Tangham Dohgansin	Deputy Attorney General Legal Department of the Court of Appeal for the Centre Province, Ministry of Justice, Cameroon
Mr. Hesham Mostafa Abd El kader Abo Salem	Judge Primary Court of Mansoura, Ministry of Justice, Egypt
Mr. Bright Oduro	Accra Regional Crime Officer Criminal Investigations Department, Ghana Police Service, Ghana
Mr. Suharto	Chief of Planning and Administration Bureau CID Police Headquarters, Indonesia
Mr. Kongchi Yangchue	Judge, Head of Criminal Chamber The People's Supreme Court, Laos
Mr. Amarsaikhan Delegchoimbol	Section Chief Criminal Police Division For Combating Corruption and Economic Crime, National Police Agency, Mongolia
Mr. Dilli Raman Acharya	Joint-Attorney Office of the Attorney General, Nepal
Mr. Simon Kauba	Metropolitan Superintendent Lae Metropolitan Police Command, Papua New Guinea
Mr. Isidro Castillo Perez Jr.	Deputy Chief/Director Inspectorate and Legal Office, Philippine Public Safety College, Philippines
Mr. Ian Montclair Queeley	Inspector of Police Police Headquarters, Saint Christopher and Nevis

Ms. Ayesha Jinasena	State Counsel Attorney General's Department, Sri Lanka
Mr. Sutthi Sookying	Acting Director of Financial and Banking Crime Department of Special Investigation Ministry of Justice, Thailand
Mr. Hasan Dursun	Planning Expert Prime Ministry State Planning Organisation, Turkey
Mr. Luis Celestino Garćia Figueroa	Chief Inspector Chief of the Detector Dog Section, Metropolitan Police, Venezuela
Mr. Samson Mangoma	Deputy Officer Commanding C.I.D. Serious Fraud Squad, Department of Zimbabwe Republic Police, Zimbabwe

Japanese Participants

Mr. Keiji Uchimura	Professor of Applied Technology Police Info-Communications Academy, National Police Agency, Japan
Mr. Yutaka Oya	Chief of General Affairs Division Tokyo Probation Office, Japan
Mr. Yuji Saito	Deputy Superintendent Aiko Juvenile Training School for Girls, Japan
Mr. Tsutomu Sunada	Deputy Director Info-Communications Planning Division, Info-Communications Bureau, National Police Agency, Japan
Mr. Tomoyuki Mizuno	Judge/Professor Legal Training and Research Institute, Japan
Mr. Daisuke Moriyama	Public Prosecutor Special Investigation Department, Tokyo District Public Prosecutors Office, Japan

THE 127TH INTERNATIONAL TRAINING COURSE

Overseas Participants

Mr. Hany Mohamad Nasseh Gabr	Deputy Chief Investigations Section, Alexandria Police Department, Egypt
Mr. Orisi Vuki Katonibau	Staff Officer Administration Fiji Prison Service, Fiji
Mr. Maju Ambarita	Head Section Finance Internal Controlling, Jakarta Prosecutor Office, Jakarta, Indonesia
Mr. Bin Mohamad Abdul Aziz	Head of Unit Internal Audit Unit, Prison Department Malaysia, Ministry of Internal Security, Malaysia
Mr. Rungit Singh a/l Jaswant Singh	Senior Federal Counsel Attorney General's Chambers, Prime Minister's Department, Malaysia
Mr. Julio Ometei Ringang	Chief Division of Correction, Bureau of Public Safety, Ministry of Justice, Palau
Mr. Mark Mengepe Mewerimbe	Chief Inspector Officer In-Charge-Prosecution, Department of Police, Boroko Police Station, Port Moresby, Papua New Guinea
Mr. Hernan Gallo Grande	Chief Inspectorate Bureau of Jail Management and Penology, Philippines
Mr. Saidamir Badriddinovich Saidov	Head of Operative Ministry of Internal Affairs, Tajikistan
Mr. Pongtorn Janoudom	Principal Research Judge Court of Appeal Region IV, Thailand
Mr. Somphop Rujjanavet	Penologist 7 Chief of Information and International Conference Section, Department of Corrections, Ministry of Justice, Thailand

Mr. Patelisio Leniti Pale	Assistant Probation Officer Probation Services, Ministry of Justice, Tonga
Mr. Hamish Garae	Station Sergeant Vanuatu Police Force, Vanuatu
Mr. Jonah Muzambi	Officer Commanding District Zimbabwe Republic Police, Ministry of Home Affairs, Zimbabwe
Ms. Mildred Bernadette Baquilod	State Counsel V Office of the Chief State Counsel, Department of Justice, Philippines
Mr. Eric Wai-fung Law	Superintendent Tai Lam Centre for Women, Hong Kong Correctional Services Department, Hong Kong
Ms. Soo-Hee Kim	Correctional Supervisor Su-Won Detention Centre, Korea

Japanese Participants

Mr. Osamu Aoki	Senior Chief Programme Supervisor Matsumoto Juvenile Prison
Mr. Toshihiro Fukugaki	Probation Officer Kobe Probation Office
Mr. Keiichi Ichinose	Superintendent Second Investigation Division, National Police Agency
Ms. Hatsue Matsubayashi	Probation Officer Yamaguchi Probation Office
Ms. Mikako Matsushita	Family Court Probation Officer Asahikawa Family Court
Mr. Koichi Nakamura	Assistant Judge Tokyo District Court
Mr. Yuichiro Okuno	Public Prosecutor Hiroshima District Public Prosecutors Office
Ms. Noriko Shibata	Public Prosecutor Kochi District Public Prosecutors Office
Mr. Yasuaki Sugawara	Section Chief Enforcement Division, Immigration Bureau, Ministry of Justice

Mr. Akira Takano	Assistant Judge Tokyo District Court
Ms. Sachiko Tokuda	Chief Specialist Katano Juvenile Training School for Girls
Mr. Masahiro Tomoi	Superintendent Community Safety Planning Division, National Police Agency

THE 128TH INTERNATIONAL TRAINING COURSE

Overseas Participants

Mr. Mohammad Farid Mollakhel	C.S.I. Manager Crime Scene Investigation Team, Ministry of Interior, Afghanistan
Mr. Fatos Lazimi	State Advocate State Advocate Office, Council of Ministers, Albania
Mr. Abul Kashem	Additional District Magistrate Office of the Deputy Commissioner, Chandpur, Bangladesh
Mr. Alfred Kofi Asiama-Sampong	Senior State Attorney Ministry of Justice (Attorney-General's Dept.), Ghana
Mr. Animesh Bharti	Deputy Secretary (Crime Monitoring) Ministry of Home Affairs, India
Mr. I Ketut Suwetra	Senior Investigator Criminal Investigation Directorate, Bali Regional Police, Indonesia
Mr. Khampheth Ounheune	Head of Civil Enforcement Division Enforcement Department, Ministry of Justice, Laos
Mr. Bounma Phonsanith	Investigator and Vice of the Chief Cabinet Supreme Public Prosecutor of Lao POR, Laos
Mr. Khin Maung Win	Staff Officer Financial Intelligent Unit, Committee for Drug Abuse Control, Ministry of Home Affairs, Myanmar

Mr. Ngwe Htun	Director Bureau of Special Investigation, Myanmar
Mr. Surya Nath Prakash Adhikari	District Government Attorney District Government Attorney Office, Kathmandu, Nepal
Mr. Shahid Hussain Khan	Deputy Director Federal Investigation Agency, Islamabad, Pakistan
Mr. Ronald Bei Talasasa	Deputy Director Public Prosecutor's Office, Solomon Islands
Mr. Titawat Udornpim	Judge of the Rayong Provincial Court Thai Judiciary, Thailand
Mr. Toara Thomas	Senior Sergeant Fraud Section Vanuatu Police Force, Vanuatu
Mr. Erasmus Makodza	Superintendent Special Investigation Criminal Investigation Department, Headquarters, Zimbabwe Republic Police, Zimbabwe

Japanese Participants

Mr. Takuro Himeda	Chief Programme Supervisor Fuchu Prison, Tokyo
Mr. Masataka Ishijima	Public Prosecutor Tokyo District Public Prosecutors Office, Tokyo
Mr. Yasuharu Kawase	Narcotics Law Enforcement Officer Yokohama Branch, Narcotics Control Department Kanto-Shinetsu Regional Bureau of Health and Welfare, Kanagawa
Mr. Atsuo Kobayashi	Probation Officer Sapporo Probation Office, Hokkaido
Mr. Satoshi Shibayama	Judge Osaka District Court, Osaka
Mr. Kiyohiro Tanaka	Judge Tokyo District Court, Tokyo

Mr. Kazuya Tonoike	Public Prosecutor Nagoya District Public Prosecutors Office, Aichi
Mr. Yoshikatsu Yamato	Deputy Chief of Security Division Guard and Rescue Department, 2nd Regional Coast Guard Headquarters, Japan Coast Guard, Miyagi

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

Mr. Zhang, Yi	Director International Division, Department of Judicial Assistance and Foreign Affairs, Ministry of Justice
Ms. Xu, Xia	Counsellor Penal Law Division, Criminal Law Department, Legislative Affairs Commission Standing Committee of NPC
Ms. Du, Bing	Counsellor Law and Regulation Division, Department of Legislative Affairs, Ministry of Justice
Mr. Meng, Xian Jun	Director Division of Research, Bureau of Prison Administration, Ministry of Justice
Mr. Dong, Shi Hong	Senior Judge Criminal Adjudication Chamber No.2
Ms. Li, Hui	Senior Judge Chamber for Adjudication, Supervision
Mr. Wang, Jun	Deputy Director General Public Prosecution Department, Supreme People's Procuratorate
Mr. Wang, Shu Qing	Deputy Director Procurator-General's Office of General Office, Supreme People's Procuratorate
Mr. Chen, Ru Hai	Vice Director People's Reception Office, General Office, Ministry of Public Security
Mr. Zhao, Bin	Deputy Director Division for Legal Enforcement, Supervision, Legal Department, Ministry of Public Security
Ms. Zhao, Shu Huan	Officer Department of Judicial Assistance and Foreign Affairs, Ministry of Justice

Mr. Huang, Huan Guang	Deputy Director General Bureau of Re-education through Labour, Guangxi Autonomous Region
Ms. He, Chun Yun	Officer Legal Aid Centre of China

THIRD SEMINAR FOR TAJIKISTAN OFFICIALS ON CRIMINAL JUSTICE SYSTEMS

Mr. Yusufkhon Akhmadovich Rakhmonov	Chief Military Prosecutor General Prosecutor's Office
Mr. Sirojidin Kutbidinovich Nurov	Deputy Director Prison No. 6, Department of Punishment, Ministry of Justice
Mr. Akbar Partovovich Mirzosharifov	Head of the Group Prison No.7, Department of Punishment, Ministry of Justice
Mr. Rajab Yuldashev	Prosecutor Davlatmandovich, Prosecutor's Office of Firdavsi District, Dushanbe City
Mr. Habibullo Tabarovich Ashurov	Deputy Chairman Court of the Sino District, Dushanbe City
Mr. Navruz Dostonovich Turaev	District Inspector of Police (Juvenile Inspector) Department of Internal Affairs of Jeleznodorojniy District, Dushanbe City
Mr. Azam Mirzohotamovich Kholmirzoev	Executive Secretary Commission of Juvenile Affairs, Administration of Sogd Region
Mr. Ulugbek Solievich Normatov	Deputy Chief Department of Justice, Administration of Sogd Region
Mr. Abdujabor Salomovich Sattorov	Judge Supreme Court of Tazhikistan
Mr. Isroil Nazaralievich Shoev	Chief Department of Law Support for Citizens, Ministry of Justice
Mr. Suhrob Holmurodovich Raufov	Executive Secretary Commission of Juvenile Affairs, Administration of Khatlon Region
Mr. Abduvasit Gafarovich Kayumov	Tutor of Juvenile Prisoners Correctional Facility No. 9/7, Department of Punishment, Ministry of Justice
Mr. Navruz Abdulkhamidovich Samadov	Head of Sector Law Department, President Administration

Mr. Mirzoakhmad Saidovich Mirzoev	Deputy Director National Centre of the Out-of-School Educational Works, Ministry of Education
Mr. Dilshod Emomnazarovich Mahmadov	Chief Field Officer Department of Criminal Investigation, Ministry of Internal Affairs

SECOND SEMINAR ON THE REVITALIZATION OF THE VOLUNTEER PROBATION AID SYSTEM FOR THE PHILIPPINES

Mr. Manuel Co	Assistant Regional Director Parole and Probation Administration, Region III, Department of Justice
Ms. Cecilia G. Dela Cruz	Chief Research and Development Section Training Division, Parole and Probation Administration, Department of Justice
Ms. Dennah E. Vivares	Supervising Probation and Parole Officer Parole and Probation Administration, Region X, Department of Justice
Mr. Warme P. Araneta	Probation and Parole Officer Parole and Probation Administration, Region IV, Department of Justice
Mr. Elmer B. Gumapos	Senior Probation and Parole Officer Community Service Division, Parole and Probation Administration, Department of Justice
Mr. Robert August C. Camarillo	Probation and Parole Officer Training Division, Parole and Probation Administration, Department of Justic

THIRD SEMINAR ON THE REVITALIZATION OF THE VOLUNTEER PROBATION AID SYSTEM FOR THE PHILIPPINES

Mr. Ismael J. Herradura	Director II (Officer-in-charge/Administrator) Parole and Probation Administration, Department of Justice
Ms. Vilma V. Carmona	Chief (Human Resource Management Officer V) Training Division, Parole and Probation Administration, Department of Justice
Mr. Richard L. Salaya	Probation and Parole Officer I Bataan Parole and Probation Office, Region III, Department of Justice
Ms. Genoveva R. Relado	Probation and Parole Officer II Pilot Project – Holistic Approach to the Rehabilitation and Treatment of Offenders, Parole and Probation Administration, Department of Justice
Mr. Pol Vincent Q. Perocho	Probation and Parole Officer I Pilot Project – Holistic Approach to the Rehabilitation and Treatment of Offenders, Parole and Probation Administration, Department of Justice
Mr. Pedro T. Teodoro	Human Resource Management Assistant Pilot Project – Holistic Approach to the Rehabilitation and Treatment of Offenders, Parole and Probation Administration, Department of Justice
Ms. Rosana V. Solite	Senior Probation and Parole officer Biliran Parole and Probation Office Region VIII, Department of Justice
Ms. Ma. Emelita T. Valenzona	Psychologist II Regional Office, Region XI, Department of Justice
Mr. Norvic D. Solidum	Volunteer Probation Aide Laguna
Mr. Cesar L. Villamaria	Volunteer Probation Aide Laguna

FIRST TRAINING COURSE FOR THE SUPPORT OF ANTI-CORRUPTION MANAGEMENT FOR THAILAND

Ms. Nontiya Suthipong	Senior Legal Officer Corruption Prevention Bureau 1
Ms. Yaovamal Joyjuree	Corruption Prevention Officer Corruption Prevention Bureau 2
Mr. Chirdsak Arunsit	Corruption Prevention Officer Corruption Prevention Bureau 2
Mr. Surin Petchupong	Senior Investigator Corruption Suppression Bureau 1
Mr. Prachuab Katlangka	Senior Investigator Corruption Suppression Bureau 1
Mr. Prateep Jutasorn	Junior Investigator Corruption Suppression Bureau 1
Mr. Payup Kotchaplayook	Junior Investigator Corruption Suppression Bureau 1
Mr. Pichet Pumpan	Senior Investigator Corruption Suppression Bureau 2
Mr. Nuttvud Khomprasert	Junior Investigator Corruption Suppression Bureau 2
Ms. Phurisuda Nilvan	Junior Inspector Assets Inspection Bureau 1
Ms. Supatra Petchwichit	Senior Inspector Assets Inspection Bureau 3
Ms. Suwanee Kammadasidit	Senior Inspector Assets Inspection Bureau 3
Ms. Sasawan Cheepsatayakorn	Senior Inspector Assets Inspection Bureau 4
Ms. Wannee Phumarun	Junior Financial Officer Financial Division
Ms. Chintana Ploypatarapinyo	Senior Researcher Policy and Planning Bureau
Mr. Thanachot Pairoh	Head of Foreign Affairs Section Policy and Planning Bureau
Ms. Supporn Chantawangso	Junior Administrative Officer Policy and Planning Bureau
Mr. Suttie Boonmee	Junior Intelligence Officer Intelligence Unit

Ms. Wanna Khaiprapai	Junior Administrative Officer Administrative Unit
Mr. Sompol Kanchanasobhana	Senior Investigator Report Division

FIFTH TRAINING COURSE FOR KENYAN OFFICIALS ON JUVENILE DELINQUENT TREATMENT SYSTEMS

Ms. Josephine Kemunto Oguye	Provincial Children's Officer Rift Valley Province
Ms. Alice Katila Barasa	District Children's Officer Kisumu District, Nyanza Province
Mr. Jemin Otieno Onyango	District Children's Officer Nyamira District, Nyanza Province
Mr. P.N. Yahuma Okoko	Volunteer Children's Officer Siaya District, Nyanza Province
Mr. Christopher Ndegwa Kago	Senior Superintendent Bungoma Police
Ms. Margaret Agutu Mlanga	Senior Resident Magistrate Nairobi Children's Court
Ms. Hellen Akinyi Ajwalah	Divisional Probation Officer/ Probation Officer I Ukwala Divisional Office
Mr. Bison Khadiagala Madegwa	Chief Officer I/Officer in Charge Youth Corrective Training Centre
Ms. Kellen Thumuni Karanu	Assistant Director Children's Department, Ministry of Home Affairs
Mr. Mwasiwa Juma Boga	Manager/Children's Officer I Likoni Rehabilitation School
Mr. Daniel Nzei Musembi	Manager Getathuru Children Reception Centre
Mr. Livingstone A. Oruuko	Education Coordinator Children's Department, Ministry of Home Affairs
Ms. Zipporah Gatiria Mboroki	Inspector Kenya Police College, Kiganjo
Ms. Winfridah Boyani Mokayah	Senior Resident Magistrate Kisumu Law Court
Mr. George Njuguna Njane	Manager Nairobi Probation Hostel
Mr. Andrew Okoth Ojal	Senior Superintendent of Prisons/ Officer in Charge Shikusa Borstal Institution

SEVENTH INTERNATIONAL TRAINING COURSE ON CORRUPTION CONTROL IN CRIMINAL JUSTICE

Overseas Participants

Mr. Georgi Antonov Rupchev	Head of International Legal Coorperation Department Ministry of Justice, Bulgaria
Ms. Ana Maria Rosero Rivas	Consulting Attorney Procuraduria General Del Estado, Ecuador
Ms. Mariana Lara Palacios	State Attorney (Civil Area) Procuraduria General de la Nacion, Guatemala
Ms. Soraya Lizette Morales Romero	Fiscal Especial Contra la Corruption Ministerio Publico, Honduras
Mr. Souphy Norintha	Deputy Director Criminal Enforcement Division, Ministry of Justice, Enforcement Department, Laos
Mr. Kaspars Dreimanis	Investigator Corruption Prevention and Combating Bureau, Latvia
Mr. Jacques Randrianasolo	Director Inspection of Justice, Ministry of Justice, Madagascar
Mr. Ganesh Babu Aryal	Deputy Attorney Commission for the Investigation of Abuse of Authority, Nepal
Mr. Zahoor Ahmad Rana	Deputy Secretary (Administration) Ministry of Law, Justice and Human Rights, Pakistan
Mr. Raymundo Julio Abad Olaguer	Director Prosecution Bureau I, Office of the Special Prosecutor/ Ombudsman, Philippines
Mr. Fred Saeni	Officer Commanding Corruption Squad, Criminal Investigation Department, Royal Solomon Islands Police, Solomon Islands

Mr. Sukit Chua-Intra	Judge Dusit District Court, Thailand
Mr. Thammarat Limkulpong	Divisional Public Prosecutor Office of the Attorney General, Thailand
Japanese Participants	
Mr. Masato Saito	Judge Osaka District Court, Osaka
Mr. Masahiro Tashiro	Prosecutor Yokohama District Public Prosecutors Office, Odawara Branch, Kanagawa
Mr. Kan Tomita	Prosecutor Saga District Public Prosecutors Office, Saga

DISTRIBUTION OF PARTICIPANTS BY PROFESSIONAL BACKGROUNDS AND COUNTRIES

(1st International Training Course/Seminar - 128th International Training Course/Seminar)

Professional Background / Country	Judicial and Other Admin-istration	Judge	Public Prosecu-tors	Police Officials	Correc-tional Officials (Adult)	Correc-tional Officials (Juvenile)	Probation Parole Officers	Family Court Investiga-tion Officers	Child Welfare Officers	Social Welfare Officers	Training & Research Officers	Others	**Total**
Afghanistan	7	8	5	4									24
Bangladesh	21	12		12	5		4			5		2	61
Bhutan				6									6
Brunei	4				2								6
Myanmar	5			2									7
China	13	3	5	10							7		38
Hong Kong	14			11	25	3	9		1	3	1		67
India	15	10		51	7	1	1			2	6	4	97
Indonesia	21	22	24	25	14		3			6		1	116
Iran	5	11	8	8	6						2	1	41
Iraq	5	3	3	5	5	5					2		28
Jordan				4									4
Cambodia	1	2	1	5	1								10
Oman				3									3
Korea	12	3	53	6	22	4					3		103
Kyrgyz	1			1									2
Laos	8	6	7	10									31
Malaysia	20	2	7	42	33	8	3		1	5	3	1	125
Maldives	1	1	1	1									4
Mongolia	1			2									3
Nepal	28	13	11	31								3	86
Pakistan	19	10	2	33	8	1	2				2	1	78
Palestine	1												4
Philippines	17	9	23	34	9	3	11	3	1	7	4	6	127
Saudi Arabia	4		6		3						1	1	15
Singapore	10	18	5	12	10	3	10			3	1	1	73
Sri Lanka	21	20	13	20	19	1	11		1	2		1	109
Taiwan	12	4	2	2	1								21
Tajikistan	1												1
Thailand	23	35	37	16	17	8	11	1		8	5	1	162
Turkey	2	1	1	2							1	1	8
United Arab Emirates	1												1
Uzbekistan												1	1
Viet nam	10	5	2	7	1					4	1		30
A S I A	303	198	210	372	188	37	66	4	4	46	39	25	1,492
Algeria		3	2										5
Botswana	1			2									3
Cameroon	3		1										4
Cote d'Ivoire		2		1									3
Egypt	1	2		3							3	1	10
Ethiopia	3			1									4
Gambia				2									2
Ghana	1		1	5	1								8
Guinea			1	2									3
Kenya	6	4	1	12	7		6				2		38
Lesotho				1			2						3
Liberia											1		1
Madagascar				1									1
Mauritius		1											1
Morocco			1	4									5
Mozambique	1			1	1								3
Nigeria	1			5	5							1	12
South Africa				2	3					1	1		7
Seychelles				3			1						4
Sudan	2		1	13	1						2		19
Swaziland				2									2
Tanzania	4	3	4	6	1								18
Tunisia				1									1
Zambia		1		6									7
Uganda			1	5									7
Zimbabwe	1			5									6
AFRICA	24	16	13	83	19	0	9	0	0	1	9	3	177

APPENDIX

Professional Background / Country	Judicial and Other Admin-istration	Judge	Public Prosecu-tors	Police Officials	Correc-tional Officials (Adult)	Correc-tional Officials (Juvenile)	Probation Parole Officers	Family Court Investiga-tion Officers	Child Welfare Officers	Social Welfare Officers	Training & Research Officers	Others	**Total**
Australia			1				1			1			3
Vanuatu				3									3
Fiji	6	1	9	20	15					1			52
Kiribati	1												1
Marshall Island	1			3									4
Micronesia							1						1
Nauru				1									1
New Zealand	1			1									2
Palau					1								1
Papua New Guinea	10	1	4	14	10					1		2	45
Solomon Islands	3		1	2			3						6
Tonga	2	1		6	3		1				1		14
Western Samoa	1			1			1					1	4
THE PACIFIC	25	3	15	51	29	0	7	0	0	3	1	3	137
Argentina	2	2		2									6
Barbados				1			1						2
Belize	1			1									2
Bolivia		1										1	2
Brazil	2		3	15					1	1			22
Chile	1			4	2								7
Colombia	3	1	2	3					1			1	11
Costa Rica	3	4	4								1	2	14
Ecuador			1	4		1							6
El Salvador	1	1		2									4
Grenada				1									1
Guatemala					1								1
Haiti				1									1
Honduras			1	3									4
Jamaica	3				1								4
Mexico	1												1
Nicaragua		1											1
Panama			1	2								1	4
Paraguay				9		1							10
Peru	4	10	4	2	1						1	2	24
Saint Christopher and Nevis			1	1									2
Saint Lucia	1				1								2
Saint Vincent				2									2
Trinidad and Tobago	1				1								2
Venezuela	1		1	10							1		13
U.S.A.(Hawaii)								1					1
NORTH & SOUTH AMERICA	24	20	18	63	7	2	1	1	2	1	3	7	149
Albania	1												1
Bulgaria				1									1
Estonia			1										1
Hungary	1												1
Macedonia	1												1
Poland				1									1
Lithuania				1									1
EUROPE	3	0	1	3	0	0	0	0	0	0	0	0	7
JAPAN	110	153	244	94	86	77	181	60	38	2	48	67	1,160
TOTAL	489	390	501	666	329	116	264	65	44	53	100	105	3,122

PART TWO

RESOURCE MATERIAL SERIES
NO. 63

Work Product of the 126th International Senior Seminar

"ECONOMIC CRIME IN A GLOBALIZING SOCIETY ~ ITS IMPACT ON THE SOUND DEVELOPMENT OF THE STATE"

UNAFEI

VISITING EXPERTS' PAPERS

ECONOMIC CRIME: EMERGING THREATS AND RESPONSES - SINGAPORE'S EXPERIENCE

*Paramjit Singh**[1]

I. INTRODUCTION

The trepidation over economic crime lingers as a significant threat to businesses across all countries and industries. According to the PriceWaterhouseCoopers Global Economic Crime Survey 2003, at least 37 percent of the top 1000 businesses in 50 countries said they suffered from one or more serious frauds during the previous two years. The reasons to be concerned about economic crime however transcend threats to businesses alone. Peter Grabosky of the Australian Institute of Criminology surmised:

> 'The essence of fraud is a breach of trust. Trust is the very foundation of commerce, and the very basis of civil society. Economic crime thus jeopardises basic interpersonal relations, economic development, and in some cases, even the stability of government. The collapse of the Albanian regime following massive losses sustained by thousands of citizens in an investment fraud constitutes another example.'

The President of the World Economic Forum, Klause Schwab also alluded to the recent financial scandals and the matching negative ramifications on the world's economy:

> "Revelations of dishonesty in some of what were once the world's most venerated firms abound; failed CEOs departing with severance packages worth millions, top managers cooking the books, shareholder and employee welfare subjugated to the greed of the few. Even if these cases turn out to be spectacular exceptions, the image of global business has already been tarnished, and along with it, that of the globalised economy. In this context, it is not surprising that stock prices around the world have fallen to such low, barely fighting to come back."

The PriceWaterhouseCoopers Global Economic Crime Survey 2003 underscores the imminent insidious effects of economic crime on the financial markets. At least 47 percent of the more than 3600 corporate leaders at the top 1000 companies in 50 countries surveyed believed that economic crime has long-term effects on their share price. This perhaps indicates that the financial markets no longer view economic crimes as a historical offence with limited future relevance.

The trepidation over economic crime assumes an even greater ominous dimension when one computes the devastating impact of money laundering on the basic structure of the society. Money laundering has been described as the world's third largest business right behind foreign exchange and oil.[2] Around 2-5 percent (US$800 billion to US$2 trillion) of the world's GDP are laundered each year. Macro economic policy makers now have to include money laundering activities in their evaluation of the economy to avoid misdiagnosis.[3] Money laundering makes criminal activities more difficult to detect and can lead to the criminal infiltration of legitimate businesses. Gil Galvao, President of the Financial Action Task Force, cautioned:

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* Assistant Director, Commercial Affairs Department, Singapore Police Force. The views expressed in this paper are entirely the author's personal views and they do not necessarily reflect the views of his office.

1 The views expressed in this paper are entirely the author's personal views and they do not necessarily reflect the views of his office.

2 See Jeffrey Robinson's "The Laundrymen"(1996).

3 Speech delivered by Mr Tan Siong Thye, Director of the Commercial Affairs Department and Senior State Counsel in Singapore at the 7th Annual Conference and General Meeting of the International Association of Prosecutors in London in Sept. 2002 pg 2.

'Money laundering, organized crime, and economic crime are often integrally linked, and criminal organizations will use their profits to infiltrate or acquire control of legitimate businesses, and to put legal competitors out of business. They can also use those profits to bribe individuals and even governments. Over time, this can seriously weaken the moral and ethical standards of society and even damage the principles underlying democracy'.

The intimate but menacing link between terrorist financing and money laundering exacerbates the insidious impact of economic crime. Mr Tan Siong Thye, the Director of the Commercial Affairs Department of the Singapore Police Force had at the 7th Annual Conference and General Meeting of the International Association of Prosecutors in London in September 2002, beckoned the call for vigilance. He cautioned:

> 'As with criminals, money is oxygen to terrorist. Money laundered represents the fruits of drug trafficking, arms dealing, prostitution, people smuggling, kidnapping, extortion and terrorism. Ignoring money laundering and terrorist financing will result in global mayhem. Besides the apparent social implications, such as the massive loss and destruction following the September 11 attack, money laundering and terrorist financing can also create economic chaos. Allowing the flow of terrorist funds to continue leads to further terrorist attacks and heightened security concerns. That translates into higher costs for airline transport, lower tourism revenue and higher prices and transportation cost for merchandise.'

No one really knows the exact cost of white-collar crime. The US Chamber of Commerce puts the annual financial tab at a massive US$40 billion, the world over.[4] However it is commonly held that unlike most property crimes, victims may not even have detected the more complex of economic crimes. There may also be instances wherein the victims are reluctant to report such crimes. This is attributed to a multiplicity of motivations that range from pure embarrassment to the negative impact reporting may have on business relationships or staff morale, in the case of corporations. Indeed, according to the 2003 PriceWaterhouseCoopers economic crime survey,[5] only 48 percent of companies in the Asia-Pacific region said they had a requirement to report fraud to an external body. It is against this backdrop, that Mr Wong Kan Seng, the Singapore Minister for Home Affairs, had at the opening of 2001 International Economic Crime Conference in Singapore, cautioned that "globally, economic crime of all sorts must cost governments and businesses billions of dollars every year."

Given its perilous potential, there is clearly a public interest and protection element in economic crime that requires an earnest action against such crimes. For some, economic crime is not perceived as a serious crime because unlike violent crime with its noticeable impact on its victim, economic crime is seen as non-violent in nature. Experts, academics and practitioners alike, have however alluded to the pernicious and devastating impact of economic crime. It has at one extreme, the potential to cause social and economic chaos; and at the other, to cause colossal losses to individuals or corporations. There should therefore be no scepticism that economic crime can beget far more grave and momentous ramifications. So, while academics often debate on the definition of commercial crime, white-collar crime, business crime or economic crime, the primary problem lies not in defining it. The challenge lies in developing appropriate strategies to deal with it effectively.

The Singapore experience has shown that for a determined nation, the problem of serious economic crime is not insoluble or insurmountable. Given that Singapore's economic well-being depends in large measure on the success and integrity of the financial institutions, economic crimes are looked upon with a great degree of severity in Singapore. The policy in Singapore has always been to ensure the highest quality of integrity in the financial system. Corporate and national governance is taken very seriously. Indeed, in the PERC Business Environment Report 2003,[6] which ranks the socio-political and economic variables in various countries, including the United States, Australia and Hong Kong, Singapore was ranked as having the best average scores for the quality, accountability and standards of its institutions. These institutions

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4 Singapore Law Gazette (Sep 2001), "White-collar Crime - Wide Border Crimes" pg 1.

5 The PriceWaterhouseCoopers Global Economic Crime Survey 2003 involved interviews with more than 3600 CEOs, CFOs or those responsible for detecting or preventing economic crime at the top 1000 companies in 50 countries.

6 The Political & Economic Risk Consultancy Ltd's Business Environment Report 2003 comprised a survey of over 1000 senior expatriates living in Asia.

include the legal, judiciary, police, stock market regulatory, monetary authorities and the quality of corporate governance.

As one of the key institutions and bastions for the prevention, detection and investigation of economic crimes in Singapore, the Commercial Affairs Department ("CAD") of the Singapore Police Force is no less resolute in its mission to safeguard Singapore's integrity as a world class financial and commercial centre through the vigilant and professional enforcement of the laws. "The mission of CAD is to make sure no one unlawfully enriches himself/herself at the expense of others...CAD believes it serves the public interest best if it is able to do its job properly and professionally...and how well CAD does its job has a bearing on foreign investor confidence in Singapore,"[7] Mr Tan Siong Thye, the Director of CAD told The Business Times in a wide ranging media interview in July 2003.

The focus, direction and strategies of the Singapore police towards this direction have not gone unnoticed. The World Global Competitiveness Report 2002-2003,[8] ranked Singapore's police services as one of the most reliable (among 80 countries the world over) in protecting businesses from criminals.

This paper will first dwell on the more common serious economic crimes from Singapore's perspective before dealing with the credit card fraud situation in the Asia Pacific region. It is also critical to allude to the challenges that transpire from the new operating environment. Finally, the paper will discuss Singapore's experience in the successful battle against economic crime.

II. SERIOUS ECONOMIC CRIMES

It would not be possible in a paper to deal with the myriad spectrum of the economic crimes that confront us in the 21st century. As serious and complex economic crimes currently occupy a central position as an economic evil in the world, the paper will provide an overview of the serious economic crimes in Singapore. The objective is not to provide an exhaustive and in-depth analysis but to focus on the nature, challenges and suggested responses to these categories of serious and complex economic crimes. The aim in canvassing these trends is to identify areas where fraud prevention efforts can be mobilised in advance, so that nations may enjoy the maximum benefits of social and economic change, while minimising the downside consequence.

The crime situation in Singapore in 2002 was the second lowest in 15 years after 2001. The crime rate per 100,000 total population was 768 cases in 2002. There were 2,669 cases of cheating and related offences such as criminal breach of trust, forgery and counterfeiting. More than 36 percent of these 2,669 cases comprised cases that involved confidence tricksters who used various ruses to deceive victims into parting with their money, such as supplying or making false claims/purchases, deceiving victims into buying fake items or obtaining loans from victims under various pretexts.[9]

Whilst it is clear that the majority of economic crimes in Singapore comprise confidence tricksters, this paper will focus on 4 categories of serious economic crimes where fraud prevention benefits had been proactively mobilised by the Singapore authorities to keep the problem in check.

A. Securities Fraud

A safe and sound financial sector will provide investors with the confidence to participate in the activities of the capital markets. Market misconduct is the very antithesis of efforts to safeguard the financial integrity of the market. Such misconduct offends basic notions of fairness and jeopardizes the integrity of the open markets. Various forms of prohibitive market conduct in relation to securities and futures in Singapore are captured in the Securities and Futures Act. The misconduct range from false trading, market rigging and manipulation, disseminating false or misleading information statements to bucketing and insider trading.

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[7] The Business Times 14 July 2003.

[8] The *Global Competitiveness Report* is a publication of the World Economic Forum and is widely recognised as the world's leading cross-country comparison of data and information relating to economic competitiveness and growth.The Report comprises, inter alia, an exhaustive survey of senior business executives and rankings of 80 industrialized and emerging economies the world over.

[9] http://www.spf.gov.sg/.

1. Alternative and Borderless Trading Platforms

The digital age has fundamentally transformed the manner in which the capital markets operate. The Internet provides investors with an alternative trading platform that is convenient, cheap and provides easy access to the capital markets.[10] The flip side however, is that these revolutionary trading platforms also present new modes of perpetuating fraud, including those relating to the trading of securities.

Market manipulators who disseminate false or fraudulent information to the public find the Internet a convenient apparatus to reach a wide scope of users within a short span of time. False or misleading information, intended to inflate or deflate the prices of securities, is posted on online message boards or circulated in Internet chat rooms. Likewise, perpetuators of boiler room operations have jumped onto the Internet bandwagon.[11] Instead of employing groups of telemarketers to laboriously reach out to investors to promote worthless or bogus securities, the Internet can now be used to market their wares to more unsuspecting investors worldwide.

The US has already seen the negative ramifications of these alternative trading platforms. In 2001, the US Securities and Exchange Commission filed charges against 19 individuals involved in an insider trading scheme.[12] It was the first case involving the use of the Internet to pass insider information. The originators of the scheme met each other when they began communicating via the Internet and hatched the scheme in an Internet chat room. They used private internet chat rooms and instant messaging capabilities of the Internet to pass material non public information.

Singapore also experienced its first and fortunately, only case involving the use of the Internet to disseminate false information for the purpose of share market manipulation. In 2001, a rogue dealer representative posted a false take-over bid posting of a public listed company on the website of a financial portal for stocks and shares. The false website posting induced the purchase of securities of the company and triggered a knee-jerk buying of its shares, thus resulting in a rise of the share price. Fortunately, swift forensic-led investigation by the CAD led to the identification of the dealer within a span of several hours. In meting out the jail term to the dealer, the District Judge recognised that the Internet can be used as a powerful mechanism to reach a wide and vulnerable class of persons.

National boundaries are also becoming meaningless in the global securities market.[13] There is a growing assimilation of the global capital markets as a result of the emergence of a global economy. Global competitiveness has led various capital markets to reach out to each other and to overseas clients and investors. The merger of the London Stock Exchange with the German Deutsche Borse is a case in point. Other exchanges around the world are linking up with each other in an effort to stay competitive. More countries are also trading shares of foreign companies on their Exchanges. Online Internet trading has facilitated foreign investors to link directly to various capital markets. These developments have blurred the national boundaries in the global securities market.

2. Insider Trading

Integrity of the markets is the cornerstone of maintaining investor confidence. This very integrity can be eroded by insider trading - the buying and selling of securities based on some piece of confidential information which is not generally available and which is "price sensitive", i.e. likely, if generally available, materially to affect the price of a security.[14] Some academics claim that insider trading is actually the quickest way for information about the companies to reach the market, and so produces share prices that better reflect a firms' true value. Others retort that "the possibility of being outfoxed by better-informed insiders makes shares riskier for outsiders, who are therefore not willing to pay as much or may not buy at all"[15]. A study by the Indiana University in the US has however confirmed what many already know - that insider trading inflates the cost of raising funds in the stock market, since investors will pay less for shares

10 Speech delivered by Mr. Tan Siong Thye at the Cambridge Symposium 2000.
11 Richard Walker, "A Bull Market in Securities Fraud?" (April 1999), in a speech by Director CAD at Cambridge International Symposium 2000.
12 US Securities and Exchange Commission Litigation Release No 16469 (14 March 2000).
13 Speech delivered by Mr Tan Siong Thye at the Cambridge Symposium 2000.
14 Council for Securities Industry, 'Statement on Insider Dealing' (1981) CSI No 5, pg 3.
15 www.economist.com/editorial/justforyou/current/fn5060.html,'Insider Trading'.

floated in markets they think are rigged. The study also revealed that those countries which enforced their insider-trading laws had a lower cost of equity".[16]

The Singapore Government, like most regulatory bodies in the world, is unambiguous on its position on insider trading. The MAS encapsulated its undesirable impact: "Insider dealing is a particularly damaging activity as it destroys the trust between investors and issuers. Insider trading erodes the confidence of investors and is antithetical to market fairness and efficiency.[17] This fairness notion rests on the belief that insiders should not have an undue advantage over other investors in the market. The rationale to regulate the potential abuse of advantageous information is that there is public interest in protecting the free market. In cases where there is information asymmetry due to the use and abuse of confidential, price-sensitive information, then market failure is said to occur.[18]

To bring its securities and futures legislation in pace with advancement in capital markets, be consistent with international best practices and introduce greater market discipline, the Singapore government re-looked at the jurisprudential approach to Singapore's insider trading laws. The laws on insider trading were redefined in 2001 by removing the need to prove the defendant's connection with the corporation, and shifting the focus to the possession of inside information by the accused. This means that liability now directly depends on whether the defendant traded whilst in knowing possession of undisclosed market sensitive information ("the information-connected approach"), and is not dependent on how he was connected with the company concerned ("the person-connected approach").

The new information-connected approach creates a more level-playing field among market participants. In the traditional person-connected approach, the burden was on the Prosecution to show the defendant had received the information from the insider, had an arrangement or association with him and was aware that the insider was precluded from dealing. This meant that it was more difficult for the defendant to be convicted as the balance was tilted too much in his favour, to the detriment of other market players. It was also arduous for others down the information chain, i.e. those who received price-sensitive information from some other persons and traded in securities, to be caught. The information-connected approach shifts the core of the offence, i.e., trading while in possession of undisclosed price-sensitive information by the defendant. The new provisions also tightened the mens rea test for directors or connected persons. A refutable presumption was created that connected persons with possession of inside information are deemed to know that the information is undisclosed and price sensitive.

The new standard aims to introduce a greater degree of market discipline for those in fiduciary positions. The regulations curbing the misuse of privileged information also help to create a "level playing field" among market participants. The shift in approach will send a clear message to investors and market participants that use of material non-public information to one's advantage will not be tolerated.

3. 'Bucket Shops'

'Bucket shops' commonly refers to commodities trading companies that lure victims to trade in securities by masquerading as legitimate trading companies offering lucrative 'jobs' with minimal requirements. These 'jobs' include clerical and administrative positions that require no experience, qualification or age limits. Once lured, instead of the promised jobs, jobs seekers are presented with a sales pitch to entice them into trading in commodities. They end up investing with these companies which may "bucket" (claiming to effect transactions for the clients when they did not) or "churn" (make repeated transactions) to earn commissions from clients. The victims usually show initial profits but soon start losing money and are asked by the companies to top up their trading accounts. To cut or recover their losses or retrieve their principal sum, the victims end up investing more money and eventually losing their entire investment.

Singapore effectively dealt with the 'bucket-shops' through a multi-pronged approach. Various government agencies work within a multi-dimensional approach. A new legislation, the amended Commodities Trading Act criminalised inter alia, false trading, bucketing and fraudulently inducing trading in futures contracts and employment of other fraudulent practices in relation to bucket shops. It also broadened

16 Ibid.
17 Monetary Authority of Singapore, 'Consultation Document on Insider Trading' (27 Jauuary 2001) pg 1.
18 Yang Ing Loong, Andy Yeo and Sharon Lee, 'Insider Trading' reported in www.lawgazette.com.sg.

the definition of commodities to include intangible commodities such as band-width and indices. Under the amended Act, harsher penalties also await those who trade without a license.

The legislative effort is complemented by the strenuous enforcement efforts of the CAD. Following reports that bucket-shop operators had "cheated unsuspecting job-seekers of some S$1 million in the first four months of 2001,"[19] CAD successfully launched a major calibrated enforcement blitz. More than 8 corporations and 38 individuals were charged under the amended legislation, effectively curtailing the bucket-shop problem in Singapore.

B. Corporate Fraud

1. Sound Corporate Governance

A good corporate governance regime is central to the sound development of the state. A sound corporate governance regime, comprising a well functioning legal, regulatory and institutional environment helps to maintain overall market confidence, renew industrial bases, attract long term investment capital, sustain economic growth and ultimately enhance the nations' overall wealth and welfare. The integrity of corporations, financial institutions and markets is particularly central to the health of economies and their stability. The corollary of poor corporate governance practices is well expressed by Arthur Levitt, former chairman of the Securities and Exchange Commission in a speech in 2001:

> "If a country does not have a reputation for strong corporate governance practice, capital will flow elsewhere. If investors are not confident with the level of disclosure, capital will flow elsewhere. If a country opts for lax accounting and reporting standards, capital will flow elsewhere. All enterprises in that country, regardless of how steadfast a particular company's practices, may suffer the consequences. It serves us well to remember that no market has a divine right to investor's capital".

Corporate governance has gained global significance in recent years. The President of the World Bank, submitted that, "the proper governance of companies will become as crucial to the world economy as the proper governing of countries".[20] This view is particularly momentous when one takes account of the consensus view that poor corporate governance often causes corporate carnage and failure. The recent spate of corporate calamities, the likes of Enron and WorldCom, prompted the President of the Institute of Chartered Accountants in England and Wales to remark, "behind every headline case is a failure of corporate governance".[21]

Corporate governance of companies may be defined as the processes and structures in which the business and affairs of the individual companies are governed by their board of directors and senior management. The OECD issued a set of corporate governance standards and guidelines to help corporations and other parties that have a role in the process of developing good corporate governance. The OECD paper defines corporate governance as a "set of relationships between a company's management, its board, its shareholders, and other stakeholders."

Corporate fraud and scandals are the very antithesis of good corporate governance. Corporate misconduct generally refers to punishable acts that are committed by directors, agents or those in controlling positions within corporations, using the resources and power derived from the corporate form as a vehicle to achieve ends. These acts may either benefit the individual personally or the corporation. The acts are distinguished from other punishable acts against the interest of the corporation that are committed for personal gain by agents or persons who are not in controlling positions, such as misappropriation of corporate properties.

2. Collapse of Barings

The infamous 1995 collapse of Britain's oldest merchant bank, Barings, offers an unfortunate but succinct illustration of the nexus between lax corporate governance and corporate failure. Much of the circumstances surrounding the collapse revolved around,

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19 The Straits Times April 18, 2001.
20 Wolfensohn, J.D (1998), 'A Battle for Corporate Honesty, The World in 1999' in The Economist Newspaper.
21 Wyman, P.(2002), Speech given at ICAEW Council on Enron, Feb 2002, reported in http://www.icaew.co.uk.

Nick Leeson, the then managing director of Barings Futures (Singapore) Pte Ltd ("BFS"), Barings Singapore office. Leeson had concealed the spiralling debts which he had chalked up as a derivatives trader in Singapore, causing the 240 year old bank to collapse, under losses of US$1.4 billion. Leeson was sentenced to six and half years in a Singapore prison for charges of deceiving the auditors of Barings and the Singapore International Monetary Exchange Ltd ("SIMEX").

There are several lessons in corporate governance that arose from the collapse of Barings. The main thrust of this section is to underscore some facets of corporate governance drawn from the investigation report on the affairs of BFS by the Inspectors appointed by the Minister of Finance, under the Companies Act ("the Report"). The report was directed to the specific circumstances surrounding BFS and not the Barings Group. The succinct report is reproduced, in part, in this section to assist in the analysis.

Barings set up BFS in 1987 and was granted membership by the Singapore International Monetary Exchange Ltd ("SIMEX"). Leeson was employed by Barings Securities Limited ("BSL") in 1989. In 1992, he applied for registration as a dealer with the Securities and Futures Authority ("SFA") in England. When the SFA queried BSL on a false statement that Leeson had made in the application, BSL eventually withdrew the application to the SFA.

Notwithstanding his failure to register with the SFA, it was decided from the outset that Leeson would also trade at BFS, as its floor manager at SIMEX. In Leeson's application to register with SIMEX, the Exchange was never made aware of the false statement that Leeson had made to the SFA. SIMEX later said that Barings "contributed to the deception by supporting his application which contained false information". Although required to do so, Leeson also did not disclose the outstanding county court judgement against him in the UK.

By 1993, Leeson was trading on behalf of the Barings Group (referred to herein as "proprietary trading"). By the end of 1994, Leeson was thought to be one of the major contributors to the profits of the Barings Group. As a proprietary trader, Leeson's primary activity was to arbitrage or to take advantage of price and interest differences between those quoted for identical contracts on SIMEX on the one hand and on the Tokyo Stock Exchange or the Osaka Securities Exchange on the other.

Almost immediately after BFS began trading on SIMEX as a clearing member, Leeson opened a trading account which he named account 88888. This was the account Leeson subsequently used to conceal errors and to carry out unauthorised trading activities using the banks money up to Feb 1995. The transactions booked in account 88888 by Leeson were "distinguished by three features:

(i) the size of the positions was large from the outset and grew quickly;
(ii) the transactions were not hedged by matching positions. As a result, the Barings Group was exposed to enormous potential losses from even small market movements; and
(iii) the transactions consistently reflected losses from the time the account was opened. In fact the cumulative losses on account 88888 amounted to \135.5 billion (S$2.2 billion) after the collapse of the Barings Group.[22] Leeson required funds to finance the losses and margin deposits. The funds came from other Barings Group companies. Despite this, the Report found that "Barings management consistently contended that account 88888 was an unauthorised account that they had no knowledge of".

The Report found that there were shortcomings in the way in which the persons to whom Leeson reported implemented the matrix management structure. In theory, the Barings Group functioned on a matrix management structure, with Leeson reporting both to his local managers in BFS and his product managers in London. In practice however, Leeson's local managers considered BFS as Leeson's own responsibility and thus did not check Leeson's activities. The local managers also never remedied the problem highlighted in a 1994 internal audit report which identified Leeson's control of both the front and the back offices of BFS as a problem.

The Report also concluded that the vast sums of money remitted to BFS, which exceeded the total value of the Barings Group's assets, failed to attract close scrutiny by the Barings Group. The Barings Group's

[22] See Michael Lim and Nicky Tan's, "Barings Futures (Singapore) Pte Ltd. The Report of the Inspectors appointed by the Minister for Finance" (1995).

risk positions, trading limits and trading performance and the allocation of funding were monitored each day by a high-level Asset & Liability Committee ("ALCO"). It established that at some stage, ALCO did decide that Leeson should be asked to reduce his positions, but this decision was never effectively implemented.

The Barings Group's Financial Controls Department also apparently did not discover the existence of account 88888 although it might have been expected to do so. The Report attributed this partly to the limited view that the Barings Group Finance Director, took of the role of Financial Controls. It established that Financial Controls never had an accurate idea of the true profits and losses of the Barings Group nor properly monitored the cost of funding of the Barings Group's trades executed by Leeson.

The Report found that there was insufficient action taken by the Barings Group to reconcile Leeson's funding request. Leeson kept cabling Barings London office to send him more money, ostensibly to fund client positions or meet demands by SIMEX for margin calls (payment deposited with the exchange as security against loss). In actual fact, the money was to finance the losses booked in account 88888. The Report found that Credit Control made no attempt to verify the identities and creditworthiness of the "clients" receiving these loans. Any such attempt would have revealed that there were no such "clients".

The Report concluded that the Barings Group's management either knew or should have known about the existence of account 88888 and of the losses incurred from transactions booked in this account. This was due to several facts, including the fact "that very large sums of money were remitted to BFS without requiring BFS to justify its requests for funds. Furthermore, the 1994 internal auditors had identified as one key issue to be examined further in Singapore, the fact that Leeson occupied a very powerful position controlling both the front and the back offices of BFS. He was both chief trader and head of settlements and was thus in a position to record the trades that he himself had executed in any way he wished. Nothing was done to remedy this".

The Report also alluded to the inability of Barings Group Treasury and BSL to understand BFS's margin calls. In January 1995, given the magnitude of the Barings Group's positions on the Exchange, SIMEX queried BFS on the adequacy of its financial resources to deal with potential losses and margin calls. A reply by BFS, drafted by the Group Treasurer and approved by ALCO, assured SIMEX of the adequacy of funds to support the positions maintained with SIMEX. ALCO had however made no effort to understand fully the position and the basis for the assurances it gave to SIMEX. The Report found that "had ALCO taken any such step, it might well have curtailed the flow of funds to BFS. This would have deprived Leeson of the funds he needed to place as margins with SIMEX, prevented him from continuing to trade in the way he did, and possibly averted the collapse of the Barings Group".

In addition, the Report concluded that action had not been taken to fully investigate and resolve a discrepancy detected during an audit at BFS. In January 1995, while performing the annual audit of BFS's financial statements for the year ended 31 December 1994, BFS's external auditors discovered a discrepancy of \7.7 billion (S$115 million) between the SIMEX Yen settlement variation account in the general ledger and the balance for the same account as shown on the SIMEX statements. To cover up this discrepancy, Leeson concocted a fictitious deal, a supposed 'over-the-counter' deal that was supposedly brokered by BFS for BFL and Spear, Leeds & Kellogg ("SLK"). He told the auditors that this discrepancy represented a receivable due to BFS from SLK. When further queried, Leeson gave a different explanation, that the balance had in fact arisen from a transaction that he had brokered between SLK and Banque Nationale de Paris ("BNP") without any authorisation from his superiors and that BFS had paid BNP a sum of about \7.7 billion (S$115 million) two months earlier. The Report found that in fact, there was no receivable due from SLK at all. The discrepancy represented part of the funds remitted by the other Barings Group companies to BFS that Leeson had used to finance the losses and margin calls in respect of transactions booked in account 88888.[23]

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[23] Leeson was subsequently prosecuted and convicted in Singapore for cheating Coopers & Lybrand, BFS's auditors, into giving an unqualified audit clearance. He deceived them into believing that US securities house Spear Leeds and Kellogg (SLK) had paid BFS a sum of 7.78 billion yen through Citibank in Singapore for an Over-the-Counter trade Leeson had brokered. To do this, Leeson concocted an option to deal to balance his company's books. To cover his tracks, he had computer entries faked, confirmation letters as "evidence" for the trade and also falsified bank statements.

In summary, the Report found that:

(i) Almost immediately after BFS began trading on SIMEX in 1992, Leeson opened a trading account which he named account 88888 and booked a large volume of transactions in this account. He then contrived a series of measures to conceal the true nature of the account from the external auditors and supposedly from his superiors. The net effect of these transactions was to artificially inflate the Barings Group's reported profits which was attributed to his performance; and
(ii) Information pertaining to account 88888 and the margin calls on the account was available in London at all times. In spite of the growing discrepancy between the funds remitted to BFS and the transactions in respect of which the funds had been requested, other Barings Group companies continued to remit funds to BFS, and by the date of the collapse, had remitted about S$1.7 billion".

According to the Report, the collapse of Barings "could have been averted if:

(i) the growing difficulty in reconciling Leeson's funding requests had been thoroughly and promptly investigated; or steps had been taken to overcome the inability of Group Treasury and BSL Settlements since, at least, June 1994, to understand BFS's margin calls; or
(ii) the significant risk (i.e. those highlighted by the internal auditors in October 1994, that Leeson could override internal controls by virtue of his command of the front and back offices) had been addressed; or initiatives such as the "middle office" person had been effectively implemented when they were proposed in the last quarter of 1994; or
(iii) Barings high level Asset & Liability Committee had taken Leeson to task for increasing his positions, despite instructions in 1995 that he should reduce his positions; or the discrepancy highlighted in the 1995 audit (the SLK Receivable) had been fully investigated and resolved at the end of January 1995; or
(iv) ALCO had understood and effectively addressed the concerns expressed by SIMEX in its letters to BFS, particularly as to the large positions maintained by BFS, and its ability to fund these positions; or the reasons underlying the requests for very large amounts of funds by Leeson in January and February 1995 had been analysed and understood".

3. Implications for Corporate Governance

The collapse of Barings had therefore much to do with the endemic ineffective corporate management. At its core was the failure of internal controls. A well-informed board did not seem to have been present in this case. W. P. Hogan alluded to the failure of the management in its monitoring and analysis of trading activities as well as the risk associated with them.

Accountability was suspect. The Inspectors Report alluded to the endemic repeated failures by the management to deal with the problems highlighted earlier in this section. W. P. Hogan also observed that the "inefficiencies of Barings accounting, recording and settlement systems meant that data supplied to the leading supervisor was defective and not revealing the true condition of the Group."[24] These views were echoed in 2000 by a three-judge High Court panel in turning down the appeal against debarment by a Barings director. They alluded to the "serious abdication of responsibility" that contributed to the Barings crisis. Likewise in June 2003, the British High Court judge hearing a litigation brought by the liquidators of BFS against BLS, blamed Baring's management, citing "a very high level of fault by BFS, and those to whom the board of BFS delegated their functions".

Leeson himself, in an interview on his side of the story given to the London's Sunday Morning Post after his release from prison, was reported to have said:

> "There are many people who have to look at themselves daily in the mirror and know too that they, too, were not performing properly. I was feeding them complete rubbish to get cash from London to hide the losses: at the end, as much as 40 million pounds or so a day"... I was supposed to report to four people. ...My direct supervisor wasn't interested in the futures and options side of the business. Another boss was in Tokyo and I was having less and less to do with him - only speaking to him occasionally on the phone. Lastly there were my bosses in London. In due course he (Barings Head of Finance Products Group) began to be excited by the size of the profits I was reporting, and he took direct responsibility for me."[25]

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[24] See W.P Hogan, "Corporate Governance: Lessons from Barings".
[25] The Sunday Morning Post, July 18,1999.

Another significant focus in corporate governance relates to the role of shareholders in monitoring and rendering accountable the directors and management of any company. This aspect was not scrutinised at length in the Singapore Inspectors report, which primarily concentrated on the assessment of what happened at BFS. It is noteworthy however, that W. P. Hogan had alluded to the absence of questioning by outside shareholders as another likely circumstance that may have "bred a complacency towards effective management in the Barings case".

Ultimately, the lesson to be drawn from the Barings fiasco is that 'corporate governance' is not merely a list of procedures or safeguards. It is also a state of mind.

C. Money Laundering - Singapore's Experience in Underground Systems and Non-Financial Institutions

Money laundering refers in general to the process intended to mask ill-gotten gains so that they appear to have originated from a legitimate source. The 'washing' process to 'clean' these ill-gotten gains involves a complicated cycle of transformation, commonly referred to as the 'placement', 'layering' and 'integration' stages.

The concentration of the world's anti-money laundering efforts has shifted over the years. Proceeds from drug trafficking were the focal point of the world's anti-money laundering measures in the 1980s. In the 1990s, different forms of crimes such as corruption and financial crimes engendered the incentives for money to be laundered. Today, terrorist financing has gained prominence in the world's anti-money laundering campaign. Whilst the methods are closely intertwined to traditional money laundering, the purpose of terrorist financing may differ. Additionally, in terrorist financing, a predicate offence may not be occasioned and the money laundered is meant to be used to commit crimes in the future. In both however, the integrity of the financial system is struck at its core.

Singapore is strategically located at the crossroads between Europe and East Asia and is a well reputed and established international financial and commercial hub. It has institutionalised a robust and, as alluded by the Director of CAD, "disciplined, collaborative and holistic approach" to combat the twin evils of money laundering and terrorist financing. In formulating the right strategies, Singapore is mindful of the challenges that we face. These challenges are aptly encapsulated by the Director of CAD at a speech to the 7th Annual Conference and General Meeting of International Association of Prosecutors in London in September 2002:

> "The problem is compounded by the complex nature of money laundering and terrorist financing, which according to the IMF, "cut across several quite separate dimensions (e.g. law enforcement, financial supervision, corporate vehicles, etc);
>
> Moreover, money launders are free to transfer their proceeds of crime internationally but law enforcement is hindered by jurisdictional boundaries and legal technicalities. It means that investigations into international money laundering is hindered and delayed in the process of trying to satisfy the national legislation in different countries;
>
> In addition, the new knowledge based economy with the increasing use of ever changing technology pose new challenges. The Internet and E-Commerce and online financial services provide business conveniences, but financial institutions now find it difficult to implement "Know Your Customers" practices, thereby reducing the quality of information supplied to law enforcers. Modern communication technology offers instantaneous transaction capability but it heightens time constraints on the investigator because criminal funds must be traced and seized quickly before launders can move them."

This paper will focus on Singapore's proactive, collaborative and disciplined approach in ensuring the problem of money laundering through non-financial institutions and underground systems is kept in good stead and check.[26]

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[26] Speech delivered by Ms Yeo Pia Jee, Assistant Director of the Financial Investigation Division, CAD, at the 20th International Symposium on Economic Crime in September 2002, at Jesus College, UK.

1. Non-Financial Institutions - Proactive Enforcement Efforts

There are about 413 money-changers and 123 remittance houses in Singapore. In 2001, the remittance houses transacted close to S$10 billion. This figure has progressively escalated by at least 35% over the last three years. The sheer volume of public funds passing through remittance houses, make it incumbent on the authorities in Singapore to exercise continued vigilance to ensure that the operators are properly licensed and regulated. The legislative and regulatory safeguards and measures will be alluded to in a later section of the paper.

The complex nature of money laundering and terrorist financing underscores the possibility of remittance houses being used as conduits for transferring illegal proceeds or even for financing terrorist activities. The regulator of financial institutions in Singapore, the Monetary Authority of Singapore ("MAS") has proactively and religiously conducted focused inspections in addition to the regular on-site inspections. A case in point was the MAS move in 2002, to revoke the licenses of two medium-sized remittance houses in Singapore that were transacting several hundred thousand dollars a day. The businesses had failed to comply with accounting and reporting requirements. Whilst there was no suspicion of fraud, the move was a prudent one since any lapse in practices could give rise to opportunities for mal-practices to be committed.

The regulatory effort of MAS is complemented by the strenuous investigative efforts of the CAD. Since 1999, the CAD has successfully investigated 49 complaints against money-changers and remittance houses. Of these investigations, the CAD has successfully prosecuted 20 cases. Convictions were secured for a variety of offences like carrying out business without a license and failure to segregate clients' monies.

The comprehensive regulatory and enforcement efforts have yielded successes in uncovering fraudulent activities. At the 2002 International Symposium on Economic Crime in London, the CAD shared a recent case in which the prosecution of a bank cheat was successful because the money-changer was diligent in adhering to the requirement of maintaining proper records of the customer's particulars and of the transaction details. In the case, two officers from a local bank conspired with others to transfer S$600,000 from the bank customers' account to an accomplice's account. The CAD's investigation revealed that one of the bank officers left Singapore with 26 S$10,000 notes to a neighbouring country, to convert the money into foreign currency so as to avoid detection and convert the S$10,000 notes into smaller denominations. On his return to Singapore, he patronised a local money-changer and changed the foreign currency into smaller denominations in Singapore currency notes. Because the transaction exceeded S$5,000, the money-changer complied with MAS guidelines and he maintained proper records on the identity of the customer and the transaction amount. This information was crucial for the investigation. It would have been difficult otherwise to establish the chain of evidence that the cash held by the accused originated from the proceeds of his crime. The duo was convicted for cheating the bank as well as for money laundering under the Corruption, Drug Trafficking and other Serious Crimes (Confiscation of Benefits) Act.

2. Underground Systems

Recent events have drawn attention to the possibilities of the underground systems being used to move "dirty" money. The ease in which money can be moved makes the infamous *Hawala* or *Hundi* systems an attractive and popular avenue for laundering money.[27] In 2001, the CAD carried out an intelligence probe on a group of unlicensed remitters who routinely offered remittance services to foreign workers employed in Singapore. As they were unlicensed, their activities were deemed illegal.

The probe resulted in the arrest of one of the bigger unlicensed operators. The investigators went on to uncover evidence that reinforced our understanding that these *Hawala* operators exist to cater the needs of the foreign workers in Singapore. Unlicensed operators thrive because they charge low or no commissions and they have the necessary network to ensure that remittances reach the beneficiaries, even in remote parts of the world. They also provide value-added services to their customers by delivering letters with the remittance to beneficiaries at no extra cost. Their flexible operating hours and mobile services also provides convenience to their customers.

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[27] Speech by Mr Tan Siong Thye, "Money Laundering and E-Commerce" delivered at Cambridge Symposium 2001 reported at pg 278 of the February 2002 issue of the Journal of Financial Crime.

There is a possibility that non-financial institutions can be used by money launders to transfer ill-gotten gains. Singapore's multi-faceted approach of licensing, regulation and enforcement, coupled with its world benchmarked practices and legislation are however designed to detect and counter the use of the financial system for money laundering. This approach has in our view, achieved optimal impact.[28]

D. Credit Card Fraud

1. Susceptibilities in Credit Card Fraud

Credit card vulnerabilities are manifested in various forms. They include:

(i) Susceptibility inherent within credit cards

Credit cards have inherent vulnerabilities. Even when credit cards first appeared in the financial payment systems in the 1950s, there were attempts to use them to obtain funds, goods or services fraudulently. The illegally used credit cards are either completely counterfeit, altered (by re-embossing and re-encoding), or genuine credit cards that were lost or stolen.

Legitimate or valid credit card details are highly sought after by fraudsters. The legitimate details are used to either counterfeit a credit card or perpetrate fraud. Legitimate credit cards details may usually be compromised at three main locations, viz.,

(a) at a merchant location or as the credit card data is passed from one organisation to another during the authorisation process via telecommunication lines. The information from a valid credit card's magnetic strip can be obtained through "card skimming." This is the process of replicating the full data encoded in the magnetic stripe of a genuine credit card, and transferring this copied data on the magnetic stripe of a counterfeit card. To complete the process, the blank, white credit cards are then embossed with stolen numbers, and the signature panel on the card installed. Identifying logos, holograms and colour printing are added to imitate a real or valid card. The challenge is that skimming takes place without the knowledge of the legitimate card holder until much later, when he receives a statement of purchase he did not make; or

(b) where the data is stored. Computer hackers can for example, steal credit card data from servers that store credit card details by using brute attacks or compromised passwords. In February 2003, the United States Secret Service (USSS) and the Federal Bureau of Investigation (FBI) conducted a probe to track down the computer hacker who breached the security system of an entity that processed credit card transactions on behalf of merchants. It was estimated that the hacker may have gotten access to information on as many as 8 million credit card accounts overall. Often, when credit card accounts are hacked, account numbers and other information obtained may be sold to others who turn, may use that information to make unauthorized purchases or counterfeits.[29]

(c) Other sources of obtaining legitimate credit card data include sources such as cloned web sites, faked merchant web sites or web based computer programmes that use mathematical Luhn algorithm to generate credit card details. In 2002 for example, a Pakistani based offender stole credit card numbers by setting up fake online auction sites at Yahoo! and eBay. These stolen credit card details may be sold to others, who can make use of the information to make unauthorised purchases.

(ii) Susceptibility in the application process

It has often been said that the most vulnerable link in the security chain of credit cards relates to the manner in which the cards are issued. Frauds relating to the issue of credit cards may sometimes be perpetuated when an offender obtains the personal details of a real person and uses them to acquire credit cards in that name. The liability of goods purchased with the use of such cards is then passed to the legitimate cardholder. The crime may also be effected with the use of false identification details to overcome the pre-approval identification process. The information is then used to secure a valid credit card in a false name by offenders who later dodge on payment and abscond. The industry is however experiencing a decline in credit card application fraud as credit card issuers have been quite successful in taking preventive measures.

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28 Speech by Ms Yeo Pia Jee, at the 20th International Symposium on Economic Crime at Jesus College, UK.

29 CNN Money 27 Feb 2003, "Hacker hits up to 8M credit cards".

(iii) Susceptibility in the transaction process

Fraud is most commonly facilitated if the cards are lost or stolen. At least 48 percent of credit card fraud in the world is perpetuated through lost or stolen cards.[30] Some of these cards were also newly issued cards, stolen from the postal service, before they reached the legitimate cardholder. This remains the easiest way to perpetuate fraud with little or no investment in technology.

Secondly, an increasing number of altered or counterfeit cards have also been used to facilitate credit card fraud. As the magnetic stripe of the counterfeit credit card has been replicated with the tracked data encoded on the genuine card, issuers' authorization processes can be easily compromised and the CVV/CVC value is verified and the fraudulent transaction is approved on the skimmed card. Merchants manning frontline credit card point of sales terminals are also easily deceived into believing that the counterfeit credit card that is presented for payment, is a genuine card because of increasingly high quality of counterfeits and simulated security features, including fake holograms, ultraviolet features and micro printing. Merchant fraud, in which the merchant may collude with the presenter of the counterfeit card to generate fictitious sales transactions and share the proceeds of payment, may also be perpetuated.

Thirdly, electronic commerce and online credit card transactions mean that there is no longer a need for the credit card merchant and card holder to be in the same location. Online fraud poses complex challenges as more credit card merchants embark into the global e-commerce arena, a market that Forrester Research expects to soar to US$8 trillion by 2004. Card fraud is increasingly carried out via faceless mediums such as the Internet and other 'card not present' transactions like telephone orders. At present, most commercial transactions which take place on the Internet are undertaken by customers purchasing goods and services by merely disclosing their credit card details. Therein lies the vulnerabilities. Credit card details obtained illegally have been used to incur millions of dollars in losses. A Pakistani based offender for example, had over a three year period obtained more than US$3 million in stolen merchandise from US online retailers by using stolen credit card details he had obtained after setting up a fake web-site. As the magnitude of global online commerce increases, so too will online credit card fraud, if undeterred.

2. Organised Card Counterfeiting Syndicates in the Asia Pacific Region

The Asia-Pacific region is among the fastest growing credit card market in the world. According to some estimates there are currently about 140 million to 150 million credit cards and between 6 million to 7 million credit card terminals across the Asia Pacific region. According to MasterCard, the average growth rate for the region will be in double digits in the next five years. Developments in electronic commerce will also result in a higher proportion of transactions that are carried out remotely. MasterCard International estimated that by 2005, 52 percent of its transactions will be carried out through remote services, rather than physical point of sale terminals.[31]

Unfortunately, the losses sustained through credit card fraud is also an equally fast growing development around the world. In Europe, the proportion of fraud on United Kingdom issued plastic cards committed outside the United Kingdom doubled during the 1990s and will soon amount to one third of all losses.[32]

Organised credit card counterfeiting has been touted as one of the most common and potentially insidious forms of transnational credit card fraud in the Asia Pacific region. The card industry estimates that over 60 percent of fraud losses in the Asia Pacific markets are attributable to losses sustained through card counterfeiting activities. The Australian Crime Commission warned credit card skimming is a booming crime, with banks reporting a 400 per cent increase in losses in 2002 and costing Australian consumers, business and banks a whopping A$300 million a year.[33]

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30 Tej Paul Bhatla, Vikram Prabhu and Amit Dua, "Understanding Credit Card Fraud" (June 2003).
31 Russell G. Smith, "Plastic Card Fraud" delivered at the International Association of Financial Crimes Investigators 10th Annual Conference in Sydney 20 May 2002.
32 Ibid.
33 The Age, "Counterfeit Credit Card gangs in the Rise" (17 Aug 2003).

According to Russell G. Smith of the Australian Institute of Criminology, offenders most involved in counterfeiting seem to belong to organised groups which emanate from the region bounded by Malaysia, Indonesia, Hong Kong and Thailand.[34] A United States report on Asian organised crime noted that Chinese criminal groups based in Hong Kong were responsible for 40 per cent of the world's counterfeit credit card losses, which are estimated to cost business between A$41 billion and A$2 billion per annum.[35]

The challenges posed in combating organised card counterfeiting syndicates in the region are exacerbated as such organised transnational crime syndicates usually have the influence of:

(i) Capital, which enables the syndicates to operate and establish bases across different jurisdictions, recruit a network of criminal operatives from various jurisdictions and acquire the capability to produce the counterfeit instruments to perpetuate the fraud;
(ii) Organization, which enables the syndicates to effectively command, control and coordinate their illegal operations across more than one territorial jurisdiction; and
(iii) Muscle, which enables the syndicates to effectively discipline lower level syndicate operatives and deter them from absconding with the proceeds of the crime.

Most credit card fraud syndicates in the Asia Pacific are largely involved in organised credit card counterfeiting activities. The 'capital-organisation-muscle' elements of their illegal operations have been apparent in several cases that were crippled by law enforcement agencies in the region. They include:

(i) A syndicate that had established bases across Malaysia, Hong Kong and Korea. In April 2001, an international syndicate involved in the manufacture and use of counterfeit credit cards was crippled in coordinated operations by the Hong Kong ICAC, Korean and Malaysian police. The suspected mastermind had obtained bona fide credit card data through fraudulent means from hotels in Malaysia and retail outlets in Hong Kong, which he transmitted from his base in Hong Kong to recruited operatives in Korea for the manufacture and use of the bogus cards. Close liaison between the 3 police forces resulted in arrest in various jurisdictions.
(ii) A syndicate that operated between Japan and Hong Kong. Close cooperation between the Hong Kong ICAC and the Tokyo Metropolitan Police ("TMP") uncovered a transnational counterfeit card syndicate based in Tokyo in 2001. The syndicate had operatives straddled in Hong Kong as suppliers of credit card data. As a result of coordinated efforts, TMP raided a counterfeit card factory in Tokyo and arrested five people, including a Hong Kong citizen believed to be the syndicate head. During the raid, the TMP recovered more than 1,000 sets of genuine credit card data, over 300 blank plastic cards used for making false credit cards, computer equipment and other tools for manufacturing false cards. A Hong Kong man was subsequently sentenced in Japan. Inquiries in Hong Kong established that the man's accomplices had been using skimmers to collect genuine credit card data from a Hong Kong restaurant for use in manufacturing false credit cards which were subsequently used in retail outlets in Japan. Card issuing banks in Hong Kong had reported losses of over $185,500 due to the criminal use of these counterfeit cards overseas.
(iii) Syndicates that had links in China, Philippines and Japan. Between 1999 and 2001, Hong Kong police uncovered at least four syndicates that recruited employees working at Hong Kong restaurants, cafes, hotels, nightclubs or petrol pumps, as operatives in transnational counterfeit credit card operations. These operatives were paid commissions to use mobile pocket size skimmers to steal credit card data from legitimate cards of their patrons. The counterfeit cards manufactured from the stolen data were subsequently used at retail outlets in Philippines, China, Hong Kong, Japan and Europe to incur more than HK$1 million in charges.
(iv) A syndicate that operated within the Indonesia, Singapore and Malaysia geographical triangle. In 2000, close cooperation between the three regional enforcement agencies resulted in the crippling of a well organised seven-member syndicate that spanned Indonesia, Malaysia and Singapore. The Indonesian masterminds allegedly learned the tricks from their accomplices in Malaysia and recruited operatives from the hospitality services industry in Indonesia. The operatives were paid to secretly copy data from genuine credit cards used in Indonesia and hundreds of cloned cards were made. Several well groomed operatives were recruited as 'tourists' to proceed to Singapore and make fraudulent purchases with the cloned cards. The syndicate's Singapore link trained and guided

34 Russell G. Smith and Peter Grabosky, "Plastic Card Fraud" delivered at the conference on Crime Against Business in Melbourne in June 1998.
35 Ibid.

the 'tourists' as they made hundreds of dollars worth of fraudulent purchases in Singapore. The operatives disposed of the goods through fencers locally and abroad and duly paid the proceeds to the syndicate masterminds.

3. Singapore's Experience

Singapore has a high number of credit card transactions, but a minimum credit card fraud rate. Between January and November 2003 alone, total credit card billings in Singapore amounted to more than S$11.1 billion. Fortunately, in the past 5 years, there was an average of only 235 cases of credit card fraud each year.[36] Industry sources believe Singapore has one of the lowest credit card to 'sales to fraud' ratio in the Asia Pacific region - as low as 0.08 basis points. Of these, the majority comprises losses that were incurred through credit cards that were reported lost or stolen by the card holders.

Credit card skimming activities are also relatively unknown in Singapore. The last known skimming related fraud in Singapore occurred more than two years ago. The case involved an employee of a petrol kiosk who was recruited to run credit cards through a traditional hand held skimming device on behalf of a foreign based syndicate. Much of the low rate of skimming activities or credit card fraud in Singapore, has been attributed to the effective five-pronged countermeasures adopted by the Singapore authorities.

Online credit card fraud poses a complex challenge. There were reports that credit card merchants located in the United States and United Kingdom were duped into accepting fraudulent online credit card purchases, purportedly made by Singapore based fraudsters. The fraudsters had masqueraded as Singapore based individuals and placed online orders with stolen credit card details. The crooks gave instructions to the merchants to deliver the purchases to addresses purportedly within Singapore. A careful examination of the consignee's given name, address, IDD code and telephone number, would however have easily traced the delivery address to a neighbouring country. The Singapore authorities promptly initiated various measures, including working with the credit card industry to avert Singapore's crime free reputation from being soiled by such online criminals. This approach has in our view, achieved optimal impact.

4. Metamorphosis and Shift in Strategies

Developments in the Asia Pacific region suggests that credit card 'skimming' syndicates have switched to safer strategies. The syndicates now rely less on operatives with hand held miniature skimmers to steal data from the magnetic strips of credit cards. They have transgressed to more sophisticated 'chip skimming'. Chip skimming, in which memory chips are implanted directly into the credit card point of sales terminals offer the syndicates a less conspicuous means of stealing credit card data. In 2002, the Hong Kong ICAC discovered an electronic skimmer secretly implanted in a credit card point of sales terminal in a Hong Kong restaurant. In the same year, the Malaysian Police discovered two integrated circuit chips implanted in credit card terminals of two well-established hotels in Malaysia. Whilst the discoveries had prevented losses that could have amounted to millions, the developments suggest the credit card data can be stolen more inconspicuously with the help of a single rogue employee with some basic technical knowledge. This may be the sign of things to come.

Syndicates have also leveraged on modern technology to perpetuate more insidious skimming activities in the hope of frustrating detection. Recent experience in the region shows that skimming activities have progressed to compromising telecommunication networks through wire-tapping at host terminals. In April 2002, the Malaysian police uncovered a Pulau Langkawi based syndicate that had allegedly stolen encoded credit card information by tapping into telephone line junction boxes. The syndicate targeted shopping complexes which used multiple credit authorisation terminals. It is believed the syndicate enlisted telecommunication technicians to help identify telephone lines and secretly steal credit card data. The Malaysian police made another arrest in January 2003 in Johor Bahru, Malaysia when a suspect was caught intercepting a telecommunication line that was illegally connected to a credit card service centre.

Apart from wire-tapping at host terminals, industry sources have also alluded to the possibilities of skimming by running parallel lines from telecommunication networks. The stolen data may then be transmitted wirelessly using GSM technology to remote stations. Commercially available products such as

[36] Based on reports made with the Singapore Police Force.

digital voice recorders or MP3 players can store the data required to produce counterfeit cards. Merchants and card issuers may not discover the compromise until months later when the Common Purchase Point also known as Point of Compromise is identified. By then, evidence of the skimming would have been removed.

The syndicates also tend to shift their activities across different jurisdictions, preferring softer targets, as soon as authorities begin to clamp down on them. Fraudsters who think rationally about the consequence of offending could target countries that have the lowest maximum penalties for relevant offences or those in which sentencing practices result in comparatively low terms of imprisonment. Russell Smith had noted that in the case of credit card fraud, this is likely to be the case, at least with respect to large scale, organised activities. Offenders in China, for example, where the death penalty exists for serious fraud offences, would be well advised to target victims in Australia where in some states they would receive a few year's imprisonment, or less, for offending.[37] In Singapore, anyone caught illegally skimming credit card data may be prosecuted under the Computer Misuse Act, which carries a maximum punishment of ten years. Japan and Taiwan have also passed stricter fraud legislation in 2002.

5. Industry Safeguards

As much of the vulnerabilities in credit card fraud are inherent in the credit card, or lie in the application or transaction process involving the cards, the role of the industry in safeguarding the integrity of the card and the transaction process is paramount. Fortunately, the industry has also leverage on technological advancements in its effort to prevent card fraud. Banks and merchants have deployed fraud prevention technology in their overall risk management strategies.

The "chink in the armour" of most online credit card transactions has been ascertaining that the purchase is indeed made by the cardholder. A combination of tools and technologies has been deployed by the industry. These include the CVM, a 3 or 4 digit code printed but not embossed on the card nor available in the magnetic strip, to help ensure that the person submitting an Internet credit card transaction is in possession of the card. Payer authentication based on (PIN), associated with the card, similar to those used with ATM cards is also being deployed to authorise online credit card transactions. To prevent identity theft related fraud arising from the use of information in sales receipts, a global initiative requiring merchants to truncate account numbers on sales receipts is also being undertaken. Instead of seeing the full 16-digit credit card number on the sales receipt, as is the case currently, the potential fraud perpetrator will only see the last four numbers, while the first 12 numbers have been masked out. The expiry date of the card, now openly displayed, will also be blocked out. The initiative will take full effect by 2006 and is expected to reduce online fraud significantly.

The industry has also proactively leveraged on security technology to authenticate the account information and make it more difficult to copy electronic credit card data. The industry solutions include:

(i) The use of 'magnetic fingerprints' in credit cards. The solution aims to use intrinsic physical properties of a credit card's magnetic stripe to differentiate between an original and cloned card. The combination of unique magnetic stripe characteristics, together with the account number and other encoded data on the stripe will give each credit card a unique fingerprint. The derived algorithmic value or fingerprint is stored in the banks authorisation system so that it will make it difficult for anyone to present a cloned card as the magnetic fingerprint will not match those stored in the issuing bank's authorisation's systems. These are believed to be stopgap measures pending ultimate migration to more secure systems;
(ii) Smart credit cards, embedded with an integrated circuit chip (ICC) are also increasingly being touted as the solution to skimming. Smart chip credit cards can contain between 16 KB and 32 KB microprocessors, which are capable of generating 72 quadrillion or more possible encryption keys, thus making it practically impossible to fraudulently decode information in the chip.[38] Several countries in the region have already began the migration towards the use of ICC in credit cards instead of magnetic strips to provide a much higher platform for secured card transactions; and
(iii) Biometrics have been increasingly used in international travel documents and other forms of

37 Russell G. Smith and Peter Grabosky, "Plastic Card Fraud".
38 Tej Paul Bhatla, Vikram Prabhu and Amit Dua, "Understanding Credit Card Fraud".

documents, requiring high security platforms. The issue of whether biometrics will be used as a standard security feature in the credit card of this millennium will be carefully reviewed by the key industry players, taking into consideration a host of interdependent factors, including the costs associated with credit card security systems vis-a-vis the level of fraud.

Law enforcement and industry players in the Asia Pacific will continue to monitor trends and countermeasures in credit card fraud. Whilst detailed statistics are not available as credit-card companies have a policy of not revealing detailed fraud statistics, industry sources have alluded to credit card fraud to sales ratio in Asia Pacific being "less than half of the global average."[39] This notwithstanding, history has shown that criminal syndicates prescribe to the belief that it is usually possible to triumph over the system. As long as this belief exists, law enforcement and related parties in the fight against credit card fraud are conscious of the dangers of letting their guard down.

III. IMPEDIMENTS TO PREVENTION, ENFORCEMENT AND DETERRENCE

Effective prevention, enforcement and deterrent action in respect to serious economic crimes today are complicated by several challenges. They include:

(i) Economic crime is more dynamic than ever. New fraud patterns emerge swiftly and can quickly transform and migrate. As soon as businesses institute preventive security measures against one type of fraud, it is not uncommon for criminals to move on to a less risky approach soon after. This dynamism, fuelled by today's fast changing technological landscape has not only led to the emergence of new forms of criminality, but also repetition of familiar economic crimes in "electronic clothes".

(ii) The 'boundary-free' nature of transnational economic crimes complicates the difficulties in locating offenders across boundaries and mounting a prosecution. Enlisting law enforcement assistance may be complicated as resources are finite and priorities may differ across jurisdictions. Sometimes the cost of sending law enforcement officers abroad or securing witnesses from abroad to testify in proceedings may be considered exorbitant.

(iii) Advancement in technology has complicated this further - today fewer or no accomplices are needed to stage the fraud schemes that can reach out to a greater scope of potential victims. Some crimes may slip detection or be discovered only much later. With more electronic commerce and little or no face to face interaction with the victim, those who masquerade their identity behind computer networks, anonymous e-mailers and encryption devices are able to shield themselves from most but the most determined and technologically sophisticated enforcement agencies.

(iv) The 'faceless' nature of serious economic crime today complicates the evidentiary limitations of traditional enforcement and investigation. The traditional "smoking gun", paper trial, "eyewitness" testimony and evidential aspects are less applicable in today's context. Modern communication technology offers bountiful benefits but also heightens the constraints on the investigator as evidence can disappear quickly.

(v) To compound matters, there is the complex interplay of legal problems in different jurisdictions. The diminution of national borders in an increasingly global business community complicates the jurisdictionally limited law reform which is largely unsuited to the demands of a rapidly advancing technological environment.

Notwithstanding the enormous difficulties, law enforcement must find ways of overcoming these problems. To do nothing would be, as CAD's Director Mr Tan Siong Thye cautioned, "akin to standing still in the face of an oncoming tidal wave." Economic crimes in the digital age will only become more severe as the nature, scope and magnitude of electronic commercial transactions multiply and increases exponentially.

IV. SUCCESSFUL RESPONSES - FIVE KEY STRATEGIC FRONTS

Crime has never been a big problem in Singapore. Singapore has grown in many ways in the past decades to become a city-state that has sustained levels of high economic growth, political stability and a sense of safety and security. Indeed, in 2002 the World Competitiveness Report, one of the most authoritative sources on the international competitiveness of nations, ranked Singapore the third safest city in the world in terms of the level of personal security and private property. Singapore has been ranked in the top three

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[39] Edmond Chan, Vice President, Mastercard (Asia Pacific), The New Straits Times dated 24 March 2002: "Stricter controls, enforcement pay off".

positions in this category for the last four years. In 2003, the PERC Business Environment Report 2003, once again ranked Singapore as having the highest level of public security and safety among countries in the region, including Australia, the United States and Hong Kong.

Singapore's experience has shown that to successfully combat economic crime, there are five key strategic fronts that must be simultaneously engaged. The very diverse nature of economic crime necessitates a combination of counter-measures to effectively plug the problem. Singapore's success against the menace has been achieved by a sum total of three elementary but bedrock principles of deterrence, effective enforcement and prevention under a responsive criminal justice system. These principles are crystallized in the tough and relevant laws enacted by a responsive legislature and pushed by a strong and effective executive; in the strong enforcement by incorruptible officers; in the robust and efficient world class court system, and a police force aspiring to be world class in its total policing capabilities.

A. The Legislative Measures

In tandem with a maturing society, Singapore has over the years, enthused from a purely merit based regime towards a disclosure based regime. Along with this, Singapore has pushed for higher standards of corporate governance, greater market discipline and *caveat emptor*. This climate naturally means that there are in existence, a number of relevant and effective statutes in place to combat economic crimes.

The perpetration of economic crimes today, especially those that are 'boundary-free' and 'faceless,' involves demeanour, notions, methods and expressions that may not yet be defined in existing legislation in some countries. Singapore, like many other countries, has responded by outlawing the new forms of fraud with suitable and appropriate legislation to enable appropriate enforcement to counter the appearance of such economic crimes. Whilst the prospects of criminal prosecutions and punishment may have some deterrent effect, Singapore has also regulated business and commerce in such a way as to prevent and control economic crime without unnecessarily stifling the wheels of commerce and industry. This comprehensive framework of control is achieved in part through relevant legislation and statutes. The bare bones of some laws that have been enacted to keep serious economic crime in check are discussed in this section.

1. Money Laundering

Singapore's legislative framework gives legitimacy and empowers law enforcers to combat global money laundering effectively. For example, the Corruption, Drug Trafficking and Serious Offence (Confiscation of Benefits) Act ("CDSA") was introduced in Singapore in 1999 to provide serious penalties for persons involved in the laundering of proceeds of crime. The Act is significant as it, inter alia:

(i) makes the laundering of the proceeds of at least 182 predicate serious crimes, regardless of whether they were committed locally or not, an offence in Singapore. While there is no mention of the word 'money laundering' in the Act, it is an offence when any person conceals, disguises, converts or transfers any property that represents that person's benefit from criminal conduct;
(ii) amended the *men rea* requirement for a money laundering offence to the accused person 'knowing or having reasonable grounds to believe' that the proceeds were derived from serious crimes;
(iii) makes it mandatory for all persons to report suspicious transactions to the authorities. Non-disclosure would attract a maximum fine of S$10,000; and
(iv) the amendments to the CDSA in 2000 facilitates the sharing of information obtained under mandatory Suspicious Transaction Reporting, with our foreign agency counterparts.

The Money-changing and Remittance Business Act (MCRB) is Singapore's protection against money laundering through non-financial institutions. The robust licensing requirement under the MCRB restricts persons of dubious reputation or poor financial standing from entering the money laundering and remittance business. In addition, the obligation to report suspicious money laundering activity under the CDSA is a general one and extends to non-financial institutions such as money changers and remitters.

As alluded to earlier, it is widely believed that many terrorist activities are funded through a series of money laundering operations.[40] Terrorist organisations can thus adversely affect the integrity of the financial

[40] Speech delivered at the 7th Annual Conference and General Meeting of the International Association of Prosecutors in London.

systems. Various legislation such as the United Nations Act 2001, United Nations (Anti-Terrorism Measures) Regulations and the Terrorism (Suppression of Financing) Act ("TSFA"), are significant in Singapore's war against terrorists financing. These laws also give effect to the international conventions signed by Singapore, as with the proper statutory framework in place, Singapore is now in a position to negotiate with foreign countries.

2. Securities and Capital Markets Laws

The Securities and Futures Act 2001 ("SFA") is Singapore's legislative framework to regulate activities and institutions in the securities and futures industry. The SFA was the result of a fundamental re-examination of Singapore's approach to the supervision and development of the financial sector in 1997, including the shift in emphasis from a merit to a disclosure based regime.

The SFA embodies the new regulatory approach. It provides for a module licensing regime and aligns the regulatory requirements and business conduct standards across a similar class of activity. MAS officers are given wide powers to conduct supervision and investigations to carry out their regulatory role. The civil penalty regime that was previously applicable only to cases of insider trading was also extended to other forms of market misconduct.

The legislation has several significant implications, inter alia:

(i) It will make it easier to prove instances of market misconduct, such as insider trading and other market misconduct offences in court. This is because a civil lawsuit, which is won on the "balance of probabilities", can now be waged against the alleged offenders. In the past, only criminal action could be brought by the public prosecutors based on the more difficult process of proving the case "beyond reasonable doubt". This is an important change as the higher standard of proof in a criminal case of suspected market misconduct offences will not be brought to light;
(ii) Perhaps a more significant difference is the law now enables the securities regulator, the Monetary Authority of Singapore to complement the criminal penalty regime enforced by the Commercial Affairs Department. The Monetary Authority of Singapore can now take civil action against alleged market conduct offences instead of criminal action. It is expected that in time to come, this is where the legislative amendments in the SFA will pack a punch since it is the MAS, backed by the Commercial Affairs Department and the Attorney-General's Chambers which can readily marshal the resources and the know-how to take legal action; and
(iii) The new securities trading platforms brought about by globalisation and technological developments are brought into the fold of the regulation. The SFA for example, provides for a wide gamut of laws that include the provision of extra-territorial reach in the security and futures legislation. In this regard, the SFA provides that if the act is partly committed in Singapore and partly committed outside Singapore, or if the act committed outside Singapore, has a substantial and reasonably foreseeable effect in Singapore and if the act is an offence if it is committed in Singapore, the person who committed the act would be guilty of an offence.

The juxtaposition of these developments will enable Singapore to provide an effective yet nuanced approach to punish wrongdoers and further ensure that Singapore's securities markets operate fairly, efficiently and cater to the new challenges in the regulation of the capital markets.

3. Corporate Fraud

The comprehensive framework of control against corporate fraud is achieved in part through relevant legislation and as well as statutes. The offences described in the Companies Act for example, include all acts and omissions of directors and other officers of a company which are contrary to the law.

4. Reviews and Fresh Sentencing Norms

The gamut of laws in the legislative arsenal against economic crimes is periodically reviewed from time to time to ensure laws remain relevant. These include periodic reviews of the Penal Code, which adequately covers general scams and frauds. Where applicable, fresh sentencing standards are set to deter criminal misconduct. The Chief Justice of Singapore Yong Pang How for example, remarked in a criminal case involving credit card skimming, that new sentencing norms for computer crimes must be set to protect the public interest. The accused in that case, procured two others to swipe customers' credit cards through a device that captured data stored on the magnetic strips, and subsequently provided the information to a

counterfeit credit card syndicate. The accused could have been charged for cheating under the Penal Code, with a maximum imprisonment of 7 years. Instead, he was charged under the Computer Misuse Act for using the card-reading device. The offence carried a maximum sentence of 10 years imprisonment and a $50,000 fine.

B. An Effective Regulatory Regime

Much of the battle against economic crimes takes place at the frontline (e.g. financial institutions). An effective regulatory regime is thus as crucial. The Monetary Authority of Singapore (MAS), the regulator of banks and financial institutions plays a significant role to develop a regulatory environment that upholds soundness and safety while encouraging enterprise and innovation.

1. Money laundering

The MAS requires financial institutions to institute rigorous anti-money laundering procedures, such as the 'Know Your Customer" principle.[41] The MAS also issues directives and conducts regular on-site inspections to ensure that financial institutions have adequate control systems, processes and procedures to combat money laundering, terrorist financing and for the reporting of suspicious transactions.

An equally strong regulatory regime to monitor the alternative remittance systems, such as the money changing and remittance business is also necessary. The MAS regulates these businesses through the MCBA. Those who operate such businesses without licences face vigorous enforcement action by the CAD. There are also requirements for annual audits and record keeping to facilitate regulatory inspections and criminal investigations. This is reinforced by Guidelines on Prevention of Money Laundering issued by the MAS to money changing and remittance licensees.

Self-regulatory bodies like that of the law and accounting professions in Singapore, have also promulgated guidelines to report money laundering activities to prevent them from being targeted as intermediaries by money launders. The Law Society of Singapore for example, is currently reviewing its guidelines on anti-money laundering measures. The auditors role and responsibilities in relation to the prevention, detection and reporting of money laundering are also laid out in the Institute of Certified Public Accountants of Singapore's Statement of Auditing Practice. These proactive measures play a part in addressing the vulnerabilities that professionals, such as those in the legal and financial services, face in being implicated in money laundering activities.

2. Building Strong Pillars for Good Corporate Governance

The Singapore Government recognizes that high standards of corporate governance are needed in the financial sector to foster a strong risk management culture, better internal controls, and greater transparency. Good progress is being made towards this direction. The Government implemented several key initiatives in 2002 to improve corporate governance practices. They include:

(i) Formation of the Council on Corporate Disclosure and Governance (CCDG) to review accounting standards, corporate governance and disclosure issues. Established in August 2002, the CCDG comprises members from businesses, professional organisations, academic institutions and the government whose role is to catalyse and advance governance standards in Singapore. The Council prescribes accounting standards in Singapore in consultation with the Institute of Certified Public Accountants of Singapore. It also aims to strengthen the framework of disclosure practices, reporting standards and corporate governance, taking into account trends in corporate regulatory issues and international best practices.

One of the Council's recommendations was quarterly reporting, which is now required of listed companies with market capitalisation of S$75 million or more. Smaller companies have been exempted until 2005 when a review will be conducted. The International Accounting Standards were reviewed to make sure they were applicable in Singapore. Most were adopted as the Financial Reporting Standards (Singapore), and Singapore-incorporated companies had to comply with these starting 1 January 2003.

41 The MAS Notice 626 (Guidelines on Prevention of Money Laundering) to banks for example, takes account, inter alia, of the provisions of the CDSA and the FATF 40 Recommendations.

(ii) The Code of Corporate Governance ("the Code") for all listed companies to comply from financial years beginning on or after 1 January 2003 was put into effect on 1 January 2003. The Code is a critical milestone in strengthening Singapore's disclosure-based and corporate governance regime. The Code sets out principles and almost 70 best practices spanning four main areas of governance, namely, board matters, remuneration, accountability and audit, and communication with shareholders. The Singapore Exchange (SGX) Listing Manual requires all listed companies to disclose in their annual reports, their corporate governance practices with reference to the Code. The provisions of the Code are not mandatory and the emphasis is on self-regulation. Deviations from the Code have to be disclosed by companies. The emphasis is on compliance with the spirit rather than the form of the Code.

(iii) Proposed enhanced corporate governance standards for MAS-regulated financial institutions. In February 2003, MAS obtained feedback on corporate governance guidelines for Singapore-incorporated banks and direct insurers. The guidelines to be issued aim to further strengthen the independence of boards and set out the roles to be played by directors and chief executive officers in relation to their duties towards shareholders, depositors and policyholders.

(iv) More recently, in January 2003, an educational institution had set up a centre to contribute to the research and promotion of best practices in corporate governance and financial reporting. The National University of Singapore Business School set up the Corporate Governance and Financial Reporting Centre to further entrench high standards among corporations in Singapore.

(v) Companies in Singapore are regulated by the common law. In addition, listed companies are subject to such pronouncement of the Singapore Exchange as are found in the Listing Manual. Whilst the Manual does not have legislative force, the Securities and Futures Act makes it obligatory for listed companies to comply with provisions and other exchange rules. Compliance is enforced by means of an appropriate injunction applied for by the MAS or Singapore Exchange. The legal and regulatory regimes are very much in line with those of developed countries.

Singapore's efforts have not gone unrecognised. Singapore was ranked top in Asia for transparency in the World Competitiveness Yearbook 2002. Credit Lyonnais Securities Asia and PERC, both of whom regularly monitor the corporate governance climate, have accorded Singapore the highest ratings in Asia. An Ernst & Young survey of annual reports of 30 large locally listed companies in August 2003 found that all had generally complied with the principles set out in the Code of Corporate Governance. For instance, all 30 companies surveyed have a monitoring committee and had appointed an independent director to be the Chairman of the audit committee as recommended by the Code.[42]

To battle online credit card fraud and e-payment system related fraud, the MAS has developed guidelines to assist financial institutions in recognising and understanding the dynamism of web application and computer and Internet vulnerabilities. The guidelines are designed to promote sound processes in managing technology risk and the implementation of security practices in line with international best practices. The provisions in the MAS Internet Banking Technology Risk Management Guidelines for example, require that credit card validation numbers specified on the credit card should be used for online credit card transactions. Other related regulatory initiatives by the MAS include the Security Guidelines for Mobile Banking and the Payments and Technology Risk Management Guidelines for Financial Institutions.

3. Private Industry Regulation.

Private industry regulation is an equally effective and complementary regulatory platform that complements the efforts of the government. In the battle against credit card fraud for example, Visa International, has set 10 new security directives for online credit card transactions by its member financial institutions and merchant partners to combat online fraud and boost consumer confidence in e-commerce. The rules include keeping security systems up-to-date, encrypting stored data accessible from the Internet and using and regularly updating anti-virus software. Errant Visa merchant members may be liable to fines, restriction of their credit limit through the Visa network or termination of their Visa membership.

An effective regulatory regime requires the amalgamated efforts of relevant government and private agencies to work together within a structured platform. A case in point is the Singapore Police Force's membership in the Alliance for Cyber-crime Experts (ACE), a network of agencies that comprise

[42] Speech by Mr. Tharman Shanmugaratnam, Acting Minister for Education, at the Best Managed Boards Award, on Wednesday, 19 November 2003, at the Regent Hotel, Singapore.

government bodies like the Info-Communication Development Authority and various interested private regulatory parties such as the Internet Service Providers. The ACE members are in constant deliberations on ways to prevent economic crimes perpetuated via cyber space, including Internet credit card fraud and related epayment and e-banking networks. The ACE is a significant player in the promulgation of rules and regulations concerning the 'faceless' nature of the e-revolution. Quarterly meetings are held to ensure that the law enforcement agencies are constantly updated with the latest state-of-the-art technology in the market and possible countermeasures to circumvent its shortcomings in law enforcement.

C. Vibrant and Proactive Institutional and Enforcement Capability

The rationale for an effective, vibrant and proactive institutional capability and policing to combat economic crimes in Singapore was encapsulated by the Singapore Minister of Home Affairs, Mr Wong Kan Seng at the opening of the International Economic Crime Conference in Singapore in 2001:

> "As Singapore develops as a major financial hub, the development of our capital market, banking and financial sectors and electronic commerce is likely to bring about increasingly sophisticated commercial crime. An effective enforcement system is crucial to protect the integrity of our financial market and business environment."

To proactively surmount the imminent challenges posed by the rising sophistication of economic crime, the Singapore Government created a single premier economic crime investigative authority in 2000. The Commercial Affairs Department, then under the Ministry of Finance, was merged with the Commercial Crime Division of the Police. This pooled the scarce resources and the enforcement and intelligence capabilities of the two crime fighting agencies. It positioned the new Commercial Affairs Department ("CAD") under the Singapore Police Force as the de facto specialised serious economic crime investigative authority in Singapore and the "premier investigative authority on white-collar crimes in Singapore."[43]

The reconstitution of CAD was complemented with a revamp of the Attorney-General's Chambers in 2000 to further enhance institutional capacities to combat economic crime in Singapore. Specialised units within the Attorney-General's Chambers were set up to handle the prosecution of complex crimes, including economic crimes and money laundering. The Financial and Securities Directorate was one of the several units set up. The Deputy Public Prosecutors in the Directorate are specialist prosecutors in dealing with serious commercial offences. The state prosecutors involved also play a more hands-on role advising police officers from the start of the investigations until the cases reach the courts. The relationship has significantly enhanced the police's capabilities to unravel the layers of corporate web usually spun by white-collar crooks to cover their tracks.

The reconstituted CAD has become an even more effective economic crime fighting unit. It has introduced several features to proactively ensure its operational effectiveness in dealing with economic crimes and up-keeping the integrity of Singapore's financial markets and business environment. Some of them include:

(i) Structurally, a streamlined organisation structure was created. Dedicated divisions, comprising highly specialised units to investigate corporate fraud, security fraud, money laundering, credit card fraud and other serious economic crimes were created. The streamlined organisational structure also meant that a central agency for the receipt and analysis of Suspicious Transaction Reports (STRs), investigating of money laundering and identifying and seizing proceeds and assets of crime was created. The quantity and quality of STR information has since increased.[44] The last three years have also seen the successful conviction of several money laundering and securities fraud offences. The new structure has also effectively tackled other serious economic crimes, such as credit card fraud.

(ii) The CAD embarked on a highly specialized training programme for its investigators, resulting in highly trained specialist in various corporate and financial fields. Joint training programmes with world-renowned economic crime enforcement agencies and industry leaders have become an

43 The Business Times 18 September 1999.

44 Speech delivered by Mr Tan Siong Thye at the 7th Annual Conference and General Meeting of the International Association of Prosecutors in London.

integral part of the training diet. Training via video-conferencing with specialist agencies around the world has also become a regular feature in the Department's module. A case in point was a training session with AUSTRAC in August 2003. The calibrated training programme has produced a core of highly trained and desired anti-economic crime specialists - in the past three years, CAD officers have increasingly become regular invitees to share their experiences at world renowned economic crime forums.

(iii) The Department has introduced investigation turnaround times as one of its key measurements of effectiveness. In a wide-ranging media interview in July 2003, Mr Tan Siong Thye, the Director of the CAD publicly heralded the 3 to 9 months investigation turnaround times.[45] Eighty-five percent of the cases investigated by the Department already meet the timelines and many of them are completed well within the prescribed turnaround time. A rogue securities dealer who had posted false information on the webpage of a financial portal to manipulate the share market was for example, prosecuted within 10 days after the offence was reported. The Department plans to reduce the turnaround time-line even further to improve its enforcement prowess and professionalism against economic crimes.

(iv) The Department embarked on a programme to proactively leverage on the progress of information technology to enhance the operational capabilities of the police in combating economic crimes. There is an active use of technology, such as computerised investigation, case management and intelligence systems. At the operational level, technology is deployed extensively to aid complex economic crime investigation. A case in point is the introduction of an IT based system to automatically scan trades to help investigators pick up unusual patterns in securities fraud investigation. The system has been effective in overcoming the difficulties and time in analyzing hundreds and thousands of stock trades in investigations.

The Department has also spearheaded processes to effectively integrate info-communication technology into key business processes. A case in point is the deployment of info-communication solutions for business processes like *ex parte* applications to the Subordinates Courts and consultation with the Attorney General's Chambers. These processes have contributed effectively to improving investigation turnaround times.

D. A Sharing of Responsibilities and Partnership

Swift law enforcement action, effective government measures and legal provisions cannot be the only solution to triumph in the battle against economic crime decisively. Collaboration and partnership, particularly with the business and commercial fraternity is a crucial bedrock. The Singapore Minister of Home Affairs aptly reiterated this at the opening speech at the International Economic Crime Conference in Singapore. He advised "... as with all crime, Singapore's commercial and financial integrity cannot be safeguarded by dependence only on appropriate laws and effective enforcement. It must be a joint effort with the community. The Singapore Police Force will build and leverage existing community links to combat economic criminals."

The main thrust of Singapore's police-community partnership in the battle against economic crime is based on the concept of mutual help. The public and business community is persuaded and encouraged to take personal responsibility, both individually and in partnership with others in safeguarding themselves or their business with the advice and assistance of the police. It is based on the principle that prevention is a shared responsibility and crime prevention measures taken by the community and business entities can limit and reduce opportunities for the commission of crime. This philosophy drives the key message that crime is prevented if the opportunity is denied or delayed. The message is put into operation through a robust institutional structure. This includes:

(i) The National Crime Prevention Council (NCPC), set up to act as a catalyst, advisor and partner to mobilise the support of groups, organisations and individuals from the community to work closely with the Police to prevent crime. It is committed to promoting public awareness of and concern about crime and to propagate the concept of self-help in crime prevention. The Council comprises influential representatives from the commercial and industrial sectors, as well as from the public sector and the Singapore Police Force. Working closely with the police, the council holds regular

[45] Business Times dated 14 July 2003 "It's all about timing, says CAD chief".

crime prevention campaigns, as well as regular exhibitions, seminars, workshops and talks on crime prevention.

(ii) At the organisational level, various departmental and divisional structures within the Singapore Police Force have been formed with the primary task to raise awareness of the community to the significant role it plays in crime prevention and safeguarding itself. These units embark on an extensive programme of community oriented and crime prevention activities, including crime prevention talks and exhibitions.

(iii) There has also been a shift in mental models of the police. Apart from its enforcement responsibilities for example, the officers in CAD also place greater emphasis on their roles as facilitators in the pre-emptive and problem solving approach to countering economic crimes. Through this community engagement approach, CAD serves as partners of the people and the business community instead of solely being a white-collar crime investigative agency.

1. Partnership with the Business Community

Given the complexities involved, a partnership with the business and financial community is extremely imperative in the area of prevention, education, exchange of information and policy development. With the community focus concept and structures firmly in place, and strategic networks established with public and private bodies, it becomes possible to leverage on their cooperation and expertise in economic crime prevention. Against this backdrop, the Singapore Police Force and the CAD initiated various initiatives to engage and mobilise the business and economic community on several fronts. These include:

(i) Industry-wide symposiums and conferences to exchange ideas, promote a culture of awareness about serious economic crimes and propagate the concept of self-help amongst the business and corporate community. The Singapore Police Force and the CAD regularly organize symposiums on economic crimes. Participants from the government and private industries such as the legal, banking, financial, economic, service and retail fraternities come together to learn and share their experience. The industry experts dissect a myriad of issues including, lessons on corporate governance, internal controls, accounting and auditing at these forums.

The CAD has organised at least 4 major industry-wide symposiums on corporate governance, e-commerce fraud and economic crimes, as well as money laundering since 2001. An international economic crime conference was also organized in which more than 500 public and private sector participants from more than 33 countries the world over, came together to focus on economic crime trends and prevention initiatives. These initiatives underscore the importance of good corporate governance that Singapore places in its holistic approach in controlling economic crime. They form part of the larger broad based efforts by public and private sector institutions in Singapore to raise awareness among the corporate sector of the value of good corporate governance.

(ii) Regular dialogue sessions and open lines of communication with the industry serve an effective institutionalised platform to promote industry education and exchange of information. CAD's Suspicious Transaction Reporting Office (STRO) conducts regular outreach programmes with members of the business community as part of its strong anti-money laundering regime initiatives.[46] The dialogue sessions help engage and dispel misconceptions that the business community might have on suspicious transactions reporting. Workshops with members of the community on money laundering and terrorist financing are also conducted. STRO has also set up a dedicated hotline and email address to assist members of the business community who may encounter difficulties or problems dealing with suspicious transactions. These programmes have created better awareness among the members of the business community on detecting, reporting and preventing money laundering.

(iii) Leveraging on the cooperation and expertise of the industry via formal arrangements is equally imperative. For instance, the CAD is a member of the Credit Card Security Group, a task force comprising a consortium of representatives of various banks and credit card issuers in Singapore. The Group meets on a monthly basis to discuss development of strategies, programmes and counter-measures against credit card fraud in Singapore. The Group also supports the CAD in the joint education programmes for credit card merchants, businesses and customers to robustly

46 The business community includes all financial institutions under the purview of the MAS. Banks, insurers, fund managers, accountants, lawyers, money-changers are also involved in the business process and are part of the business community targeted by the CAD.

promote credit card fraud prevention measures. The close and symbiotic task force arrangement has been a crucial pillar in keeping a tight lid on the credit card fraud situation in Singapore.

Investigation and prosecution of economic crimes involving an element of market or business practices, such as insider trading, sometimes require the use of expert testimony in prosecutions. In marking the official appointment of CAD's Panel of Experts in 2002, the Director of the CAD, Mr Tan Siong Thye said, "it is imperative that in the collaboration with the business community in this area, an official panel of experts be formed to enhance the stature of the expert's role". The CAD Panel of Experts comprises a cohort of 25 carefully selected private sector business individuals and captains of industry who are readily available to assist the police in investigation and prosecution of serious economic crimes such as insider trading or corporate fraud.

To meet the challenges of economic crimes in the 21st century, the Singapore Police continue to involve the community and fine-tune the system of community engagement. The existing community engagement infrastructures will be periodically reviewed and enhanced to better meet the increasing intricacies of economic crime in the years to come. The CAD will also continuously expand the network of strategic alliances and partnerships with private organisations, trade associations, etc. to control economic crime. This commitment is aptly embodied in the Singapore Police Force's crime prevention slogans, 'crime prevention, a shared responsibility' and 'low crime does not mean no crime'.

E. International Cooperation

Needless to say, international cooperation is a necessary tool in the holistic approach to deal with serious economic crime. The importance of cross border co-operation was succinctly encapsulated by the Singapore Minister for Home Affairs Mr. Wong Kan Seng during his opening remarks at the International Economic Crime Conference in Singapore in 2001. Mr. Wong said, "To fight crime effectively on the local, regional and global level, we need the co-operation of all our partners from foreign enforcement agencies...As criminals leverage on the new economy initiatives to perpetrate their criminal acts, so must we be ahead of the most sophisticated of them. And to do so, it is vital that we share and learn from one another, unleashing the synergies of our collective intellectual resources and experience".

The Mutual Assistance in Criminal Matters Act was passed in 2000. The Act empowers the Singapore authorities to request foreign agencies to perform a variety of investigative tasks to combat serious crime. These include gathering crucial evidence, recovering the proceeds of crime and carrying out searches and raids in foreign countries. It would also make it easier for Singapore to provide similar help to foreign authorities.[47]

The Act positions Singapore as a global player in the battle against economic crime that has taken an international dimension. The Singapore Minister of Law heralded the Act as "Singapore's commitment to be part of the wider network of cooperation in combating crime on a global scale".[48] Such cooperation will focus on combating serious crimes such as money laundering, securities fraud and serious commercial fraud. The Act is essentially an enabling legislation. It also does not affect the close ties that the Singapore Police have already with its foreign counterparts and Interpol in tackling cross-border crimes.

Mutual assistance with foreign counterparts is a necessary and important component in Singapore's fight against economic crimes. Singapore is an active participant in international bodies which have been set up to fight money laundering worldwide. Besides being an active member of the Financial Action Task Force (FATF), Singapore is also a member of the Asia-Pacific Group on Money Laundering, which promotes the adoption and implementation of internationally accepted anti-money laundering standards. Singapore's financial intelligence unit, STRO develops close working relationships and establishes formalised frameworks for the sharing of information and intelligence. STRO is actively involved in the negotiations of Memorandum of Understanding ("MOU") with several foreign countries. Singapore's membership in the Egmont Group in particular, highlights its willingness to work in tandem with its foreign counterparts in exchanging information and intelligence with regard to money laundering and terrorist financing matters. In the area of securities fraud, the provisions relating to mutual assistance to foreign regulatory authorities in

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47 The Act however does not provide for foreign investigations that are inter alia, not considered a crime under Singapore's laws or when the investigation is aimed at prosecuting someone based on his race, religion, sex or nationality.
48 Straits Times dated 23 February 2000.

the Securities and Futures Act as well as MOUs, that the MAS has entered into with regulators from major financial centres, would also facilitate the enforcement process against securities fraud.

IV. CONCLUSION - STRIKING A BALANCE

The results of the Singapore's proactive strategies to put a lid on crime have not gone unnoticed. The crime rates in Singapore have consistently been relatively low and perhaps more telling, is the negligible impact crime has had on the business environment in Singapore. Indeed, the World Global Competitiveness Report 2002-2003 ranked Singapore and Finland as the top two of 80 countries around the world, where common crime had the least impact on business cost.

We cannot pretend that solutions and countermeasures against economic crime are meant to be a panacea. There is no ultimate weapon against fraud and the war against fraud is one that has no armistice. Criminal activity of any kind usually stems from the belief that it is possible to beat the system. What we can do is to have the systems, the structures, the processes and the will and determination to protect the interests of the honest law abiding citizens or economic community, and to make it difficult for criminals who turn to crime.

In the final analysis however, policies and strategies vis-a-vis control of economic crimes recognise the need to balance enterprise and accountability - that energy against economic crimes should not be at the expense of imposing impractical burdens on commerce and industry. It is a matter of "fine tuning and striking a balance," which the Director of the CAD aptly espoused in his speech at the International Symposium on Economic Crime in Cambridge:

> "The challenges before us today are probably greater than ever before. The public perceives white collar crime to be of growing concern; consumers demand greater protection from fraudsters whilst at the same time want to maintain their privacy online; law enforcement asks for stronger legislation to fight increasingly sophisticated criminals; the international community is actively seeking mutual assistance in criminal investigations; the private sector asks not to be disadvantaged by burdensome new laws that might leave them behind in the global market place. There is a need to fine tune and strike a balance between the demands of various groups in our efforts to seek solutions to the new criminal trends and threats that we face".

ECONOMIC CRIME IN A GLOBALIZING SOCIETY: ITS IMPACT ON THE SOUND DEVELOPMENT OF THE STATE - AN INDIAN PERSPECTIVE

*Deepa Mehta**

I. INDIA: THE LAND AND THE PEOPLE

India is a vast sub-continent covering an area of 3, 287,590 sq. km. It extends from the snow covered Himalayas in the north to the tropical rain forests in the south. It is the seventh largest country in the world. It is surrounded by water on three sides: the Arabian Sea on the west, the Bay of Bengal on its east and the Indian Ocean on the south. Neighbouring countries are Pakistan on the northwest, China, Nepal and Bhutan on the north and Bangladesh and Myanmar on the east. India is a federal republic with its national capital in New Delhi. Administratively, it is divided into 28 states and 7 union territories. It is very densely populated with over 1050 million or 1.05 billion people. The national language is Hindi but there are 14 other official languages. Likewise, about 80% of the population is composed of Hindus and others are Muslims, Christians, Sikhs, Buddhists, Jains, Parsis, etc.

On the economic front, India has traditional village farming as well as modern agriculture, handicrafts as well as a wide range of modern industries and a multitude of support services.

In recent years, government controls have been reduced on imports and foreign investment and the growth rate since 1990 has been 6%. Although, poverty has been reduced considerably, overpopulation is still a major handicap and about a quarter of the population is still too poor to be able to afford an adequate diet. Despite that, India has a large number of well-educated people skilled in the English language and is a major exporter of software services and software workers. In fact, the information technology sector leads the strong growth pattern.

India is a Union of States and is governed by a written Constitution, which came into force on 26th November 1949. As I mentioned earlier, India consists of 28 states and 7 union territories. According to the Constitution Parliament can make laws on certain subjects for the whole or any part of India and this is known as the Union List. Similarly, the Legislature of a State can make laws for the State and this is known as the State list. There is also a third list known as the Concurrent list where both the Parliament and the states can legislate. The 'Police' and 'Public Order' are both in the State List but 'Criminal laws' and 'Criminal procedure' are in the Concurrent List. As a result, the Indian Parliament has enacted the basic criminal statutes, namely, the Indian Penal Code, Criminal Procedure Code and Indian Evidence Act but 'Police', being a State subject, is raised and maintained by the State government. Each State or Union Territory has a separate police force. In addition to the state police, the Central government has set up certain central investigating agencies, including the Central Bureau of Investigation. Established on 1 April 1963, and evolved from the Special Police Establishment established in 1941, it is a premier investigative agency of the state government and can take up cases falling within the jurisdiction of the States with their consent. Other investigative agencies are the Narcotics Control Bureau, the Enforcement Directorate, the Central Board of Direct Taxes and the Central Board of Customs and Excise, etc. These agencies investigate criminal cases falling in the ambit of special statutes being administered by them and are empowered to launch prosecutions.

Against such a background, the New Year has heralded an even greater increase in the GDP of the country. The headlines in the Hindustan Times on 1st January, 2004 were 'All sectors on fire, GDP grows 8.4%'. The Times of India stated 'Economy breaks 8% barrier'. Agriculture has grown at 4.1%, manufacturing has clocked 7.3% and services have grown at 9.6% according to data released by the Central

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Statistical Organization. Economic liberalization in India, which commenced in 1991 "has come to stay" as benefits of an open economy have started percolating. Economic liberalization and globalization have opened up the prospects of regional economic integration with the extended neighbourhood and the opening up of markets. However, it has also brought in its fold opportunities for white-collar criminals to manipulate and benefit from business expansion, particularly in the field of financial and capital markets. Lack of understanding and expertise in these new spheres of crime has made it more difficult for government and criminal justice agencies to control and suppress such economic crime.

II. CHARACTERISTICS OF ECONOMIC CRIME

It is important in the first instance to understand the nature of economic crime. Economic or white-collar crime, as it is generally referred to, is a crime committed by a person of a certain social status in the course of his occupation. The economic crime occurs as a deviation from the violator's occupational role. Also, most of the laws involved or violated are not part of the traditional criminal code. Such crimes are corruption, corporate fraud, public fraud, tax evasion, goods smuggling, stock manipulation, currencies forgery, credit card fraud, environmental crime, intellectual property infringement and the more recent phenomenon of cyber crime.

These crimes are different from traditional crimes in the characteristics of their objective and modus operandi. The traditional criminal steals small sums of money and often uses brute force and conventional tools to achieve his aim. On the contrary, a criminal committing an economic crime steals large sums of money and employs technology and communications to carry out unlawful commercial transactions, disturb databases or orchestrate massive frauds. His victims are ignorant and naïve and often remain unaware of the fact that they have been cheated.

Another characteristic of economic, commercial, corporate or white-collar crimes is that they are often perceived as 'good business': and good business often requires 'cutting corners'. Legal violations by corporations are often viewed as part of the business system, much like industrial spying or psychologically suggestive marketing techniques. These activities are considered as an extension of the capitalist system based on profit and a technical adherence to the letter rather than the spirit of the law.

Such crimes are, however, very costly for our society. In contrast to conventional crimes, which affect specific individuals, economic crimes affect society as a whole. For instance, false advertising induces the public to invest in products that do not have the desired effect. Unsafe drugs, pesticides and food additives affect the health of thousands. Exposure to industrial hazards such as unsafe equipment and poisonous materials and emissions have an adverse effect on workers' longevity. That is because many forms of economic crime are relatively invisible, compared with violent crime, for example. The effects on society of economic crime are hidden as public fear and concern are heightened in cases that affect personal security more directly.

A significant proportion of transnational organized crimes assume the nature of global economic crime. Proceeds of transnational crimes such as drug trafficking, extortion, corruption, tax evasion, arms smuggling, terrorism, and fraud have to be laundered. The international economic threat, posed by Global Organized Crime, in an increasingly global economy is among the major "new" threats to national security. Global Economic Crime does not just affect a select group of financial institutions or regional areas; it affects international financial networks and economies at a national level. Laundering billions of dollars in organized crime money worsens national debt problems because the large sums of money are then lost as tax revenue to that country's government. Global Organized Crime can have a damaging effect on political structures, especially fragile democracies and developing economies. As people feel that the government is powerless to stop organized crime, they turn to crime leaders for protection and political institutions begin to deteriorate.

Economic crimes have mushroomed in many countries, especially those that are in the process of economic, social or political development. A number of difficulties arise in the investigation of such offences. The first is that of definition: for instance the characteristics or constituents of 'illegal monopolies' or 'manufacture of unsafe products'. The second is the determination of responsibility: whether it is that of the corporation or the individuals within it. Thirdly, it is often very difficult to prove the intent to commit a crime. Lastly, and perhaps, most importantly, the public, although it is becoming increasingly aware of the

nature of such crimes, is largely apathetic, and even if in some cases it is concerned, is unable to put pressure on the government leaving the issue to a few consumer protection groups.

Cooperation among Global Organized Crime groups has increased as restrictions have lessened between international borders. These foreign havens for criminals and their assets have made it increasingly difficult for Law Enforcement to trace illegal profits; gather evidence on the criminal leaders; and identify and contain criminal groups. These global networks allow organized crime groups to greatly increase the profits of their operations and their methods of evading local governments as they share information, skills, costs, market access and relative strengths.

Financial transactions, while being perfectly legitimate, are extremely complex and involve the financial systems of many countries. Financial markets operate with speed due to modern communications and electronic data processing and create an impression of impropriety. Caution has to be exercised in regulating financial and economic activities in such a way that they foster free competition and do not stifle it through over regulation. In other words, a balance has to be struck between the regulatory and legislative systems.

III. STATE OF ECONOMIC CRIME IN INDIA

Against this backdrop, let us now focus on the state of economic crime in India and its effect on the sound development of the State. I have classified economic crime in India into three groups viz.:

(i) Traditional economic crime such as corruption, smuggling, invoice manipulation, bogus imports;
(ii) Emerging technological economic crime such as credit card frauds, counterfeiting, cyber crime;
(iii) Money laundering and hawala through which proceeds of transnational organized crime are transmitted abroad.

A. Group - I

1. Corruption

Corruption is an economic crime that is a primary reason for low achievement in the poverty alleviation efforts of the nation. Greed and poverty are the two basic reasons for corruption. It occurs in many countries but it has increased substantially in India in recent years. Corruption has a very upsetting impact as it increases injustice and violates human rights. Corruption arises due to monopoly, power and discretion without accountability. Too many laws, rules and formalities perpetuate corruption and provide opportunities for corrupt practices among government officials. The demoralizing fact is that many in high places remain untouched. In 2001, 2990 cases were registered by anti-corruption departments in India and property recovered or seized was of the value of 84000 million rupees.

Mr. N. Vittal, former Central Vigilance Commissioner of India has stated that corruption in India is anti-national involving the transfer of money through 'Hawala' or underground banking and money laundering; corruption is anti-poor; and corruption is anti-economic development. Measures for combating corruption are simplification of rules and procedures, transparency and creation of public awareness, and an effective prosecution and punishment system.

2. Smuggling

Smuggling, which consists of clandestine operations leading to unrecorded trade, is one of the major economic offences affecting India. Though it is not possible to quantify the value of the contraband goods smuggled into this country, it is possible to have some idea of the extent of smuggling from the value of contraband seized which is indicated in the table given below:

Year	Value of the Goods Seized
1988	443 Crores
1989	555 Crores
1990	760 Crores
1991	775 Crores
1992	535 Crores
1993	388 Crores
1994	535 Crores
1995	631 Crores

The high point of smuggling was in 1991 when contrabands worth Rs. 775 crores were seized. Introduction of various liberalization measures such as the gold and silver import policies in 1992-93 have had their impact on customs seizures in that the total value of seizures came down by 30% in 1992.

A look at the seizures of important commodities seized from 1991 to 1996 indicates that gold and silver which accounted for 44% of the total seizures prior to liberalized import policies came down to 21% after liberalization and have been falling further. On the other hand, the seizure of commodities like electronic goods, narcotics, synthetic fabrics, and foreign currency has been rising. In 1990, gold occupied the top position amongst smuggled items followed by silver, electronic items and narcotics. In 1995, however, narcotics occupied the number one position followed by gold, foreign currency, electronics and synthetic fabrics.

Year	1990-91	1991-92	1994-95	1995-96
Gold	198.8	188.5	55.4	50.8
Silver	146.6	147.7	3.6	0.54
Narcotics	25.1	21.8	54.3	77.94
Electronic items	55.5	23.1	51.2	38.0
Foreign currency	7.7	10.8	27.4	40.2
Indian currency	6.5	5.6	6.6	5.6
Synthetic fabrics	4.8	2.0	2.4	12.9
Watches	3.2	6.2	3.3	3.9

Smuggling, in its broader connotation also includes drug trafficking, smuggling of migrants and trafficking in persons.

3. Invoice Manipulation

This is another variety of economic crime affecting India. In fact all developing countries are victims of invoice manipulations. The term means invoicing of goods at a price less or more than the price for which they were actually sold or purchased. Such transactions are collusive between the trade partners. Both are guilty of fabrication of false documents and records and violate national laws with a view to cheating customs and tax authorities.

By under-invoicing, the value of the goods is lowered which would mean lesser payment of import duties. By over-invoicing the value of goods is shown higher which would mean higher out-flow of foreign exchange from the country. By these methods, the country is depleted of its revenues and foreign exchange earnings.

The practice of invoice manipulation has international ramification and adversely affects the economy of the victim country. A number of difficulties are experienced in the investigations of invoice manipulations particularly in retrieving information such as documents like “Bills of Entry, “Shipping Bills,” “Bills of Lading,” “Invoices,” “Letters of Credit,” departure schedules of sailing vessels, etc. despite their being public documents. International cooperation is therefore needed to curb this menace.

4. Bogus Imports

Several cases have come to notice in the recent past, which indicate that there is leakage of foreign exchange through the device of bogus imports. The modus operandi is quite simple. The operator opens a current account in India in a bank authorized to deal in foreign exchange. He usually poses as a small-scale industrialist and produces forged certificates/ documents to establish his credentials. His partners abroad prepare a set of export documents such as an invoice, bill of lading, and bill of exchange and send them through their foreign bank branches to Indian banks for collection. On receipt of these documents, generally on collection basis, the importer’s agent deposits the amount in Indian rupees in his bank’s current account and the bank remits the foreign exchange. No goods, of course, are ever imported and the country loses valuable foreign exchange.

B. Group – II

1. Cyber Crime

The use of computers has grown exponentially during the last few years. Financial networks, communication systems, power stations, modern automobiles and appliances all depend on computers, and these computers can record withdrawals, deposits, purchases, telephone calls, usage of electricity, medical treatments, driving patterns and a lot more. It is therefore not surprising that computer technology is involved in a growing number of crimes. These are generally taken to include theft of computer services, unauthorized access to protected computers, software piracy and the alteration and theft of electronically stored information, extortion committed with the assistance of computers, obtaining unauthorized access to records from banks, credit card issuers or customer reporting agencies, traffic in stolen passwords and transmission of destructive viruses or commands. With the physical growth of the Internet over the past few years, a number of new generation crimes affecting the LAN, WAN and Internet such as theft of communication services, information piracy, forgery and counterfeiting, dissemination of offensive materials, stalking, extortion, electronic vandalism and terrorism, sales and investment fraud, etc. 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.

Computer crimes are now a matter of growing concern. Traditional barriers to crime faced by criminals are being obliterated by digital technologies. In a digital world, there are no state or international borders; customs agents do not exist. Bits of information flow effortlessly around the globe, rendering the traditional concept of distance meaningless. In the past, the culprit had to be physically present to commit a crime. Now cyber crimes can be committed from anywhere in the world as bits are transmitted over wires, by radio waves or over satellite. Similarly, in the past, companies protected their secrets and bank funds in locked file cabinets and vaults in buildings surrounded by electronic fences and armed guards. Now this information is located in one computer service that is connected to thousands of other computers round the world. Anyone of these networks or even a phone line into a company's main computer is a transnational invitation to crime. Crime in the digital world has another advantage for crooks over "atom-based" crime: electrons and bits have no effective mass or weight. Robbing a bank or an armoured vehicle of cash would pose problems of transportation and storage whereas transfer of money poses no such problems in the digital world.

Information technology is redefining the ways of conducting business and communication, and is shaping the interaction between business and consumers for sale and purchase of goods and services. Traditional commerce has become electronic commerce. It involves selling and purchasing of information, products and services over communication networks. It encompasses a wide array of commercial activities carried out through the use of computers, including online trading of goods and services, electronic fund transfers, online trading of financial instruments and electronic data transfers within and among companies. For purchasing goods or services, a customer is required to pay. While in a traditional business it is done through cash or cheque, in E-business, it is done through digital cash. However, the growth of the electronic mode of conducting business hinges on assuring the consumers and the business that their use of communication network services is secure and reliable, that their transactions are safe, and that they will be able to verify important information about the transacting parties. Security is indispensable to E-commerce. Authentication, integrity and confidentiality are the three issues associated with electronic communications.

Cyber crimes have become a reality in India too. Cyber hackers have broken into and maliciously altered the content of several computer websites, including that of the Ministry of Information Technology and of Parliament. Indian Airlines was subjected to fraud of several millions of rupees by tampering with the computerized booking records. Computer hackers also got into the Bhaba Atomic Research Centre Computer and extracted some data. Some computer professionals, who prepared the software for the M.B.B.S. examination, altered the data and gave an upward revision to some students in return for a hefty fee. A big loss was caused to a bank where the computer records were manipulated to create false debts and credits and in another bank false bank accounts were created. A telephones official manipulated computer terminals by reversing the electronic telephone meter systems, thereby allowing some companies to make overseas calls without charges. In a case of software piracy some of the employees stole a copy of the source code and in another educational software was stolen.

Law enforcement agencies today face a number of challenges in the investigation of such cases. These can be categorized as technical, legal and operational challenges.

Technical challenges:

When a hacker disrupts air traffic control at a local airport or a child pornographer sends computer files over the Internet, or when credit card numbers are stolen from a company engaged in e-commerce, investigators must locate the source of the communication. They have to trace the 'electronic trail' leading from the victim to the perpetrator in almost every case. To succeed in identifying and tracing global communications investigators have to work across borders, not only with one's counterparts but also with industry to preserve critical evidence such as log files, e-mails, etc. before it is altered or deleted. Besides, while less sophisticated cyber criminals may leave electronic 'fingerprints' more experienced criminals know how to conceal their tracks in cyber space. Internet telephony, strong encryption, and wireless and satellite communication and other technological advances have made it possible for international criminals and terrorists to target victims in unprecedented ways.

(i) *Legal challenges:*

Deterring and punishing computer criminals requires a legal structure that will support detection and prosecution of offenders yet the laws defining computer offences, and the legal tools needed to investigate criminals using the Internet, often lag behind social and technological changes, creating legal challenges to law enforcement agencies. In India, however, the Information Technology Act, 2000 has been enacted in pursuance to the General Assembly of United Nations resolution A/RES/51/162, dated the 30th January 1997.

The Information Technology Act elaborates upon digital signature; electronic governance; attribution, acknowledgement and dispatch of electronic records; secure electronic records and secure digital signatures; regulation of certifying authorities; digital signature certificates; duties of subscribers, penalties and adjudication; the cyber regulations appellate tribunal; offences; and non-liability of network service providers in certain cases, etc. It specifies that Electronic Signatures will be valid and legally enforceable only if the e-transaction is done through "public key cryptography". 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.

(ii) *Operational challenges:*

There is a need to have high tech crime units that respond to quick investigation and assist law enforcement agencies faced with computer crimes. The police have to be made cyber sensitive through adequate training and supported by an expert group with specialized knowledge of computer forensics.

Just as investigators followed the trails and physical signs of robbers, modern investigators have to understand and follow a criminal's paper trail, or cyber trail, in the form of invoices, communications, and other records that leave behind evidence of the criminal's passing. A cyber trail is both an extension of crime scenes in the real world, and a digital crime scene in itself. If a crime occurs in the physical world and there is a computer with network access at the crime scene, investigators have to search the computer and network for related digital evidence. Similarly, if a crime is first witnessed or recorded on a network, investigators have to collect all relevant digital evidence on the network and, if possible, determine the physical locations of the primary computers involved and treat those locations as crime scenes.

The investigation of computer crime requires a team effort of police, forensic scientists, lawyers and programmers or system administrators. Police are generally expected to know how to oversee an investigation, but may not know much about computers and computing and thus not know what evidence to look for. Programmers and system administrators may know a great deal about computers, networks, and how they work, but nothing about legal procedural requirements regarding the preservation of evidence. Forensic scientists may know how to deal with evidence but, like the police, may not know what to look for

when dealing with digital evidence or how to apply real-world forensic science methods to it. Lawyers may know about the law of evidence but not much else. But today, when cyber crimes are fast increasing, the police have to learn how to handle digital evidence, use it to generate investigative leads, and to know when to call in an expert for assistance. Programmers and system administrators, who handle digital evidence, need to use it to generate investigative leads, and to know when to call in police for assistance. Forensic scientists have to become intimately familiar with every aspect of digital evidence so that they can process it to support an investigation. Finally, lawyers of both prosecution and defence, have to learn to dig up digital evidence, defend it against common arguments, and determine whether it is admissible. Together, this team will then be able to conduct an investigation of a computer crime, look for evidence, find it, and treat it so as to preserve its admissibility once it is found.

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 the CBI associated in this exercise share their expertise with the State police forces through regional training programmes held periodically.

2. Counterfeiting

Currency counterfeiting is an organized white-collar crime, which has assumed serious proportions globally. It not only causes serious setbacks to the world's economy but also jeopardizes genuine business transactions. These days, counterfeiting of currency notes is done with the help of modern equipment such as colour scanners, colour laser photocopiers and printers, as well as by computer graphics software. Most of the security features such as the use of complex designs, special paper, watermarks, optical fibre, security thread, micro-printing, currency-printing, colour shift, and holography in genuine notes are copied with the help of advanced computer technology, which provides them with sophistication and perfection.

There has been an upsurge in the incidence of supply of counterfeit Indian currency notes from across India's borders. 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. Almost half of the total seizures are made from the three states of Uttar Pradesh, Bihar and West Bengal. Counterfeiting of currency is resorted to to gain quick profit, acquire funds for drug trafficking or subversive activities, or mobilize funds for smuggling. Sometimes, external agents in the form of travellers and cross border smugglers are involved. Counterfeit currency can be used for destabilizing economies, provide financial assistance to terrorists and militants for buying arms and ammunition and sponsor religious fundamentalism, etc.

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 varying degrees and up to life imprisonment for counterfeiting any currency or making or possessing instruments or materials for forging or counterfeiting currency notes or for possession of forged or counterfeit currency notes or bank notes.

Counterfeiting, however, goes beyond the production of bogus currency to the counterfeiting of all kinds of manufactured products such as clothing, audio and video equipment, compact discs, watches, liquor, perfumes, etc. In such cases, losses are suffered by the manufacturers of the products, their employees, the economies of the concerned states and the concerned governments that would have received tax revenues.

3. Credit Card Frauds

A major form of economic crime is credit card fraud. Here also, the fraudster is one step ahead of law enforcement agencies as technology has facilitated the manufacture of false cards. As financial institutions introduce innovations against counterfeiting and fraud, increasingly sophisticated ways of profiting from or beating those systems are devised. Most of the credit card fraud is committed by using counterfeited cards, which are re-embossed or re-encoded. Nowadays, counterfeiters have reproduced holograms and encoded magnetic stripes on credit cards. New security measures can only be introduced gradually and if measures are taken against fraudulent card users in one part of the world, they quickly move to another part where detection measures are less sophisticated. Thus, problems associated with these kinds of frauds take a long time to overcome and cause losses around the world. In India, credit card frauds also occur by stealing the

cards and the accompanying information at the time of application or delivery and forging signatures. Sometimes merchants or employees of hotels, restaurants or shops take genuine numbers of cards from sales slips and pass them on to syndicates.

C. Group – III

Before we discuss the strategies that have been adopted by money launderers, let us pause to consider the specific kinds of transnational crimes where proceeds are transmitted out of a country's national borders.

1. Transnational Organized Gangs

In the sixties and seventies India had Haji Mastaan (gold smuggling), Yusuf Patel (gold smuggling) and Karim Lala (drug smuggling). In the eighties and nineties other gangs emerged. Dawood Ibrahim, Tiger Memon and Mohammad Dosa are reportedly operating from abroad (Dubai) and are involved in extortion of 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 Chota Rajan (Drug Trafficking and Contract Killings), Arun Gawli (Contract Killings and Protection Money), Late Amar Naik (Protection Money), Chota Shakeel and Om Prakash (Babloo) Shrivastava (Kidnappings for ransom and Killings). In the field of terrorism certain transnational organizations such as Lashkar-e-Toiba, Jaish-e-Mohammad, Hizbul Mujahiddin, etc. have been operating. The most essential characteristic of organized crime is making money or "maximisation of profits".

2. Drug Trafficking

Flanked by the Golden Crescent, (South-west Asia) and the Golden Triangle (South-east Asia), India has, due to its geographic location, become the corridor for movement of heroin and hashish to various destinations in Europe, America and Africa. Substances of abuse include alcohol, tobacco and natural and manufactured drugs. A kilogram of heroin, which costs approximately a thousand dollars on the Indo-Pak border, is reportedly sold for 250,000 dollars in Europe or USA.

The global drug trade has grown phenomenally. It is said to fund terrorism and other forms of transnational crime. Legislative measures against drug trafficking include The Narcotic Drug and Psychotropic Substances Act and Rules, 1985 and The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988. The Narcotics Control Bureau functions as a coordinator between various departments and arranges interagency coordination meetings

International drug trafficking poses a threat to the social fabric of all countries. The increase in the scale of these operations has led to an increase in drug use, addiction, and the general crime level. Drug profits are transferred electronically to dozens of banks around the world in less than 24 hours by using falsified export documents and invoices for goods in order to disguise drug trafficking transactions.

3. Smuggling of Migrants

There have recently been many reports of smuggling migrants from India and an industry has emerged which involves Indian agents recruiting migrants, transporting them to Europe or North America, collecting fees from them and sometimes providing them with jobs in the destination areas. India is both a source and a destination country for migrant workers. Skilled workers from India migrate to the U.S.A., Europe, the Middle East and East Asian countries. Similarly, migration into India takes place from neighbouring countries. Sometimes smuggling and trafficking activities are carried out by criminal networks, which are also involved in trafficking of narcotics, document fraud, money laundering, arms smuggling and other transnational crimes

4. Trafficking in Persons

Trafficking in human beings is a transnational organized crime that involves the illegal trade of human beings, through abduction, threat of force, deception, fraud or "sale" for the purposes of sexual exploitation or forced labour. A major reason is the search for work abroad due to economic disparity, high unemployment and disruption of traditional livelihoods. Traffickers face few risks and earn huge profits by taking advantage of large numbers of potential immigrants. In many cases, drug traffickers have switched to trafficking human beings because it is more lucrative and relatively risk free.

In cross border trafficking, India is a sending, receiving and transit nation. Receiving women and children from neighbouring countries and sending women and children to Middle Eastern nations is a common

occurrence. The long and porous border between India and its neighbouring countries facilitates trafficking in women and girls.

5. Terrorism

Terrorism has been there for quite a while in India. It is characterized by hijacking and killing of well-known individuals, shoot-outs or bomb attacks in public and religious places and more recently, an attempted attack on the Indian Parliament. There are a number of terrorist outfits operating in India such as Lashkar-e-Toiba, Hizbul Mujahidin, Jaish-e-Mohammad and so on.

There are many causes of terrorism ranging from ideology, religion, fundamentalism, fanaticism, politics to corruption and money-laundering and mercenary ones. Different and varied methods have been adopted to create panic – from the hijack of the Indian Airlines aircraft in Afghanistan in December 1999 to suicide strikes evident in the assassinations of former Prime Minister Rajiv Gandhi in 1991 and Chief Minister Beant Singh in 1995 to 'Fidayeen' strikes in Jammu and Kashmir to terrorist attacks such as the attack on the Indian Parliament in 2001, an attack on the American Centre, Kolkata in 2002 and attacks on Akshardham temple and Raghunath temple, also in 2002. . Firm links have also been established between militant outfits in India and the underworld – drug traffickers, border crossers, currency counterfeiters, travel racketeers, mafia syndicates, etc. – which are used not merely as a support mechanism but also to execute actual actions.

6. Trafficking in Arms

The Purulia Arms Drop case is the most glaring example of transnational arms smuggling. In December 1996, an Anotov 26 aircraft dropped over 300 AK 47/56 rifles, ammunition, sniper weapons, rocket launchers and night vision devices in Purulia in West Bengal. The aircraft was bought from Latvia, chartered by a company, Carol Airlines, registered in Hong Kong, moved to Bulgaria to pick up the consignment of arms and finally apprehended in Bombay after it had dropped its consignment. There is evidence of smuggling of arms in Jammu and Kashmir, Punjab and the North East where caches of arms have been seized.

7. 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 something new. However, globalization has brought about an increase in the international movement of money. 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 maximize profits.

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.

8. Hawala

The Indian Hawala or Hundi system is the 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 the misuse of a banking channel. It may refer to, in a restricted manner, a system of rendering services, the most important in this context being the transmission of money. Hawala represents such services. It operates in the following manner.

Someone in the U.S.A., for example, deposits $1,000 to an underground banker for payment to be made to an Indian in India. The U.S.A. underground banker contacts his counterpart in India immediately on the

phone or by wire and sends some coded message for payment of money to the Indian recipient. As in a bank, there is no physical transfer of money from one country to another; the accounts are settled by a reverse process when an Indian sends $1000 to someone in the U.S.A. The Indian operator contacts his counterpart in U.S.A. and money is paid in U.S.A. without any physical transfer of money. These operators work in a very organized manner and have a well-knit network. They undertake their business under cover of absolute secrecy and no paper trail for audit is kept. The system operates on an ethnic network. The network may include more than three or four countries. The principal operators engage agents and sub-agents in various countries for collection and disbursement of money. Hawala is widespread in India from metropolitan cities to smaller towns. Members of Indian families earning a living abroad are the clients of the system.

Money laundering and Hawala transactions, threaten developing economies and contribute to illicit drug trafficking and terrorist and subversive activities. As mentioned earier, India, for instance, is a transit point for drug traffickers and other criminals from the Golden Crescent and the Golden Triangle. It has become a conduit for the South East, Middle East, and Far East and Latin American countries. Both non-resident Indians and resident Indians use the Indian Hawala system or underground banking extensively for drug trafficking and remittances of money. In the mid-nineties Bombay was attracting huge amounts of Narcotics money from drug cartels in Columbia (London Times, May, 1993). The private sector is also involved in quick transfer of cash across continents. Travel agents and courier companies target Indians living abroad who want to repatriate money. The time taken to transfer money is much less. Money launderers also use such private companies for money transfers.

There are many reasons for the use of underground banking channels instead of the normal banking system. The high tax rate and the Exchange Control Regulations (though now considerably liberalized) have been the major reasons for Hawala and other economic crimes in India. Underground banking is extensively used for drug trafficking and remittances of money. It is here that the economic offenders and the launderers meet. Economic offenders want to remit money and money launderers help in doing so. Another reason for money laundering is due to evasion of taxes by some corporate houses.

Money laundering techniques include smurfing (a large number of small transactions, each transaction being less than the mandatory transaction reporting threshold), establishment of front companies, remittances through Hawala (non-banking channels), over-invoicing and double invoicing legitimate business (ordering goods at inflated prices and depositing the difference between the real and inflated values in an offshore account) 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 set up 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. They file income tax returns in which the commission is shown as taxable income and also issue fake Letters of Credit and false bills. The cheque discounters are generally associated with commodities markets where fake transactions in commodities can largely go unnoticed.

Money laundering has so far been dealt with mainly under the Foreign Exchange Regulation Act, 1973, but with effect from 1999, FERA has been replaced by the Foreign Exchange Maintenance Act. A bill named as 'The Prevention of Money Laundering Bill' has been introduced in Parliament by the Government of India and is 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 committed 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 to hear appeals. Financial institutions are expected to maintain transaction records and furnish these to the adjudicating authority. Failure to do so would be punishable too.

D. Indian Legislation to deal with Money Launderers

Presently, legislation to deal with such offenders is specifically intended to deprive offenders of the proceeds and benefits derived from the commission of offences against the laws of the country. It provides for the confiscation or forfeiture of the proceeds or assets used in connection with the commission of certain crimes. The concerned Acts in Indian legislation are:

(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 (Sections 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.

For this purpose, the Government of India has set up the following Investigating Agencies that function under the Department of Revenue in union with the Ministry of Finance.

E. The Central Economic Intelligence Bureau

An apex intelligence and coordinating body, the Central Economic Intelligence Bureau was set up with the intention of coordinating and strengthening intelligence gathering and investigative efforts of all agencies enforcing economic laws. Accordingly, the Bureau collects intelligence regarding aspects of the black economy that require close watch and investigation as well as the emergence of new types of such offences and evolves counter-measures required for effectively dealing with existing and new types of economic offences. It acts as the nodal agency for cooperation and coordination at the international level with other customs, drugs, law enforcement and other agencies in the area of economic offences. It implements the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1971.

F. The Directorate of Revenue Intelligence

The Directorate of Revenue intelligence is concerned with Customs related offences and collects intelligence about smuggling of contraband goods, narcotics, under-invoicing, over-invoicing, etc. through sources. It analyses and disseminates such intelligence to its field formations for action and keeps a watch over important seizures and investigations. It also functions as the liaison authority for exchange of information among ESCAP countries for combating international smuggling and customs frauds and liaisons with foreign countries, Indian Missions and enforcement agencies abroad as well as with the CBI and INTERPOL on anti-smuggling matters. Cases are referred for action to the Income Tax Department.

G. Enforcement Directorate

The Directorate of Enforcement is mainly concerned with the enforcement of the provisions of the Foreign Exchange Management Act 1999 to prevent leakage of foreign exchange which generally occurs through remittances of Indians abroad otherwise than through normal banking channels; illegal acquisition of foreign currency; non-repatriation of the proceeds of exported goods; unauthorized maintenance of accounts in foreign countries; under-invoicing and over-invoicing of exports and imports and other types of invoice manipulation; siphoning off of foreign exchange against fictitious and bogus imports; illegal acquisition of foreign exchange through Hawala and obtaining secret commissions abroad.

The main functions of the Directorate are to collect intelligence relating to violation of the provisions of the Foreign Exchange Regulation Act; conduct searches of suspected persons, conveyances and premises and investigate such cases. The Directorate also adjudicates cases of violations for levying penalties and confiscates amounts involved in contraventions.

H. The Directorate General of Anti-Evasion (Central Excise)

Due to the growth of the Central Excise revenue and its coverage to almost all manufactured products a specialized intelligence agency, the Directorate of Anti Evasion, was created to target prevention of Central Excise duty evasion. The Directorate collects intelligence relating to evasion of central excise duties, studies their modus operandi and alerts Collectorates. It also studies the price structures, marketing patterns and classification of commodities in respect of which possibilities of evasion are likely in order to

advise Collectorates for plugging loopholes and co-ordinates with Enforcement agencies like Income tax, Sales tax, etc.

I. The Directorate General(s) of Income Tax (Investigation)

The Directorate Generals of Income Tax Investigation deal with all matters connected with investigations under the Income Tax Act of the Central Government. They collect intelligence pertaining to evasion of Direct Taxes and organize searches to unearth black money. They take steps to ensure that persons having information about tax evaders come forward with the same to the Department and disburse rewards.

J. The Narcotics Control Bureau

The national policy on Narcotic Drugs and Psychotropic Substances is based on the Directive Principles contained in the Indian Constitution (Article 47), which directs that the State shall endeavour to bring about prohibition of the consumption, except for medicinal purposes, of intoxicating drugs injurious to health. Besides, India is also a signatory to:

- Single Convention on Narcotic Drugs 1961 as amended by the 1972 Protocol.
- Conventions on Psychotropic Substances 1971.
- United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.

The broad legislative policy in the matter is contained in the three Central Acts, viz. Drugs and Cosmetics Act, 1940, The Narcotic Drugs and Psychotropic Substances Act, 1985, and The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988. The Department of Revenue has the nodal co-ordination role as administrator of the Narcotic Drugs and Psychotropic Substances Act, 1985 and the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.

The Narcotics Control Bureau was constituted in 1986 to exercise the powers and functions of the Central Government for coordination of action by various authorities under the N.D.P.S. Act, Customs Act, Drugs and Cosmetics Act, etc. and for countermeasures against illicit traffic under various international conventions and protocols presently in force. It is the apex-coordinating agency and collects and analyses data related to seizures of narcotic drugs and psychotropic substances, studies trends, modus operandi, collects and disseminates intelligence and works in close cooperation with the Customs, State Police and other law enforcement agencies.

K. Special Investigative Tools

In addition to traditional investigative methods to combat global economic crime, law enforcement agencies utilize special investigative tools such as controlled delivery, undercover operations and electronic surveillance (wiretapping, communications interception, etc.) to effectively fight global economic crime. However, their use is controversial because they may infringe on human rights to privacy or may be misused.

L. Controlled Delivery

Controlled delivery techniques have proven an important enforcement tool in identifying the principles involved in drug trafficking and other major smuggling offences especially those 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. It is the technique of allowing illicit or suspect consignments… 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 (The United Nations Conference for the Adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances). Further, according to Article 11 of the Convention, controlled delivery is to be allowed on the basis of mutual agreements or arrangements between nations.

Section 4 of the Indian Narcotic Drugs and Psychotropic Substances Act, 1985 endorses these international obligations. 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. 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.

M. Electronic Surveillance

Electronic surveillance covers wiretapping, communications interception, etc. Telephone interception and the monitoring of all electronic communications are controversial aspects of electronic surveillance, yet are useful in assisting law agencies to combat global economic crime. In India, interception of messages 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 public interest. Also, a legal provision has been made in the licensing conditions of cellular companies to provide parallel monitoring facilities for all communications being received and emanating from mobile sets.

N. Survey on Economic Crime in India

PriceWaterhouseCoopers Corporation carried out a survey across a sample drawn from the top 1000 Indian companies in the manufacturing, services and financial services sector in 2003. According to the survey, there has been a significant increase in economic crime over the past two years but there has been a reluctance to report it. Corruption and bribery are perceived as the most prevalent economic crimes in India. Reluctance to admit them may be due to fear of adverse implications or acceptance of corruption as an everyday cost of doing business. Other economic crimes having high prevalence include financial misrepresentation, product piracy and counterfeiting. The incidence of low reporting of financial misrepresentation may be attributed to low transparency and poor accountability. Companies appear to be unaware of the extent to which product piracy and counterfeiting are rampant and tend to avoid publicity for fear of adverse implications, particularly their effect on brand image. Perceived prevalence of asset misappropriation and cyber crime in India is also relatively low and suggests the need for tighter internal controls and other deterrents. The reported absence of money laundering is somewhat surprising and seems indicative of poor detection.

Most Indian respondents were unable to quantify their loss arising from economic crime as the financial impact of less tangible economic crimes such as corruption and bribery or product piracy and counterfeiting is difficult to quantify. They are, however, conscious of the collateral cost of economic crime on their business which, apart from financial loss results in undermining of staff morale and impacting business relationships, reputation and brand image.

Audits (external and internal), tip-offs and accident or chance are reported to be the main factors in the detection of economic crime in India. Most organizations are aware that they are required to report frauds but the reporting is low because of a reluctance to initiate recovery proceedings, scepticism about recovery, desire to avoid publicity, concerns regarding implications of disclosure, drawn out litigation process and a propensity to accept certain crimes as a customary business risk. Development of controls in their organization such as organization ethics or a code of conduct will form an effective deterrent in combination with pre-employment screening and fraud detection training. Looking ahead, respondents believe that despite improved controls, vulnerability to corruption and bribery, asset misappropriation and financial misrepresentation continue to be high, despite an expected decline in corruption. However, an increased threat is expected from economic crimes like product piracy and counterfeiting, cyber crime and industrial espionage.

IV. 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 global economic crime and the complexity of its investigation requires a global response. At present, the measures adopted to counter these crimes 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 global economic crime.

Tracing the money trail, including the origin of funds, combating money laundering through reduction of bank secrecy and seizure of assets are issues of paramount importance. Putting in place legislation on forfeiture and confiscation of properties acquired through criminal activities and sharing of available

technology on the subject would be a step in the right direction. Extradition is one of the most important tools used for bringing transnational fugitives to justice and 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. However, it is also an area that poses the greatest problems. A large number of countries have not entered into extradition treaties and even where such treaties exist, they are mostly embroiled in complicated procedures leading to undue delay in extradition. There is a need for simplifying procedures and expediting the process.

In India, the Extradition Act, 1962 deals with extradition of fugitive criminals. India has extradition treaties with a number of countries. It has also entered into Mutual Legal Assistance Agreements/Treaties in criminal matters such as 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 with a number of countries. India is a signatory to the United Nations Convention against Transnational Organized Crime and to the South Asia Association for Regional Cooperation (SAARC) Convention for Suppression of Terrorism. Pursuant to the SAARC Convention, India enacted the SAARC Convention (Suppression of Terrorism) Act.

TACKLING CORRUPTION: AN INDIAN PERSPECTIVE

*Deepa Mehta**

Corruption has prevailed in society since time immemorial. In the modern world, however, corruption is associated with public office. To a common man, corruption is associated with giving or accepting some kind of compensation in the form of money, office or position for a service rendered in an illegal form, or by overstepping one's legal authority. It is a kind of reward promised or taken, or gratification expected for a service that is rendered in the course of fulfilment of one's normal administrative or other lawful duties. It may be construed as, "offering, giving, soliciting or acceptance of an inducement or reward which may influence the action of any person" as also "the use of office for private profit". It may manifest itself in a simple form such as the purchase of a railway ticket by paying an extra amount to the ticket collector or procuring a license for the establishment of an industrial unit or a contract for the construction of a building project. Sometimes, it may take more subtle forms such as in the distribution of election tickets or in the change of political affiliations of the members of the political parties.

Section 7 of the Prevention of Corruption Act, 1988 defines corruption as:
"Whoever being or expecting to be a public servant, accepts or obtains, or agrees to accept, or attempts to obtain gratification whatever, other than legal remuneration as a motive or a reward or for bearing to do any official act or for showing or for bearing to show, in the exercise of his official functions favour or disfavour to any person with the Central or State Government or Parliament or Legislature of any State or with any public servant as such."

The World Bank defines corruption as the abuse of public office for private gain. Corruption as dealt with by the Council of Europe's Multidisciplinary Group of Ministers is bribery and can be said to constitute the combined effect of monopoly of power plus discretion in decision-making in the absence of accountability.

Amongst the major causes of corruption, the important ones are, greed, circumstances, opportunities, and other temptations that include party funds, money for patronage, apprehension of loss of office, need for extra money to maintain standards, etc. In an expanding economy on account of rapid industrialization and growth of an acquisitive society, a conflict of values inevitably occurs. The age-old concept of values of judging people by what they are rather than what they have crumbles and people easily succumb to corruption. This apart, the rising cost of living and the wide gap between real wages and the opportunities to make quick money encourages corrupt practices among public servants and businessmen. Besides, Indian society tolerates amassing of wealth and it is seen as a symbol of competence. Other reasons are consumerism and desire for an ostentatious lifestyle and evil social practices like dowry and pressure of payment for education.

The Santhanam Committee constituted by the Central government has identified certain procedural causes of corruption. These are: red tape and administrative delay; unnecessary regulations; scope of personal discretion; cumbersome procedures; scarcity of goods and services and lack of transparency. Thus, we have a situation where on the one hand enterprising businessmen are ready to pay "speed money" and on the other civil servants agree to exercise discretion, not infrequently, for ulterior motives. Other reasons for corruption are where officers on behalf of the State engage private companies to perform specific tasks or public works or provide services and these companies, in collusion with officials, indulge in corrupt practices such as overcharging, providing low quality work, etc. Secondly, wide discretionary powers conferred to people with specialized skills and knowledge as in the field of defence projects can lead to corrupt practices. Of late, a number of such scams have unfolded such as Bofors, HDW Submarines, defence purchases, etc. Thirdly, lack of transparency, unclear, ambiguous and technically complicated regulations lead to corruption, as the public is unable to exercise effective control.

Corruption breeds a distrust of public institutions; it undermines ethical principles by rewarding those who are willing and able to pay bribes, and hence perpetuates inequality. Money laundering becomes

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lucrative and links are established between corruption and organized crime. Illicit activities invariably rely at some point in time on the support of corrupt public officials. Sometimes, organized criminals acquire such great power that they are in a position to undermine and destroy institutions, with dire consequences for democracy and the rule of law. Moreover, globalization and the changing structure of trade, finance, communications and information has generated an environment in which corruption is no more confined to national boundaries. It is operating increasingly across borders and, in many cases, is transnational and international in character. Criminal organizations have adapted corporate-like structures to criminal activities, employing highly skilled manpower and mechanisms to assist in tax evasion, money laundering and concealing income.

Corruption may be seen at various levels. It may be present at political levels, in the corporate sector and amongst the bureaucracy, and may also be responsible for the criminalization of politics. For most political parties, winning the elections becomes a sole obsession and increasing election expenses are often stated as a major cause for political corruption. In addition, an expensive and lavish lifestyle is the product of a consumerist culture and politicians also form part of the same culture. In the last few years, the press has been replete with reports of scams and scandals. Certain Chief Ministers of States and Union Ministers have had to resign on account of being legally charged with corrupt practices. The Bofors scam, Bihar's Fodder scam, purchases by the Department of Telecommunications, Jain Hawala Case, Lakhubhai Pathak Case, various land grab cases, HDW Submarine case and certain defence purchases have been widely reported in the press and are now the subject matter of judicious scrutiny. There is a widespread perception that corruption in contracts, commodity imports, international financial transactions and violations of the Foreign Exchange Regulation and Income Tax Acts has also increased.

Political corruption has very high visibility, and it makes sensational news. Corruption in the corporate sector is no less: only it makes less news. According to a report of the International Monetary Fund, a lot of capital has been deposited in foreign banks. Basically, concealment of income, evasion of taxes and duties, black-marketing, rigging of share prices, manipulating the stock market and other such practices have led to smuggling and money laundering. In India, a number of scams have recently been reported in the press, notably the Harshad Mehta case (rigging of share prices), ITC case (prosecution for foreign exchange regulations), Reliance Industries (official patronage and manipulation of customs duties), MS Shoes scam (manipulation of the stock exchange) CRB scam (securities scam), etc. Such trends have been associated with the generation of a parallel black economy and loss of a huge amount of revenue to the government. The business-politics nexus is found to be implicit in the very nature of things, as it works to the mutual advantage of both parties.

Whereas mega corruption in high places makes big news, it is the lower level graft that really hurts the common man. And that is where bureaucratic corruption comes into focus. At the countryside level, corruption may exist in departments maintaining land records or those disbursing agricultural loans or in bribing the police to settle petty brawls and disputes. In towns and cities, corruption in the form of evasion of income and other taxes is more high profile as it concerns a higher income strata and the clout of the officials lies in the tremendous discretionary powers vested in them. Corruption in the excise and customs department means a great loss to the central revenues. Smuggling of gold, drug trafficking, undervaluation and evasion of excise duties are the common modes of corruption in this sphere.

In many countries, a sizeable proportion of higher-level civil servants are believed to be either corrupt on their own or act as accomplices, conduits or agents for corrupt Ministers. At lower levels of bureaucracy, corruption mostly takes the form of speed money for expediting approvals and for providing (or not withholding) legitimate services (e.g., in utilities such as telephones, electricity boards and civic services). An interlocking of corruption exists at various levels of the government hierarchy – elected politicians, higher bureaucracy and lower bureaucracy. Criminalization of politics begins with politicians seeking the assistance of criminals, in particular to fight elections. This means the use of 'money power' and 'muscle power' by politicians on the one hand and aiding and abetting crimes and sheltering of criminals on the other, which in turn leads to politicization of the administration, particularly of the police and election of persons with criminal records and their consequent occupation of places of honour and status.

Amongst Indian legislation, The Prevention of Corruption Act, 1988 has been enacted to consolidate the law relating to the prevention of corruption. Various governmental institutions have been established to deal with corruption. The Administrative Vigilance Division in the Ministry of Home Affairs was established in

1965. The Delhi Police Establishment Act came into force in 1946. The Special Police Establishment has become a part of a bigger organization, the Central Bureau of Investigation. The Central Vigilance Commission has been set up in the Centre. Similar bodies have been set up in the States. The main idea was to have an external independent and impartial body to look into the allegations against government officials and thus inspire public confidence.

The Central Vigilance Commission set up in 1964 acts as the apex body for exercising general superintendence and control over vigilance matters in administration and probity in public life. It is governed by the Central Vigilance Commission Act, recently enacted on 11th September 2003. It is an Act to provide for the constitution of a Central Vigilance Commission to inquire or cause inquiries to be conducted into offences alleged to have been committed under the Prevention of Corruption Act, 1988 by certain categories of public servants of the Central Government, corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Central Government and for matters connected therewith or incidental thereto. The Commission consists of a Central Vigilance Commissioner and two Vigilance Commissioners. The Commission can undertake an inquiry into any transaction in which a public servant is suspected or alleged to have acted for an improper or corrupt purpose; or cause such an inquiry or investigation to be made into any complaint of corruption, gross negligence, misconduct, recklessness, lack of integrity or other kinds of mal-practices or misdemeanours on the part of a public servant. The Commission tenders appropriate advice to the concerned disciplinary authorities in all such matters. It also exercises superintendence over the vigilance administration over various Ministries and corporations of the Central government. Proceedings before the Commission are deemed to be judicial proceedings.

The Central Vigilance Commission has two Chief Technical Examiners to advise the Commission in all technical and contractual matters. The Chief Technical Examiners conduct intensive examination of all types of works and contracts under their purview. During the course of such examinations, a number of irregularities and lapses in the award and execution of works are observed such as lapses/irregularities in awarding contracts, defective contract conditions and clauses, overpayment made to the contractor, execution and acceptance of sub-standard work, infructuous and avoidable expenditure, etc. These are brought to the notice of the Chief Vigilance Officers for suitable corrective action. The role of the Chief Technical Examiners is not limited to detection of malpractice. They may also suggest preventive measures in certain areas as a safeguard against malpractice or corrupt practices in order to plug loopholes in procedure/rules, regulations and to improve the systems in organizations so as to prevent a recurrence of such lapses. In cases where serious irregularities or negligence are observed, they are referred to the Chief Vigilance Officer for detailed investigation.

The Chief Vigilance Officers in Central government Ministries and corporations decide upon the existence of a vigilance angle in a particular case, at the time of registration of the complaint. Generally a vigilance angle is characterized by:

(i) Commission of criminal offences like demand and acceptance of illegal gratification, possession of disproportionate assets, forgery, cheating, abuse of official position with a view to obtaining pecuniary advantage for self or for any other person; or
(ii) Irregularities reflecting adversely on the integrity of the public servant; or
(iii) Lapses involving any of the following:
    (a) Gross negligence;
    (b) Recklessness;
    (c) Failure to report to competent authorities, exercise of discretion/powers without or in excess of powers/jurisdiction
    (d) Cause of undue loss or a concomitant gain to an individual or a set of individuals/ party or parties; and
    (e) Flagrant violation of systems and procedures.

Today the Public Sector Undertakings in the country play a significant role in the economic as well as social development of the country. Further, the spectrum of the public sector ranges from a monopolistic nature like internal air traffic, life insurance, etc. to highly competitive fields like textiles and banking. These undertakings are not regarded merely as large commercial concerns but have, in varying degrees, wider objectives than commercial concerns in the private sector. They deal with taxpayers' money and are

therefore accountable to Parliament. They are subject to public criticisms and criticisms in the press. Unlike the private commercial organization where individuals count more, in these public undertakings, systems have to work more than individuals. Under such circumstances, there is a need for a strong vigilance organization in the PSUs with a set of rules to regulate the conduct of the employees of these undertakings.

Vigilance has to be looked upon as one of the essential components of management. The objective of vigilance is to ensure that the management gets the maximum out of its various transactions. In the field of purchases, it should get quality products at competitive rates. In the field of sales, it should get the maximum realization for its products at the minimal selling cost. In the field of personnel, it recruits the best talented people and keeps the morale of the people high. Likewise, in any one of its transactions, management should endeavour to get the best.

Vigilance and Anti-corruption Bureaus are established in all State governments. The State Vigilance Bureau is the main agency of the State to deal with cases involving corruption. The Bureau conducts investigation/enquiries into the following types of allegations involving public officials, including those working in the public sector undertakings of the State government:

(i) Criminal misconduct of public servants as defined in the Prevention of Corruption Act 1988.
(ii) Dishonest or improper conduct or abuse of power by public servants.
(iii) Gross dereliction of duty or negligence.
(iv) Misappropriation of public funds.
(v) Amassing of wealth disproportionate to known sources of income.
(vi) Misuse of public money or property.

Besides conducting investigations into vigilance cases, the Bureau also conducts vigilance enquiries, confidential verifications and surprise checks. The Bureau also collects intelligence about corrupt officials and maintains dossiers on them. Generally, the Bureau is headed by a Director who is of the rank of Director General of Police. The Director is assisted by Inspectors General of Police and other police officers. The field formations are at division level and district level. Besides executive staff, the Bureau has legal and technical staff to assist them in the investigation of cases.

There are also a number of special laws regulating customs, excise, taxes, foreign exchange, narcotics, drugs, banking, insurance, trade and commerce and export and import. Some of the existing legislation provides for confiscation of the proceeds of crime. The Directorate of Revenue Intelligence compiles yearly information regarding the number of seizures made by the Customs officials, the total value of the seizures and the nature of commodities seized. For instance, 38,998 seizures valuing about 10,197 million rupees were made in 2001. The nature of the commodities seized by customs included gold, silver, electronic goods, narcotic drugs, machines, fabrics/yarns/silks and others. Similarly, the Enforcement Directorate conducted 295 raids and searches in 2001 and seized and confiscated currency as well as imposed fines after registering cases under the Foreign Exchange Regulation Act. The Central Board of Direct Taxes also conducted 5,321 searches in 2001 and recovered about 5,123 million rupees. The Directorate General of Foreign Trade has, similarly, registered cases for offences under the Export and Import Act. The Central Bureau of Investigation and State Vigilance Bureaus of various state governments register cases and arrest persons under the Prevention of Corruption Act. During 2001, the CBI registered 858 cases and arrested 197 persons whereas the State Vigilance Bureaus registered 2,990 cases and arrested 3,223 persons under this Act.

Corruption adversely affects economic performance, undermines employment opportunities, and clouds prospects for poverty reduction. Petty corruption raises the cost of engaging in productive activities. Its burden falls disproportionately on poor people. For those without money or connections, petty corruption in public health or police services can have serious consequences. Corruption affects the lives of poor people through many other channels as well. It diverts public resources away from socially valuable goods, such as education and infrastructure investments that could benefit poor people like health clinics, roads, etc. Instead, it tends to increase public spending on capital–intensive investments that offer more opportunities for kickbacks, such as defence contracts. It lowers the quality of infrastructure, since kickbacks, are more lucrative on equipment purchases. Corruption also undermines public service delivery. Where corruption involves the transfer of funds outside the country, it seriously undermines economic development. The way funds are allocated gets distorted, foreign aid gets reduced and productive capacity gets further weakened.

Corruption is often tolerated because issues like prices of food grains, drinking water, and employment rank higher in the voter's priority. The voter considers all parties to be equally corrupt, the only difference being that some have been found out and exposed while others have not yet been exposed. Secondly, a complicated system together with red-tape leading to delays in many public offices makes the common man consider that paying a bribe as speed money is the easy way out. Voters are not bothered much about corruption at higher levels but they are more directly and visibly affected by the corruption at the cutting edge level of administration which they experience everyday.

The Central Vigilance Commission has brought out 'The Citizens Guide to Fighting Corruption,' which, according to the Central Vigilance Commissioner, "contains the distilled essence of the strategies evolved so far to fight corruption and the principles that can be adopted (by) every patriotic citizen of India who wants to fight corruption". Corruption cannot be fought only by individuals or by specialized agencies like the Central Vigilance Commission, the CBI or by Government Anti-Corruption Bureaus. It has to be a fight at all levels of society. Corruption is a major challenge confronting India, it is affecting social and economic growth, it is anti-poor and affects the growth of an equitable and just society and that people at large, and not just agencies, have to be sensitized to its evil effects.

The World Bank Report of 1997 says, "Incentive for corrupt behaviour arises when public officials have wide discretion and little accountability". The World Development Report on Poverty 2000-2001 states that the state will deliver more effectively to all its citizens, but to poor people in particular, if public administrations implement policies efficiently and are accountable and responsive to users, corruption and harassment are curbed, and the power of the state is used to redistribute resources for actions benefiting poor people. Streamlining bureaucratic procedures, simplifying tax systems, eliminating excessive regulations, privatizing state-owned enterprises and motivating public servants can help reduce the opportunities and scope of corruption. Another important measure is disseminating information on budget allocations and spending which enables people to hold civil servants accountable, reducing inefficiency and corruption. And community participation and monitoring can keep it in check.

Accountability is necessary for good governance. This is possible through transparency in operations. Hence transparency in public life demands greater access to information, rules and regulations. Transparency in government is possible if there is freedom of information and the citizens have access to information. Recently several States have adopted the 'Right to Information Act' which empowers any person desiring information to make an application to the competent authority asking for relevant information. The competent authority is bound to provide the information within the time frame specified unless the same is refused on valid grounds. The Delhi Government for instance has enacted the Delhi Right to Information Act, 2001. It makes provision for securing information as a matter of right, barring some exemptions. The citizens can file an application with the competent authority of the concerned Department along with a fee and get information within 30 days. In case the information cannot be given, then a rejection letter with cogent reason has to be issued.

With the advancement of and use of information technology in day-to-day life and even in governmental operations, speedy processing of information not only reduces the scope of corruption but also improves the quality of service to the citizens. The CVC has recommended that in addition to publicity of tenders through newspapers, trade journals and providing tender documents manually or through the post, etc., the complete bid documents along with application forms shall be published on the web site of the organization. In the state of Andhra Pradesh, in the registration department, the use of IT has reduced the processing of papers for the transfer of property from a couple of weeks to about half an hour. Corruption can be reduced through increased communication between civil servants and their clients. In Bangalore a "report card" which provides citizen's views on public services in the city shows how a public feedback mechanism can make public agencies more accountable to their clients.

Corruption flourishes because there are people in power who benefit from the present system. In India, the number of persons who actually benefit may not be more than 50 million out of over 1000 million. Unfortunately those who benefit from power are also those who have to initiate changes to check corruption. It is, therefore, important for people to play an active role in this regard. The public interest litigation is a route that can be used to approach the courts and thereby make the administration change policies or initiate action to check corruption. Citizens may approach agencies such as the Central Vigilance Commission and

Lok Ayuktas. The electronic and print media can be effectively used in shaping public opinion. NGOs can play an active role in taking up individual cases for fighting corruption or bringing about systemic changes. Members of the public can also report about the activities of public servants who are found to be living beyond their means. In Maharashtra, vigilance cells have been formed in many towns by bringing together interested groups to comply with the requirements of law and take up the problem with the officers concerned. Around 45 organizations and departments of the Government of India have also published citizens' charters, which explain what services these departments are going to provide for the citizens.

The 'Guide' suggests that NGOs can undertake documentation and ranking of the corruption perception index of government organizations as one of their activities. Transparency International has adopted a methodology for bringing out the Corruption Perception Index (CPI). The advantages of publishing the CPI are many. First, they provide an informed basis for a debate on corruption. Secondly, they encourage honesty by publicly naming and hence shaming dishonest officers. In fact this activity has commenced in some states.

Ethics should form part of the education system and children in the schools should be mobilized to create a social climate for making corruption unacceptable. Schools can reach large numbers of children, and through them, their parents and the community at large. The use of media for mobilizing the people against corruption can also be part of this effort. Praja, an NGO of Mumbai, has devised a unique system for citizens to ensure redress of citizens' grievances through an online complaint registration system. The complaint is sent to the authority concerned and to Praja. Both Praja and the municipal authorities hold meetings regularly regarding these complaints.

According to Transparency International, a non-government organization in Berlin, which publishes the Corruption Perception Index of countries annually, India is ranked at 72 out of 91 countries in 2001 in the order from the least corrupt to the most corrupt. In this perspective, our fight against corruption is an on going one. It has been estimated that "if the corruption level in India comes down by 15% the GDP growth will improve by 1.3% and investment will go up by 2.9% of the GDP".

Although corruption has become deeply entrenched, yet it is not impossible to get out of the corruption trap. A strong political will and commitment to a clear anti-corruption agenda is required. Efforts have to be made in different directions to reduce corruption. Certain changes are required in the legal framework such as suitable modification of Indian Official Secrets Act in order to develop greater transparency in public dealing. The promulgation of Corrupt Public Servants (Forfeiture of Property Act), 1999 will ensure real punishment of corrupt public servants by way of confiscation of property. Similarly, the appointment of independent ombudsmen by major public utilities for redress of grievances and development of Codes of conduct on the basis of the International Code of Conduct for Public Officials can be considered. In our fight against corruption, good practices need to be adopted and encouraged. Strengthening of accounting standards and practices, establishing of accountability in administration and fostering responsibility at lower levels through decentralization, deregulation and elimination of unnecessary controls and developing transparency in the adoption of discretionary practices, tendering and procurement are certain such measures. Finally, and most importantly, healthy social values encouraging honesty in word and deed need to be inculcated through an active involvement of the family, the school and the community.

The United Nations has done appreciable work in this direction. In its resolution 51/59 the General Assembly has adopted the International Code of Conduct for Public Officials and recommended it to Member States as a tool to guide their efforts against corruption. In its resolution 51/191, the Assembly has adopted the United Nations Declaration against Corruption and Bribery in International Commercial Transactions. The Convention on Combating Bribery of Foreign Public Officials in International Business Transactions was adopted within the framework of the Organization for Economic Co-operation and Development (OECD) in 1997 and the Eighth International Anti-Corruption Conference also adopted the Lima Declaration against Corruption that year. These instruments provide a comprehensive framework for combating corruption by evolving strategies consonant with indigenous conditions.

If we want our countries to become economies in which all citizens will be able to enjoy their rights and a good quality of life, fighting corruption is the most important need. It is the responsibility of both the government and the citizens together to respond to this need.

THE ROLE AND RESPONSIBILITIES OF THE SERIOUS FRAUD OFFICE IN FIGHTING FRAUD WITHIN THE UNITED KINGDOM

*Peter Kiernan**

The Serious Fraud Office and the office of Director were created by the enactment of the Criminal Justice Act 1987. The Serious Fraud Office is a non-Ministerial Government Department whose activities are subject to the superintendence of the Attorney General. This means that we are not subject to political interference in the conduct of our duties. The role of the Attorney General is somewhat difficult to define. He is responsible to Parliament for the work of the Serious Fraud Office and he is able to require the Director to explain and justify his decisions and, quite correctly, frequently does so. However, he may not affect those decisions directly or indirectly. Indeed, even in cases of great political sensitivity, no Attorney General has ever sought to do so. The independence of the Director is a central feature of his role.

As a Government Department created by statute, the remit of the Serious Fraud Office is very strictly constrained and is limited to those matters provided for in our founding statute.

By Section 1(3) of the Criminal Justice Act 1987,
"the Director may investigate any suspected offence which appears to him on reasonable grounds to involve serious or complex fraud".

Perhaps surprisingly there is no definition of what constitutes 'serious or complex fraud,' this has meant that the Serious Fraud Office has had to develop its own view of this phrase and what it means. I shall return to this issue later.

The Act goes on in Section 1(5) to provide that
"the Director may –
(a) institute and have the conduct of any criminal proceedings which appear to him to relate to such fraud; and
(b) take over the conduct of any such proceedings at any stage".

Thus the Director is empowered to investigate and prosecute. Perhaps not a startling statement but in terms of the United Kingdom, and specifically England, Wales and Northern Ireland, this was a dramatic departure from previous practice.

Indeed, the Serious Fraud Office is a wholly unique organisation in terms of Law Enforcement Agencies within England, Wales and Northern Ireland. I specifically exclude Scotland from these discussions because the Scottish legal system is radically different from that in the remainder of the United Kingdom.

It may be helpful to explain the context in which the Serious Fraud Office was created, the general situation as far as Law Enforcement in the UK is concerned and the development of the Serious Fraud Office through its life.

On the 8th November 1983, the then Lord Chancellor and Home Secretary announced the establishment of an independent Committee of Enquiry whose terms of reference were:
"To consider in what ways the conduct of criminal proceedings in England and Wales arising from fraud can be improved and to consider what changes in existing law and procedure would be desirable to secure the just, expeditious and economical disposal of such proceedings".

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The report of the Fraud Trials Committee makes reference to the widespread public concern at the effectiveness of the methods of combating serious commercial fraud that led to the establishment of the Committee.

Concerns over the delays involved in conducting investigations were also highlighted in the report. It may help if I outline the prevailing system of the time, which should explain why this concern existed. Often, following the collapse of a major company, the Department of Trade and Industry would appoint Inspectors under the Companies Act. These Inspectors were usually a highly respected Barrister of many years experience and an expert Accountant from one of the major Accountancy practices. They would be appointed to enquire into the circumstances of the collapse of the company and to publish a report of their findings.

If, in conducting their enquiries, the Inspectors decided that fraud was suspected, then the report would not be published immediately and the matter would be referred to the Police for investigation. Often this referral to the Police would commence some two years after the events in question due to the painstaking nature of the Inspectors' enquiries.

The Police would then commence a criminal enquiry which would often cover much of the same ground that the Inspectors had previously been over and would often take two to three years of itself. Once the Police had completed their enquiries, the matter would be referred to Prosecutors who would consider the evidence that the Police had brought forward and would decide whether any charges were appropriate. Commonly the evidence and the charges that the Police had put forward were changed and additional enquiries were required before a prosecution was allowed to take place. Thus it could often be the case that a criminal prosecution would not commence until six or seven years after the events in question had occurred. This often meant that trials were extremely difficult because the evidence wasn't entirely consistent and witnesses' memories of events had faded. Often these cases resulted in acquittals, either by the jury or on the instruction of the judge, which would occur because the evidence failed to reach the required standard.

Just to explain this, in English cases, there are two standards that must be reached during a trial. The first is that the judge must satisfied that there is sufficient evidence upon which a jury properly directed could safely convict, if this point is reached at the close of the prosecution case then the case proceeds, we say it 'passes half time', and the defence then calls any evidence they wish. After all the evidence has been heard the second standard is that the jury must be satisfied so that they are sure that the defendant has committed the crime he is being tried for.

So, in the event of convictions, because of the passage of time from the events in question to the case being concluded, often wholly inadequate sentences were handed down against the fraudsters.

It was only after the criminal investigation or trial that the Inspectors' report would be published. These often made specific findings of fraudulent conduct on the part of those involved, many of whom were never satisfactorily prosecuted. Not surprisingly, this system led to widespread unhappiness with the ability of investigators and prosecutors to deal with such cases.

It was in the light of these problems and concerns that the Fraud Trials Committee were asked to make recommendations. The Committee, headed by a very senior judge, a Law Lord, Lord Roskill, reported on the 9th December 1985, over two years after its inception and after the most extensive of enquiries.

The opening sentences of the Summary at the commencement of the report were highly damming of the existing regime and are worth quoting:

"The public no longer believes that the legal system in England and Wales is capable of bringing the perpetrators of serious frauds expeditiously and effectively to book. The overwhelming weight of the evidence laid before us suggests that the public is right."

The report goes on to make a number of recommendations which advocated fundamental change to the existing system and which caused a great deal of furore at the time.

Interestingly, some of the most radical changes proposed by the Committee were accepted by the Government and the legal professions with very little difficulty. Others met with very considerable opposition.

The very first recommendation of the First Trials Committee was that there should be a new unified organisation, which later became the Serious Fraud Office, which should be responsible for *"all the functions of detection, investigation and prosecuting of serious fraud..."*

In the event, the Serious Fraud Office was not given powers to detect serious fraud, merely to investigate and prosecute. Whether that was a wise course is impossible to say but it has been a recurring theme during the life of the Serious Fraud Office that it is an organisation which is purely reactive to events and is not able to properly take part in proactive activity which might prevent fraudulent conduct. Unlike the fight against organised crime which is predominantly intelligence led, seeking to disrupt or prevent organised crime groups from functioning, the fight against serious and complex fraud is an ex post facto, an after the fact, review of events.

There are several reasons for this, not least of which is that fraudulent activity tends to be less susceptible to being anticipated. Many major frauds are not premeditated in the same way as is much organised crime activity. This is not to diminish the consequences and the harm that can flow from major fraud. In the United Kingdom, it has been an almost inevitable feature of major fraud that personal tragedies occur.

The second major proposal of the Fraud Trials Committee was that the new organisation should have "Case Controllers"; these were to be lawyers who would have responsibility for directing the investigation process from the outset, and who would also be responsible for the subsequent prosecution up to the verdict being handed down. This was a radical departure to previous practice and not universally approved of, even today. Let me explain why.

In 1985 when the Fraud Trials Committee reported, the Prosecution of Offences Act 1985 had only just set up the Crown Prosecution Service, which was a new national organisation whose responsibility it was to prosecute all criminal cases coming from the Police Service but who were to play no part at all in the investigation process and were required to be completely independent of the investigating agencies. The creation of the CPS followed on from a previous Royal Commission which looked into concerns that the 'old' County Prosecuting Solicitors Offices, which were linked directly to each of the local Police Forces, were insufficiently 'independent' of the police in carrying out their functions. This principle, of prosecutorial independence from the investigators, has become known as the Phillips principle after the judge who first proposed it and it remains a bedrock principle underpinning English criminal practice today. Except that is, where the Serious Fraud Office operates. Indeed several very senior judges have undertaken reviews of various events or organisations since the Serious Fraud Office was created; they have all fully endorsed the Phillips principle. At the same time they have all supported the 'SFO Model' for fraud as being the only sensible approach to the issue. As might be appreciated a certain tension exists between the various agencies as a result.

I would now like to turn to the most controversial recommendation of the Roskill Committee and the one which caused the most argument. It was that juries, regarded as a fundamental principle of English law since the Magna Carta, should be abolished for serious fraud cases and should be replaced by a panel of specialists, who would more easily be able to understand the complexities of the transactions that are involved in serious fraud cases. This recommendation was strongly opposed by many in the judiciary and the legal profession of the time and, as a direct result, was not implemented by the Government.

Interestingly, the current Government has recognised the weaknesses of jury trial in serious and complex fraud cases and in the Criminal Justice Act 2003 it has enacted provisions which would do away with juries in some serious fraud cases in England and Wales to be replaced by trial by Judge alone. Those provisions were equally fiercely opposed during the passage of the Bill and it has been agreed that they will not be brought into force until both Houses of Parliament pass a motion agreeing to this. Such is the attachment to the principle of trial by jury that it is considered very unlikely that these provisions will ever be brought into force.

The issue of juries and their ability to understand serious fraud cases has been a running theme throughout the life of the Serious Fraud Office. It is an issue which will not go away but which seems incapable of being resolved. Part of the reason for this is the absolute secrecy of jury deliberations, which prevents any assessment of the effectiveness of the jury process.

Following the creation of the Serious Fraud Office in 1988, there was widespread concern in the professions about the powers that had been allocated to the Serious Fraud Office to enable them to expeditiously undertake their enquiries.

These powers, afforded to the Director by Section 2 of the 1987 Act, are again a departure from the norm in relation to Law Enforcement powers generally in England and Wales.

In fact, while they have often been described as draconian, they are in fact less severe than powers allocated to Companies Act Inspectors under the Companies Acts, although the purpose is virtually identical. That purpose is to allow those undertaking the enquiry to quickly gather information to enable them to ascertain what occurred. It should be noted that the operative word is 'information' as opposed to 'evidence'. The distinction is significant even though many fail to appreciate that a distinction even exists. But that is a discussion for another day.

Nevertheless these powers have been the subject of frequent challenge and have been gradually modified by case law, both domestic and under the European Convention of Human Rights.

So what are these powers? The powers afforded to the Director permit him to require anyone who might reasonably be expected to have information to provide documentation or information for the purposes of his investigation. Thus, individuals, businesses and institutions can be compelled to provide information either in the form of documents or to answer questions and there are sanctions for failing to answer those questions or provide the information or for providing false information in answer to questions. However, mindful of the "right against self incrimination", answers given to such enquiries are not admissible against the maker in any subsequent proceedings, except for the purposes of establishing that he had lied in answer to questioning.

The Act provided that answers given in interview by an accused could be used to establish whether the accused had said something inconsistent with their statement in interview, if he/she later gave evidence on their own behalf which was inconsistent with it. This power, though still a part of the Act, has been superseded by subsequent decisions of the European Court of Human Rights and undertakings given by the Attorney General in response thereto.

I hope that this sets the scene and provides some useful background information to the Serious Fraud Office, how it came into existence and the issues surrounding its creation. I would now like to turn to our role in the fight against fraud.

Given that the Serious Fraud Office's statutory remit is the investigation and prosecution of serious or complex fraud cases, we have had to establish our own aims and objectives to fulfil that requirement. Thus, whilst our function is to investigate and prosecute serious or complex fraud, our aim is to achieve a broader result, which is twofold:

'to deter fraud and to maintain confidence in the United Kingdom's financial systems (by the appropriate and effective investigation and prosecution of serious and complex fraud in England, Wales and Northern Ireland).'

The decision to have the maintenance of confidence in the financial systems of the UK as our aim comes directly from the Fraud Trials Committee report which makes reference to the concern that fraud was not being effectively investigated and prosecuted,

'with potentially harmful consequences not only for the unfortunate victims of fraud, but also for the reputation of the nation, and in particular the City of London, as one of the world's great financial centres'.

As will be appreciated, this aim has had an impact on the cases that are selected for investigation. It has also had an influence on the criteria that we apply in selecting cases. I mentioned previously that the absence of a definition of the phrase 'serious or complex fraud' within the Act meant that we were obliged to interpret it ourselves. We did this by framing the criteria for accepting cases to incorporate those factors that we considered would be relevant to an investigation of serious or complex fraud cases. They are listed below:

'The key criterion should be that the suspected fraud was such that the direction of the investigation should be in the hands of those who will be responsible for the prosecution.'

'The factors which would need to be taken into account include:

1. *Cases of the order of at least £1 million. (This is simply an objective and recognisable signpost of seriousness and likely public concern, rather than the main indicator of suitability ;)*
2. *Cases likely to give rise to national publicity and widespread public concern. These include those involving Government departments, public bodies, the Governments of other countries and commercial cases of public interest;*
3. *Cases requiring highly specialised knowledge of, for example, Stock Exchange practices or regulated markets;*
4. *Cases in which there is a significant international dimension;*
5. *Cases where legal, accountancy, and investigative skills need to be brought together;*
6. *Cases which appear to be complex, and in which the use of Section 2 powers might be appropriate.*

None of these factors, taken individually, should necessarily be regarded as conclusive.'

As will be appreciated, these criteria are fairly broadly drawn and allow for a considerable amount of latitude and discretion on the part of the Director in deciding whether to accept a case for investigation or not.

For example, the case may be regarded as being of high public concern where the losses to the individuals are small in real terms, but where the category of victims is such that the impact of that loss on the victim is significant. Thus, where there has been fraud perpetrated against vulnerable groups in society, for example the elderly, for whom even a small loss can have a very considerable impact on their health and wellbeing, cases have been accepted for investigation by the Serious Fraud Office.

Historically, the Serious Fraud Office has sought to interpret its criteria in as positive and inclusive a way as possible, especially as the environment in which we are working has changed over the years.

The history of the Serious Fraud Office is one that commentators have described as chequered. I would not accept that criticism as it proceeds from a fundamental misunderstanding of the context in which we work. For example, the Press will often report that the Serious Fraud Office does not have a very good record in prosecuting very high public interest cases such as Maxwell, Guinness and Blue Arrow. This is slightly unfair as the Serious Fraud Office secured convictions in both the Guinness and the Blue Arrow cases, albeit that we suffered reverses on appeal, in the European Court of Human Rights in the Guinness case and in the Court of Appeal in England in the Blue Arrow case. The Press ignore our successes, such as in the BCCI cases which resulted in convictions in every case.

The record of the Serious Fraud Office generally is good, with a long run conviction rate across the entire history of the Office of 70% (with the 5 year rolling average currently running at a slightly higher rate).

It is fair to say that the Serious Fraud Office occupies a very important position in the fight against fraud in the United Kingdom. In the 16 years of our existence, the Serious Fraud Office has developed an enviable reputation within the professions and the Judiciary, both for the quality of our investigations and prosecutions and also in respect of the innovative way in which we undertake our duties.

Indeed the Serious Fraud Office has always been keen to push the boundaries of investigation and prosecution techniques and has a number of 'firsts' in the use of technology in the presentation and delivery of cases.

In addition the Serious Fraud Office has always maintained a very self-critical attitude toward the conduct of investigations and prosecutions and has undergone a number of self-imposed reorganisations to ensure that we continue to improve our performance across every Division of the office.

The Serious Fraud Office is currently organised into four Operational Divisions, headed by Assistant Directors who are very experienced prosecutors and staffed by Case Controllers, Investigating Lawyers, Investigators and support staff. We find this multi-disciplinary approach is the most effective way of working.

Individual case teams will incorporate a range of disciplines dependant upon the requirements of the case. Each case is headed by a Case Controller, as envisaged by the Roskill Committee, who is responsible for the case from acceptance right through to the verdict and any appeal. We strive wherever possible to avoid changing the Case Controller as this continuity is a very important factor in making our cases a success.

As regards the investigators we employ, we are committed to having as diverse a group of specialists as possible; to this end we employ stockbrokers, insolvency specialists, insurance specialists and a variety of accountants and investigators from a wide range of backgrounds, including many former police officers.

As regards our caseload, all Operational Divisions share responsibility for cases arising in the London area but each of them has specific responsibility for a different part of England, Wales and Northern Ireland. This allows us to develop very close relations with those police forces we work with. In achieving this it has brought benefits to both the Serious Fraud Office and the police forces concerned in terms of improved familiarity with our ways of working and a greater understanding of the issues affecting each of us and a willingness to work together to overcome problems.

This has been especially important in the last few years when police forces have been under increasing pressure to reduce the resources available for investigating fraud due to other policing commitments, such as street robberies, domestic burglaries and car crime. Having developed these close relations, we have been able to anticipate problems and minimise the impact of reducing resources from the Police, albeit this is now becoming quite a serious issue.

I am pleased to say that this has been recognised by the Government and a new initiative has been brought forward whereby the City of London Police will act as a 'lead Force' for cases arising in London and the South-East. This will mean that in the 14 police force areas that comprise 'London and the South-East' the City of London Police will provide additional police resources over and above that provided by the 'home' force to enable us to undertake these investigations more effectively. In addition, the Serious Fraud Office has been granted additional resources by the Government to increase our staff numbers to approximately 300 permanent staff to further help in this regard.

It will be appreciated that the Serious Fraud Office, with a limited budget and a relatively small staff of approximately 240 permanent members, can only ever undertake the very top echelon of fraud cases that arise in England, Wales and Northern Ireland. Indeed, at any one time, the Serious Fraud Office will only have approximately 80-90 cases under investigation and prosecution.

Our approach to investigating cases is simple. We assess what we consider to be the essential criminality of those involved and focus our enquiries on only those areas that are likely to result in securing the evidence required to prove the case. We commonly exclude potential lines of enquiry that would divert us from our primary focus, either from the outset or those that are discovered as we proceed with the investigation. Nevertheless we always seek to keep an open mind on the investigation and will change our approach where this is appropriate.

We maintain tight control over the course of the investigation by preparing outline investigation plans and as the investigation proceeds making these increasingly more detailed to ensure the work being done follows the plan. We use other standard tools for following the progress of letters of request and notices issued using our investigation powers to ensure that delays in gathering evidence are kept to a minimum.

The Investigation Plan and the progress of the investigation generally is discussed on a monthly basis at a Case Conference, which brings the whole team together, both the Serious Fraud Office and Police staff, to deal with developments and make any necessary decisions relating to issues that may have arisen. We find these conferences have two benefits; it improves team work by ensuring that everyone understands the role they have within the team and how their work is contributing to the overall goal and it also gives the team the opportunity to raise issues of concern and discuss them as a group.

The issue of international co-operation is one that arises in the vast majority of our cases. Given that these enquiries are often the cause of delay in conducting our investigations, we pursue only those overseas enquiries that are essential to our case and we seek to initiate those enquiries at the earliest opportunity.

For many years now we have seen the immense value of close international co-operation and seek to develop ever-closer links with our colleagues overseas to bring this about. We regularly play host to international colleagues and, subject to budgetary constraints, are enthusiastic advocates of the International Association of Prosecutors, which promotes and fosters such better relations.

Despite the fact that we are a small department and only deal with the most serious of cases, the Serious Fraud Office is looked to, to provide a lead and to set the standard. This is a challenge we accept and strive to meet.

The focal role the Serious Fraud Office has in leading the fight against fraud has both disadvantages and compensations. In consequence of the fact that we are a small department, resources are necessarily stretched to cover all the areas where we are asked to contribute to government policy, at the same time the fact that we are involved so often means we have the opportunity to influence decisions out of all proportion to our relative size.

In consequence of our central position in the fight against fraud, throughout the life of the Serious Fraud Office, senior members of the office have undertaken public speaking engagements. There have been two reasons for this, to explain how we work and our commitment to ensuring that fraud is being effectively tackled and also to raise awareness of fraud and fraud issues in the minds of the public, the establishment and the financial services industry. In this way we are able to make a small contribution to promoting fraud prevention and awareness issues and techniques.

In addition, the Serious Fraud Office is determined to play a full part on the international stage. We have developed our own Mutual Legal Assistance Unit, which handles incoming requests from countries throughout the world in relation to inquiries to be made in the United Kingdom. If the Director accedes to the request then we are able to use our powers to gather information, which can be produced in evidence if required. This unit has only been operating for a short while, but has already undertaken many dozens of requests on behalf of many Foreign Governments and provided very valuable assistance in the fight against fraud worldwide. The Serious Fraud Office is committed to providing this service to our colleagues across the world as it is one of our central beliefs that greater co-operation between international colleagues is the only way in which international fraud can be effectively handled. Further we contribute to improving knowledge of fraud investigation and prosecution techniques by taking part in training courses such as these and in the process improve our own knowledge.

At the same time the Serious Fraud Office is very keen to develop our own working tools and practices to ensure that we keep at the very cutting edge of investigation and prosecution techniques. That is not to say that we consider ourselves to be leaders in this highly specialist field because there are always things that we can learn from our colleagues both at home and around the world. Our approach is simple, we are always prepared to learn new techniques and to take advantage of others experience to improve ourselves so that we can undertake our duties and fulfil our responsibilities to the very best of our ability.

The Serious Fraud Office has embraced the use of technology in the way we investigate and prosecute. In the United Kingdom, the Serious Fraud Office was the first prosecutor to use satellite links to bring evidence from a witness outside the jurisdiction before a UK Court. We have pioneered the use of presentational systems (images of documents rather than the documents themselves) and tools (such as PowerPoint and other graphics packages) as a means of streamlining the proceedings in court and conveying

highly complex information in a readily digestible form, and we have been quick to pick up on the excellent work of our colleagues around the world who routinely use these techniques in presenting their cases to improve our own.

Perhaps our most significant development is our most recent one. We have devised an entirely new computer system which, together with refined and improved working practices, will allow us to proceed from the commencement of our investigation through to the verdict of the trial (or perhaps the close of any appeal) using one set of IT tools. There is nothing intrinsically new in what we have done, which is to use images of documents rather than the documents themselves, but we have, we believe, developed the first end-to-end system which complies with the legal requirements that apply to the investigation of cases in England and Wales, but also allows the investigator the maximum flexibility in how they can use the tools to facilitate the investigation. We hope to reduce the length of our investigations by at least 25% using this system.

Another major responsibility of the Serious Fraud Office is to develop and maintain good working relations with regulators. We see it as a major part of our duties to co-ordinate with regulators to ensure complimentary working practices to better undertake our respective duties. To achieve this we meet regularly with the many regulators that operate in the UK to discuss areas of interest or concern and to seek ways of improving our relationship. In addition we participate in information sharing arrangements with them to try and make sure that we are each able to work from the best available information.

Whilst we would not boast of our achievements, our record is one I believe we can be proud of, not that we measure ourselves by reference to this. Rather we have worked hard to acquire a reputation for prosecuting with integrity, fairness and to a high standard. Nevertheless our conviction rates are good, convicting 70% of all defendants since our inception, and averaging 76% over the last five years. In respect of prosecutions, which usually involve multiple defendants, we have secured convictions against at least one defendant (usually the main suspect) in 83% of cases. But we are not content. Statistics are a poor judge of quality. It is our aim to continue to improve, both in terms of the quality of our casework and the speed with which we bring cases before the courts.

The Roskill Committee, at the start of their report, quote from Magna Carta. The quote is as valid today as it was nearly 800 years ago. I finish by quoting it to you;

'*Nulli vendemus, nulli negabimus, aut differemus, rectum aut justiciam'*

'To no one will we sell, to no one will we deny or delay, right or justice'

Magna Carta Chapter 40.

FRAUD INVESTIGATION AND PROSECUTION IN THE UNITED KINGDOM

*Peter Kiernan**

I. BACKGROUND TO THE UK REGIME

One of the things that most attracted me to working for the Serious Fraud Office when I joined it in 1992 was the fact that it was a wholly unique organisation within the United Kingdom's Law Enforcement Agencies.

It is unique in a number of ways and I will elaborate on these in due course but the most obvious, is that it is a single function organisation.

The Serious Fraud Office investigates and prosecutes fraud, nothing else. As is the case in many countries, the United Kingdom has a number of organisations that investigate or prosecute criminal conduct. Indeed, there are many organisations in the United Kingdom that investigate or prosecute fraud. However, for the vast majority of these organisations, the investigation or prosecution of fraud is a secondary function sitting alongside other primary responsibilities. It may help if I give you some examples. I shall confine myself to the main agencies that are involved in these kinds of cases but the truth is there are dozens of others who have some responsibility for the investigation or prosecution of fraud in their particular areas of operation.

Clearly, the primary responsibility for investigating criminal conduct lies with the 35 Police Forces of England and Wales. The cases brought by these Police Forces, are prosecuted by the Crown Prosecution Service, a national organisation created in 1985 to ensure national standards of service in relation to the prosecution of crime in England and Wales.

The remit of both these organisations is very broad. It covers a very broad spectrum, but not all, of the criminal offences that exist in England and Wales. As a consequence, the resources each of them is able to devote to fraud is, in real terms, very small. Central government initiatives for dealing with crime tend to concentrate on criminal conduct that has a high local impact and this is where Police Forces and the Crown Prosecution Service are, quite properly, directing the vast majority of their efforts. This is putting increasing pressure on the resources available to conduct fraud investigations, which tend to have a low local impact as the impact of most frauds are spread across the country and, more often than not these days, internationally too.

The Serious Fraud Office has jurisdiction over all serious or complex fraud committed in England, Wales and Northern Ireland but is a relatively small organisation of approximately 250 permanent staff who are able to conduct approximately 80 investigations and prosecutions at any one time. It will be readily appreciated that this means that only a very small percentage of fraud is dealt with by the Serious Fraud Office, albeit these are the most serious and complex of cases.

The Department of Trade and Industry has responsibility for the "regulation" of limited companies and undertakes criminal investigations in relation to the operation of those companies, including instances of fraudulent conduct on the part of the Directors. The DTI is a very large department and has wide-ranging responsibilities, the regulation of companies and the investigation of suspected crime being a very small part of that remit. As a general rule, there is a strong tendency for the DTI to prosecute so-called 'regulatory' offences, such as failure to keep accounting records. In addition, they will often prosecute instances of misconduct by Directors in companies that are failing. For example, it is not uncommon for Directors of companies to seek to strip assets from companies when they realise that things are going badly. Equally, it is quite common that in failing companies, Directors will seek to cheat their creditors or continue trading after the point where the company is insolvent and they should cease trading. The DTI will routinely investigate and prosecute less serious instances of these offences.

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Both Her Majesty's Commissioners of Inland Revenue and Her Majesty's Commissioners of Customs and Excise (Customs and Excise) investigate and prosecute the evasion of taxes or excise duties. Once again, both organisations have a primary function, which is the collection of revenue and it is seen as a necessary function to encourage the payment of due taxes or excise duties that they also be able to investigate and prosecute where there is deliberate evasion.

What might be regarded as a potentially small area of the duties of Customs and Excise, prosecuting tax evaders to encourage compliance, has in fact become a very significant part of their functions. Customs and Excise investigate a very considerable amount of organised crime within the UK. Organised crime activity directed at evading customs or excise duties in relation to tobacco, alcohol and hydro-carbon fuel oils is now very big business. In recent years these areas have been subject to concerted attack by organised crime gangs in an attempt to take advantage of loopholes and avoid the payment of duties, which in the case of alcohol can be 75% of the price of the goods in question. It has been a very low risk option for these gangs and returns profits not so far behind that for drugs and at a much lower risk of either detection or prosecution.

Following a number of unfortunate results in recent trials where Customs and Excise cases collapsed, the Government announced that an enquiry would be conducted by a senior judge. I was fortunate to be asked to assist the judge, Mr Justice Butterfield. As a result of his report, the government has decided that the prosecution of Customs and Excise cases would be conducted by a new body to be called the Customs and Excise Prosecution Office which is due to be set up in the next year.

Just to illustrate the importance of these cases, the sums involved can be extraordinary. The value of these frauds can often reach tens of millions of pounds for an individual case and the sum regarded as lost to the Treasury in any year is counted in terms of a billion pounds or more. The importance of these cases cannot be over-stressed and the need to ensure that they are successfully investigated and prosecuted is a real priority for the UK.

Lastly, of the major organisations, I would mention the Financial Services Authority. The FSA is the regulator for most of the regulated markets and organisations within the UK Financial Services Sector and, much as with the Inland Revenue and Customs and Excise, the ability to investigate and prosecute for criminal conduct is considered a necessary power to enable them to conduct their primary responsibilities of regulating the markets effectively.

I have, very briefly indeed, outlined the major organisations involved in investigating and prosecuting fraud and it may not be readily apparent but there is a considerable amount of overlap between many of these organisations in the areas that they cover and the cases that they take.

Many of the cases that the DTI might investigate, could easily be investigated by either the Police or, if it fits our criteria, the Serious Fraud Office. Cases that the Financial Services Authority might choose to investigate could equally be investigated by the Police or the DTI or the SFO. Many frauds will involve the fraudulent evasion of tax, after all if you are stealing from your creditors why would you bother paying taxes? Indeed if you company is in trouble your least urgent creditor is the government, everyone else comes first. The option of not paying your taxes is usually the first step for many on the road to wholesale fraud.

As I am sure you will appreciate this can lead to a certain amount of confusion and discussion as to which is the most appropriate agency to investigate a particular case. To enable us to deal with these matters, we have devised a number of mechanisms to allow us to do this with the minimum of fuss and difficulty.

The primary method of deciding where a case should be investigated is an informal group called the Joint Vetting Committee. The JVC has a membership of the Serious Fraud Office, the Crown Prosecution Service, the Police Service and the Assets Recovery Agency.

The purpose of the JVC is to allow consideration of cases which might be investigated by more than one organisation to decide which is the most appropriate of them to investigate, according to the circumstances of each case. In SFO terms, these are usually the cases that are on the borderline of our acceptance criteria. Often cases will be discussed at the JVC where there is no clear answer to the question as to how the case

should be taken forward. The Committee discuss the best possible options for dealing with a particular case, including where it is not considered that a criminal prosecution is likely to be possible, and whether it would be suitable for action under the auspices of the Proceeds of Crime Act and intervention by the Assets Recovery Agency.

I should explain that the UK has recently created the Assets Recovery Agency with a view to depriving criminals of the proceeds of their criminal conduct. This agency has a variety of powers which are not limited to bringing criminal proceedings, but also include recovery through the Civil Courts and even taxation powers where this is considered appropriate. In appropriate cases, even though it may not be possible to proceed with a criminal investigation, it may well be possible to establish that the monies in the possession of the individual are the proceeds of criminal conduct to the civil standard, and may be susceptible to recovery, or where the individual is in possession of monies which do not tally with his reported income, then they are able to 'tax' him on these funds, often applying interest and penalties for failure to report this 'income'.

In addition to the JVC, the SFO has bilateral meetings with the Financial Services Authority and the DTI, and occasional meetings with the Customs and Excise on an "at need basis".

In addition, we have regular meetings of a network of organisations involved in fighting fraud which allows us to share intelligence, identify trends in frauds within the UK and address issues of mutual interest.

In this way, whilst our approach is fragmented and, frankly, a little confusing to the casual observer, it has developed into a highly sophisticated and mutually supportive system. It is not regarded by any of the various participants as such but we each play an important role in ensuring that the various organisations involved maintain an appropriate approach to the work they undertake.

Let me explain this further. As a result of the interlocking and overlapping functions of the various departments, it is inevitable that any changes in approach or direction by any of the organisations involved, quickly become known within the law enforcement community. For example, in respect of the reduction of police resources I mentioned in my other paper, this was very quickly identified by a number of the organisations within the law enforcement community. As a result it was impossible for the issue to be ignored. The police have been forced to acknowledge the fact of the significant reduction in resources they are applying to fraud and, in fairness to those officers who are dedicated to the investigation of fraud, they have done so readily because of their dedication to pursuing this type of crime.

The response of the government has been to approve a proposal that the City of London Police fraud squad should be expanded and assume the position of 'lead force' for all SFO cases in London and the South-East of England. Whilst this is very welcome, it is only a partial answer and does not begin to address the growing weakness in the investigation of smaller frauds that do not meet our criteria.

This proposal arose from a working party set up by the government called the 'Improving the response to fraud' (IRF) group. This group included participants from all of the major stakeholders interested in the effective investigation and prosecution of fraud; including the SFO, CPS, Treasury, Home Office, DTI and the Police. It produced two reports, the recommendations of which have not yet been pursued. It did consider the option of creating 'lead forces' from a few police forces to assist the SFO but this was not the favoured option of the group.

As I have mentioned, these new arrangements do not provide a fully comprehensive regime for dealing with fraud, however. The harsh reality is that the investigation of fraud across the UK is inconsistent and incomplete. The IRF Group was concerned not just with the most serious cases but with concerns about the national response to fraud at all levels. There remains a considerable amount of fraud which is not satisfactorily handled or investigated. That is assuming it is investigated at all. Let me explain.

The fraud squads of local police forces are at best getting smaller, at worst being disbanded. This is because, as I have already mentioned, central initiatives have required police forces to concentrate their resources on crimes having a high local impact and police forces, like most government departments, are being required to be more responsive to local needs and issues. This is an entirely proper thing for them to

do and no one would deny the need and importance for just such an approach. Local issues such as domestic burglaries, car crime, street violence, street robberies and vandalism are issues that directly affect the feelings of safety and security of the local community.

However, as a direct result of this downward pressure on fraud squad resources there is an equal pressure on the selection of cases they are willing or able to accept for investigation. Routinely fraud squads now only accept more serious cases on which to devote the limited resources they have. Many forces will not allow fraud squads to investigate frauds valued at less than £750,000, except in the most exceptional circumstances. In consequence, smaller frauds must be handled on a local level by detective officers who are unfamiliar with such cases. Sadly, it is often the case that when these frauds are reported the victim is turned away and advised to proceed through the civil courts as the matter is a 'civil dispute'. This response merely reflects the inability of local officers to handle these cases and their desire to avoid the need to do so.

Fortunately we are moving towards recording more effectively the frauds that are being reported and whether or not any investigative action is taken, and this will allow us to get a much better idea of the scale of the problem and push for the allocation of greater resources to this area of criminal activity. Currently we have no proper measure of the level of fraud in the UK. The Home Office crime reporting statistics make no mention of fraud and there is no specific category of 'fraud' to capture this information. Equally, as there is no 'offence' of fraud, it is prosecuted using a variety of charging options, 'frauds' that are reported currently get rolled into other categories of crime such as theft.

II. PRACTICALITIES OF FRAUD INVESTIGATION

Whilst these weaknesses in our system exist, let us concentrate on what we are able to achieve and how we do this.

The approach used for the investigation of fraud in the UK is dependent upon which agency is undertaking the enquiry. Each agency has its own powers and approaches to fulfilling its functions in this regard. As I mentioned previously in this paper, the various agencies have different purposes in mind when pursuing fraud cases. Many are intent on seeking to reinforce their primary function, securing compliance with regulatory practices or rules, or payment of taxes or duties. In such agencies, it may be possible for those involved to avoid criminal proceedings by agreeing to submit themselves to suitable administrative penalties. After all, if your main function is gathering taxes, if someone offers to pay the tax due, together with interest and penalties, you may not consider that criminal action is ultimately necessary.

There are a wide range of powers available to some of the agencies working in this field and these powers are by no means consistent or equivalent with each other. You may imagine that this might cause some problems. You would be correct to think so. In inter-agency investigations, where two or more agencies co-operate in a particular case, it is often very difficult to decide which agency should exercise their powers in situations that arise. Great care is necessary to avoid the suggestion that the power used was selected only because it was a wider power than others available. An example may assist. In the UK the widest powers available to investigators lie with HM Customs & Excise, in a joint investigation with the police it would be improper to use wider Customs powers where the police would usually exercise their own more limited powers.

It may help if I were to outline some of the powers available to some of the various agencies concerned to show you what I mean.

Let me start with the police, the main powers of the police are contained in the Police and Criminal Evidence Act 1984. This Act provides the police with three main powers to search for evidence:

- Section 1 - Stop & Search – This type of power is available only to police officers, who may stop and search someone at any time when they suspect the person has in his or her possession stolen goods.
- Section 17 - Search following arrest – Again this is a power available only to a police officer who may search the premises where a person has been arrested, where he believes that further evidence may be found there.
- Section 8 - Search Warrant – This is a normal warrant to enter premises and is less extensive in terms of material that can be seized than the search powers available to some other agencies. For example, it does not entitle an officer to remove journalistic material.

In addition the police may use their powers under Section 9 and Schedule 1 of the Police and Criminal Evidence Act 1984 to secure the production of material to them, where they can satisfy a judge of the need for the order. In using this power the police can gain access to material that they would be unable to seize under a search warrant.

Contrast this with the powers available to an Inspector appointed under the Companies Act who may require information to be provided to assist in the enquiry he or she is undertaking. However, the power has no direct sanction for failure to comply, the most that can be done is to ask the Companies Court to have the person who is refusing to comply with contempt of court. This is very much a last resort as the penalties can be severe and often leads to extensive delays in the Inspectors gathering the necessary information for their purposes.

Then consider the SFO's powers. Under a search warrant granted in accordance with section 2(4) of the Criminal Justice Act 1987, it is police officers who are empowered, in the presence of an appropriate SFO officer, to search and seize material. Using this power the limitations of police search powers are overcome and any material is capable of being seized, except for material which is subject to legal professional privilege (otherwise known as Attorney-Client privilege).

I have deliberately not gone through any of these powers in any detail but I hope you have a flavour of the prevailing organisations, their powers and the overlap and complexities of the situation in the UK.

Having outlined the powers available to the investigators and prosecutors, I feel it is only proper to give you an indication of the responsibilities and obligations of the prosecutor.

The primary obligation placed upon the prosecutor relates to the disclosure of unused material, that is material in his possession which is not to be produced as evidence but which has been collected during the course of the investigation. The requirement to disclose information to the defence is contained in the Criminal Procedure and Investigations Act 1996. The regime has been amended by the Criminal Justice Act 2003 but these provisions are not yet in force.

The requirement to disclose unused material comes in two parts; we must disclose material which undermines the prosecution case and we must disclose material which might assist the defence. The first part is readily understood and fairly straightforward. The second is highly speculative and is currently the cause of most problems in fraud trials.

The problem arises from the fact that it is for the prosecutor to decide what is or is not relevant to an issue the defence are raising. This mainly happens because the defence are, understandably, reluctant to disclose what their defence will be at too early a stage. This in turn makes disclosure very difficult for the prosecutor who must interpret the information he receives in deciding whether disclosure is made or not. As you might imagine, different prosecutors take different views as to whether to interpret matters in a more liberal manner or more strictly. This is what causes the problem. If the prosecutor takes a strict view of the position then he will disclose very little information. As the requirement to disclosure is one that continues throughout the life of the case, including the trial, the prosecutor will often have to make decisions about what should be disclosed as the defence emerges during the trial and will be forced to disclose material as the trial progresses. This can lead to further disclosure as the defence review the material provided. This in turn will often lead to allegations of bad faith against the prosecutor who can look as if he has been 'withholding' the material in an attempt to disadvantage the defence. At least he is often portrayed that way and, if it happens too often, it can be very hard to refute such an impression. That is why the SFO takes a very open view of disclosure, permitting the defence access to any material which they ask for, provided they give a reason for wanting to do so.

Habitually in major cases, the defence will often concentrate on seeking to establish procedural defects or failings in the process of the investigation and prosecution as a means of trying to have the case stopped. Indeed it is now common, that if such attempts fail, the defendants will plead guilty because they cannot dispute the evidence against them and have no defence to the charges brought.

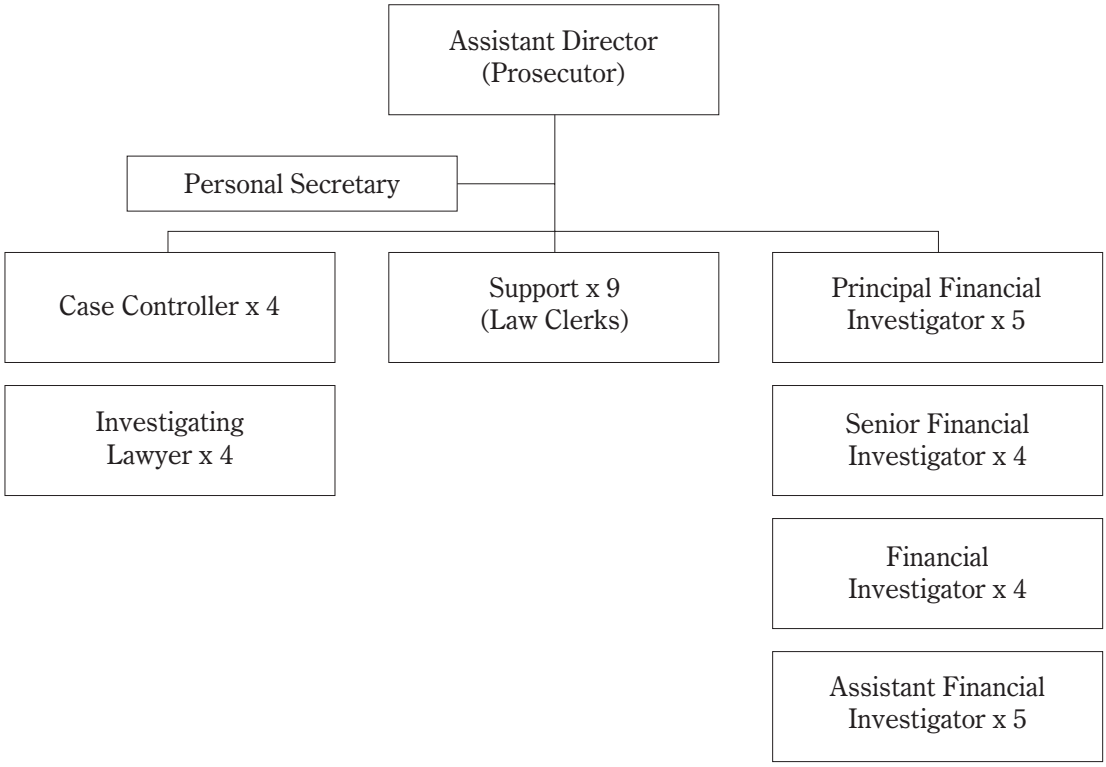
I turn now to the methods by which we investigate serious fraud cases.

III. THE SERIOUS FRAUD OFFICE APPROACH

I will outline the way we operate at the SFO. This should give you a fairly clear idea of the general approach to fraud investigations in the UK as most police forces now operate in broadly compatible ways. It is perhaps an indicator of our success that the police feel they can follow our methods, albeit with inevitable changes to suit local needs.

The SFO has four operational divisions, each of which is responsible for cases arising in London and the South-East and for separate parts of England, Wales and Northern Ireland. I also mentioned in general terms our divisional structure and case teams. You can see below how our divisions are organised and the possible make up of case teams.

Outline Divisional Structure



Possible Make Up of a Case Team

What each team will actually consist of will depend upon the needs of the specific case.

I would now like to move on to explain how we work. Crucial to success is an investigation plan agreed by all parties. This will be formulated and will define the overall scale, scope and direction of the enquiry; it will define the roles and responsibilities of each of the team members and the resources that will be

employed in the investigation; it will set out where the investigators will work (this might be at our offices or at a satellite office set up in the local police area, whichever is most appropriate) and whether or not they are committed to other responsibilities or dedicated to that particular investigation; it will detail methods of exhibit and property handling, storage and responsibilities for document control; it will also cover the use of information technology; in addition it will specify what initial lines of enquiry will be pursued, the target dates for achieving these, what tolerances there are within the plan and the performance indicators that will be used.

Regular case conferences are held - usually each month - at which the direction of the enquiry will be reviewed and new objectives set. All decisions are recorded in the minutes which become part of the Policy file. For example, decisions such as who are suspects and who are witnesses will be recorded together with reasons for discontinuing lines of enquiries, decisions as to charge or to offer no evidence and acceptance of guilty pleas and the media strategy for the investigation.

To try and keep things simple we use a fairly basic type of project management tool in the form of task sheets.

We have also developed in-house expertise in computer forensic technology. Much of the material we rely on is now kept in electronic format and to be able to access and interpret that material is vital. We have a small unit of about eight people which we are hoping to expand over the next year. Data recovery using outside firms can be extremely expensive but is often unavoidable. For example we are getting ever increasing volumes of computer data in our cases, now sometimes reaching thousands of Gigabytes. In such circumstances, the use of external support is essential if we are to process and review this volume of material in an efficient manner.

We work closely with similar specialist computer forensic units in the Customs and Excise, the Inland Revenue and in the police and when, for example, searches are taking place and there are numerous premises to be visited we will try to help each other out by pooling resources - all of which is an additional strain but a good use of the resources available to us all.

Precise roles and responsibilities in any given investigation will depend upon the nature of the case and, to some extent the resources available. In every case the intention is to create a team which will make the most effective use of the abilities of police officers and SFO staff. Flexibility is vital. In our Memorandum of Understanding with the Association of Chief Police Officers suggested roles and responsibilities might include:

Lawyers
- Advise on legal issues.
- Liaise with lawyers representing the defence or any 3rd party interest.
- Conduct Section 2 interviews as needed.
- Assess evidence.
- Prepare letters of request.
- Prepare and serve Section 2 orders for production of documents as agreed.
- Recommend prosecution decision.
- Instruct counsel.

Financial Investigators
- Advise on accountancy issues.
- Adduce accountancy evidence.
- Conduct enquiries of an accountancy nature.
- Conduct Section 2 interviews as agreed.
- Prepare and serve Section 2 orders for production of documents as agreed.
- Advise on operational issues and investigation management; such as the direction and scope of the investigation.
- Assimilate information to enable a prosecution decision to be made.
- Gather evidence to support a prosecution case.

Police
- Advise on operational issues and investigation management; such as the direction and scope of the investigation.
- Assimilate information to enable a prosecution decision to be made.
- Gather evidence to support a prosecution case.
- Exercise powers under PACE and other legislation as agreed.

These are only suggestions; no one has a monopoly of wisdom when it comes to investigating fraud. The combination of a police officer and accountant working alongside each other has been shown, time and time again, to be a very potent weapon in the fight against fraud. The only people who benefit from an insular approach are the criminals.

Since fraud is a document based offence and since both fraudsters, their victims, banks and others are often unwilling to discuss what happened, we use the Director's investigation powers under Section 2 of the Criminal Justice Act 1987 whereby individuals can be required to furnish information and answer questions and to produce documents and give explanations for them. This power can be exercised by any member of the SFO authorised by the Director or by a competent investigator - often an outside accountant brought in for the case - on the Director's behalf. These powers are not however exercisable by a constable; this is not any reflection on their ability as investigators. On the contrary, it is a reflection of the constitutional independence of chief officers and the responsibility they have for the police officers working for them and reflects their own wishes.

Although the problem of obtaining access to documents can be overcome by using the procedure laid down in Schedule 1 of the Police and Criminal Evidence Act 1984, the advantage of a Notice under Section 2 is not only that the procedure is quicker but also a reluctant witness can be required to give an explanation, furnish information and answer questions. In many fraud investigations people with information or evidence don't want to talk. They may have good reasons for not talking. They may be under obligations of confidentiality to their customers, as is a bank; they may simply be embarrassed and would prefer not to be exposed in a trial as foolish or incompetent; they be frightened of civil action for negligence or worse; they may be close to the accused or in some cases they may be the accused themselves. The ability to use our Section 2 powers overcomes these problems.

It also provides a criminal sanction for failing to comply with the Notice either to produce documents or answer questions; provides a sanction for giving false or misleading information; and a sanction for destroying documents, etc. In the case of a defendant, the use which can be made of his answers to a requirement under Section 2 is limited. The Act provides that it can only be used for a prosecution for giving false information. Since the case of Saunders in the European Court of Human Rights the Attorney General has, as a matter of policy, decided that its use in cross-examination will not now be used for fear of offending the Convention on Human Rights.

Whether used on willing, reluctant or frankly hostile recipients Section 2 has proved time and time again that it is a swift and economical way of getting to the documents and to, if not the truth, at least to an approximation of it.

A. Section 2 Powers

Section 2 (1) The powers of the Director shall be exercisable only for the purposes of an investigation under Section 1.

Section 2 (2) The Director may by Notice in writing require the person whose affairs are to be investigated or any other person whom he has reason to believe has relevant information to answer questions or otherwise furnish information.

Section 2 (3) The Director may by Notice in writing require the person under investigation or any other person to produce at such place as may be specified in the Notice and either forthwith or at such time as may be so specified any specified documents which appear to the Director to relate to any matter relevant to the investigation or any documents of a specified description which appear to him to so relate and:

(a) if any such documents are produced the Director may take copies or extracts from them;

(b) require the person producing them to provide an explanation of any of them

if any such documents are not produced the Director may require the person who was required to produce them to state to the best of his/her knowledge and belief where they are.

B. Document Management

What distinguishes fraud from most other criminal investigations is the amount of material we have to deal with. Either in hard copy or electronic format it forms the basis of our investigations and ultimately after being sifted is put together in an attempt to show how the crime has taken place. Fraud is a document reliant crime. We are dealing with commercial activity - either real or imagined and before we can bring a case to prosecution with any degree of confidence we have to be sure that we have a grasp of the material; that there are no problems that would arise on disclosure to the defence; that we are absolutely certain about being able to prove its provenance - by which I mean we can prove where it came from, when, whose building, whose room, whose desk and exactly where it was found. And we have to be able to do that in a very short space of time.

We put a great deal of effort into controlling the material we acquire, whether it is under the search provisions of Section 2, Criminal Justice Act; whether we have obtained it by issuing notices or whether we have obtained it voluntarily. All material is logged in an ascending order of detail; first of all bags are logged, usually following a search; that is then broken down into files and finally into individual documents or series of documents which are produced by witness statements. The process is laborious and requires a patient assessment by the investigators as well as the in-putters. But it gives an opportunity of a review of the documents at the earliest possible stage and ensures that control is there. It provides the basis for the schedules for disclosure that are needed later, during the trial process.

In order to improve our efficiency and effectiveness we have been developing a new computer based document management system whereby all material is scanned into the system, DOCMAN. Not only will it enable our investigators to access the material on screen rather than the laborious process of going to the exhibit store, drawing out originals and returning them but it gives us the great advantage of being able to search across the entirety of the case material using this system seeking particular names or words in a matter of seconds. It will also enable us to marshal the material in electronic form, both the witness statements and the images of the documents and instead of serving reams and reams of paper copies of the evidence we serve it in electronic form both on the defence and the court.

It would be disingenuous of me to stand here today and suggest that using Information Technology is universally popular with judges. It is not. But I was recently at a JSB Seminar and was struck by the enthusiasm of today's Judges for using information technology in the courtroom. I would like to outline the technology that is available in the UK today and the reasons why we are using these tools. The available tools are:

- Real Time Transcription
- Video links
- Use of images rather than paper
- Use of graphics and animated graphics

1. Real Time Transcription

This is an online service which renders the speech of the persons in court into text as it happens. It has a number of benefits, not least of which is that it avoids the need for the judge to make a handwritten note of the evidence and can save considerable amount of time as a result. This results in the witnesses' evidence being given more naturally because they are not having to stop to wait for the judge to catch up. It also means that the examination of the witnesses can proceed at a speed which the prosecution and defence might wish.

2. Video Links

This is common enough that I need not describe it but the benefits of this tool are often overlooked. Undoubtedly it allows the court to hear from witnesses who may be unable or are unwilling to attend in the

court itself. This is regularly used for business and professional witnesses who live outside the UK and who would be most unwilling to spend several days away from their jobs to perhaps spend and hour or two giving evidence. It may also give the jury a better view of the witness, who could easily be up to 10 metres away from them in the court itself. We tend to use large screens which show the witness in close up. However, the disadvantage of this tool is that for overseas witnesses this can lead to the court sitting at unsocial times of day or in the evening.

3. Use of Images Rather Than Paper

Again, using images is nothing particularly innovative but it saves a considerable amount of court time by getting everyone in Court looking at the same document very much more quickly than is possible normally. In addition jurors are forced to concentrate on what they are being shown not other documents in the jury bundles. Further it can highlight areas or parts of documents that might be of interest and can be used to easily compare two documents (e.g. signatures or handwriting).

In terms of certainty, using these systems also records what was shown and when to every witness so there can be no confusion either at trial or at any later appeal. These systems also allow advocates to append notes to individual Images (that only they can see) so that preparation for the examination of witnesses is made easier. This is also possible by linking Images to the real time transcript of the evidence as it happens. Another spin off is that it can reduce the size of the paper Jury Bundles needed. It should be noted though that using these systems requires large screens, at least 21 inches, to avoid "screen fatigue".

4. Use of Graphics/Animated Graphics

It may sound obvious but the effective use of graphics allows for much clearer and more easily understood presentation of complex facts and events and accordingly saves court time as well improving the case being presented. Animating those graphics can make very complex transactions more easily understood by providing information in simple pieces that are built upon layer by layer and allow the jury to retain their understanding of the whole transaction, which is often not possible with a step by step recitation of the events. However, there is a risk that the graphics produced are too good and make the case too clear for the jury. In such cases the defence will look for reasons to object to their use.

I hope that this very brief and necessarily superficial outline of the situation in the United Kingdom and our approaches in tackling fraud gives you a flavour of the complexities we face. We do not claim to have a perfect system, indeed I have mentioned some of the critical weaknesses in this paper, but we do have a system that provides much of what is required and given that competition for resources will always result in less being made available than would be ideal, it is as good a system as we are likely to get.

LEARNING FROM THE PAST: PRACTICAL LESSONS FROM UK CASES

*Peter Kiernan**

I. INTRODUCTION

I propose going through a number of cases from the SFO's history, which have been important to our development. Some have been successful, some not. All have contributed to the office that I know today. In addition to the cases, I propose mentioning a number of other issues or events that have brought us to this point in our history.

II. CASES

A. Guinness

The Guinness case was the first major enquiry launched by the SFO. It was also something of a speculative case, as the area of take-overs had never before been prosecuted.

The facts are that from early 1986, Guinness plc had been engaged in a closely fought competition with Argyll plc to take over The Distillers Company plc. Their respective offers for Distillers included a substantial share exchange element and accordingly, their respective share prices were a critical factor for both sides.

In November 1986, amid rumours of misconduct during the course of the bid, the Secretary of State for Trade and Industry appointed Inspectors under sections 432 and 442 of the Companies Act 1985 to investigate the affairs of Guinness. It should be noted that if a person is interviewed under the compulsory power contained in section 434 of the Act, the answers obtained by the Inspectors may be used in evidence against the maker.

During the course of the take-over bid, the quoted Guinness share price rose dramatically. It transpired that this was a result of an unlawful share support operation. This involved 'supporters' buying shares who were paid substantial sums from Guinness's own funds but without board authority - in effect the supporters were given secret indemnities against losses and, in some cases, equally secret and very large success fees. The indemnities and success fees were paid under cover of false invoices.

Ernest Saunders, the chief executive of Guinness at the time of the bid, was the only defendant who gave evidence at the trial. At trial and in his evidence to the DTI Inspectors, he denied all knowledge of, or involvement in, the share support operation or the false invoices.

Gerald Ronson was one of the supporters. His companies purchased approximately £25 million worth of Guinness shares against the promise, given by Saunders, of an indemnity and a success fee of £5 million. False invoices, which bore no suggestion that they related to indemnities and success fees, were rendered to Guinness and paid. Ronson had told the DTI Inspectors that at the time, he did not think there was anything wrong with what he was doing, and he had trusted Anthony Parnes who had elicited Ronson's support. When interviewed by the Inspectors, Ronson was unable to explain why he thought Guinness should pay him £5 million to do something, which if it had been lawful, Guinness could have done itself.

Anthony Parnes recruited Ronson as a supporter. After the bid, Parnes received a success fee of £3.35 million, negotiated on his behalf by Jack Lyons, after he supplied a false invoice.

Two further false invoices were submitted to Guinness and paid in respect of support recruited by Parnes from Ephraim Margulies, chairman of S & W Beresford plc. Parnes' defence at trial was that he had not acted dishonestly.

Jack Lyons not only provided support himself but also recruited other supporters. He received from Guinness, under cover of false invoices, indemnity and success fees. Lyons denied to the DTI Inspectors

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that he had been involved in obtaining supporters or in drafting the false invoices. Lyons clearly knew the giving of indemnities was wrong. He claimed that if he had been approached to do this, he would have walked out.

All four defendants were convicted; Saunders received a sentence of 5 years imprisonment (reduced to 2.5 years on appeal), Parnes received a sentence of 18 months imprisonment plus costs, Ronson was fined £5 million plus costs and Lyons was fined £3 million plus costs.

After his conviction, Saunders was diagnosed, by his own doctors, with Parkinson's disease and released early from his sentence of imprisonment. Interestingly, he made a full recovery within weeks of his release. I believe he is the only person ever to do so.

The first appeals against conviction by Saunders, Parnes and Ronson were dismissed by the Court of Appeal on 16 May 1991, with the exception of one conspiracy count against Saunders.

On 22 December 1994, the Home Secretary referred the cases of all four appellants to the Court of Appeal on the grounds that disclosure of material, which was not made available at the time of the trial, might have aided the defence and possibly influenced the outcome of the trial.

The papers related to another take-over matter called TWH. The TWH matter was referred to the SFO by the Department of Trade and Industry in early 1988. The events in question took place about the time of the Guinness bid which had been in 1986. Henry Ansbachers Co Ltd, a merchant bank of which Lord Spens was a director, had given a number of indemnities to TWH, a firm of licensed dealers, in connection with various share purchases by TWH. Following an investigation, the SFO decided not to institute any proceedings as the fact of the indemnities was made known to the other parties to the take-over.

The TWH material was disclosed to the defendants in the second trial arising from the Guinness case, the trial of Lord Spens and Roger Seelig. It was disclosed to them because Lord Spens' defence was that his actions in the Guinness take-over were no different to that in the TWH case, where there had been no suggestion his actions were criminal. In fact there were material differences, not least of which was the fact that the TWH indemnities were known to all parties but the detail is not important here. The TWH material was not disclosed to the defendants in the first Guinness trial because the material was not considered relevant to any of the issues that they were raising by way of their defences and was, therefore, not disclosable.

The appeal was heard between 16 and 26 October 1995 before Lord Chief Justice Taylor, Mr Justice MacPherson and Mr Justice Potter. On 27 November 1995, the appeals were dismissed, except for Lyons' appeal in respect of one count.

The appellants had alleged an abuse of process on two grounds: the use of the transcripts of the compulsory DTI Inspectors interviews and the failure to disclose the TWH material. The Court of Appeal was wholly satisfied that there was nothing in the circumstances of this case which rendered the admission of the transcripts of evidence from the DTI inadmissible; it was expressly permitted by statute. It found that the TWH and other material should have been disclosed but that the appellants, in fact, suffered no prejudice. The court deciding that the undisclosed material could not have produced 'credible evidence of accepted or acceptable market practice' in relation to the Guinness arrangements.

Following the dismissal of that appeal, Saunders applied to the European Court of Human Rights ("ECHR") complaining that his rights had been contravened through the use in his trial of evidence provided by him to DTI Inspectors under their compulsory powers. In December 1996 the ECHR found in his favour but made no award of compensation to him. It did, however, order the UK Government to pay a contribution of £75,000 towards Mr. Saunders' legal costs. Subsequently the other three defendants made similar and additional complaints to the ECHR. Similarly, they too were successful on the matter of admissibility of the compelled evidence.

Following the ECHR decision regarding Mr. Saunders, the Attorney General issued guidance that evidence contained in compelled interviews should not be used against the maker. The law was later

amended to reflect this in 1999 by the Youth Justice and Criminal Evidence Act, which came into effect in April 2000.

The Human Rights Act 1998, which incorporated some of the rights contained in the European Convention of Human Rights into English law, came into force on 2 October 2000. Using this legislation the four defendants applied for their cases to be referred again to the Court of Appeal claiming that the European Convention could be applied retrospectively and therefore that the use in their trial of compelled statements should not have been admitted in evidence. This last appeal was also dismissed; the Court of Appeal decided that the Human Rights Act was not retrospective and so could not render previous decisions wrong even though the law had subsequently changed.

The Guinness case was something of a critical case for the SFO. It was our first major success but it was not a wholly convincing one. Errors were made in the prosecution, which could have fatally undermined the case and, it has to be said, we were somewhat lucky in holding on to the convictions. I do not mean to suggest that the convictions were not entirely appropriate or proper, merely that our own failings might have provided the defendants with an entirely undeserved reprieve.

The two major lessons in this case were that compulsory interviews with defendants were no longer to be regarded as acceptable and that disclosure of unused material must be considered very carefully. In fact the law has changed since this case but the issue remains very much a live one. I mentioned the current regime for disclosure in my other paper which has not really improved matters and presents difficulties for prosecutors on a daily basis.

B. Blue Arrow

Taking place in 1992 the Blue Arrow or County NatWest case was the second major trial for the office and followed fairly close to the Guinness series of cases. This was a fairly well conducted investigation and prosecution. Except that the trial lasted for nearly a year. At the time this was unheard of. Following the conclusion of the trial, where we secured convictions against most of the defendants involved, the convicted defendants all appealed.

What was interesting about this appeal was that just before it was heard a national newspaper decided to print interviews with a number of the jurors because of the grounds of appeal that were being put forward by the appellants. In effect they were arguing that the jury could not be expected to understand and retain the evidence they had heard over such an extended period. As a result their convictions should be regarded as unsafe and their convictions should be overturned.

The newspaper, the Mail on Sunday, approached the jurors to get their impressions on this approach and, perhaps unsurprisingly, they were not very impressed that their verdicts were being challenged purely on the basis that they did not have the ability to remember information over a long period of time. All those interviewed, a majority of the jury, were happy to explain why they felt they fully and properly understood the case and were completely satisfied about the guilt of those involved. For a prosecutor it made compelling reading. In the UK a jury's deliberations are secret and must remain so. It is a criminal offence to make any enquiry about it.

The Court of Appeal paid no heed to the newspaper reports and decided that the jury could not be expected to be able to function effectively in such a complicated case over such a period of time. The appeals were all upheld and the defendants had all their convictions quashed. The court was especially critical of the 'scatter gun' approach that we were said to have taken to the charges that were brought by the prosecution.

The charging strategy in such cases is especially difficult to gauge. In the Guinness cases, the case was split into three aspects to ensure the trials were manageable. In the event the second and third trials became ineffective. In the second trial one defendant, who was representing himself, Roger Seelig, was assessed by the Judge as being unable to stand the strain of his chosen course of action and so he stopped the trial.

In the event in the Blue Arrow case, to avoid the risk to subsequent trials, it was decided to try all the defendants in one go. It made for a very full dock and was probably an unwise choice but, then again, the jury did convict the majority of them. The Court of Appeal's criticism led to a fundamental reappraisal of our

approach to charging. Subsequently it was decided that in future cases, charges would be framed such as to ensure that the trial would be manageable. This has presented us with other problems, more of which later.

Incidentally, the newspaper was severely fined for contempt of court and threatened with prosecution. One might be tempted to think that this course of action was adopted because the newspaper report made a mockery of the findings of the Court of Appeal, but one must remember how jealously the Court protects the confidentiality of jury proceedings in reaching their verdicts.

C. BCCI

The investigation into the affairs of the Bank of Credit and Commerce International (BCCI) is a most important case in SFO history. It is partly due to the fact that it was a major success for the office, securing convictions in all ten trials, that resulted from the investigation into the collapse of the bank. However, it is mainly due to the lessons we learned in how to deal with what we call a 'blockbuster' case. These cases cause immense logistical problems and are inevitably funded by a separate vote by parliament.

At its height the BCCI case had a staff of over forty people, including police officers. There was, as you might imagine, an immense amount of paperwork involved both emanating from the Bank itself but also the customers (both victims and those who became defendants).

One of the major lessons learned was that maintaining the case team in one location was an essential factor in keeping up the momentum of the investigation which lasted for over seven years following the collapse of BCCI in July 1991.

In addition there was close co-operation with overseas prosecutors, including the United States, France, Switzerland, Liechtenstein, Luxembourg and Germany, which has brought considerable enduring mutual benefits.

It might be worth mentioning a little about some of the trials to give you an idea of the scale of the issues we were dealing with. In May 1994, following a long trial, Nazmuddin Virani was convicted of a number of offences of false accounting and was sentenced to two and a half years imprisonment. Virani had been Chairman of Control Securities plc, a publicly quoted property company, as well as being Chairman of a privately owned property group. He was a substantial customer of BCCI and in return for signing false audit confirmations which appeared to confirm that certain substantial loans had been made to his private companies, and which were designed to, and did in fact, deceive the external auditors of BCCI, he obtained benefits both for himself and his companies in the form of cash and loans.

The practical difficulties of prosecuting a case such as this can be seen from the fact that although Virani had prepared and served a written statement of his defence months beforehand, the real defence (that Virani was allegedly dyslexic and did not know what he was signing) was not revealed until well after the trial had started.

Imran Imam was an account executive at BCCI who worked closely with its former chief executive Swaleh Naqvi. In July 1994, Imam was convicted of a number of offences of false accounting and conspiracy, being sentenced to three years' imprisonment. He had assisted, from the BCCI side, in the deception of the bank's external auditors by portraying loans made to a large customer of the bank as 'performing'. Thus the impression was given to the external auditors that interest on and capital from the loans were being repaid to the bank so that no provision against the loans was needed in the bank's financial statements. In fact no interest on or capital from the loans was being repaid.

The customer who 'borrowed' more money than anyone else from BCCI was Abbas Gokal. With senior BCCI officials, Gokal masterminded a massive fraud totalling approximately £800 million.

Gulf was a large group of shipping companies based in Geneva with offices in over 40 countries. From the mid-1980s Gokal and his Gulf Group secretly received many millions of dollars from BCCI, even though he knew, as did senior BCCI management, that his companies were hopelessly insolvent. To cover up the fact that massive unsecured loans totalling approximately £800 million were being made, Gokal and his fellow conspirators falsified documents on a vast scale.

The symbiotic relationship between the Gulf Group and BCCI meant that their fortunes were inextricably linked. BCCI's massive unrepaid loans to the Gulf Group inevitably played a significant part in the collapse of the bank in July 1991. The Gulf Group in its turn could not survive long without the backing of BCCI. It folded shortly afterwards owing many hundreds of millions of dollars.

The SFO's ensuing investigation uncovered documents signed by Gokal in a London safe deposit box which showed that he and his two brothers owned and controlled the companies involved in the fraud.

Gokal was caught in July 1994 after the SFO heard that he was bound from Pakistan to the United States. His plane re-fuelled in Frankfurt and thanks to the co-operation of the German authorities he was arrested and extradited from there. Gokal's trial was one of the biggest ever prosecuted with more than 800 witnesses and evidence from every continent. He was sentenced to 14 years imprisonment which remains the longest sentence handed out in an SFO case.

There were other lessons learned from this case. The approach to handling 'blockbuster' cases remains based upon the experience gained in this case. In addition, the operational division structure and case team structure we have today was based upon that used in the BCCI case.

D. Maxwell

The collapse of the Mirror Group under the stewardship of Robert Maxwell was another 'blockbuster' investigated by the SFO during the mid-1990's. Following his death when he fell into the sea from the rear of his executive yacht, the investigation was forced to concentrate on the actions of his lieutenants, two of which were his two sons - Kevin and Ian. Investigating such a case with the main defendant absent is always very difficult, especially when the missing person was a particularly dominant personality, as in this case. In the event the first trial was unsuccessful, it alleged that Kevin and Ian Maxwell deceived banks that had lent money to the Mirror Group companies, both as to the ability of the companies to repay loans that had been advanced and to secure additional lending. The jury acquitted the brothers, clearly accepting their defence that they did not know the full picture and relied upon their father, who instructed them what to do.

For the SFO the most significant development was Mr. Justice Buckley's ruling that Kevin Maxwell should not face a second trial in which he faced allegations of theft from the pension funds of the Mirror Group companies. The judge effectively decided that we should only have one try at a defendant and not be able to have 'several bites of the cherry'. The pressures faced by the defendants because of the various concurrent investigations - by DTI Inspectors, liquidation proceedings in respect of the companies, bankruptcy proceedings for all the defendants, civil proceedings by losers, disciplinary proceedings by regulators - undoubtedly played a part in the judge's decision and it cannot be argued that he sympathized with the ordeal they had been through.

The Maxwell case was so complex; involving pension funds, banks and other financial institutions, that one single trial able to encompass the whole extent of the alleged criminality was not possible. You will recall the Blue Arrow case I mentioned earlier, following which the 'robust and early use' of the power to sever the indictment in order to secure a manageable and fair trial became the norm. As a result, the SFO made every effort to reduce the amount of evidence and the number of counts in its cases. Adopting this approach in Maxwell, it was considered that the counts against the six defendants involved should be divided between a number of trials.

The judge's ruling in the Maxwell case that it should be 'unusual' for a second trial to take place posed a problem for the SFO. The challenge became how to present enough of the full picture to a court in the biggest and most complex cases without the trial becoming unmanageable and without having more than one trial.

In the event we have considered the judgment something of an aberration and it does not seem to have been followed subsequently. Nevertheless this case is a good example of the impact that questionable judicial decisions can have. At the time and for some time after the judgment, we were left in an impossible position, with the defence criticising us whichever approach we followed.

E. Barings

I mention this case only because it is an excellent example of the need for good and effective international co-operation. The investigation came about following the collapse of Barings Bank, when one of its traders based in Singapore, Nick Leeson, amassed losses of the order of £600-700 million without the bank being aware of it.

In any event following the collapse of the bank the SFO was asked to investigate. At the same time the Singaporean authorities investigated the fraud, in the guise of the Commercial Affairs Department (CAD), which has subsequently been subsumed into the Police.

There developed a classic case of mistrust between the CAD and the SFO which caused both sides problems. The SFO's position was, and remained throughout the events that followed, that we wished to provide a supporting role to the CAD but to ensure that we had sufficient evidence to be able to act to secure Leeson's detention and extradition to the UK should the CAD extradition request fail for any reason. You will recall that Leeson was arrested as his plane landed in Frankfurt, having fled Singapore because he feared being imprisoned there.

It is fair to say that we received no assistance from the CAD whatsoever. I recall one meeting where the head of the department asked why we were not prosecuting senior Barings staff in London. I was forced to point out that as he declined to provide me with access to the documents he had in Singapore, I was unable to contemplate doing so as the bulk of the evidence to prove the fraud was held by him. Even after the return of Leeson to Singapore to stand trial, we were not provided with access to any documentation.

I do not think that the situation was helped by the delay that occurred in having face to face meetings between SFO and CAD staff but where, perhaps, there are concerns about professional rivalry and competing interests, this may be inevitable. It is an isolated example fortunately.

F. Mutual Legal Assistance

The SFO has developed a Mutual legal Assistance Unit which allows us to assist our overseas colleagues. It also provides us with benefits, in that we are the recipients of better mutual legal assistance as a result, in a recent hearing the Divisional Court has ruled that the SFO was justified in helping the Italian authorities in their investigation into former Italian premier Silvio Berlusconi. Previously search warrants were executed and documents which Signor Berlusconi's lawyers argued should not be allowed to leave the country were obtained by SFO staff for Milan prosecutors. Finding in favour of the SFO, the Divisional Court provided valuable confirmation of the extent of the SFO's special investigative powers which compel the provision of information under Section 2 of the 1987 Criminal Justice Act. The extension of our powers to assist overseas investigators came into effect in February 1995 and this was the first legal challenge to it.

III. CONCURRENT INVESTIGATIONS

It might not be immediately apparent from the foregoing but it is almost an inevitable fact of life during our cases that we are forced to contend with concurrent investigations. In a fraud case we might see:

- A Companies Act investigation S432 – which might be published.
- A Companies Act inquiry S477 – which is not published.
- Directors Disqualification proceedings against the directors of the companies under investigation.
- Administration/Receivership/Liquidation proceedings relating to the Company under investigation.
- Bankruptcy proceedings against individuals under investigation.
- A FSA disciplinary enquiry.
- A Public enquiry.
- Professional disciplinary proceedings, e.g. Law Society, ICAEW, OPRA.
- Proceedings by the revenue departments – Customs and Excise and Inland Revenue.
- Civil litigation by losers.

It is unlikely that all of these would be in progress at the same time – though it is possible they may do so – but they do create difficulties. The multiplicity of the enquiries can put a huge strain on suspects and although I am rarely sympathetic, I do have some concerns.

It also makes evidence gathering hugely difficult. I may be seeking to use someone as a witness but he may be the subject of an investigation by another agency, for example the FSA or the Law Society. One man's witness may be another man's defendant.

We try to address these issues right at the start and agree, at least, a priority but there is no hard and fast rule that can be applied to these situations. The only sure thing, is that it involves a great deal of effort to maintain contact with all those involved to ensure that we co-ordinate our activities such that we do not hamper each other too much. At the same time we cannot become too close and sharing information is a hugely problematic area for us.

IV. COMPUTER FORENSIC EVIDENCE

I mentioned in my other paper the huge volumes of computer data that we are now securing in our cases. The volumes involved cause us practical problems in terms of our ability to process the information within a reasonable time. The use of private businesses to assist in the processing of data is almost always essential and this merely adds to the issues involved in ensuring that the evidence is properly produced.

We have taken the view that the only safe way to secure the evidence is to 'image' the hard drive or other data storage media. This effectively means talking a photograph of the data as at the date when we gather the evidence. This image is produced in such a way as to prevent anyone from tampering with the information on the image.

It sounds all rather straightforward. It is far from being so. We usually gather the most computer data when we are conducting a search. Nothing could be simpler you imagine. It is not so. The power to seize material granted by a search warrant only applies to the seizure of material that is relevant to the matters under investigation as outlined in the information we supply to the court when granted the warrant. I am sure you will realize that any computer will contain very significant amounts of data or information that is wholly irrelevant to any issue in the investigation.

In such circumstances it had been our invariable practice to secure the consent of the occupier of the premises to our imaging the hard drive, either on site or at our offices, and returning the computer within a day or two. Usually informing the occupier of the amount of time that would be needed for us to review all the data in his office or home to ensure we only removed relevant data was sufficient to persuade them to agree. Our approach resulted in the minimum inconvenience to the occupier and the maximum advantage to ourselves. We would then allow the occupier the opportunity to attend at our offices at which time we would review the data and remove the irrelevant material. Often they would not bother and we would process the data only making available to the case team the data that was relevant to our investigation.

However, the problem was not solved. Unfortunately an inexperienced police officer engaged in a search removed a computer without the agreement of the occupier. Sadly for him the occupier was not satisfied with the answers given to him and he challenged the seizure of the computer, and other material, as being unlawful. Very unfortunately for the police officer concerned, the court agreed with the occupier. Indeed it was an inevitable decision in the circumstances. Nevertheless it left us with a problem. The court's decision was widely reported and police forces started to be challenged routinely when they sought to seize computer data. The response of the government has been to introduce legislation which avoids the problem. So what is the problem? Whilst the legislation does provide a mechanism for seizing irrelevant material that is 'inextricably linked' with relevant material where it is 'impracticable' to separate them, the provisions do not provide clear guidance on what 'inextricably linked' means and it also provides some difficulties over what should be regarded as appropriate circumstances when it can be said that it is impracticable to separate the material.

As a result it is now much more difficult to secure the consent of the occupier because they believe that refusing consent gives them an advantage, that you may be unable to remove the computer and so seize the evidence on it. In consequence the process of securing the computer data is now much more labour intensive as we have to demonstrate the problems in removing only relevant material on site.

You may be wondering why we do not simply use the new power to remove the computer. The simple answer is that the legislation creates as many problems as it solves. I mentioned earlier that the processing

of the seized date is very time consuming. As an example, a colleague recently had a team of eight staff reviewing the seized data to sift through it for relevant evidence. It took them two months to review 2,000 Gigabytes of data and resulted in about 400 Megabytes of relevant material.

Had the data been seized under the new legislation it imposes burdens on the investigators, personally, to complete the review as soon as possible. Clearly this allows some latitude but it is also likely to be subject to challenge by the occupier just to make life as difficult for the investigator as he can.

V. WHERE NEXT?

I would like to mention two more examples of the kind of situations we face and where this might take us in the future. The first is the case of Regina v Steen and others.

The circumstances were that operating from business premises in Brighton and in Darlington, the defendants conspired to defraud people overseas who responded to press advertisements for commercial loans. The fraudulent scheme required applicants to pay non-refundable advance fees to have their applications processed. However no loans were ever forthcoming. Instead, further financial conditions would be imposed that proved impossible for the applicants to meet.

They avoided promoting their service in the UK so all of the would-be borrowers were overseas, almost exclusively in Australia, New Zealand and North America. Hundreds of applications were received for loans ranging between half a million and twenty million pounds.

Once the loan applications had been received, Corporate Advances - the company based in Brighton - would notify the applicants that their application had been accepted in principle and that an administration fee was required to progress it to the "offer stage". When applicants responded, paying the administration fee of £6,900, their application would then be referred to the company in Darlington. Steen would arrange to send applicants an "Offer Letter" from the supposed lender, who was said to be Peninsular Holdings of Panama. It would state that in order for the matter to proceed further, due diligence enquiries would have to be carried out and for which the applicant was required to pay another fee in advance. Where the clients proceeded they would sign the offer letter and pay the due diligence fees, which typically would be the equivalent of £20,000 per application.

Applicants would then receive a 'Commitment Letter' in the name of Peninsular Holdings of Panama stipulating certain conditions. Those conditions included a requirement that the client provide an 'assignable collateral bond'. The clients, whose commercial ambitions often exceeded their financial acumen, had either been led to believe that this condition would not be required or alternatively, in their desperation to obtain the loan, had given the condition insufficient consideration. When they enquired about the cost of the collateral bond they learned that it would be in the region of 40% of the value of the loan.

It was obvious to the scheme operators that clients would not have paid either the administration fee or the due diligence fee if they had known at the outset that they would ultimately be asked to provide such a sizeable collateral sum. Many clients had made it clear from the beginning that they were not in a position to provide collateral apart from the assets of their project and that if they were able to raise such a sum then they would not have been seeking a loan in the first place.

The defendants, through their business fronts, shared in the proceeds. Corporate Advances received around £1.5 million in administration fees. Some of this was passed to Peninsular Holdings, which in turn passed to Corporate Advances some of the £2.5 million it collected in due diligence fees.

Steen fled to the Philippines when the trial went against him and before the verdicts. He was convicted in his absence and was subsequently returned quickly with excellent co-operation from the authorities there.

Nevertheless we are facing an appeal in this case on an entirely unexpected basis. I mentioned during the public lecture the case where the prosecuting barrister received a bottle of champagne from a member of the jury, together with an invitation to dinner. It just goes to show that even in the best cases, there is no way of predicting what will happen to cause difficulties.

If that fraud was being operated today - and I suspect that something like it is probably going on somewhere - there would be one major difference. Instead of placing advertisements in the press it would be done over the Web and Internet. That would allow the fraudster to target many more gullible individuals as a result. It would also mean that the trail of evidence becomes much more difficult to access, assuming you can find the computer where the information is stored and much of the information may have been destroyed by the internet service provider as they rarely retain data for very long because of the commercial cost of doing so.

My last example is a bit silly but just goes to prove that there are many people out there who are very gullible or, perhaps, desperate. I can give you one rather sad example of a lady who wrote to us from America regarding a company in Cheshire offering:

"Magical/spiritual services for $68, every three months, plus $25 for extra spells. I had this service done starting on 12/01 through 6/02. They said that every thing done for me would work. They also told me how well the workings were going and how positive the feedback was, and that everything would come right for me after a certain spell was done, then after that spell was done, they wanted to go on for another $68. I was also told to delete all the emails I got from them so no one could see them.

To this day, nothing has worked, except something that happened that makes the situation they were working on for me, impossible to get better or change now.

I asked for all of my money back, a total of $211, but after almost a year of asking for a refund, and a mix up of emails, they gave me just $59. They claim they have clients come back to them over again, so I don't know why they can't give me more.

I then asked for $46 back to make about half of the money, but I never got it. I don't know how they can get away with promising people everything done for them would work because Tanith, the high priestess doing the spells, knew it and felt it. Or to say not to fear and that she wouldn't let me down, when nothing she did for me DID work. Then not to give back a fair or reasonable refund. I put my faith, trust, and belief in them, and I got nothing out of it. I lost instead of gained. It's like they promise you the magic will work just to get you to give them money. If they won't give your money back, then they should NOT be promising all the spells will work. They shouldn't do that at all. I don't know how they can do that, and think it's OK. It's not fair to get someone's hopes up like that, knowing how important the situation they are working on is to people, and mine was EXTREMELY important to me. Too important to make false promises about it all coming right for me, when it didn't.

They don't seem to care either, or understand how I feel about that. They are so sure the spells work, but they don't back it up with a money back guarantee if they don't work. I paid them for spell work Tanith promised would work. It didn't, so why can't they give me all of my money back?

I talked to a lawyer about this, but she said their service to help me would be more than what I spent on Shining-light, and that I should report this as fraud to the proper places in the UK."

A sad case indeed - I am just amazed she got $59 back.

THE UNITED NATIONS CONVENTION AGAINST CORRUPTION OVERVIEW OF ITS CONTENTS AND FUTURE ACTION

*Dimitri Vlassis**

I. INTRODUCTION

The new United Nations Convention against Corruption has enormous significance. It proves that a destructive practice as old as history can no longer be tolerated. It manifests the realization that the world of the 21st century needs new rules to become a better place for all peoples. It demonstrates that core values, such as respect for the rule of law, probity, accountability, integrity and transparency must be safeguarded and promoted as the bedrock of development for all.

People around the world, in developing and developed countries alike, have become increasingly frustrated at witnessing and suffering from the injustice and the deprivation that corruption brings. On a daily basis, people have faced head-on the effects of corruption on areas such as the administration of justice and the provision of adequate medical care. They have watched with awe and anger the revelations about the luxurious lifestyle and immense fortunes amassed by corrupt leaders, while their people toiled to scrape a living and were denied the most basic of services.

And that anger becomes resignation and cynicism when people discover that the vast fortunes stolen by corrupt leaders cannot be recovered because they have been transferred abroad. To these people, diatribes about good governance, sustainable development, the benefits of a free market and the liberalization of trade ring hollow.

It is there that lies one of the gravest dangers, one of the most serious threats posed by corruption. The loss of confidence in institutions and the de-legitimization of government have destructive consequences that can span generations. The best and brightest will eschew local political and economic life or even flee abroad.

The new Convention offers good reason to look at the future with optimism. It is itself an act of faith. Only a few years ago, speaking of the possibility of such an instrument, and saying it would be negotiated in such a short time, would have brought ironic smiles to the faces of most people. Yet, it is a reality and a remarkable achievement.

It became a reality because of the vision, determination and commitment that all Governments displayed throughout the negotiation process. And it is a remarkable achievement because it is innovative, balanced, strong and pragmatic. These qualities, together with its universality and functionality, make the new Convention a unique platform for effective action and an essential framework for genuine international cooperation.

The Convention offers all countries a comprehensive set of standards, measures and rules that they can apply to strengthen their legal and regulatory regimes to prevent and control corruption.

Negotiating the Convention was not an easy undertaking. There were many complex issues and concerns from different quarters that the negotiators had to tackle. It was a formidable challenge to maintain the quality of the new Convention while making sure that all of these concerns were properly reflected in the final text. Very often compromise was not easy and all countries made concessions. But the result is a source of pride. This result was made possible by the flexibility, sensitivity, understanding, and above all strong political will that all countries displayed.

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II. BACKGROUND

The new Convention can be seen as the most recent of a series of developments in which experts have recognised the far-reaching impact of corruption and the need to develop effective measures against it at both the domestic and international levels. It is now widely accepted that measures to address corruption go beyond criminal justice systems and are essential to establishing and maintaining the most fundamental good governance structures, including domestic and regional security, the rule of law and social and economic structures which are effective and responsive in dealing with problems, and which use available resources as efficiently and with as little waste as possible.

The gradual understanding of both the scope and seriousness of the problem of corruption can be seen in the evolution of international action against it, which has progressed from general consideration and declarative statements,[1] to the formulation of practical advice,[2] and then to the development of binding legal obligations and the emergence of numerous cases in which countries have sought the assistance of one another in the investigation and prosecution of corruption cases and the pursuit of proceeds. It has also progressed from regional instruments developed by groups of relatively like-minded countries such as the Organisation of American States,[3] the African Union (formerly Organisation of African Unity),[4] the OECD,[5] and the Council of Europe[6] to the global United Nations Convention.[7] A series of actions on specific issues within specific regions has become more general and global in order to deal most effectively with the problem.

III. OVERVIEW OF THE CONVENTION

A. General Provisions (Chapter I, Art. 1-4).

The first article of the Convention states that its purposes are the promotion and strengthening of measures to prevent and combat corruption more efficiently and effectively; the promotion, facilitation and support of international cooperation and technical assistance, including in asset recovery; and the promotion of integrity, accountability and public management of public affairs and public property.

The Convention then includes an article on the use of terms. In addition to such definitions as "property", "proceeds of crime" and "confiscation", the most significant innovation of the new Convention are the definitions of "public official", "foreign public official" and "official of a public international organization".

The Convention contains a broad and comprehensive definition of "public official" that includes any person holding a legislative, executive, administrative or judicial office and any person performing a public function, including for a public agency or public enterprise, or providing a public service. The definition retains the necessary link with national law, as it would be in the context of national law that the determination of who belongs in the categories contained in the definition would be made.

During the negotiation process significant debate revolved around whether there was a need for a definition of "corruption" and, should the answer to that question be affirmative, what the content of such a definition would be. In the end, negotiators decided that attempting to define in legal terms, i.e., in terms that would stand scrutiny in a wide array of legal systems around the world and would add value to the rest

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1 See, for example GA/RES/51/59 and 51/191, annexes, and the discussion held at the 9th U.N. Congress on the Prevention of Crime and Treatment of Offenders, held in Cairo from 29 April - 8 May 1995 (A/CONF.169/16/Rev.1, paragraphs 245-261.

2 See, for example, the United Nations Manual Practical Measures against Corruption, ECOSOC Res.1990/23, annex, recommendation #8 and International Review of Criminal Policy, Special Issue, Nos. 41 and 42, New York 1993.

3 Inter-American Convention against Corruption, OAS General Assembly resolution AG/res.1398 (XXVI-0/96) of 29 March 1996, annex.

4 African Union Convention on Preventing and Combating Corruption, Maputo Mozambique, 11 July 2000, available from the AU on-line at: http://www.africa-union.org/Official_documents/Treaties_%20Conventions_%20Protocols/Treaties_Conventions_&_Protocols.htm.

5 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, OECD document DAFFE/IME/BR(97)20.

6 European Criminal Law Convention on Corruption, 1998, European Treaty Series #173.

7 For a summary of other international legal instruments dealing with corruption, see United Nations Manual on Anti-Corruption Policy, Chapter V, available on-line at: http://www.unodc.org/pdf/crime/gpacpublications/manual.pdf.

of the text of the Convention was neither feasible nor desirable. Corruption could easily be allowed to stand as a word describing conduct that was broadly understood in a progressively more consistent manner throughout the world. While the term might still be understood in a broader or narrower fashion depending on national exigencies or traditions, attempting to crystallize in a short legal text requiring high precision the core of the collective perception of the concept entailed a number of unnecessary risks. There was the risk of limiting the Convention to the current understanding, thus depriving the instrument from the dynamism necessary for it to remain relevant to national efforts and international cooperation in the future. There was also the risk of capturing in the definition only some aspects of the phenomenon, thus inhibiting broader action against corruption that countries might have already taken or might be contemplating. In deciding not to include a definition of "corruption" in the final text the negotiators were inspired to a large extent by the similar approach taken by the United Nations Convention against Transnational Organized Crime, which does not define "transnational organized crime" but, instead, contains a definition of "organized criminal group".

The Chapter contains an article on the scope of application, which states that for the purposes of implementing the Convention, it will not be necessary, except as otherwise provided in the Convention, for the offences set forth in it to result in damage or harm to state property. This provision has particular importance for international cooperation and asset recovery.

Finally, the chapter contains an article on protection of sovereignty, an issue which figures prominently in the concerns of Member States, especially in view of the jurisdictional provisions that are later found in the Convention. The article was inspired and follows the formulation of a similar article in the United Nations Convention against Transnational Organized Crime.

B. Preventive Measures (Chapter II, Art. 5-14)

The Convention contains a compendium of preventive measures which goes far beyond those of previous instruments in both scope and detail, reflecting the importance of prevention and the wide range of specific measures which have been identified by experts in recent years. More specifically, the Convention contains provisions on policies and practices, preventive anti-corruption bodies; specific measures for the public sector, including measures to enhance transparency in the funding of candidatures for elected public office and the funding of political parties; comprehensive measures to ensure the existence of appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making; measures related to the judiciary and prosecution services; measures to prevent corruption involving the private sector; participation of society; and measures to prevent money laundering. The chapter on prevention has been structured in a way that would establish the principle of what needs to be put in place, but allows for the flexibility necessary for implementation, in recognition of the different approaches that countries can take or their individual capacities.

The provisions on preventive measures are regarded as forming an integral part of the mechanisms that the Convention is asking States to put in place. It is the one side of the coin, the other being the criminalization of a variety of manifestations of corruption. It is important to note that the prevention chapter covers all those measures that the international community collectively considers necessary for the establishment of a comprehensive and efficient response to corruption at all levels.

C. Criminalization and Law Enforcement (Chapter III, Art. 15-44)

While the development of the Convention reflects the recognition that efforts to control corruption must go beyond the criminal law, criminal justice measures are still clearly a major element of the package. The Convention would oblige States Parties to establish as criminal offences bribery of national public officials; active bribery of foreign public officials; embezzlement, misappropriation or other diversion of property by a public official; money laundering; and obstruction of justice. Further, States Parties would establish the civil, administrative or criminal liability of legal persons.

In recognition of the fact that there may be other criminal offences which some countries may have already established in their domestic law, or may find their establishment useful in fighting corruption, the Convention includes a number of provisions asking States Parties to consider establishing as criminal offences such forms of conduct as trading in influence, concealment, abuse of functions, illicit enrichment, or bribery in the private sector.

The final formulation of the criminalization chapter, with the inclusion of both "mandatory" and "discretional" offences, created a quandary for negotiators as to how to deal with international cooperation, more significantly certain principles such as dual criminality, which normally govern such forms of international cooperation as mutual legal assistance. The solution found, which is explained below under "international cooperation", is another innovative feature of the Convention, adding significantly to its value for the international community.

Other measures found in Chapter III are similar to those of the Convention against Transnational Organized Crime. These include the establishment of jurisdiction to prosecute (Art. 42), the seizing, freezing and confiscation of proceeds or other property (Art. 31), protection of witnesses, experts and victims and cooperating persons (Art. 32-33) and other matters relating to investigations and prosecutions (Art. 36-41).

Elements of the provisions dealing with money-laundering and the subject of the sharing or return of corruption proceeds are significantly expanded from earlier treaties (see Chapter V), reflecting the greater importance attached to the return of corruption proceeds, particularly in so-called "grand corruption" cases, in which very large amounts of money have been systematically looted by government insiders from State treasuries or assets and are pursued by subsequent governments.

D. International Cooperation (Chapter IV, Art. 43-49)

Chapter IV contains a series of measures which deal with international cooperation in general, but it should be noted that a number of additional and more specific cooperation provisions can also be found in chapters dealing with other subject-matters, such as asset recovery (particularly Art. 54-56) and technical assistance (Art. 60-62). The core material in Chapter IV deals with the same basic areas of cooperation as previous instruments, including the extradition of offenders, mutual legal assistance and less-formal forms of cooperation in the course of investigations and other law-enforcement activities.

A key issue in developing the international cooperation requirements arose with respect to the scope or range of offences to which they would apply. The broad range of corruption problems faced by many countries resulted in proposals to criminalise a wide range of conduct. This in turn confronted many countries with conduct they could not criminalise (as with the illicit enrichment offence discussed in the previous segment) and which were made optional as a result. Many delegations were willing to accept that others could not criminalise specific acts of corruption for constitutional or other fundamental reasons, but still wanted to ensure that countries which did not criminalise such conduct would be obliged to cooperate with other States which had done so. The result of this process was a compromise, in which dual criminality requirements were narrowed as much as possible within the fundamental legal requirements of the States which cannot criminalise some of the offences established by the Convention.

This is reflected in several different principles. Offenders may be extradited without dual criminality where this is permitted by the law of the requested State Party.[8] Mutual legal assistance may be refused in the absence of dual criminality, but only if the assistance requested involves some form of coercive action, such as arrest, search or seizure, and States Parties are encouraged to allow a wider scope of assistance without dual criminality where possible.[9] The underlying rule, applicable to all forms of cooperation, is that where dual-criminality is required, it must be based on the fact that the relevant States Parties have criminalised the conduct underlying an offence, and not whether the actual offence provisions coincide.[10] Various provisions dealing with civil recovery[11] are formulated so as to allow one State Party to seek civil recovery in another irrespective of criminalization, and States Parties are encouraged to assist one another in civil matters in the same way as is the case for criminal matters.[12]

E. Asset Recovery (Chapter V, Art. 51-59)

As noted above, the development of a legal basis for cooperation in the return of assets derived from or

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[8] Art. 44, para. 2.
[9] Art. 46, para. 9.
[10] Art. 43, para. 2.
[11] See, for example, Art. 34, 35 and 53.
[12] Article 43, paragraph 1 makes cooperation in criminal matters mandatory and calls upon States Parties to consider cooperation in civil and administrative matters.

associated in some way with corruption was a major concern and a key component of the mandate of the Ad Hoc Committee. To assist delegations, a technical workshop featuring expert presentations on asset recovery was held in conjunction with the second session of the Ad Hoc Committee,[13] and the subject-matter was discussed extensively during the proceedings of the Committee.

Generally, countries seeking assets sought to establish presumptions which would make clear their ownership of the assets and give priority for return over other means of disposal. Countries from which return was likely to be sought, on the other hand, had concerns about the incorporation of language which might have compromised basic human rights and procedural protections associated with criminal liability and the freezing, seizure, forfeiture and return of such assets. From a practical standpoint, there were also efforts to make the process of asset recovery as straightforward as possible, provided that basic safeguards were not compromised, as well as some concerns about the potential for overlap or inconsistencies with anti-money-laundering and related provisions elsewhere in the Convention and in other instruments.

The provisions of the Convention dealing with asset recovery begin with the statement that the return of assets is a "fundamental principle" of the Convention, with annotation in the travaux preparatoires to the effect that this does not have legal consequences for the more specific provisions dealing with recovery.[14] The substantive provisions then set out a series of mechanisms, including both civil and criminal recovery procedures, whereby assets can be traced, frozen, seized, forfeited and returned. A further issue was the question of whether assets should be returned to requesting State Parties or directly to individual victims if these could be identified or were pursuing claims. The result was a series of provisions which favour return to the requesting State Party, depending on how closely the assets were linked to it in the first place. Thus, funds embezzled from the State are returned to it, even if subsequently laundered,[15] and proceeds of other offences covered by the Convention are to be returned to the requesting State Party if it establishes ownership or damages recognised by the requested State Party as a basis for return.[16] In other cases assets may be returned to the requesting State Party or a prior legitimate owner, or used in some way for compensating victims.[17] The chapter also provides mechanisms for direct recovery in civil or other proceedings (Art. 53) and a comprehensive framework for international cooperation (Art. 54-55) which incorporates the more general mutual legal assistance requirements, mutatis mutandis. Recognizing that recovering assets once transferred and concealed is an exceedingly costly, complex, and all-too-often unsuccessful process, the chapter also incorporates elements intended to prevent illicit transfers and generate records which can be used should illicit transfers eventually have to be traced, frozen, seized and confiscated (Art. 52). The identification of experts who can assist developing countries in this process is also included as a form of technical assistance (Art. 60, para. 5).

F. Technical Assistance and Information Exchange (Chapter VI, Art. 60-62)

The provisions for research, analysis, training, technical assistance and economic development and technical assistance are similar to those contained in the United Nations Convention against Transnational Organized Crime, modified to take account of the broader and more extensive nature of corruption and to exclude some areas of research or analysis seen as specific to organized crime. Generally, the forms of technical assistance under the Convention against Corruption will include established criminal justice elements such as investigations, punishments and the use of mutual legal assistance, but also institution-building and the development of strategic anti-corruption policies.[18] Also called for is work through international and regional organizations (many of who already have established anti-corruption programmes), research efforts, and the contribution of financial resources both directly to developing countries and countries with economies in transition and to the United Nations Office on Drugs and Crime,[19] which is expected to support pre-ratification assistance and to provide secretariat services to the Ad Hoc Committee and Conference of States Parties as the Convention proceeds through the ratification process

13 See A/AC.261/6/Add.1 and A/AC.261/7, Annex I.
14 Art. 51 and A/58/422/Add.1, para. 48
15 Art. 57, subpara. 3(a).
16 Art. 57, subpara. 3(b).
17 Art. 57, subpara. 3(c).
18 Art. 60, para. 1.
19 Art. 60, paras. 3-8.

and enters into force.[20]

G. Mechanisms for Implementation (Chapter VII, Art. 63-64)

The Convention contains a robust mechanism for its implementation, in the form of a Conference of the States Parties, with comprehensive terms of reference already specified in the Convention and with a secretariat that would be charged to assist it in the performance of its functions. These provisions are inspired by the United Nations Convention against Transnational Organized Crime, but go considerably beyond that instrument, both in terms of scope and detail. The Secretary General is called upon to convene the first meeting of the Conference within one year of the entry of the Convention into force,[21] and the Ad Hoc Committee which produced the Convention is preserved and called upon to meet one final time to prepare draft rules of procedure for adoption by the Conference, "well before" its first meeting.[22] The bribery of officials of public international organizations is dealt with in the Convention only on a limited basis (Art. 16), and the General Assembly has also called upon the Conference of States Parties to further address criminalization and related issues once it is convened.[23]

H. Final Provisions (Chapter VIII, Art. 65 - 71)

The final provisions are based on templates provided by the United Nations Office of Legal Affairs and are similar to those found in other United Nations treaties. Key provisions include those which ensure that the Convention requirements are to be interpreted as minimum standards, which States Parties are free to exceed with measures which are "more strict or severe" than those set out in the specific provisions,[24] and the two articles governing signature and ratification and coming into force. The Convention is open for signature from 9 December 2003 to 9 December 2005, and to accession by States which have not signed any time after that. It will come into force on the 90th day following the deposit of the 30th instrument of ratification or accession with the Office of Legal Affairs Treaty Section at U.N. Headquarters in New York.[25]

IV. THE ROAD AHEAD

The Signing Conference that the United Nations Office on Drugs and Crime organized in Mérida last December was yet another manifestation of the political will that made the Convention possible and enabled the Ad Hoc Committee to negotiate it in record time, fully respecting the deadline set for it by the General Assembly. Ninety-five countries signed the Convention and, in an unprecedented and highly significant move, one country also deposited the first ratification of the new instrument.

While we should all rejoice with the adoption of the new Convention, we must guard against complacency. The new instrument must be only the beginning of our redoubled efforts to prevent and control corruption. We must all make sure that the momentum that made its negotiation possible is not allowed to dissipate. The collective political will that permitted the innovative and groundbreaking solutions of the new Convention must continue unabated.

Before highlighting our vision for what lies ahead, let me use this opportunity to clarify what we consider a matter of crucial importance. Quite often, and with some consternation, we come across a fundamental misperception about the new Convention, namely that it does not foresee monitoring of its implementation. Nothing can be further from the truth. The Convention contains provisions for a vigorous and effective mechanism to ensure and follow up on its implementation. The relevant provisions were carefully negotiated and, while inspired by similar provisions in the United Nations Convention against Transnational Organized Crime, go considerably beyond that Convention both in terms of details and potential impact. We must dispel this misperception and, instead of engaging in theoretical discourses about our own individual image of how

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20 GA/RES/58/4, paras. 8 and 9 and Convention Art. 64. UNODC is already designated as the secretariat for the Ad Hoc Committee pursuant to GA/RES/55/61, paras, 2 and 8 and GA/RES/56/261, paras. 6 and 13. By convention, the General Assembly calls on the Secretary General to provide the necessary resources and services, leaving to his discretion the designation of particular U.N. entities and staff to do so.

21 Art. 63, para. 2.

22 GA/RES/58/4, para. 5.

23 GA/RES/58/4, para. 6.

24 Art. 65, para. 2.

25 Art. 67 (signature, ratification, acceptance, approval and accession) and 68 (Entry into force). For further information see the segment on procedural history and footnotes 10 and 11 (sources of assistance), above.

the Convention should read, concentrate on the task at hand, which is formidable.

We must organize our efforts around some key elements that we must always keep in mind.

The first step must necessarily be to secure the necessary ratifications for the entry into force of the Convention within the shortest time possible. Implementation would be a word devoid of meaning if the Convention languishes on the shelves for long. The best way to achieve implementation is to bring into existence the Conference of the States Parties and make sure it functions effectively. To secure the necessary ratifications, we should exercise all the influence we possess to bring ratification to the top of the domestic political agenda in as many countries as possible, in all regions of the world. We have been informed that a number of Governments, which were also very active during the negotiation process, are thinking about forming an informal group of "friends of the Convention" to seek ways to keep the momentum alive. We should support them and encourage them in pursuing that direction.

The Office on Drugs and Crime intends to pursue the following actions in achieving the objective of effectively promoting the new Convention and securing the necessary ratifications for its entry into force.

- Organization of high-level seminars to increase awareness of the Convention on the part of Member States, as well as intergovernmental and non-governmental organizations.
- Assistance to requesting States in the development of legislation and regulations to facilitate the ratification of the Convention. The Office intends to develop a Legislative Guide for the Implementation of the United Nations Convention against Transnational Organized Crime and further explore the development of appropriate implementation tools.
- Provision of expertise or technical cooperation to requesting States with a view to strengthening domestic criminal justice systems capabilities in dealing with corruption.
- Assistance in the establishment or intensification of bilateral and multilateral cooperation in the areas covered by the Convention.
- Facilitating the sharing of information, experience and expertise between States.

Implementation rests firmly in the hands of States. And for good reason. First, effective action against corruption is the responsibility of Governments. Only through their commitment and determination can we see tangible results. Second, the Convention is the first truly global instrument of its kind. This is a prominent feature that distinguishes it from the very commendable initiatives and instruments that preceded it at the regional level. This global nature is also the source of special attributes that we must not ignore. Mechanisms for implementation that were developed for, and are functioning in the context of regional legal instruments cannot be readily emulated at the global level. We can learn from the experience gained by those mechanisms, and we fully intend to continue and strengthen our close working relationships with the international organizations that are supporting those mechanisms. But, we must also take into serious consideration legitimate concerns of our constituency and, most importantly, the gaps in capacity that exist in many developing and least developed countries. On that basis, and remaining faithful to the letter and spirit of the Convention, we must nurture its implementation mechanism and support the widest possible participation in the development and functioning of that mechanism, including through well-targeted technical assistance to developing countries.

While guided by these considerations, we must not underestimate the role that civil society and the private sector can and must play. Governments must be prompted, encouraged, supported and held accountable. And both civil society and the private sector can help in all of these efforts. To complement and support the initiative of Governments forming a support group for the Convention, we are exploring the possibility of putting together two other informal groups, one that would serve as a forum for civil society and one that would offer the opportunity to the private sector to become engaged and bring to bear its own great potential and influence. In putting together these groups, we would seek the cooperation and guidance of the Global Compact and would welcome ideas and support from all concerned.

In the United Nations, we believe that it is a matter of consistency, credibility and efficiency to lead by example. Our interaction with Governments and all other members of our constituency stand to gain enormously from the realization and the firm belief that we "practice what we preach". And the Organizational Integrity Initiative, spearheaded by the Office of Internal Oversight Services is a case in point.

The same principle applies to the private sector. I believe that the issue must be approached in a two-pronged fashion. The private sector must realize and accept that its position and operations in a globalized economy bring with them great potential, but also great responsibility. Integrating and projecting transparency, and using influence to help fight corruption is a sound business practice, it makes eminent business sense. Investments require a stable and secure environment to produce returns. They require a "level playing field". Corruption produces invariably a host of distortions in markets, it removes the most basic elements from the environment that is conducive to productive investment and thrives on the confusion that ensues. Just like businesses invest seriously in their own infrastructure, they must look very carefully at investing in the infrastructure of the environment in which they wish to operate. And it is a sound investment, an investment in the future carrying very little risk, to support the efforts of countries to strengthen their systems in order to fight, domestically and together with others, corruption. Its returns may not be easily and immediately quantifiable in a way that they would be reflected in a balance sheet. But the results and returns are bound to show in the medium to longer term. This is why the Office on Drugs and Crime is an avid supporter of the Global Compact and stands ready to contribute to its efforts in any way it can, especially in view of the imminent introduction of transparency and action against corruption as its tenth principle.

THE UNITED NATIONS CONVENTION AGAINST CORRUPTION ORIGINS AND NEGOTIATION PROCESS

*Dimitri Vlassis**

I. BACKGROUND

In a world of relative turmoil produced by radical changes in the Post-Cold War era, there are new opportunities and incentives to engage in corrupt practices. The assumption that "free markets" and non-interventionism are the remedy against corruption is challenged by recent experience. It now appears that each socio-political and economic system produces its own version of corruption and that no system is completely corruption-free.

The problem of corruption is systematic rather than individual. It occurs in monopolistic or oligopolistic situations, in which one or a handful of companies control a given market. The state may wish to engage private companies to perform specific tasks, provide services or carry out public works. To the extent that only a very small number of companies are practically able to carry out the work, the ground is fertile for corrupt practices, i.e. overcharging, low quality work, delays, etc.

In addition, very wide discretionary powers in the hands of individuals or organizations may generate temptations and incentives for corruption. Whenever there are few or no mechanisms of "checks and balances", people have plenty of opportunities to take undue advantage of their power. Another contributing factor is the lack of transparency, which reduces the ability to control those in positions of authority. This lack of transparency may be caused by factors ranging from secrecy in banking to dictatorial regimes disallowing the questioning of authority.

Most of the time, corruption entails a confusion of the private with the public sphere or an illicit exchange between the two spheres. In essence, corruption-related activities involve public officials acting in the best interest of private concerns regardless of, or against, the public interest. Abuses of public office to secure unjust advantage may include any planned, attempted, requested or successful transfer of a benefit as a result of unjust exploitation of an official position.

While planning and developing anti-corruption strategies and policies, it is essential to begin from determining the extent of the harmful effects of corrupt practices. In many countries, particularly developing countries and countries with economies in transition, corruption hampers social, economic and political progress. Public resources are allocated inefficiently and the population's distrust of political institutions rises. Consequently, productivity becomes lower, administrative efficiency is reduced and the legitimacy of political order is undermined. In addition, projects are left incomplete and economic development is impaired, which, in turn, leads to political instability, as well as poor infrastructure, education, health systems and other social services.

On the other hand, the phenomenon of corruption has also detrimental effects in developed countries by undermining ethical principles, rewarding those willing and able to pay bribes for their own benefit and perpetuating inequality. The result is that individuals who wish to conduct their affairs honestly are demoralized and lose faith in the rule of law. Moreover, competition is distorted and the quality of products and services tends to deteriorate. National budgets are severely depleted and rules and regulations designed to enhance social responsibility of corporations and other businesses are undercut and undermined.

II. EARLY WORK OF THE UNITED NATIONS AGAINST CORRUPTION

The United Nations Crime Prevention and Criminal Justice Programme began exploring whether the ground was fertile for action against corruption at the international level at a time when it was deemed adventurous even to mention the word "corruption".

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True to its tradition that prevailed from its establishment and is at the root of many of its successes, the Programme approached the issue from the technical rather than the political perspective.

In December 1989, working in close cooperation with the (then) Department of Technical Cooperation for Development of the Secretariat, the Programme organized an interregional seminar, which was hosted by the Government of The Netherlands in The Hague. Following a thorough review of the impact of corruption on good governance, public administration and the judiciary, the seminar produced a set of comprehensive recommendations. It is interesting to note that the seminar prefaced its recommendations on certain special considerations, which were cast as overarching conditions for effective action against corruption, or in other words, as essential elements of an enabling framework and environment for such action to have meaning. The participants in the seminar recognized the importance of democratic institutions, a free press, the rule of law, the independence of the judiciary and the creation of a political, administrative and social-economic environment in which the public and civil service can operate without improper interference. The recommendations of the seminar covered considerable ground, ranging from the need to embrace economic and development strategies, to the requirement of putting in place a broad range of preventive and law enforcement measures, and including the establishment of independent specialized bodies to implement or oversee the implementation of policies and measures against corruption. In the area of international cooperation, the seminar called for improved mutual legal assistance and extradition, as well as confiscation of illicit proceeds, and stressed the importance of technical cooperation in this sphere. The seminar also proposed the preparation of an international code of conduct for public officials and a United Nations programme to promote compliance with that code. It should be noted that the seminar provided the opportunity for the Crime Prevention and Criminal Justice Programme to present a first draft of a manual on practical measures against corruption on which it had been working and receive valuable comments.

In August 1990, the Programme organized the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. One of the resolutions that received the most support and passed unanimously was resolution 7 on action against corruption, which was inspired by the recommendations of the seminar and called for the preparation of a draft international code of conduct for public officials and the finalization and publication of the manual on practical measures against corruption.

Action against corruption featured prominently among the priorities established for the United Nations Crime Prevention and Criminal Justice Programme by the Versailles Ministerial Conference that revamped the Programme in 1991. It was also among the issues that the Commission on Crime Prevention and Criminal Justice decided to pursue when it was established in 1992. Under its guidance, the Programme developed the International Code of Conduct for Public Officials, which was adopted by the General Assembly by its resolution 51/59 of 12 December 1996. The General Assembly recommended it to Member States as a tool to guide their efforts against corruption. Further in its resolution 51/191 of 16 December 1996, the Assembly adopted the United Nations Declaration against Corruption and Bribery in International Commercial Transactions, annexed to that resolution, and requested the Economic and Social Council and its subsidiary bodies, in particular the Commission on Crime Prevention and Criminal Justice, to examine ways, including through binding international legal instruments, to further the implementation of the Declaration, to keep the issue under regular review and to promote the effective implementation of that resolution. It should be noted that the Declaration is generally regarded as the precursor of the OECD Convention against the bribery of foreign public officials.

III. THE NEGOTIATION PROCESS

The question of a convention against corruption was raised for the first time in connection with the negotiations for the United Nations Convention against Transnational Organized Crime. The Ad Hoc Committee that carried out those negotiations debated whether corruption should be covered by that Convention. The view that prevailed was that corruption was too complex and broad an issue to be covered exhaustively by a convention dealing with transnational organized crime. However, it was also evident to all negotiators that that Convention would not be complete without provisions on corruption, because corruption was both a criminal activity in which organized criminal groups often engage and a method used by those groups to carry out other criminal activities. The Ad Hoc Committee agreed on the inclusion of limited provisions on corruption in the United Nations Convention against Transnational Organized Crime on the understanding that a separate instrument would be envisaged to cover corruption in an appropriate manner. The United Nations Convention against Transnational Organized Crime, which was adopted by the

General Assembly in resolution 55/25 of 15 November 2000 and entered into force on 29 September 2003, includes provisions related to corruption. The Convention envisages criminalization of active and passive bribery involving a public official (Article 8 para. 1) or a foreign public official or international civil servant (Article 8 para. 2), as well as of participation as an accomplice in corruption-related offences (Article 8 para. 3). In addition, States Parties are required to adopt measures designed to promote integrity and to prevent, detect and punish the corruption of public officials (Article 9). The article criminalizing corruption includes also a basic definition of public officials, essentially deferring to national law.

Following the successful conclusion of the negotiations for the United Nations Convention against Transnational Organized Crime and its three Protocols, and the establishment of the new Ad Hoc Committee, the issue of fully realizing the commitment taken during those negotiations to pursue the development of an independent instrument against corruption came to centre stage. At the beginning, there was some brief debate about whether the new instrument should be a separate convention, or the objective could be as effectively achieved through the development of a protocol to the United Nations Convention against Transnational Organized Crime. The argument about the multifaceted nature of the problem of corruption necessitating a separate and comprehensive approach proved to be convincing enough that the question was laid to rest at the early stages of the debate.

However, Member States wished to time the beginning of the new negotiation process in a way that would ensure sufficient preparation, both on the part of their substantive services and agencies, and on the part of the Secretariat that would support those negotiations. Member States also wished to ensure that the negotiation process would be based firmly on shared objectives and a clear understanding about the scope of the objective to be achieved, precisely in view of the broad nature of the phenomenon of corruption and, most importantly, because of the rather nebulous character of the terminology employed to describe the phenomenon. Corruption was a term used in different contexts to embrace different, sometimes widely divergent concepts and had not acquired the certainty that is demanded invariably in a legal context, or more importantly, in the context of making international law. At the same time, Members States wished to ensure that the expertise and experience gained, as well as the spirit achieved during the negotiation process for the United Nations Convention against Transnational Organized Crime would be fully preserved and built upon. These attributes were considered of the utmost importance and as guarantees for the success of the new endeavour that the international community was about to embark upon.

In view of all these considerations, debate at the Commission on Crime Prevention and Criminal Justice revolved around devising a preparatory process that would satisfy all concerns and create an environment that would be conducive to pursuing the new negotiations on a sound basis.

In its resolution 55/61, the General Assembly established an Ad Hoc Committee for the Negotiation of a Convention against Corruption. That resolution also outlined a preparatory process designed to ensure the widest possible involvement of Governments through intergovernmental policy-making bodies. The Centre for International Crime Prevention (CICP) was asked to prepare an analysis of existing international legal instruments for the Commission on Crime Prevention and Criminal Justice, whose central theme in 2001 was the issue of corruption. The resolution also called for the convening of an open-ended intergovernmental group of experts, which was asked to draft terms of reference for the negotiation of the new instrument, taking into account the analysis of existing legal instruments and recommendations prepared by the Secretariat and the views and comments of the Commission. The Group was asked to submit its recommendations to the General Assembly, through the Commission and the Economic and Social Council, for approval.

There was an interesting development that merits special mention. At the time that the General Assembly was considering resolution 55/61, Nigeria, on behalf of the Group of 77 and China, proposed to the Second Committee of the General Assembly a draft resolution on the illegal transfer of funds and the repatriation of such funds to their countries of origin. As originally proposed, the draft resolution was calling for the negotiation of a separate instrument on this subject. Through negotiations at the General Assembly, the two resolutions were brought in line and the Intergovernmental Expert Group mentioned above was asked, by General Assembly resolution 55/188, to examine the issue of illegal transfer of funds and repatriation of such funds when considering the draft terms of reference for the negotiation of the new convention against corruption. This new mandate placed the issue of asset recovery squarely within the framework of the new convention.

Pursuant to General Assembly resolution 55/188, the (then) Centre for International Crime Prevention of the United Nations Office on Drugs and Crime begun studying the issue and seeking input from Member States, other entities of the United Nations system and other international organizations, in order to comply with the request of the Assembly to the Secretary-General to submit a report on this matter. Over the last three years, the Centre submitted three reports on this issue to the General Assembly and carried out a study to assist the Ad Hoc Committee charged with the negotiations of the new Convention against Corruption.

In elaborating these reports and the study for the Ad Hoc Committee, we found that the issue was as complex as it was crucial. In fact, the complexities surrounding it could not be underestimated. These complexities derived as much from the nature of the activities that produce the illicit wealth, as from the difficulties associated with the authors of these activities and their position of power. Such complexities were compounded by corollary factors, such as gaps in domestic legislation, perceived deficits in legitimacy of processes initiated to establish facts and determine culpability and, last but not least, deficiencies in international cooperation.

One of the key conclusions in the reports of the Secretary-General was that notwithstanding difficulties or complexities, the dimensions of the problem demanded joint and conclusive action by the international community. For this action to be effective, the international community must embark on sustained efforts to forge consensus. Such consensus needs to be based on a common understanding of the constituent elements of the issue, a common perception and appreciation of its impact on national efforts towards development and on the international quest for globalization beneficial to all, and finally agreement on the international aspects of the problem that require genuine and meaningful cooperation.

The sensitive and complex nature of asset recovery became evident during the tenth session of the Commission on Crime Prevention and Criminal Justice, in 2001, when it negotiated a draft resolution, which later became Economic and Social Council resolution 2001/13. While maintaining the matter as one of the key issues to be covered by the new Convention, the debate on the draft resolution produced an evolution of the terminology employed to approach the question. The new resolution spoke of transfer of funds of illicit origin, derived from acts of corruption, including the laundering of funds, and the return of such funds.

The Intergovernmental Expert Group met in Vienna from 21 to 30 July 2001 and recommended, by means of a draft resolution, terms of reference for the negotiation of the new convention regarding both substance and procedure. The Commission approved the draft resolution at its resumed session in September 2001 and, following approval also by the Economic and Social Council, the General Assembly adopted it as resolution 56/260 on 31 January 2002.

In that resolution, the General Assembly decided that the Ad Hoc Committee established pursuant to resolution 55/61 should negotiate a broad and effective convention, which, subject to the final determination of its title, should be referred to as the "United Nations Convention against Corruption".

The General Assembly requested the Ad Hoc Committee, in developing the draft convention, to adopt a comprehensive and multidisciplinary approach and to consider, inter alia, the following indicative elements: definitions; scope; protection of sovereignty; preventive measures; criminalization; sanctions and remedies; confiscation and seizure; jurisdiction; liability of legal persons; protection of witnesses and victims; promoting and strengthening international cooperation; preventing and combating the transfer of funds of illicit origin derived from acts of corruption, including the laundering of funds, and returning such funds; technical assistance; collection, exchange and analysis of information; and mechanisms for monitoring implementation.

The General Assembly also invited the Ad Hoc Committee to draw on the report of the Intergovernmental Open-Ended Expert Group, on the report of the Secretary-General on existing international legal instruments, recommendations and other documents addressing corruption, as well as on the relevant parts of the report of the Commission on Crime Prevention and Criminal Justice at its tenth session, and in particular on paragraph 1 of Economic and Social Council resolution 2002/13 as resource materials in the accomplishment of its tasks.

The General Assembly requested the ad hoc committee to take into consideration existing international legal instruments against corruption and, whenever relevant, the United Nations Convention against Transnational Organized Crime.

The Assembly also decided that the Ad Hoc Committee should be convened in Vienna in 2002 and 2003, as required, and should hold no fewer than three sessions of two weeks each per year and requested the Ad Hoc committee to complete its work by the end of 2003 according to a schedule to be drawn up by its bureau. Finally, the Assembly accepted with gratitude the offer of the Government of Argentina to host an informal preparatory meeting of the Ad Hoc Committee established pursuant to resolution 55/61, prior to its first session.

The Informal Preparatory Meeting took place in Buenos Aires from 4 to 7 December 2001. In preparation for that meeting, CICP asked Governments to submit proposals they wished to make in relation with the new convention. The purpose of the Informal Preparatory Meeting was to consolidate any proposals made by Governments, in order to pave the way for the work of the Ad Hoc Committee. The meeting had before it 26 proposals, submitted by countries of all regions of the world. Some of these proposals contained full texts for the draft convention, while others offered more general observations and comments regarding the content of the new instrument or the methodology of the negotiation process. The multitude and wealth of the proposals were evidence of the interest of countries from all regions and their willingness to be actively engaged and involved in the negotiation process. These elements augured well for the comprehensiveness and quality of the final product of the negotiation process. They also offered a guarantee of the universal nature of the new instrument, a key component of its effectiveness, acceptance and success. The Informal Preparatory Meeting consolidated all textual proposals in a single document, which the Ad Hoc Committee could use as the basis of its work.

The Ad Hoc Committee commanded the attention of Governments, international organizations and the civil society throughout its work; and for good reason. Doubtless, its task was demanding: to deliver to the world a broad, comprehensive, functional and effective international instrument to fight corruption. The pressure was considerable: success would mean turning the page in international cooperation and the establishment of new standards by which the international community will be measuring its performance in crucial sectors; failure would essentially condemn all relevant efforts for a considerable time.

The General Assembly gave the Ad Hoc Committee clear and broad terms of reference, and asked it to complete the negotiation process by the end of 2003. This deadline was doubly significant.

Firstly, it carried an important political message; the international community was intent upon showing that it meant business. There was no room for drawn out negotiations, but the product was needed urgently.

Secondly, this deadline was to serve as yet another tangible proof that significant, groundbreaking new legal instruments can be produced in the United Nations within a pre-determined and reasonable time frame. The same goals had been achieved by the previous Ad Hoc Committee on the negotiation of the United Nations Convention against Transnational Organized Crime and its three Protocols, and there was no reason why the positive experience could not be repeated

The principal strengths of the Ad Hoc Committee were: (a) the very good spirit prevailing among delegations; (b) the experience those delegations had gained by negotiating the United Nations Convention against Transnational Organized Crime; (c) a strong expanded bureau; and (d) a fully participatory process, manifested by high levels of attendance and a good mix of negotiators and practitioners making up delegations.

The Ad Hoc Committee made every possible effort to comply with the mandate it received from the General Assembly and develop a broad, effective and comprehensive convention. At the core of the negotiating process was the desire of all delegations to find an appropriate balance in the new instrument, in order to make sure that adequate and proportionate attention was devoted to prevention, criminalization, international cooperation and asset recovery.

From the very beginning of its existence, the Ad Hoc Committee added one unwritten rule to its rules of procedure. All its members demonstrated that they would be guided by a spirit of cooperation, understanding, flexibility and consideration for differing positions. That spirit was fundamental not only to the achievement of consensus, but to the safeguarding of the quality of the instrument that it was entrusted with developing. Indeed, the Ad Hoc Committee explored all avenues for reaching consensus, taking into account the concerns of all States, but keeping a watchful eye at all times on certain key qualities of the new Convention. The Ad Hoc Committee wished to make sure that the new instrument would be truly universal, functional, ratifiable and implementable.

Consensus in issues as complex as those covered by this Convention required certain key components.

First, good knowledge of the issues and an equally good understanding of the implications that provisions of the draft Convention might have. The solutions that the Ad Hoc Committee would find for the various provisions of the Convention could have implications for domestic regulatory regimes or for national capacities to deal with particular aspects of the problem, or they could have implications for other provisions of the new Convention and for the way it would operate as an instrument of international cooperation.

The detailed discussion that took place and the very balanced mixture of delegations, which were enriched by practitioners and seasoned negotiators, were proof that that knowledge and understanding were abundant in the Ad Hoc Committee.

Second, a good understanding of national positions and the concerns that drive them, coupled with sensitivity for these concerns and the desire to find ways to accommodate them. The new Convention needed to heed all concerns if it aspired to be a universal instrument.

The extensive debate that the Ad Hoc Committee held, over three readings of the draft text, provided every opportunity for all delegations to listen to each other and comprehend the reasons for each other's positions.

Third, and closely related to the second point above, a willingness to modify national positions and explore every possibility of meeting each other in the middle of the road. It was of crucial importance to be inspired through and by the development of new international standards in order to bring about changes or modifications at the national level, when those were necessary to improve international cooperation.

The Ad Hoc Committee began its work in January 2002. It held seven sessions and completed the negotiations successfully on 1 October 2003. It is important to note that the Ad Hoc Committee was an open-ended body and was consistently attended by a very high number of delegations (a total of over 130 delegations took part in the process).

PARTICIPANTS' PAPERS

ECONOMIC CRIME IN CAMEROON – ITS IMPACT ON THE SOUND DEVELOPMENT OF THE STATE

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I. INTRODUCTION

As a result of the declining terms of trade and increasing debt situation of Africa, the continent has been rendered poorer than it was two decades ago thus worsening welfare and increasing its marginalization in this era of globalization. Although globally, foreign investments have increased, Africa receives less than 5% and this capital is heavily concentrated in a few countries. This situation has been exacerbated by the fact that the region is a net exporter of capital to the rest of the world (UNCTAD, 2001). The state of trade and investment and its impact on development in sub-Saharan African countries and in particular the developing countries of the Central African region have greatly worsened.

Cameroon as part of Central Africa has not been spared by this negative trend whose effect on the national economy and the livelihood of its people has been devastating. Severely impacted by the economic crisis of the late '80s the phenomenon of poverty has been amplified. The devaluation of the FCFA, successive reductions of salaries in the public sector and the massive layoffs in the private sector, the winding up of most para-public agencies, private establishments and credit institutions, greatly weakened the national economy. At a macro-economic level, the consequence of the crisis was a total decrease of at least 55% of Cameroon's investment between the financial year 1985/86 to 1991/92. For the private sector this decrease was 37% and the public sector 80%. This economic recession led to the degradation of conditions of living.

This phenomenon was aggravated by the increasing demographic pressure with a growth rate of 2.4% (UNDP). The alarming situation in the urban cities is similar to most urban cities in Africa and other developing countries. Cities in Cameroon are faced with rapid and controlled urban growth of 6% per annum, (Annual Statistics 2000) resulting in inequalities and high unemployment rates.

A perturbing cause and effect of this prevailing phenomenon is one of increasing criminality and insecurity which greatly threatens the security of persons, their property and state property and shakes the foundation of democratic institutions. Of crucial importance are crimes of an economic nature which greatly discourage foreign investors and in a vicious circle negatively impact the already fragile and ailing economy.

Economic crimes are criminal offences that violate the economic rights of the state and its citizens, and frustrate socio-economic conditions. This has also been defined as a state where an individual(s) in the exercise of their liberty, brutally expropriate the individual and collective resources of others for their private interests. (Jean Cartier-Bresson, 1997). Although viable statistics on economic crimes are unavailable and sometimes inaccessible, a known effect has been its disruption of security and social order which are requisites for sound economic development. At a global level where the free and secure movement of persons, goods, services and capital that generate economic growth cannot be guaranteed, this constitutes a discouraging factor for both private internal and foreign investment.

Globalisation offers opportunities that can contribute to the much-needed national economic development. For developing countries like Cameroon there is an increasing fear of economic and financial destabilisation from globalisation. Marginalisation within the market forces in this new world order for trade presents a risk to nations that do not provide a judicial system that is adapted and possesses the necessary capacity to guarantee security for trade and investment within its territorial competence. Another dimension to this threat is the existing technological gaps between developed and developing countries which exacerbates this situation as it erodes the competitiveness of national economies. Though the threat is greater for developing countries, a major challenge of globalisation therefore is that of ensuring that its benefits extend to our country.

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It is within this context that within the last decade, the Government of Cameroon, with the support of the Bretton Woods institution, undertook to define a socio-political and economic architecture that is favourable to reversing the current negative trends and put the nation on a path of sound economic development. The sweeping liberalisation of the economic sector led to important structural reforms in the export sector, the privatisation of several productive state agencies and paved the way for financing and credit institutions to be put in place.

Addressing Cameroon's policy, legal, regulatory and institutional framework for combating economic crimes is therefore of critical necessity to the national and international collaborative efforts in addressing the nations financing and investment needs necessary to ensure sustainable development and poverty reduction even within the time frames for the Millennium Development Goals (MDG).

This paper seeks to contribute to the international initiative under the Japanese Government within its JICA programme which, aims at providing a forum for exchange of views and experiences on various issues pertaining to economic crime. It is from this background that this paper attempts to analyse below the current trends of the phenomenon of economic crime in the Republic of Cameroon. The impact of the existing legal and institutional framework will also be examined with the view of identifying opportunities, constraints and areas for further strengthening our reforms.

II. CURRENT TRENDS

An analysis of emerging trends in criminality of an economic nature clearly depicts two categories of economic crimes: traditional types as defined by existing legal instruments and modern types with peculiarities that do not confine these crimes to the essential elements that constitute any single traditional type.

A. Traditional Economic Crimes

An examination of the available judicial statistics on economic crimes reveals that the number of prosecutions and convictions are limited to traditional crimes defined by the Penal Code. Although these classic provisions have a limited area of application to the phenomenon it is interesting to observe that their effectiveness is excessively limited even with respect to traditional crimes which are on a continuous increase. The list of such crimes may not be exhaustive but would include economic related offences defined by the Penal Code as enumerated in Part III of this paper.

Although figures for the whole country were unavailable at the time of writing this draft, the classification of offences registered by law enforcement officers in the town of Yaoundé from January-July 2001 are indicative of major urban towns where economic crimes are dominant. Simple theft 49.6%, Armed Robbery 19.5%, Rape 3.5%, Theft by Use of Force or Climbing 16.8%, Others 10.8%. (2002 Diagnostic de la Delinquance Urbaine a Yaoundé. Page 42)

The putting in place of various multi-disciplinary teams by the forces of law and order during this period is conclusive of the increasing rate of violent criminality that came on stage posing serious threats to persons and property. An emerging phenomenon to combat the increase in criminality was the proliferation in the setting up of private security services such as Wackhenhurt and DAK services, etc. to ensure the security of private businesses and residences.

B. Modern Economic Crimes

This form of delinquency manifested itself at the advent of the economic crisis and has also been described as 'white collar crimes' relating to the quality of offenders and their mode of operations. The most common of these are 'feymania' and corruption. Organized crimes affecting the economy have also taken on a wide dimension both at a national level and on the international scene

1. 'Feymania'

'Feymania' is an economic crime that manifests itself in multidimensional forms but is basically characterised by the classified offences of breach of trust and credit by fraud.

Affected by the high rate of unemployment and poverty, its authors go in search of quick and easy profits, and this goal is achieved based on the victim's naivety.

Statistics on this phenomenon are unavailable and furthermore, the police and the banks are usually unable to detect such crimes. Beyond this, the victims out of shame hardly lodge a complaint against the offender and hesitate to make public their misfortune (Afrique Magazine, No 157, of October 1998, Page 65).

Feymen are a prototype of economic delinquents in Cameroon today. Though well known and very dangerous they maintain solid relationships at high political levels. Aged from 25-35, they are known to live in great affluence and are supposedly understood to be very rich men. Related offences include the manufacture of money through the use of multiple strategies i.e. minting counterfeits or multiplying money, sale of fraudulent precious stones and credit by fraud. They however, have an educational level classified as below minimum.

The mode of operation of feymen though apparently simple is complex. Its operation is preceded by a relationship of confidence established with his victim. The naivety of the victim is exploited and a large amount of money extorted. The tolerance of this phenomenon has led to severe social consequences. An increasing number of delinquents have led to the downfall of businessmen and traders - thus putting at risk economic operations.

2. Corruption

Corruption is non-respect of economic regulations which leads to disfunctioning of the market order. Actors are put out of market, the market is disorganized and profit affected. These practices retard social progress, and lead to misappropriation of resources and slow economic development.

Corruption is a phenomenon that is insidious to Cameroon. It has been engraved in certain daily habits i.e. 'Tchoko', 'Gombo' are regularly demanded for service to be rendered for various public services. Other-known practices include percentage charges (30%) in the award of public contracts and the payments of public internal debts.

The impact of corruption is frustrating to any economy. Generally, the risks to the establishment are increased as management orientations, growth and survival are affected. The growth of banks for example, is conditioned by the capacity for self-financing generated by credibility and security. Corruption affecting the banking sector has great repercussions on the national economy.

3. Organized Crimes

Drug trafficking, firearms trafficking, etc.

4. Offences Linked To Recent Communication Technology

Recent technological advancements in the communication sector have been used by economic crime offenders to render their crimes more complex and difficult to investigate. The proliferation of Cyber cafés and the increasing use of electronic banking/credit cards have generated diverse types of technological related economic crimes. Law enforcement officers, bank officials and managers of business operations are unable to identify these crimes.

C. Victims

An analysis of socio-professional categories of victims to economic crimes highlights the following groups:

- Traders are principal victims of armed robbery and feymania. Target businesses being petrol stations, pharmacies, supermarkets, banks, bakeries, bars, hotels and telephone booths.
- Economic operators and businessmen. They are subjected to giving inducements or paying percentages to be awarded contracts. They are also victims of armed robbery, and feymania
- International civil servants, diplomats and tourists. They are targets for aggravated theft and misappropriation.

III. LEGAL AND REGULATORY FRAMEWORK

A description of Cameroon's legal architecture is based on International Conventions, the Constitution, Laws, Sectoral laws and regulatory texts

A. International Conventions

The trans-border nature of most economic crimes greatly affects the common interests of humanity and thus makes it necessary to cooperate in the exchange of information and harmonisation of strategies for intervention. Cameroon's adherence to international legal movements is a determination and demonstration of political will by the public power to cooperate with the global community. It is in this regard that Cameroon has participated over the years in various international and regional initiatives relevant to the investigation and execution of decisions against criminal offenders in general and those specific to economic crimes and maintaining economic order, such as several UN and other international organized conferences relating to Crime Prevention and Criminal Justice on organized crime, money laundering, etc.

B. Constitution

The liberalisation of the socio-political environment in Cameroon necessitated major reforms in the Constitution to create an enabling environment for economic growth. The amended Constitution of 1996 has enshrined in its preamble various fundamental principles and rights that provide a framework for security in economic activities. The Constitution guarantees the right to freedom and security, free movement of persons and goods, and the right to ownership of property.

C. Criminal Law and Procedure

It is worth mentioning here that Cameroon has a chequered legal history that is linked to its historical background. Ruled under protectorate, mandate and trusteeship regimes, Cameroon was administered by the Germans, British and French whose legal systems have greatly influenced Cameroon's legal architecture for combating economic crimes. As a colonial legacy the English speaking provinces of Cameroon, formerly under British administration, continue to apply the common law legal system while the French speaking provinces, formerly under French administration, apply French civil law. The institution of local legislation in substantive and procedural law has been a gradual process since independence in 1960 and 1961. As an outcome, Cameroon today applies three categories of substantive and procedural law. Harmonised local legislation applies throughout the national territory and in default of such laws, each criminal or civil court applies the Civil law or Common law systems as was applied by that court before independence.

In examining the extent to which the current substantive and procedural laws are effective in combating economic crimes as a means to maintaining economic order, pieces of local legislation and provisions of applicable common law and civil law need to be visited.

In Criminal law, the Cameroonian legislator through the Penal Code (Law No. LF –1 of 12th June 1967) makes available various economic offences, which provide the opportunity for the judiciary to protect economic development. These offences of the Penal Code include Misappropriation of Public Funds (Art. 184), Forgery of Treasury Security (Art. 202), Counterfeiting (Art. 211), Striking Money (Art. 215), Other offences against the national economy (Arts. 222-226), Cheque without cover (Art. 253), other offences against the public economy (Art. 252-257), Signature in blank (Art. 309), Violation of commercial secret (Art. 311), Corruption of public servant/employee (Art. 134, 312), Deception of Shareholder (Art. 313), Forgery (Art. 314). Offences against proprietary interests include (Aggravated) theft, misappropriation and stealing by false pretences (Art. 318 -326), offences against copyright, patents, trademarks (Arts. 327-330), Insolvency/bankruptcy (Art. 331-336), etc.

These provisions are not exclusive of other economic criminal provisions contained in various laws and regulatory instruments notably the Tax Code, Customs Code, Investment Code, etc., which enable the criminal judge to ensure that economic order is established.

1. Procedure

Cameroon's judicial revolution of 1972 shaped after the nation's political revolution of the same year had a major impact on the criminal procedure that is applicable today. Ordinance 72/4 of 26th August 1972 on the Judicial Organisation (JO), led to the harmonisation of the repressive jurisdictions, their competence *rationae materiae* and *territoriae* and the competent authorities in criminal and civil matters. Certain procedural matters relevant to preliminary inquiries and prosecution were also addressed.

While these major aspects of the rules of criminal procedure were unified, section 34 of the JO referred the courts for further procedural matters to the procedures, usages and practices formerly in force in the two states (today the French and English provinces) before the promulgation of the ordinance. By virtue of this clause, criminal procedure in the investigation and prosecution of offenders of crimes of an economic

nature and the execution of related judgments is defined by the Criminal Procedure Ordinance (Common law) and the *Code D'Instruction Criminelle* (French Civil Law).

2. Investigation and Trial

As a major innovation, the JO of 1972 makes mandatory the conduct of a preliminary inquiry for offences classified as felonies and discretionary for misdemeanours and charges the State Counsel as the competent authority to conduct such inquiries. Although slow judicial processes have been attributed to preliminary inquiries, the importance of this pre-trial process is relevant to gathering evidence in economic related felonies and misdemeanours of a very complex nature. In the event of a committal for trial, the deposition and attendance of sometimes high-ranking witnesses involved in economic crimes, such as corruption and organized crimes, are secured.

The application of two criminal procedures has led to the application of the accusatorial and inquisitorial procedural system in the common law and civil law courts respectively. Although attempts have been made at instituting a mixed procedural system, by virtue of Art. 34 of the JO, the common law and civil law courts, continue to apply the procedural systems in force prior to 1972. Under the accusatorial system as applicable in the English speaking courts, the presence of the accused during trial is mandatory and the burden of proof cast upon the prosecution can only be discharged by proof beyond reasonable doubt. The accused who may opt not to give evidence, may by cross examination throw doubt on the truth of the evidence by the prosecution. The inquisitorial system as applicable in the French speaking jurisdictions is conceived on the basis that the interests of society are a priority. Here the accused is presumed guilty until he discharges the burden, which is incumbent on him. The accused once notified of his trial may be tried by default and the presiding magistrate plays a prominent role in the conduct of the trial.

Under both systems a victim may apply for the award of civil damages during a criminal trial through a civil claimant procedure ('Constitution des parties civiles') which, limits the duplication of actions.

In the absence of any unifying laws on various aspects of procedural law, this constitutes the general state of the applicable procedures by the criminal and civil courts that provides a framework for pursuing economic criminals and compensating their victims.

The myriad of procedures involved, their sometimes ill adapted nature and the complexities that arise when litigants opt in favour of one legal system over the other, where economic offences/violations cross the boundaries of legal systems, are complicated issues business operators and victims often face. An on-going government initiative aimed at addressing this state of affairs is the drawing up, by the Ministry of Justice, of a draft Criminal Procedure Code which takes into account Cameroon's double heritage and the peculiarities of the Cameroonian society. It is expected that this draft will soon be tabled in parliament.

3. Punishment

The nature of sanctioning economic crimes is defined on the same general principles for other crimes as contained in the Penal Code. Based on principal penalties as provided for by Section 21(1) of the Penal code, a felony is punishable with death or with loss of liberty for a maximum of more than 10 years while a misdemeanour is punishable with loss of liberty or with a fine where the loss of liberty may be for more than ten days but not more than 10 years. The traditional economic crimes as outlined above are thus sanctioned in accordance with the provisions of the specific section of the law, which follows the classification given above. For example, Misappropriation of public funds is punishable either as a felony with 15 - 20 years and life imprisonment or as a misdemeanour with 5 – 10 years imprisonment based on the value of the property lost. The issuing of cheques without cover, simple theft, breach of trust and stealing by false pretences are punishable as misdemeanours with an imprisonment term of 2 – 5 years, corruption of a public servant 5 - 10 years and corruption of employees 1 - 3 years. Aggravated theft and misappropriation are however punishable as felonies, etc.

These provisions notwithstanding, the criminal judge is empowered to mete out a lesser sanction unless otherwise prohibited by the law creating the offence. Where an accused is a first offender or other mitigating circumstances are established, and this happens to be the prevailing situation, the judge has a wide discretion in mitigating the sentence with a less severe sanction.

Various accessory penalties such as the publication of a judgment, closure of an establishment and confiscation may accompany the principal penalty. While the later penalty ensures that offenders are punished and the victims compensated in the event of a civil award of damages, accessory penalties provide a framework for the criminal judge to raise public awareness on the commission of serious economic crimes and further pursue the ill-gotten proceeds from these crimes. Where the owners of confiscated property are unknown, such proceeds are ordered to be part of the state funds or estate.

D. Civil Law and Procedure

In Civil law, several national efforts have led to the enactment of relevant harmonised legal instruments with defined procedures for contractual relationships of specified business transactions, conditions for resolving disputes, penal and administrative sanctions for violators and compensating victims of various economic violations. The Insurance Law (Code CIMA), Labour Law and the Africa Regional Business and Commercial Law (OHADA) adopted at the close of the twentieth century seek to address the challenges of economic activities within the global market economy. Foreign investments in the oil, gas, mining and forestry sectors have led to an increase in finance and economic related violations in these sectors. The last decade thus saw the enactment of sweeping local legislation to regulate these sectors providing sanctions for violators and compensation measures for victims.

Cameroon's civil procedure is based on the English received legal instruments (Magistrates Court Civil Procedure Ordinance of 1948, Southern Cameroon's High Court Procedure of 1955) and the French *'Code de Procedure Civile'*, whose provisions have sometimes become obsolete in their countries of origin. The Supreme Court is however regulated by a local legislation, Ordinance 72/6 on the Organisation and Functioning of the Supreme Court. The Government in recognition of the ill-adapted nature of these procedures of relevance to economic activities and their negative effect on victims of economic crimes, notably major financial institutions, adopted a number of regulatory instruments which, though piecemeal in nature, seek to speed up the process of judicial recourse. These include the Simplified Procedure for the recovery of debts; Ordinance N0 92/008 of 14th August 1992 on the Stay of Execution of Judgments, etc.

E. Preventive Measures

The measures adopted at an administrative level to combat the phenomenon of criminality of an economic nature have been principally disciplinary and preventive in character.

Administrative disciplinary action, though closely related to criminal proceedings, is nonetheless an autonomous action specifically applicable to a defined institution or profession. Although the rules for instituting such actions may be the same, their spheres of application greatly differ. The use of disciplinary measures such as recovery of deficits, warnings, and suspensions have been of great significance in pursuing civil servants charged with the misappropriation of state finances or other property under their control and custody. Charges for misappropriation of public funds for example, are initiated after an investigation by fiscal or administrative control services. The Public Department of State Control upon the detection of these offences have recommended and proceeded with forwarding suspects to the Prosecution department for further investigation and trial. The State Counsel of the Yaoundé Court of First Instance was seized of the famous Mounchipou case (Former Minister and high-ranking officials of the Ministry of Telecommunications), after the control and recommendation of the State Control Department.

During Cameroon's 3 year Economic and Financial Development Plan for 1997/2000, major economic, financial and structural reforms were achieved with the support of donor organisations. Within the Structural Readjustment programme a major achievement was the putting in place of a Good Governance Programme which envisages various economic development measures. These amongst others include: the respect of rules of public contracts whereby independent auditors were instituted; reforms on the system of award of contracts; the strengthening of the state of law to ensure judicial security for investments and the intensification of the fight against corruption by improving public access (transparency) to information on public affairs.

Major judicial structural reforms carried out were aimed at implementing Government policy of bringing justice closer to the people, decongesting the courts, speeding the judicial process and thus instituting a credible judicial system in the fight against crimes. These measures provided an appropriate response to criticisms of the judiciary relating to slow judicial processes in treating case files and the high number of preventive detainees awaiting trial. The recent creation of several Courts of First Instance and

infrastructural investments in the judiciary has provided a more conducive working environment. Statistics of the Centre Province for example reveal that, the Yaounde-Ekounou and Ngoumou Magistrate Courts were created within the last two years. Construction of the State Counsels Chambers for the Yaoundé Administrative Centre and the Yaounde-Ekounou Magistrates Court were completed, and the Construction of the Bafia Court is on-going.

Other efforts by the Government provide a preventive mechanism for the commission of economic crimes due to mismanagement of public property. Preventive measures for example, taken in implementation of the National Programme on the Fight Against Corruption include the vast national campaign in 1998 to sensitize the public as both culprits and victims of corruption. Within this programme a National Commission with a coalition of partners, CSO/Private Sector/Public Sector, has been created and placed at the level of the Prime Ministry. Various Observatories which feed into this commission have been created at the level of ministerial departments for an improved management of public affairs. These measures are expected to control and prevent the increase in economic crimes against the state.

A significant effort of the private sector worth mentioning is that of the banking sector aimed at preventing financial and economic crimes. At the dawn of the 21st century, major para public corporations such as the National Electricity Corporation (SONEL), National Water Corporation (SNEC), Cameroon Airlines (CAMAIR), National Social Insurance (CNPS), etc., and major private institutions, due to less rigorous accounting systems, were victims of diverse types of cheque related offences. Bank officials though unable to produce specific statistics of offences identified, confirm that an increasing number of fraudulent and stolen cheques were being cashed, signatures of heads of institutions falsified and fraudulent identification papers used by the offenders. The culprits, who sometimes worked with the complicity of employees of these institutions, were mostly unidentified. The impact of these bank related economic crimes on customers and the likely impact on their relationships with the financial institutions led to a change in the banking policy and the adoption of preventive measures in the payment of cheques. By a decision of the Professional Association of Credit Institutions of Cameroon (APECA), counter payments of cheques issued to third parties were abolished. All cheques issued to customers are required to be pre-barred and can only be paid through a bank account of the third party. These provisions notwithstanding, bank officials complain of emerging trends in new methods of falsification where payments are made under 'Transfer Orders'.

IV. INSTITUTIONAL ARRANGEMENTS

The institutional framework for combating economic crime includes repressive jurisdiction, law enforcement institutions, penitentiary institutions and the following.

A. Criminal Law Courts

In accordance with the judicial organisation regulated by the JO of 1972, the Court of First Instance (Magistrates Court) will be competent to entertain economic crimes classified as misdemeanours and simple offences and all criminal matters pertaining to juvenile offenders below the age of 18 years. Actions for civil remedy by victims of economic offences will be entertained by this court where the damage claimed does not exceed 5 millions Fcfa (approximately $8000). Where however the economic offence is classified as a felony, the High court is competent and in civil matters can hear and determine claims in economic issues with an amount exceeding 5 million Fcfa. At an appellate level, the Court of Appeals established at Provincial levels entertains appeals from the courts below. Appeals from a Courts of Appeal are heard by the Supreme Court whose decisions bring an end to any litigation of an economic nature.

The legal Departments headed by legal officers are charged with heading and controlling investigations of crimes by the judicial police officers

B. Judicial Police Officers

As forces of law and order, the Police and Gendarmes are also specifically charged with the investigation of criminal offences. In the exercise of this function they act as judicial police officers (JPO) under the control of the legal department.

The Police Service is made up of the department of information, public security, judicial repression and immigration. Public security is particularly responsible, amongst others, for the security of persons and their goods. The Mobile Intervention Group (GMI) of the police is charged with special interventions, while the

Special Operation Unit (GSO) as a specialised unit is made up of 'anti-gangs' for the fight against grand criminality and serious offences.

The Gendarmerie is also charged with the security of persons and their goods and as judicial police officers investigate criminal offences. Equally structured as the Police, this service consists of a criminal investigation office, a Mobile Unit 'Escadron Mobile' charged with special interventions, and a Gendarmerie Operational Centre (COG) charged with the fight against grand criminality.

Upon receipt of a complaint or information as to the commission of an economic crime, the Judicial Police office are charged with conducting investigations and establishing a case file which is forwarded to the legal department for perusal, inquiry and committal where necessary.

C. Penitentiary Units

Regulated by Decree 92/052 of 27 May 1992 on the penitentiary system in Cameroon, various penitentiary centres created nationwide are charged with the detention of convicts or detainees. The over-population of these prisons has been a cause of great concern. The Yaoundé prison for example constructed more than 40 years ago with a capacity of 800 inmates today has 3024 persons.

D. Multidisciplinary approach

The multidimensional characteristics of serious crimes and modern crimes call for a multidisciplinary approach to be adopted in the prevention of and fight against increasing criminality. Faced with an increase in criminal activities, particularly organized crimes with the use of arms which greatly threatened persons, their property and the business community in urban towns and most particularly Cameroon's economic city, Douala, a series of multi-disciplinary teams of the forces of law and order were set up with the mission to carry out operations aimed at strengthening existing intervention forces. Major operations carried out in February 2000 were the 'Commandement Operationnel' in Douala and 'Operation Vautour' in Yaoundé.

Besides these repressive measures, have been preventive measures of great significance. An on-going initiative by the Government of Cameroon and UNDP is the 'Yaounde Plus Sure' and 'Douala Plus Sure' Initiative which, aims at putting in place a multi-sectoral and multi-stakeholder programme for the prevention of urban and juvenile delinquency in Cameroon's political and economic capitals.

V. CONSTRAINTS TO EFFECTIVENESS

Although economic crimes have considerably multiplied, taking on diversified and complex forms, Cameroon's criminal legislation enacted in 1967 is yet to be reviewed to render it effective in regulating the current forms of economic crimes. In its obsolete form, the traditional economic crimes legislated upon, provide an inappropriate and ill adapted framework to vigorously combat emerging forms of serious crimes which greatly hamper the global economy. Enforcement of criminal court judgments encounters increasing difficulties in the Civil law jurisdictions where accused persons are tried in default. Default judgments in criminal matters so delivered have recorded alarmingly low levels of execution.

A major problem has been one of unavailability, insufficiency, non-viability and inaccessibility to statistics on the phenomenon. Where there is available data, this is usually not properly managed due to a lack of technological resources. As an outcome of these weaknesses, the dimension of economic crimes and the extent of the effectiveness of the judicial system to fight this phenomenon needs to be given increased and particular attention.

Major difficulties encountered during investigations and inquiries include unavailability and inaccessibility of information. The high ranking officials both of the public and private sector involved in economic crimes and the sometimes political nature of the issues surrounding the commission of the office render investigations and inquiries an arduous task for the judicial police officer and the legal and judicial officer.

Wanton behavioural patterns of victims not only compound their plight but render investigations difficult. Victims of economic crimes committed by feymen, behave as if they were seemingly tied under a pact of secrecy and are usually unwilling to denounce the act. Complacency by the society to certain economic criminal acts will have a long-term impact as the young generation continues in like manner. Securing the attendance of prosecution witnesses during inquiries and trial is also faced with difficulties where witnesses

exhibit great impatience with judicial procedures. Regular complaints from process servers charged with executing summonses relate to witnesses who do not respond to the witness addresses provided during investigation.

Non disclosure, unavailability of information and victim behaviour compromise the pursuit of proceeds from economic crimes and victim compensation. A major factor that contributes to combating money laundering is accessibility to information and disclosure by individuals, the banks and other channels.

In another area, the cross boarder (national/international) nature of economic offences necessitates a huge investment in human, financial and material resources that are usually inadequate and sometimes unavailable.

Of critical importance are problems related to the wanton expertise to deal with the complex and complicated nature of emerging economic crimes. The want of highly specialised experts to establish expert reports has led to protracted inquiries. A major problem is related to lack of expertise in communications technology. Technological dependency is a root of economic dependency. Opportunities offered by recent technological advances to combat crime are not fully exploited yet this is a crucial issue that determines the extent of success of any preventive or repressive measures.

The capacity of Police and Gendarme forces in the wave of increasing criminality, especially armed bandits, is insufficient. Yaoundé urban town for example is made up of 1300 uniformed policemen thus giving an insignificant ratio of 2.5/1000 for police/population.

Sub-regional cooperation to combat increasing trans-boundary criminality needs to be strengthened. Instability from civic wars, which affect most neighbouring countries of the sub-region, has negatively impacted economic stability. The influx of refugees and the trans-boundary movements of arms have resulted in increased pressures on natural resources, generated labour problems and increased criminality. The free movement of persons, goods, services and capital, which are generators of economic growth, cannot be guaranteed within the sub-region faced with these socio-economic problems.

VI. RECOMMENDATIONS AND CONCLUSIONS

The celerity in treating case files, the quality of the judgments delivered and objectivity in the use of discretionary powers is certain to make the judge a major actor in economic development and support of the State in its fight against economic crimes. The existing legal and institutional framework can no longer cope with emerging and new forms of economic crimes. As the nation seeks to put its economy on the path of growth and increase the efficiency of Africa's economy for the enhanced welfare of its people, there is an urgency to define ways of providing the much-needed judicial security which is a priority incentive for attracting investment.

A proactive stand calls for a number of priority and appropriate measures to be put in place

1. Adapting the Legal and Regulatory Framework
   - Reform of repressive legal instruments to be adaptable to emerging economic crimes
   - Define preventive strategies to combat the increasing crime wave
   - Implement victim compensation measures

2. Strengthening Capacity of Major Actors Involved In Combating Economic Crimes
   - Enhance institutional capacity to investigate, prosecute and execute court decisions
   - Support law enforcement agencies and courts involved in the fight against economic crime
   - Build capacities of legal and law enforcement officers to master the new communication technology and thus reinforce capacity to open up to the global village

3. Availability and Management of Information
   - Provide up to date history on economic crimes
   - Enhance capability/capacity to effectively expand the collection and sharing of information and intelligence on economic offences

4. Implement and Institute Economic Crime Prevention Programmes
   - Alternatives to repressive approaches: Citizen Education on Economic Crime Prevention
   - Juvenile delinquents. Educate and prevent involvement in crime
   - Effectively implement National Good Governance and Fight against Corruption programmes that aim at ensuring security and judicial credibility

5. Promote Multi-disciplinary Economic Crime Management
   - Develop collective steps to mitigate, reduce, control and prevent economic crime
   - Integrate members from various operation programmes to strengthen and enhance capacity to achieve operation priorities specific to economic crimes

6. International
   - International Policing to contribute to global security by improving national capacity to collect and share intelligence
   - Enhance bilateral cooperation within the sub-region to combat crime

In conclusion, building on the manifested political will through the Government's initiative alongside the support of The Bretton Woods institution, to put in place conditions favourable to a credible justice system, provides an opportunity for revamping Cameroon's vulnerable economy. A major lesson from the economic depression experienced is that solid economic growth must be accompanied by the security of persons and their property as an incentive to attract foreign and private investments. Strengthening the existing legal and institutional framework to prevent and fight crimes and making it particularly adaptable to traditional and emerging serious economic crimes paves the way for greater investment and constitutes a major contribution to Cameroon's criminal justice system in support of diverse national efforts aimed at putting the economy on the right path for economic development.

COUNTRY REPORT - GHANA

*Bright Oduro**

I. INTRODUCTION

Ghana formerly the Gold Coast is about 238,500 sq. km and our immediate neighbours are Burkina Faso in the North, Togo in the East, Cote D'Ivoire in the West and the part of the Atlantic Ocean called the Gulf of Guinea in the South. Currently the population of Ghana is close to 20 million.

My paper will attempt to highlight the various forms and manifestations of economic crime and the problems that it presents to our criminal justice system. The paper also covers the rules that are applicable, available mechanisms up to the institutions that are required to control economic crime.

I have also examined what I perceive to be preventive and counter measures to confront the crime. Also an examination of the existing provisions of the criminal code and the current manifestation of the problem has been highlighted to expose the uses to which the old provisions have been put as well as a consideration of their adequacy for the current task.

I have also examined the operations of the police, the court and other investigative agencies such as the serious fraud office and the securities regulatory commission.

II. WHAT IS ECONOMIC CRIME

Economic Crime may be defined broadly as the range of crimes that occur in the course of economic transactions, or crimes that result in loss of an economic nature to the victim while the perpetrator and or his/her accomplices become the ultimate beneficiary of the illegal economic or financial gain. The victim of the economic crime may be an individual, an institution or a state.

In recent times the field of economic crime has grown by leaps and bounds on account of globalisation and the changed nature of instruments of communication. The categories of crime of an economic nature in the past years when advancement in technology had not been so high were largely those of officials or other agents who handled other people's money or other economic resources hence the name 'white collar crimes'. As the name suggested these were crimes committed by those of the clerical and administrative class of employees and other agents by reason of their pen-pushing occupations. Such crimes did not require physical presence or contact with the property, only ability to have access to and deal with the property on paper. Thus the offences were mostly of a financial nature such as embezzlement, fraud by agents, fraud by false pretences, counterfeiting, issuing false prospectuses, etc. The range of offences was also limited in sphere because the perpetrator had to be the custodian or trustee before the crime could be possible.

These days, owing to the advancement in technology, globalisation and improvements in communication and computers as well as the developments in financial markets, credit financing and the scope of international trade, many economic crime possibilities have opened up.

The range and variety of crimes of a financial nature have so multiplied that the term 'white collar crime' has become too narrow and the more general term 'ECONOMIC CRIME' reflecting the current trends and nature of the activity appears to be a more appropriate term to describe the myriad of criminal activity in the economic domain with which the Police and other law enforcement agencies must now contend.

'White Collar Crime' has ceased to be an appropriate term for the other reason that as the categories of fraud have so been opened up by technological advancement and developments, so has the profile of the offender or perpetrator changed. With emphasis shifting from pen and paper to telephone, facsimile and computer, the economic criminal has ceased to be the one who has to be well educated to have the necessary access and opportunity to commit the crime. In consequence in economies with high illiteracy rates such as ours those capable of perpetrating economic crimes may no longer be the 'white collar' type.

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* Chief Superintendent of Police, Ghana.

III. ECONOMIC CRIMES UNDER THE GHANA CRIMINAL LAW

Our Criminal Code recognises several forms of economic crime, the oldest of course, being fraud. Sections 131-135 of the Criminal Code act 29/1960 deal with fraud. They are:

(i) Fraud by false pretences
(ii) Stamp offences
(iii) Falsification of accounts
(iv) Fraud in sale or mortgage of land
(v) Fraud as to boundaries or documents
(vi) Fraud as to things pledged or taken in execution
(vii) Fraud in removing goods to evade legal process
(viii) Fraud by agents.

A. What Is Fraud

Fraud occurs when an act is done by one person with the intention that it should deprive another person of some value to which the person is otherwise entitled and when it in fact causes such loss.

To establish fraud under Ghana's Criminal law one must prove a conscious act done, as well as intention on the part of the actor that he or she should acquire some gain with a corresponding loss to the victim i.e. the act must be done with intent to defraud. An intent to defraud is defined under section 16 of our criminal code Act 29/1960 as follows:

An intent to defraud means an intent to cause, by means of such forgery, falsification or other unlawful act, any gain capable of being measured in money, or the possibility of any such gain, to any person at the expense of any other person.

From the definition it is clear that fraud is about acquiring a financial or other benefit capable of being quantified in monetary terms, at the expense of the other person. All of these frauds also contain an element of dishonesty since the intent of the fraudster is to bend another's will by trickery or other devious means to do an act which benefits the one unjustly, to the detriment of the victim's own interests.

Fraud by False Pretences

The commonest form of defrauding is the art of the confidence trickster, who adopts or uses false pretence to induce the victim to part away a benefit or his property. This offence, which is a second-degree felony under our criminal Code, attracts a maximum penalty of twenty-five years when convicted. The offence is committed if a person misrepresents an existing state of facts such that the misrepresentation induces another person to consent to parting with the ownership of any chattel. The representation may take the form of either 'written or spoken words' or by any conduct, sign or means of whatever kind. It can also be about anything and may even be misrepresentation of a right, liability, authority, ability, dignity or ground of credit or confidence. It can also cover impersonation of another as well as consciously deriving benefit from a situation of mistaken identity. It is also applicable to a person who by reason of identical name obtains advantages and privileges that would not have otherwise been granted had the fraudster not been mistaken for the more famous namesake. It is not only confidence tricksters of the more obvious sort who can be prosecuted under this head. The scope of the offence extends into the world of commerce and covers those who induce people to extend them credit when they actually have no intention of ever paying for the commodity or services rendered.

In Ghana and some parts of Africa, rampant political corruption and entrenched corruption in public life coupled with the need to launder the money so acquired has produced a new brand of confidence trickster. So common is this brand of fraud in Nigeria in particular that every person on the street of Nigeria knows it is called '419' after a section of the penal code under which provision for the offence of defrauding by false pretence is made. Unfortunately the perpetrators of the offence have found fertile grounds in Ghana and the net for victims has also spread over to Ghana. This type of fraud by false pretences is based on the well known fact that African Politicians and junior public servants loot their national treasury and then seek to transfer the money into foreign banks in order to be able to travel abroad in the course of time and live in luxury. Persons claiming to have some such resources then seek the assistance of a foreigner resident in another country, who would not have ready opportunity to effect background checks, and then defraud them.

Typically, it begins by one person usually form Nigeria writing to a Ghanaian businessman whom he has never met. The letter would typically inform the person/businessman of some funds corruptly obtained which needed to be laundered and a promise of a percentage cut to the collaborator. The request would then be made for the businessman's account number to be given for the 'slush' funds to be deposited therein. Once the account number is given the account's holder/businessman is impersonated and the account cleared of whatever it contained.

Another variation of this trick is to indicate that the illicit monies have been deposited in a trust and that it would be necessary to 'unlock' the trust.

Subsequently, a letter demanding some advanced payments written on the forged letterhead of a reputable bank would be received by the victim. Once the so-called advance payments begin they never stop because several unforeseen expenses necessary to complete the 'unlocking' process emerge. By the time the victim realises that it is a scam a lot of money would have been parted away to the fraudsters. Several millions of dollars have been lost this way by victims of this particular trick. Clearly the scenario is that the person who seeks to profit from the wrongdoing of another rather becomes the victim of this crime.

B. Falsification of Accounts

Those who handle financial resources of others in the capacity of servant or agent also have opportunities for committing economic crimes. Obviously falsification of accounts is usually a preparatory step in some criminal enterprise, usually acts of dishonest appropriation. Section 140 of the criminal code provides as follows:

Whoever being a clerk, a servant or public officer and whoever being an officer of any partnership, company or co-operation, does any of the acts herein after mentioned, with intent to cause or enable any person to be defrauded, or with intent to commit or to facilitate the commission, by himself of or by any other, of any crime, that is to say:

(a) Conceals, injures alters or falsifies any book, paper, or account kept by or belonging or entrusted to his employers or to such partnership, company or corporation or entrusted to him, onto which he has access, as such clerk, servant or officer, or omits to make a full and true entry in any account of anything which he is bound to enter therein; or
(b) Publishes any account, statement or prospectus relating to the affairs of such partnership, company or corporation, which he knows to be false in any material particular, commits an offence.

The provision clearly covers a wide range of offences and includes, those employed by private companies as clerks or servants and the state as public officers. It also covers any officer of any partnership company or corporation. The code also provides a definition of 'officer', which is also very wide.

Any officer, chairman, director, trustee, manager secretary, treasurer, cashier, clerk, accountant or other person provisionally, permanently or temporarily charged with or performing any duty or function in respect of the affairs of the company or corporation, whether for or without any remuneration.

The categories of personnel set down in the provision are wide enough to cover even gratuitous volunteers who are involved in the running or organisation of the affairs of the entity. In effect the entire group of persons who are employed in the public or private sector in whatever capacity could be liable for the offence extending even to officers of voluntary welfare associations or other charitable groups.

In order to ensure that entities, which do not have separate legal existence from their owners, are not excluded, the code defines 'Company' not in the technical legal sense, but also includes:

Any partnership or association whether corporate or incorporate, and whether the purposes thereof be or be not the carrying on of any trade or business and whether it be in course of formation or be actually formed or be in course of dissolution, winding up as liquidation.

The entity need not be fully in existence; whatever its stage of formation it can be the victim of such offence if the people at the helm of affairs misconduct themselves. In committing the offence, the person must tamper with entries made on paper or into books of account or must have failed to make a full and accurate entry into such book of account.

Indeed 'tampering' which is the crux of the offence could take the form of concealing the document in question, cutting away part of or burning it in whole or in part, altering part of the document and falsifying any book i.e. changing the content such that it gives false information.

From this, it is inferred that the information contained in a 'document', is usually on a paper or scroll or other material in which information is written which is tampered with. Therefore the types of conduct that can be criminalized are visible physical records that can be falsified. The present situation however is different. These days 'accounts' are kept on computers. The problem is if one gains unauthorised access to a computer network by entering a password or a number into a computer, given the definition of a document which apparently does not cover material visible on a computer screen which is tampered with; can he be effectively tried under this law?

The offence of falsification of accounts may also be committed in respect of acts involving the flotation of companies, or securing fresh investment for an existing company. Usually the motive for tampering with or making false entries with books of accounts is to give such a favourable impression of the financial status of the company, as would make potential investors take the bait. Therefore, the law provides that it is an offence to publish any account, statement or prospectus relating to the affairs of such partnership, company or corporation which he knows to be false in any material particular. There is thus criminal liability for fraudulent misrepresentation in respect of accounts or other documents related to investments.

C. State Revenue Related Frauds

Invoicing/Vat Frauds

One of the frauds we have been contending with and believe will grow in importance relates to altering and falsification of bills of lading and invoices, manifests, receipts or other documents, evidencing quantity, character or condition of any property, or the receipt or disposition of or the title of any person to any property. This is because not only do customs and excise duties depend on them, but also the appropriate Value Added Tax (VAT) payable or refundable on such goods. Since there are refunds for such goods there is bound to be an increased possibility for fictitious documents evidencing such transfer.

D. Fraud by Agents

In Ghana this is an area with great potential for abuse of power and corruption. Agents could be officers of the state or employees of private persons. Agents of the state are usually entrusted with a lot of power because they either do not have adequate rules to work with or have extensive discretion in granting exemptions from the application of rules. In Ghana these officials are usually grossly underpaid thus creating both opportunity and motive for extortion, corruption and abuse of office. I believe that the officials or agents' will to resist extortion and corruption must be shored up by our criminal law.

In Ghana the offence is provided for under section 145 of the code and covers financial inducements offered by third parties to agents or taken by them in order that they might show favour to that person or they would forbear to do what they are required to do by their principal. In our context, agents cover those in the private sector, servants of the state such as civil servants and officers of the District Assemblies. As the provision goes (section 145):

Any agent who dishonestly accepts or obtains or agrees to accept or attempts to obtain, from any person, for himself or for any other person any gift or consideration as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to his principal, affairs or business or forbearing to show favour or disfavour to any person in relation to his principals affairs or business shall be guilty of a misdemeanour.

From the provision, a civil servant who takes or demands a 'kick back' (or the usual 10% commission) in order to grant a contract to a particular contractor is guilty under the law. Turning a blind eye to an infraction or not taking appropriate sanctions because of the gift or consideration given is also punishable under the provision. Third parties are equally guilty and punishable under the law. The reason for including them stems from experience that third parties sway agents from their duties with tempting offers.

The making of such offers or the agreement to give consideration must therefore be tackled as a potent contribution to the offence of fraud by agents.

The following are typical happenings in Ghana in the contract business that the various categories of agents handle.

(a) Contract sums are usually padded up.
(b) Receipts which evidence payment are sometimes lower than the sums stated therein.
(c) Receipts which reflect payments which have not been made.
(d) Accounts that reflect services that have not been contracted and paid for, even though the services may not have been performed.
(e) Goods paid for that may not have been delivered.

Financial appropriations made for goods and services never yield value for money because they are either misapplied or used for shoddy jobs, which soon require re-doing.

The provision relating to frauds by agents cover these offences even though the designation of some of them as misdemeanours only attracts lighter criminal sanctions compared with the harm that could be caused to the economy. In Ghana the list of such acts, which amount to corruption, may be endless.

E. Special Offences

In the light of the foregoing considerations and the apparent lighter punishments for these crimes, a new breed of offences known as the 'SPECIAL OFFENCES' were enacted in the middle of the 1980s. These offences, largely economic in nature, were lifted from a group of offences under the same name in a previous legislation as our response to the increasing world of economic crime. These special offences are considered so serious that they are punishable by a fine not less than five million cedis and or imprisonment not exceeding ten years. The text of the provision is as follows:

1. Any person who by a wilful act or omission causes loss, damage or injury to the property of any public good or any agency of the state commits an offence.
2. Any person who in the course of any transaction or business with a public body, agency of the state intentionally causes damage or loss whether economic or otherwise to the body or agency commits an offence.
3. Any person through whose wilful, malicious or fraudulent action or omission:
   (a) The state incurs a financial loss;
   (b) The security of the state is endangered commits an offence.

From the provisions, it is difficult to get a clear picture of the specific acts, which the provisions seek to proscribe. However, it covers a wider ground of the categories of offences relating to fraud by agents. In Ghana, however some human rights activists have argued that the provision offends the principles of the Ghana Constitution and that even though the harm caused by economic crime is deeply appreciated the State in its desperation should not make such laws.

F. Investment Fraud

One other worrying crime that is emerging from globalisation, which can cause chaos to any country's economy, is investment fraud. Ghana experienced a sudden wave of this type of fraud in and around 1995. The offence is growing in importance as people seek ways of investing surplus income without the necessary familiarity with the complexities of the financial world. In Ghana people were willing to invest money with some dubious financial firms, which promised them huge interest on sums invested. These so called financial institutions then folded up within no time and it became also difficult to track the fraudsters as they left either misleading addresses or no clues as to their whereabouts, leaving the investors with great financial losses.

G. Securities Fraud

The recent emergence and growth of the securities market in Ghana would undoubtedly produce certain economic offences. Market manipulation is known all over the world to be one of the more common forms of securities fraud. This is a wilful conduct intending to deceive or defraud investors by controlling or artificially affecting the price of securities. This is perpetrated by engaging in wash sales, matched orders or rigged prices that merely seek to mislead investors.

The market manipulator goes through four main stages namely, accumulation, price appreciation, promotion and sell off.

In the accumulation stage, the market manipulator identifies a non-existent company except in name in the stock market. He then acquires a lot of shares in that company by buying from private hands creating a situation where the public distribution of shares comes under his control. He then sets in motion, the appreciation stage, which also involves the false movement of shares into friendly hands in fictitious trading such that the prices appear to be going up. Massive promotional acts are done with the view to arousing investor interest in the shares. Advertisements are then made in attractive financial magazines and promoters are hired to promote the company by issuing news releases and doing other promotional activities. In this way more people are baited to buy into the company and the share prices go higher until they reach a peak. The manipulator begins to sell off his shares making profits from the genuine investors. In no time the profits are taken out, the company collapses and the real investors lose their money.

In Ghana, the Securities Industry Law in 1993 makes provision for some of these offences, but whether anybody has been tried and convicted is another thing. The various stages of the practice are made criminal by the act.

"A person who creates or causes to be created, or does anything that is calculated to create a false and misleading appearance of active trading into securities on a stock exchange in Ghana, or a false or a misleading appearance with respect to the market for or the price of such securities commits an offence."

The law further provides that the person who by means of purchases or sales of securities that do not involve a change in the beneficial ownership of those securities or by fictitious transactions or devices maintains, inflates, depresses or causes fluctuation in the market price of any securities commits an offence.

Even though these economic criminal acts are not perpetrated on a large scale in Ghana, the laws have been made to protect the genuine investor. But again, are they deterrent enough to scare the economic criminal?

H. Advance Fee Frauds

The use of modern communications equipment and advancement in technology, enable persons in far distant locations on the globe to communicate and transact business without necessarily meeting. This has brought in its wake commercial frauds where goods ordered are not paid for because addresses used were false and letters of credit presented were forged. This type of fraud presents a real challenge to the world of commerce since the pace of life in the modern world does not permit extensive and thorough background checks on potential clients who operate thousands of miles apart. Two manifestations of advance fee fraud are discernible - those that have an international flavour and those with domestic characteristics.

In maritime frauds, which are international by nature, persons who claim to be shipping agents contact victim companies to transact business and to tranship commodities at an agreed fee. Some advances are then paid for processing so that the goods could be shipped. Once the fee is paid, the shipping agent disappears and the goods are not shipped.

In Ghana, various forms of domestic advance fee frauds are perpetrated on a regular basis. The shortage of housing units in Ghana, have contributed to some extent to the increased spate of the crime. People, who do not own buildings, purport to rent out non-existent buildings after making false representations and succeed in taking monies from potential tenants. Others pose as estate agents, locate houses that are on the rental market and under false representation succeed in stringing the victims along till they themselves give up after having parted with good money. Others who do not have enough funds to complete their buildings, put their building on the rental market, enter into an agreement with potential tenants by which they take rent advances of the equivalent of about two years rent to complete the building. Once the building is completed the owners rent them to other people at higher rates and refund the initial advance payment to the disappointed party. Many people have been victims in this way who have been made to finance other peoples building, while they still remain homeless.

One common advanced fee fraud that has also become very popular but very disturbing in Ghana is related to gold transactions. Local Ghanaians purporting to be private businessmen often lure foreigners from their home countries with attractive business connections in gold in Ghana and then defraud them. The usual practice is for the so-called businessman to obtain samples of the gold which he shows to the foreign business partner with the promise of buying greater quantities from small scale licensed miners or winners,

usually, in the gold mining areas in the hinterlands. Usually the foreigner becomes satisfied once the initial sample turns out to be gold and becomes less cautious and parts away with huge sums of money in the belief that his so-called businessman would supply the gold as promised. By the time he realizes that he has been defrauded the fraudster has vanished into thin air. It is not only persons living outside Ghana who have fallen victim to this sort of scam but other genuine foreign investors in the country who are not familiar with the intricacies of the gold business. A number of foreign businessmen have sadly left the country after having gone through this ordeal. The other common fraud which has also emerged on the scene is related to travel documents. Ghana is a relatively poor country and it is a common practice for the unemployed youth to seek to travel outside especially the United States, Western Europe and Japan among others for greener pastures. The situation has produced another brand of the confidence trickster who parades as having contacts with the various Embassies and High Commissions and then under false pretence of assisting in securing travel documents notably visas for unsuspecting victims defraud them of the monies paid by them. Indeed in the past few years the CID has been inundated with several of these cases.

I. Trademark and Copyright Fraud

Illegal infringement on trademarks and copyright is on the increase owing to international trade and the vast profits that are made if a scheme to copy other people's products is successful. In consequence, big markets have flourished for imitation goods, be it pharmaceutical, food and beverages or music. Initially, in Ghana, these acts have been subject to civil actions at common law or action for damages under the Ghana Trademarks Acts of 1965. However, civil remedies have been seen not to be enough of a disincentive considering the vast amount of profits that the violator of trademark and copyright stands to gain.

The criminal law has thus had to enter the stage to control the extent of infringements on account of the damage that these activities pose to the economy of the state or to the individual whose creativity and ingenuity produced those commodities. Even though the copyright law of Ghana prescribes the criminal sanction, these are merely ridiculous in light of the illegal profits that are made and the extent of consequential injury that may be inflicted upon the victims in particular and the economy as a whole.

IV. MONEY LAUNDERING

Illegal trade and activities, such as the narcotics trade that produce huge profit, engender money laundering. The laundering involves not just individuals but sometimes major banks. The money accrued from illegal trade is transferred into spurious or fake businesses so as to distance it from its source. The illegal act of money laundering may be committed not just by private individuals but also usually with the connivance of respectable banking or other financial institutions.

In Ghana it is an offence for anyone to engage in laundering of the proceeds of the narcotic trade. The law states:

"No person shall use, transfer the possession of, send or deliver to any person or place, transport, transmit, alter, dispose of or otherwise deal with, in any manner, any property or proceeds or any property with intent to conceal or convert that property or those proceeds knowing that all or part of that property was obtained or received directly or indirectly as a result of … the commission of a drug offence".

The provision is aimed not only at the acquisition of removable property but at all forms of property, including money. Therefore all acts, that ensures the proceeds in the narcotic trade are concealed, transformed or converted within the economy with the intention of hiding the links with illegal narcotic trade have been made criminal,

V. EFFECTS OF ECONOMIC CRIME

Economic crime in its various forms inflicts economic loss, sometimes serious loss on the victim, while at the same time it provides an unjustifiable gain to the perpetrator. It can wreck whole economies and even make nations politically unstable. In Ghana, the various coup d'etats that our nation has experienced beginning in 1966, have always been explained by the coup leaders as being due to the corrupt practices of the previous governments and their inability to stem the scourge. The scale of destruction that economic crime can unleash makes individual victims suffer irreparable injury. Ghana's traditional law uses monitory penalties and imprisonment as the usual sanctions. These fines and or imprisonments are not adequate compensation for the victim considering the scale of loss he may have sustained. Again a conviction must

first be obtained against the accused person who usually is wealthy enough to procure the best legal representation against the charges, and sometimes comes out clean. The concerns are; the laws themselves, the enforcement mechanisms and whether the traditional methods of punishment, as in Ghana, are adequate tools for effectively fighting this kind of crime?

VI. INVESTIGATIVE AND REGULATORY AGENCIES

In Ghana, the agencies tasked with investigation, prevention and detection are the police, the serious fraud office and securities regulatory commission. Indeed, as the nature and complexity of economic crime in its modern form has widened, so the battle to confront it needs to be intensified. Since many of these crimes depend on manipulation of figures and financial transactions, so has the need arisen to jointly use law and accountancy in solving these crimes. It has therefore become necessary, for more professionals with an accounting background to be roped into the investigations of economic crime. Consequently, instead of using a group of police investigators, it is now accounting experts that may be required to investigate the economic criminal. As a result certain agencies have been established in the criminal justice system, other than the traditional ones like the police, with a view to effectively and efficiently investigating economic crimes. In Ghana, even though agencies such as the securities regulatory commission, serious fraud office and regulatory arms of national banks have all been established and operate alongside the traditional police, the perpetrators of economic crime are undeterred and are keeping up the momentum.

In terms of international economic crimes, such as securities fraud, it is always better to nip in the bud the commission of the crime before it occurs or grows. Therefore these investigative agencies and other regulatory bodies have been mandated to investigate economic crime or monitor the conduct of dealers in the stock market so that potential manipulators and other fraudsters can be kept at bay. In spite of all these security, investigative and regulatory apparatus that have been introduced into the criminal justice system, the courts remain the potent weapon to deal the final blow to the perpetrators of the crime.

A. Securities Regulatory Commission

The securities regulatory commission was established under the securities industry law with extensive administrative, monitoring and investigatory functions. Among the many functions of the commission, set down in section 10, the ones that are of interest for the purposes of this paper are:

1. To maintain surveillance over activities in securities to ensure orderly, fair and equitable dealings in securities;
2. To formulate principles for the guidance of the industries; and
3. To protect the integrity of the securities market against any abuses arising from the practice of insider trading.

The commission has extensive powers to inspect goods of various persons and organisations that operate in the financial market. It can also procure a warrant from the court to inspect any premises on which books that have been ordered to be produced may have been hidden. These powers appear to be necessary on the grounds that there is really a thin line between legitimate activity and illegitimate conduct in financial dealings. Thus many of the activities that could be twisted to perpetrate a fraud could also be innocently done in the course of normal activity on the securities market. The commission's role is telling them apart, and bringing the weight of the law hard on to the potential fraudsters. Therefore, if the commission is to be effective in preventing the commission of securities fraud, then the watchword should be vigilance but the commission lacks the machinery to maintain the necessary level of vigilance.

B. The Serious Fraud Office

This investigative agency was established in 1993 to investigate "serious fraud". Apart from the general difficulty in defining exactly what serious fraud is the agency's functions revolves around investigations into acts that cause serious financial or economic loss to the state as well as political corruption and other acts calculated to defraud or affect the economy. This really means that unless there is a state-connected fraud, the agency would have no interest in interpersonal fraud, however great the extent, or ingenious the method. This is indeed a limitation that affects its ability to make a proper impact on the system.

The agency itself has had a credibility problem right from the start. It is unclear whether it is not just another state agency founded on the principle of political patronage and whether the officials have the

necessary expertise in the areas in which they are required to operate. Internal wrangling founded upon political differences, which have sometimes made front-page news, has not helped its situation. In addition, it has not as yet completed an investigation that has resulted in a successful prosecution, in all of its years of existence. Since, even the efficacy of its investigative methods has not as yet been tested by the courts, it is uncertain whether it is a toothless bulldog or sleeping giant, or neither. Consequently, it is not possible now to assess its contribution, if any, to the war on economic crime.

C. The Bank of Ghana

The Bank of Ghana has statutory power to licence financial institutions and operations whether of the banking or non-banking sector. Its functions cover those who seek to operate as a bank by taking in deposits and lending out money. Such deposit-taking therefore seems to be a potential route for investment fraud. The work of the Bank, among others, is to ensure that potential investors are not deceived into depositing monies into financial "scams". It also has the responsibility of ensuring that the operations in the financial sector are conducted so as not to be harmful to the economy. However, the Bank failed its major public test of protecting the public from financial scams when one of the biggest investment frauds occurred in Ghana in or around 1995 with the 'Pyram' and 'R5' schemes. The "scam" occurred when two companies emerged on the financial scene with investment schemes that promised about 30% interest a month on any sums invested. These companies did not comply with any of the official rules for operating investment schemes, but the Bank of Ghana did not react to the operations. Many people invested heavily in the schemes and they were even dubbed "wonder banks" in the local press. When the Bank of Ghana finally woke up to its responsibility and moved in to enforce the regulations, the companies folded up because they could not comply with the regulations. Most people lost their money when the scheme collapsed. The Bank itself, caught flat-footed, could only rake up such tame charges against the local Directors as "operating a non-banking financial institution without a licence". In the meantime, the fraudsters had left the country with their money intact. It is not surprising that the ire of the investors, who had been left holding the empty can, turned on the Bank officials.

Clearly, the Bank was caught napping. Officials who were naïve enough to sit and watch what was happening even though the news about these "wonder banks" was common knowledge realised too late that they had been negligent. Should the Bank not have offered better protection to the general public than this? Did this event not bring the entire financial system of Ghana into disrepute? Will an institution that sits and waits for a formal complaint against a company that operates as a financial institution before moving its regulators in, be capable of protecting the public against investment frauds? Yet, if the Bank of Ghana cannot do this, then who can?

D. The Police

The Police are a much-maligned institution, but it is currently the most effective barrier against all types of crime. It has traditionally operated in an area where ordinary police skills of detection can be usefully employed. However, in the world of high finance, there are no bloodstained clothes or weapons, neither are there fingerprints or other telltale signs of interference. A sound understanding of financial operations as well as accounting and other forms of expertise are the requisite tools for investigation. The regular Ghana Police are indeed not familiar with the world of the sophisticated modern criminal or even equipped with the necessary skills needed to investigate the sophisticated economic crime.

E. The Courts

It is the courts that are going to have to come down hard on securities fraud and other economic crime. Obviously diligent prosecution and aggressive sentencing is a necessary deterrent to manipulation, as it is with other forms of economic crime. However, the efficacy of the traditional approaches to the processing of criminals has been called into question. The major issue then is whether our courts are equipped to deal effectively with the phenomenon of economic crime.

VII. PUNISHMENT/SANCTION

Fines and or imprisonment have been the traditional sanction systems employed by the criminal law in Ghana. However, in economic crimes they do not seem to serve the situation appropriately. Where a person fraudulently misappropriates another's money imprisonment and heavy fines are usually the options that are imposed. However, none of these compensate the victim for the loss he has suffered. The fine when paid is paid into the consolidated fund. Therefore the victim has to live with the loss. Even though the courts may

impose heavy fines there are many occasions the court cannot exact a penalty as heavy as the loss, which has been caused. For example a person whose acts defraud another to the tune of one billion cedis could never be fined that amount. It is also noteworthy that the criminal law is strictly governed by statutes. And for many of these offences their current designation as felonies makes the perpetrators liable to imprisonment but not a fine.

Even though, imprisonment may be ordinarily a severe sanction and discourage potential criminals it appears inadequate for the purposes of the criminal law as well as the needs of the victim. This is because financial benefit illegally acquired by the criminal if properly invested could be doubled or trebled after the period of imprisonment. Having already been punished for the crime the criminal could return from prison and live in affluence on the illegally acquired wealth while the victim languishes in poverty. It is in the light of these concerns that other mechanisms have to be made, and be made available to the courts, to ensure that penalties imposed offer relief for the victim.

VIII. COUNTERMEASURES

Given the wealth and resources at the disposal of the economic criminal, the existing tools are inadequate to counter the menace posed by him or her. The need has therefore been felt to improve the quality of crime investigators, train adjudicators as well as improve the processes available for dealing with criminals. Indeed there is the need for more specialization in terms of the personnel who will investigate economic crime and also the structures of the court system.

Severe prison sentences remain significant even though not completely effective. Compensatory and confiscatory orders as well as other mechanism of restorative justice obviously seem better prospects for compensating the victim and creating a disincentive for the potential criminal. Although confiscations earned a bad name in the 1980s in Ghana when it became associated with the strong arm tactics of the revolution, it is now becoming an attractive weapon in generally fighting crime and drug related economic crime in particular. Again our criminal justice system has had to realise that even though it was not meant to be a debt collecting system the nature of modern economic crime is such that the system ought to be able to assist with the recovery of some of the money appropriated or misappropriated. Presently consideration is on restorative justice which means various means by which harm that has been done may be repaired or the victim adequately compensated. This consideration has become necessary because it is unrealistic to expect that after losing a lot of money to the perpetrator the victim would find more money to bring a civil claim against the perpetrator. Even in situations where this has been possible - delays in court processes result in a double victimization of the victim. Would it therefore not be more responsive to the needs of the time if an order of compensation could be made upon a conviction. In Ghana compensatory orders have become fashionable for physical injuries in assault cases. The courts have usually made compensatory orders when imposing fines on others. This makes it unnecessary for the victim to incur the extra expense of bringing a civil action for damages.

The making of compensatory orders has been extended by statute to enable the high court or regional tribunal to make such or other orders of reparation in situations where economic loss, harm or damage may have been caused to the state or any of its agencies.

In the era of the international drug trade the need to marshal resources to fight it has opened up other possibilities in the arsenal of the criminal justice systems. The realization that it is the extraordinary wealth which is available to the drug dealers which acts as the attraction for new recruits has led to a change of tactics. Instead of merely imprisoning such persons for long periods leaving the illegally acquired properties intact for enjoyment later there is now a worldwide trend to deprive them of their gains by confiscating these properties and other resources proven to have been acquired from illegal trade. In Ghana the property of a person who has been convicted of a narcotic offence may be confiscated under section 13 of the Narcotic Drug (Control) Enforcement and Sanctions Law 1990.

IX. PREVENTIVE MEASURES

The establishment of a commission on corruption with regulatory and investigative functions, as well as receiving information and complaints relating to economic crime and creating the necessary awareness in the Ghanaian society, is considered a pragmatic approach towards reducing the scourge. The media must

also be encouraged to give publicity and coverage to economic crime cases as a way of sensitising the public against the various forms of economic crime. The various bodies, such as the securities regulatory commission and the other regulatory arms of the Bank of Ghana, should be adequately resourced to maintain their levels of vigilance.

X. CONCLUSION

It must be stated that since criminality is a part of human existence, any development, whether technological or otherwise, has implications for the criminal law and criminal justice system. As the capacity for law enforcers has been increased by the use of technology so has it helped the criminal to improve his/her capacity for crime as well as creating new opportunities for criminal conduct. Indeed it would appear that it is largely technological developments that have succeeded in widening the gap between law breaking, lawbreakers and law enforcers. Consequently if economic crime and law enforcers are in an unequal struggle then it is because the opportunities for the criminal have really improved, whilst the certainty of being made to pay adequately for the crime has rather decreased. Therefore there is the urgent need to sharpen the tools that are currently available in order to hold its own or be ahead of the economic criminal. A good first step towards confronting economic crime is to identify and deal with the difficulties inherent in the system. There is the need to develop appropriate mechanisms and strengthen the requisite institutions. New institutions with wide powers of investigation need to be established to combat some forms of criminality. The capacity of existing institutions should be improved to enable them to adopt creative methods in handling the issues and also to be able to adapt to the current circumstances of economic crime. The personnel of these institutions need to be equipped both materially and intellectually to cope with the agile mind of the economic criminal.

Operatives with accounting skills have become important in detection and investigation of economic crime while lawyers and judges need to understand issues pertaining to the world of high finance. Clearly there are implications for the training of law enforcers and other personnel in the criminal justice system in the intricacies of modern technology, and in specialised areas such as management, accounting and stock brokerage.

The criminal justice system is indeed in the battle, which is weighted against it on several fronts. However improving its tools both in terms of capacity and logistics is the surest means by which the purposes of the criminal law can still be upheld. The globalisation of crime has come to stay and live with us, and it is up to the criminal law and the criminal justice system to brace up for the revitalised battle against economic crime.

THIRD PARTY RESPONSIBILISATION FOR CRIME CONTROL -TELECOMS AND FINANCIAL POLICING

*Keiji Uchimura**

I. ABSTRACT

Technological developments, globalisation and diversification of industrial services have weakened the technical and social control of crime and indirectly facilitated more serious crime, endangering the law enforcement mission. To meet these challenges, law enforcement authorities have developed a relationship with industries. For example, the telecommunication industry is obliged to provide interception capabilities. In the same way, financial institutions are required to lodge Suspicious Transaction Reports. These are types of 'responsibilisation' of the industries, as David Garland termed such political strategies of the state. The aim of this paper is to shed light on the actual conditions of the relationship and to find out keys to improve the relationship. Based a review of the literature and the recognition of limits of such open sources of telecoms and financial policing, interviews were conducted in Belgium, Hong Kong, Ireland, Singapore and the UK. It was concluded that the keys to crime control and socially sound development of industry are mutual understanding and collaboration between law enforcement and industry rather than controlling the industries unilaterally. In particular, it became clear that a good relationship with financial institutions is achieved through the upstream flow of information on the progress of criminal investigation. On the other hand, finding a successful model in telecoms policing is still a difficult problem for the time being. The root of trouble with the relationship is the difficulty in determining who should pay the cost of telecoms policing. In order to ameliorate the circumstances, the author proposes applying technical standardisation schemes.

Concerns about privacy and the resolution of costs might arise through such standardisation processes by collaboration of all parties in question.

II. INTRODUCTION

Cyberspace is not only the scene of cybercrime but is also tainted with 'traditional' crime.[1] The capabilities of telecoms policing typified by interception and data seizure have increasingly become vulnerable with the advance of technology and the expansion of services. Thus, the public police cannot appropriately cope with policing needs in cyberspace by themselves. Instead, having a universal relationship to crime facilitation and inhibition, the private telecommunications (telecoms) industry has been persuaded and compelled to assist in measures that are not automatically in its own short-term economic interests. Interestingly, almost the same pattern is recognised in the relations between financial policing and the financial industry.

Focusing on telecoms and financial policing, this paper will shed light on the actual conditions of the relationship and find keys to improve the relationship. Throughout this paper, the term 'telecoms policing' stands for any policing activities conducted (not necessarily by the public police) in cyberspace for preventing, detecting, investigating and remedying (not necessarily cyber-) crime.

To begin with, various aspects of the relationship between policing authorities and the telecoms industry are reviewed in the next chapter. Chapter IV deals with issues of financial policing and then these are compared with telecoms policing matters. Proposals are made based on theoretical discussions in the concluding chapter in weaving the findings of the author's interviews with foreign law enforcement officials.

III. RESPONSIBILISING TELECOMS POLICING

A. The Interception Law in Japan

The 'Telecommunication Interception for Criminal Investigation Law' (Interception Law)[2] was enacted in

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1 See Council of Europe (2001: para. 5).

2 The author concerned himself with the law by liaising with the telecoms industry and by settling on the procedural details of the due process of the Law.

2000 in Japan. The aim of the law is to tackle organised crime by authorising law enforcement agencies to intercept telecommunications related to organised crime. The history of such investigative method in Japan is shorter than the legislative traditions in Western countries.[3]

1. Precedents: Substituting *'Inspection' for 'Interception'*

There were five precedential and quite exceptional cases before the legislation (Homusho 1998: 29-34). The courts diverted the 'inspection'[4] procedure issuing warrants that permitted the police to 'inspect' the telecommunications contents. These cases were characterised by the system called Tachiainin (Presence of the Responsible). The purpose of the system is to guarantee procedural appropriateness (Inoue 1997: 77). The court applied the principle that police should ensure the presence at the site of personnel of the telephone company concerned (or, failing that, local government personnel).[5] However, the telephone company staff refused, in all five cases, to become tachiainin arguing that such co-operation contradicts the industry's legal responsibility on confidentiality of communications.[6] Consequently, the police had to depend on local government officials instead of telecommunication experts.

2. A Challenging Situation: Inheritance of the Tachiainin system

The tachiainin system was handed over and developed as a new distinctive due process for interception. The law concerning the tachiainin system stipulates that-[7]

> in case interception is to be executed, a person who is responsible for the part of the telecommunication means or any suitable substitute shall be present on the spot. If such persons are not available, a local government official shall be present.

Thus, the primarily eligible persons to be tachiainin are the staff of the telecoms service provider involved. The presence of tachiainin at all times is the most important part of the procedure. The Criminal Procedure Code allowed the non-attendance of tachiainin for exceptional circumstances of non-availability.[8] However, such an exceptional clause was removed from the Bill to place a responsibility on tachiainin to carefully watch the process of interception.[9] Unlike the precedents, they are prohibited from monitoring the communication contents and neither the right nor the responsibility of stopping interception is placed on them. In this sense, the new system sets a lighter responsibility for tachiainin than that of the inspection-interception scheme.

According to the testimony of a government delegate of the Yuseisho (Ministry of Posts and Telecommunications, MPT),[10] tachiainin have two important roles. The first function is to be present during the entire process at the scene in light of the need for the telecoms carrier to maintain their entire service without any adverse effect. Secondly, being tachiainin is an obligation for telecoms service providers, forming a part of the due process of the law. The delegate further set forth that telecoms service providers are fundamentally responsible to carry out duties of tachiainin in order to keep the integrity of their own telecommunication business.

Notwithstanding, the telecoms industry has speculated that the burden[11] of constantly seconding

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3 For example the Interception of Communication Act *1985* in the UK and Title III of the Omnibus Crime Control and Safe Streets Act of *1968* in the US.

4 Article 218 of the Criminal Procedure Code.

5 Tachiainin were permitted to monitor the telephone conversation in common with investigators. In addition, they were then requested to disconnect temporarily the branched line to disable it from monitoring and recording if the call contents were not related to the crime (Homusho 1998: 29-34).

6 "Soshiki Hanzai Hoan no Yukue" (Organised Crime Bill's Whereabouts). The evening issue of Mainichi Shinbun, 21st May 1999. http://www.mainichi.co.jp/eye/feature/article/digital/55/55_4.html.

7 Article 12, para. 1 of the Interception Law.

8 Article 114, para. 2 of the Criminal Procedure Code.

9 Statement of Sasagawa Takashi, a member of the House of Representatives, before the Legal Committee, House of Councillors, 29th June 1999.

10 Testimony before the Legal Committee, House of Representatives, 19th May 1998.

11 "Tachiainin Keihi mo'Jigyosha de'"('Operators' are compelled to pay tachiainin costs). The morning issue of Asahi Shinbun, 13th August 2000, http://www.asahi.com/tech/jiken/20000813b.html. However, the validity of the media's articles about the Interception Bill of the media was questioned. Seko, Hiroshige, a lawmaker who had been employed by the common carrier (NTT), indicated (before the Legal Committee, House of Councillors, 13th July 1999), with evidence, that the article contained false information and was biased.

personnel over a long period might be too heavy to bear. A newspaper article appeared just two days before the Law came into force criticising the heaviness of the burden . It quoted the view of the compliance officer of a fixed-line telephone company that it would be difficult to station tachiainin if interception is enforced one after another. The article also included the comment of a mobile phone operator expressing the view that they couldn't refuse their tachiainin duties because the company had a social responsibility to do so. At least in the short period immediately after the law became effective and when the author liaised with them for preparation, they repeatedly requested the police to release them from their duties of tachiainin because they thought it would interfere with their business.

3. Interception Capabilities

Another concern about interception investigation was the costs of development to facilitate telecoms interception. Hitherto, Japanese legislation provided neither a legal obligation for service providers to install interception capabilities nor a legal claim for the costs of doing so.[12] Lawmakers permitted the police to make requests to the industry provided they were non compulsory and not excessive. Since the legal and political circumstances in Japan are quite different from other countries,[13] it is inevitable that the technical implementation for interception in Japan is limited in extent. Although, the cause and effect cannot be fully discussed, it can be recapitulated that the technical difficulties combined with operational barriers resulted in the limited applicability of the law.[14] Nevertheless, the imbalance between telecoms policing needs and capabilities is a globally common issue.

B. Global Difficulties and Responses to Telecoms Policing

1. The Era of Analogue Technology and the Monopolised Supplier

Traditionally, the technical methods of telecoms policing were relatively simple. As for telephone interception, call content was available by the following means (see Grabosky and Smith 1998: 21-22). First, a pair of copper cables were branched off near the local switch. Then the branch was extended to the interception site. Traffic data, e.g. call length and dialled numbers, were logged in correlation with subscriber data for billing purposes (Lloyd 2000: 179-180). Dialled numbers were also obtainable, without assistance of telephone service providers, by attaching a device called the 'pen-register' to the branch (Diffie and Landau 1999: 117).

Unlike the Internet or mobile phone services, subscribers' static data of fixed line services were easily accessed by lawful powers because the customers are literally connected. Another facilitating factor was the monopolisation of services. As Grabosky and Smith (1998: 206) pointed out, '[e]nlisting the co-operation of a single, large organisation was a relatively routine matter.' Thus, it can be summarised that the telecoms policing of early days was easy.

2. Technical Developments and Increasing Anonimity

Because of advances in the technology and popularity of services, the importance of data handled by the industry has grown. Additionally, technologies needed for telecoms policing of modern systems have become far more difficult (see Diffie and Landau 1999: 97-99). Furthermore, the global popularity of mobile phones and the Internet has brought about challenging situations. It is almost impossible, and arguably inappropriate, for public police to install functions by themselves within the huge networks, whether confidentially or not. There seems to be no other solution than pre-installing capabilities friendly for policing (Diffie and Landau 1999: 116).

To make matters worse, digital technology is applied in almost all telecoms systems removing biological features of users (Council of Europe 2001: para. 62). Diversified services have also deteriorated. The traffic

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12 Testimony of Matsuo, Kunihiro, before the Legal Committee, House of Councillors, 29th July 1999.

13 For example, the Communication Assistance for Law Enforcement Act of 1994 (CALEA) of the US places telecommunication providers under an obligation to be equipped with interception capabilities. Similarly in the UK, the Regulation of Investigatory Powers Act 2000 stipulates in article 12 that persons providing public telecommunications services are liable to assist by interception capabilities.

14 After two Annual Interception Reports reported that there were no cases, the first productive report was submitted to the Diet in February 2003. It disclosed that four interception warrants for mobile phones were enforced for drug dealing cases in the previous year. See http://www.npa.go.jp/keiji/boujyuhouoku.htm.

data of the modern systems are not usually recorded if the services are flat-rated or free of charge because they are not needed for billing purposes (APIG 2003: para. 128). Similarly, the allocation data of IP addresses (subscriber data) and the history of IP addresses of destination (traffic data) were also immediately deleted by Internet Service Providers (ISPs) because they are regarded as valueless (Council of Europe 2001: para. 29). In addition, many free email services are accessible to anybody. Such services are not only free of charge but also require little proof of identity. The most problematic services are 'anonymous remailers' (Mostyn 2000: 81-82). The problem of anonymity is also found in pre-paid mobile systems (Denning and Baugh 1997: 128).

3. International Responses - The Requirements

In parallel with domestic struggles, already discussed, remarkable international efforts have been made since the mid 1990s mainly in order to regain interception capabilities. The first initiative was started under the EU and bore fruit as the Council Resolution in 1995. A set of 'requirements' of law enforcement agencies for telecoms policing, often referred to as the 'International User Requirements (IUR)', is acknowledged in the first half of the resolution. Then in the latter half, member states are required to implement the requirements (The Council of the European Union 1996). This resolution would be epoch-making for it pioneered an international concern about capabilities of telecoms policing.

4. International Responses - Standardisation

An international effort was also made by the ITU (International Telecommunication Union) adopting Resolution 1115, 'International Harmonization of Technical Requirements for Legal Interception of Telecommunications'. The motivation for the resolution was 'that the costs of legal interception capability and associated disruptions can be lessened by providing for the capability at the design stage'.[15] Although the ITU has made no progress since 1997, the regional standardisation has been active in Europe. The ETSI (European Telecommunications Standards Institute) has established standards relating to lawful interception.[16] The reason for the difference in productivity between the two projects is that, whereas the ITU could not co-ordinate the diverse political and economic conditions of members, the law enforcement needs and industrial efforts to respond to them have been matched among European countries (Tsuchiya 2001: 16). Standardisation in the ETSI has produced satisfactory results not only in the economies of scale but also in removing trans-border barriers among jurisdictions and markets with different legal requirements (p. 16).

5. International Responses - Countermeasure against Cyber-crime

Members of the Council of Europe and some extra regional countries signed the *'Convention on Cybercrime'*. The significance of the treaty for telecoms policing is that it requires states to establish new powers to enable 'the expeditious preservation of' existing computer data, including traffic data.[17] Backed by the provision, the Japanese government is preparing domestic legislation to create new investigative powers to request telecom service providers to retain traffic data up to ninety days.[18]

However, the industry has opposed the data retention policy because it costs a great deal of money. As the WITSA (World Information Technology and Services Alliance) (2000) appealed 'as the global voice of the IT industry' to governments in the statement for the Draft Convention -

> to avoid imposing new requirements [for data preservation] on ISPs that result in significant financial burdens on their operations. Such added costs will ultimately affect the access costs of end users, and may negatively affect the growth of Internet usage.

C. Case Studies of Telecoms Policing

1. Legal Solution: Internet Auction Providers' New Responsibility

The first case study deals with the world's first legal regulation for on-line auction providers. The

15 See http://www.itu.int/council/index97/1997/135/135.html.
16 See http://www.etsi.org/.
17 Article 16 of the Convention on Cybercrime: Explanatory Report.
http://conventions.coe.int/Treaty/en/Reports/Html/185.htm.
18 See http://www.moj.go.jp/SHINGI/030324-2.html.

Amendment of the Second-hand Dealing Law went into effect in April 2003 in Japan.[19] The amendment requires any online auction provider (1) to notify police as a 'service provider of second-hand articles auction mediation' (an Auction Mediator), (2) to report to the police if any article on the auction block is suspected of being a stolen item, and (3) to take the appropriate action to halt the auction if the article is obviously recognised as a stolen item.

The amending process was tangled. The industry opposed the bill partly because the burden of inspecting the suspiciousness of articles is too heavy.[20] Moreover, lawmaker Yoko Tajima's criticism of the bill was as follows.[21]

> Police must be admitting the ineffectiveness of their cyber-patrol to lobby this bill. [. . .] Presumably, the real intention of the crafty bill might be to divert the responsibility of impotent police onto the industry's shoulder.

2. Telecoms Policing in the UK

Secondly, the measures for telecoms policing in the UK are examined. The *Regulation of Investigatory Powers Act 2000* (RIPA) established the powerful and expanded legal framework of telecommunication interception. In addition, unlike Japanese legislation RIPA provides that the operational costs for the implementation of individual interception warrants are paid in full by the government. Presently discussions are going on between the industry and the Home Office on fair compensation from the government for installing interception capabilities in compliance with section 13 of RIPA. Sutter (2001) argues that due to the compliance burden, British ISPs are at risk in the domestic market because of the challenge by competitors based outside the jurisdiction who might provide cheaper services.

The *'Anti-Terrorism, Crime and Security Act 2001'* (ATCS) legalising communications service providers (CSPs) to retain any sort of communications data on a voluntary basis to enable anti-terrorism measures.[22] ATCS has been criticised because the government disregarded groundwork with the industry (Thomas 2002). Further, a Parliamentary group pointed out how the system is economically not feasible. Rather than voluntarism, they made the counterproposal of a reasonable 'Data Preservation' system- to comply with a request to preserve certain communications data (APIG 2003: para. 179).

3. *Paralegal* Solution (1): 'Know Your Customer' for Prepaid Phones

The next case study is about the crime investigation and prevention measure taken by the Japanese industry. This case was characterised as being of a *paralegal* nature, achieved through administrative guidance.

When a pre-paid mobile phone was used in a kidnapping for ransom case in 1999, the police had difficulty in investigating the case because of the anonymity of the user. In response, the *Keisatsucho* requested mobile operators to collect user identification for crime prevention and the maintenance of investigative capabilities.[23]

The industry held a wait-and-see policy as the first response with informal and theoretical support from the Yuseisho, the regulating authority. According to their argument, the customers' identity information for *pre*-paid services is not needed for billing purposes by definition. Thus, it was considered that the collection of such *unnecessary* information was prohibited by the Privacy Guideline for Telecommunications Business. In addition, the industry contended that collecting such data would be fatal to the service since the convenience of the service is its raison d'etre.

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19 See http://www.npa.go.jp/safetylife/seiankis9/kobutu.htm.
20 See http://www.watch.impress.co.jp/internet/www/article/2002/0315/npa.htm.
21 Testimony of Tajima, Yoko, a member of the House of Councillors, before the Cabinet Committee, House of Councillors, 19th November 2003.
22 Anti-Terrorism, Crime & Security Act 2001: Summary.
http://www.homeoffice.gov.uk/oicd/antiterrorism/atcsa.htm.
23 "Keitai Denwa: Tokumei no Kyoki" (Mobile phone: an anonymous weapon). Morning issue of Asahi Shinbun, 26th April 2000. http://www.asahi.com/tech/jiken/20000426a.html.

An imitative kidnap case, using a more sophisticated technique, occurred four months later. The *Keisatsucho* made the same request again and wanted the operators to act without delay. The reaction of the Minister of *Yuseisho*, to this was to report, a few hours later, his solution to these kidnap cases as follows.[24]

> Pre-paid mobile phones were abused in the kidnap case committed in December last year and the case in Kanagawa Prefecture this time. I apprehend this situation as a serious social problem. Therefore we have just instructed the industry to devise immediate measures against this matter taking privacy concerns into consideration since the service is a sort of disposable-type. In this context, on the grounds that a serious social evil has arisen from this service through a variety of crimes, not to speak of drug dealing, we would like to discuss immediately the government's countermeasures [. . .].

Under the guidance of the Yuseisho, the industry then began to collect identity data by checking photo identification at shop fronts on the purchase of handsets.[25] According to a Yuseisho official, a modified interpretation of the Guideline made available such a measure. In other words, 'preventing crime' and 'keeping a record to provide against a time of need' were newly authorised to be necessary which allowed the telecoms to avoid potential liability for the infringement of privacy requirements.

4. Paralegal Solution (2): the Anti-mobile Theft Initiative

The last case study is the anti mobile phone theft initiative in the UK. The chronological development of this case is somewhat similar to the above mentioned case; it appears that the escalation of the serious situation brought turning points in both cases.

The Home Office worked on mobile telephone companies to take measures to deny the benefits of mobile phone theft (see Clarke 1997: 23). In January 2001, the government began to request mobile operators to block phone calls from stolen handsets. Whereas three new operators complied with it, two refused. The reasons for the non-compliance were reportedly that the timing of upgrading network systems was approaching and 'customers [were] not demanding it'.[26]

The threat of mobile phone theft and the operators' refusal to comply attracted media concern since the Home Office publicised the results of research into 'mobile phone theft' (Harrington and Mayfew 2001) a year later. A Home Office spokesman revealed that the government has the legislative option of forcing the industry to install technical measures to deter mobile phone theft as a last resort.[27] In addition, they criticised the operators for being unethical:[28]

> [N]etwork operators, as well as criminals, benefit from the problem. They estimate that [they] make tens of millions of pounds each year through calls made via stolen phones. [. . .] [The only party to be hurt is] the customer - and [the mechanism] actually benefits the network because people are still paying for airtime, even if they do so on a stolen handset - they seem to have lost the knack of throwing millions of pounds at the problem.

Just a week after the article appeared, the two mega-carriers simultaneously announced their adoption of the measure to bar calls from stolen handsets and to help to trace them.[29]

IV. THE COUNTERPOINT: FINANCIAL POLICING

A. Overview

This chapter will review financial policing typified by Anti Money laundering (AML) measures as the counterpoint to telecoms policing and examine how these policing schemes resemble each other.

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24 Testimony of Yashiro, Eita, before the Budget Committee, House of Councillors, 25th April 2000.
25 "Pre-paid Shiki Keitai Denwa ni Kansuru Taiosaku" (Safeguard of Pre-paid Mobile Phone). NTT DoCoMo, 5th May 2000. http://www.nttdocomo.co.jp/new/contents/00/whatnew0512.html.
26 "Phone Firms Defend Security Record", BBC, 8th January 2002.
http://news.bbc.co.uk/1/hi/uk/1749215.stm.
27 Ibid.
28 "The Key to the Mobile Phone Theft Epidemic" Guardian, 2nd February 2002.
http://www.guardian.co.uk/Print/0,3858,4348454,00.html.
29 "Ministerial Statement in Response to Vodafone and mmO2 Announcement on Mobile Phones". Government News Network, 8th February 2002. http://www.nds.coi.gov.uk/coi/coipress.nsf/.

B. Co-operation of the Financial Sector in Controlling Money Laundering

Global countermeasures have been arranged by the *Financial Action Task Force on Money Laundering* (FATF) as the Forty Recommendations in 1990 and revised in 1996. The majority of the Recommendations are about the 'role of the financial system in combating money laundering'[30] because of the effectiveness of the involvement of financial institutions in detecting money laundering (ML): Further, as Gilmore (1999: 83) noted, the more important factor was the awareness 'of the negative impact which "dirty money" can have on the credit and financial institutions through which it passes or in which it is deposited or invested in the course of laundering operations', though this 'awareness' amounts to an assertion rather than a demonstration of harm. Banks in the US spend from five to six percent of their compliance budget for AML and foreign asset control requirements.[31] Four important tasks are imposed upon banks and non-bank financial institutions of member countries.

1. 'Know Your Customer' (KYC) Requirement

Firstly, financial institutions have been required to know in order 'to identify, on the basis of an official or other reliable identifying document, and record the identity of their clients [. . .] when establishing business relations or conducting transactions'.[32] The policy is slightly enlarged in the UK as the Money Laundering Reporting Officer (MLRO), who is appointed by the financial institution, is requested to verify not only the KYC information but also the 'know [their] business information' (FSA 2001, Annex A: 17). However, the practical lengths to which institutions should go to 'know their customer' are variable: some jurisdictions[33] are required to identify the beneficial owners of accounts, whereas others[34] are not. KYC rules themselves should not be considered a burden because to comply with the rules benefits the industry as well.[35]

2. The Requirement to Retain Evidence

Having a close relation to the previous mentioned requirement, financial institutions are required to retain the data. The FATF requests to keep 'for at least five years, all necessary records on transactions, both domestic or international, to enable them to comply swiftly with information requests from the competent authorities'.[36] Retained data in this manner becomes evidence of internal audits (Gilmore 1999: 87), to say nothing of criminal prosecution by means of seizing.

3. Transaction Scrutinising Requirement

In addition, financial institutions should examine, with special attention, any transaction which they regard as particularly likely, by its nature, to be related to ML.

Although a majority of the FATF jurisdictions have adopted the system of self-vigilance of financial institutions, the US and Australia have applied a variation of this system. The latter system merely applies a 'fixed threshold' of transactions for triggering the reporting and thus financial institutions are not required to be cautious about the dubiousness of transactions (Gilmore 1999: 88).[37] Thus, compliance with this scheme may be easier than the former. In other words, Financial Intelligence Units, rather than the industry, fulfil the duties of identifying suspicious (in the professional criteria of crime control) transactions from massive amounts of data. Nevertheless, the development of counter-techniques should not be ignored.

4. Requirement of Suspicious Transaction Reports (STR)

The final requirement is to report the information of transactions that are suspected (or are over the threshold) to the Financial Intelligence Units (FIUs). Since reporting without firm criminal evidence may

30 Recommendations 8-29, FATF.
31 "Anti-money laundering rules among most expensive compliance cost for banks, ABA says". Money Laundering Alert, June 11 2003. http://www.moneylaundering.com/.
32 Recommendation 10, FATF.
33 Jurisdictions such as Guernsey and Jersey.
34 For example, Japan, the UK and US.
35 Dan McAleese argues that firms are naturally expected to know their customers in order 'to reduce counterparty risk' and 'to offer the best service to the customers'. See "KYC - a guide to the processes and techniques". Complinet, 5th June 2003. http://www.complinet.com/ml/dailynews/print_display.html?ref=46690.
36 Article 12, FATF.
37 Since then, they have introduced suspicious activity reporting to supplement routine reporting. See http://www.fincen.gov/reg_statutes.html.

give rise to conflicts with the interest of banking secrecy, the FATF suggests the need to exempt reporters from the liability to maintain confidentiality.

To summarise the impact of these requirements, it can be deduced that financial institutions have shared a considerable burden and responsibility for AML measures despite the fact that they are private businesses. The relationship between the financial sector and the authorities responsible for combating ML may be comparable to that of the telecoms industry and law enforcement agencies.

C. Analogical Points to the Counterpart

Thus, the relationship between policing and the financial sector is surveyed in this paper in parallel with that of the telecoms sector. The reason why these two issues are paired is that they are comparable. Three comparable points can be found as follows.

1. Increasing Universality in Relation to Crime

The first point is that both of these industries have a universal relationship to crime facilitation and inhibition, and, in both cases, the private sector has to be persuaded and compelled to assist in measures that are not automatically in its own short-term economic interests.

As the explanatory report of the Convention on Cybercrime points out -

> [technical] developments have given rise to unprecedented economic and social changes, but they also have a dark side: the emergence of new types of crime as well as the commission of traditional crimes by means of new technologies. Moreover, the consequences of criminal behaviour can be more far-reaching than before because they are not restricted by geographical limitations or national boundaries.
>
> (Council of Europe 2001: para. 5)

Meanwhile, financial gain is the most important aspect of the majority of crimes. According to the PIU report around 70 percent of recorded crime in England and Wales is acquisitive (PIU 2000: para. 2.5). In addition, some non-acquisitive crime, most significantly terrorism, is only available when it is facilitated by underground money transactions. Johnson (2002) states that the definition of ML has changed after the terror attacks on the US. Whereas the term originally focused only on 'the criminal origin of what appears to be clean money', it is now re-defined and widely accepted as 'moving funds through financial institutions or accounts to disguise its origin *and/or purpose'* (Johnson 2002: 10, italics added). In fact, the Bush administration devised the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act. The Congress found that-

> money launderers subvert legitimate financial mechanisms and banking relationships by using them as protective cover for the movement of criminal proceeds and the financing of crime and terrorism[.][38]

The definition of money laundering in Japan has been enlarged by two steps. First, adopting the FATF Recommendations, the Punishment of Organised Crime and Control of Proceeds of Crime Law in 2000 defined it. The introduction was remarkable progress as the FATF evaluated that-

> the Japanese money laundering system in [June 1998], was not effective in practice[.] [. . .] The new Law extends the definition of money laundering to cover over 200 predicate offences.
>
> (FATF 2000, para. 95 and 96)

The second step was taken by the Punishment of Terrorism Financing Law in 2002. It was to create a type of criminal offence which punishes an act of financing for the purpose of committing terrorism, and then to make it a predicate offence for money laundering.

In this manner, financial policing has become increasingly significant and capable of wide application for criminal investigation, and thus it can be regarded as one of the primary investigative tools, like telecoms policing.

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38 Section 302 (a) (3) of the USA PATRIOT Act.

2. Global Nature

Issues of facilitating financial policing are global matters in striving towards effective countermeasures for the global threat of trans-border crime, for example drugs dealing and international terrorism. Especially, the AML initiatives are even comparable with the issue of 'tackling global warming'[39] for insufficient measures by any responsible party may cause worldwide vulnerability. Since the beginning of the FATF, members have self-assessed and a mutual assessment scheme was added in 1992 (Gilmore 1999: 94). The latter might be observed as being a powerful method to harmonise policies among sovereign countries, although there is some risk of stigmatising 'rogue states' (Levi and Gilmore 2002: 361).

A similar situation can be found in the field of telecoms policing. Law enforcement capabilities have increasingly been vulnerable with the advance of technology and services. The international roaming function of mobile telephones, for example, offers criminals a more reliable and useful tool. On the Internet, the threat of an anonymous remailer controlling crime is aggravated by the existence of boundaries of jurisdiction. Generally, technologies and services are not defined domestically in the global age. Rather, the design of domestic facilities is bound by *de facto* standards designed by the oligopolistic manufacturers and the core technologies and system configurations are substantially based on international technical standards.

Another concern in a global context is the impact on the international competitiveness of businesses subject to compliance. A UK ex-investigator remarked that financial institutions in the UK are greatly handicapped in the European competitive market by the compliance burden of the AML provisions of the Terrorism Act 2000 and the Anti-terrorism and Security Act 2001 (Hamblin 2002). In this sense, offshore banking might be viewed as a threat to the domestic industry in common with law enforcement.

The identical concern in conjunction with lawful interception capabilities is expressed by Sutter (2001). He argues that due to the compliance burden of interception capabilities borne by RIPA, ISPs in the UK are at risk in the domestic market from international competitors located outside the jurisdiction of the UK who might provide cheaper services.

Again, it is summarised that telecoms policing is comparable with financial policing in the light of globalisation; in that both have been impacted negatively. However, unlike telecoms,[40] the reaction of financial policing, i.e. the AML movement, is backed by a fairly coherent global movement of key political institutions, such as the G7, OECD, UN, Council of Europe and EU, that has evolved over the past decade and a half (Gilmore 1999).

3. Compliance Costs

The compliance cost is also comparable. For the financial industry, AML compliance leads to a 'heavy burden' of paper work (Sheptycki 2000: 146). Especially, the examination of transactions would be mentally burdensome if the transaction were made, for example, by a 'good' customer. In addition, as a respondent to the FSA proposal of AML, particularly large-scale organisations might have the problem of an 'un-manageable' number of transactions to be examined (FSA 2001: 12). Even in the earliest stage of AML, KYC rules have been unwelcome. For example, British banks see the principle to be the 'high compliance costs, with little demonstrable benefit other than for anti-money laundering purposes' (FSA 2001: 10), although such outspoken complaints cannot be heard in the post 9/11 era.[41]

Similarly, it is known that various requirements, they are arguably burdensome, are assigned to the telecoms industry. However, unlike the impact of financial policing, there are few fact-finding enquiries into the burden of the industry except for the 'data retention' issues.

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39 "Cleaning up dirty money", The Economist, 24th July 1997.

40 The only exception to this is the Convention on Cybercrime which obliges member states to adopt the procedural law on telecommunication policing.

41 Hamblin (2002) raises the question of jurisdictionally differentiated anti terror regulations in the aftermath of 9-11. Firms in countries that adopted draconian legislation would suffer 'a competitive disadvantage with firms from other countries', rather than the internal compliance cost of AML and anti-terrorism requirements.

V. DISCUSSION AND CONCLUSIONS

A. Theoretical Discussion on State vs. Non-state

1. Crime Control by the State and Private Sectors

By Max Weber's definition, the 'state' inevitably monopolises the legitimate enforcing powers (Weber 1947: 154). However, this classic paradigm was denied half a century later. Stanley Cohen (1985: 40-41) noticed that not only the state but also lay volunteers and professionals took measures in an overlapping manner to control deviance. The expansion of social control was conveniently justified by the state explaining that benign and professional players who have 'natural resources', rather than bloated 'overburdened, inefficient and inhumane' state systems, should be given the power (p.77). According to his metaphor, there are many fishers (parents, neighbours, teachers, social workers, probation officers, prison officers) setting their own nets to catch fish (offenders) in the sea (jurisdiction). Whereas the catches of the formal net (prison) are politically or fiscally controlled, the coverage of the nets of non-state fishers has widened or the nets have been changed into more finely woven ones to catch more fish (p. 41-42). In addition, 'there is far more room for the weaker form of privatization [than that of offender treatment apparatus] where the state contracts out certain services to private enterprise, retaining some measure of control' (p. 64).

Here, Cohen's *visions of social control* are reinforced. Various cases of telecoms policing examined in previous chapters fit exactly in his recognition by converting the *sea* from the real jurisdiction of the state to cyberspace. For, cyberspace is composed of private domains with public access, like rising mass-private property (p. 67), operated by the private telecoms industry. The same is equally true of financial policing, as Sheptycki (2000: 137) takes up the problem of the uncontrollability of 'electronic money [. . .] in cyberspace'.

Garland (1996) analysed the macro strategies on criminal control of the sovereign state. He began by identifying the limitation of the state's capability in controlling crime in the contemporary circumstances. He discovered the 'responsibilization' strategy adapted by the sovereign state. That is, the state has handed some roles of crime control, which had long been monopolised by the governmental agencies, over to non-governmental organisations and individuals. In this process, risks and costs incurred by crime have been distributed to the responsibilized private sector (p. 451).

The role of the state and non-state players in controlling *'Electronic Theft'* - type crime is examined by Grabosky et al. (2001). Due to the limitations of law and law enforcement, the state has responsibilized various parties to prevent cybercrime on the principle of potential victims' self-help. Based on the situation, they predict that technology will be primarily entrusted with the mission to control electronic theft, and that the state will have a mutually complementary relationship with industry for technological intervention (p. 206).

2. The Shortcomings of Responsibilization

Garland's criticism of responsibilization was that it might damage a balance of security level in its distribution distorted by the market principle. He (1996: 463) applied this idea in the real space focusing only on the dimension of the haves versus the have-nots. Upon reflection the dichotomy may be applied to the composition between the conventional telephone services operated by state-owned and/or mega-carriers vs. tiny ISPs who have the ethos of self-governance. The former would be more tolerant than the latter toward responsibilisation in complying with the state's request. Therefore, responsibilising in cyberspace might bring forth a disparity in crime control. Otherwise, an effective and fair cost sharing mechanism has to be devised. The same is true of responsibilizing financial policing measures. As the results of interviews suggest, banks have complied more loyally with AML requirements than non-banks and non-financial services have.

3. Charging the Compliance Costs to 'Those Who Benefit'

The discussion on the burden sharing of Situational Crime Prevention (SCP), the simple responsibilisation form of crime control (Garland 1996: 453), are two-fold. First, if the costs are 'modest', then the potential victim would pay the costs. The second approach is to invoice the costs to 'would-be' offenders. Namely, potential offenders should pay as beneficiaries because they are incapacitated from committing crime. These methods appear, at first glance, ethically unproblematic for they conform to the benefit principle (Duff and Marshall 2000: 23-24).

However, identifying 'those who benefit' is a complex issue. First, the major part of targeted crime for telecoms policing, e.g. drugs dealing,[42] victimises nobody or society on the whole. In the same way, there may be no other choice than determining that legitimate society is the victim of ML. In a sense, society has paid the policing costs through taxation and the state ought to compensate the industries. One might argue that the industries are the potential victims in an indirect manner because their integrity is at reputational risk[43] through crime facilitated by services provided by the industries. Even so, as far as such an intangible risk might be negligible, and the compliance costs would be, arguably, too much, the responsibilising strategy unavoidably seems to be not very effective.

However, the second option would be more problematic. Would-be offenders may be a subset of customers of the services at large. This logic might justify the diversion of compliance costs to all customers because differentiation between would-be offenders and the law abiding might be impossible and inappropriate. Based on this pessimistic analysis, all customers are equally treated as possible offenders and will receive bills. Thus, it is problematic and presumably ineffective if the beneficiary-payment principle alone is applied. In addition, since crime prevention is not the sole purpose and effect of telecoms and financial policing, stronger accountability is needed.

4. Boomerang Effect on the State

The next method is to return the fiscal responsibility to the state from the responsibilized party. Surprisingly, few theorists advocate this method for AML measures. However, for telecoms policing, it has already materialised in many jurisdictions. Inoue argues that the compliance costs of the telecoms industry in installing interception capabilities should be compensated by the state if the costs exceed a reasonable level (Inoue 1997: 212), though there may be arguments about what a 'reasonable level' is.[44] The notion might be influenced by the dogma that policing ought to be the monopolistic mission of the state. Either way, since the state is not a cornucopia; the costs are collected from taxpayers. In this case, the policing regime is reinforced because the paid industries are not only responsibilized but also obligated to comply.[45] Thus, moderating the compliance dilemma, the strategy might be welcomed by the non-state agencies. For, the concern of crime control being not a priority for them even though they are responsibilized, they would otherwise give profit making, for example, priority over responsibility.[46] The bottom line seems to be that the policy needs the backing from taxpayers consisting of haves and have-nots, netizens (network citizens) and non-netizens, criminals (provided that they pay tax, which is rare) and non-criminals.[47]

5. Para-taxation system: Responsibilizing cost recovery as well

At least in the traditional context, this state contribution strategy might be quite appropriate and be justified because the citizens are assumed to be the principal beneficiary of policing. Nevertheless, taking into consideration the history and the dynamism of industrial services, applying such a burden sharing approach to the responsibilization of financial and telecoms policing seems to be still unfair. Rather, the liable party would be the industry as they have an ethical responsibility, and the redirection of the costs to customers should be justified. Of course, the state, rather than responsibilized industry, continues to hold the primary responsibility for crime control. Consequently, the expenses being borne only by customers of responsibilized services may be equated with a kind of earmarked tax imposed on the customers by the industries.

B. Improving the AML Scheme

Responsibilizing the industry for financial policing is a good example of para-taxation.[48] In all interviewed

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42 Japanese interception has never been applied to crime other than drugs related crime.

43 See case studies above on both Japanese and British mobile phone operators.

44 The notion may not always be applicable. For example, subsidising the *tachiainin* costs for the Interception Law might be problematic. Since watching the process is the role of the *tachiainin*, such compensation by the party to be watched might be viewed as the emasculation of the watchman. In addition, reimbursing might distort the market and create an entrance barrier to the business (APIG 2003: para. 176).

45 See Duff and Marshall (2000: 33) for the difference between responsibilities and obligations.

46 See Garland (1996: 464).

47 In addition, it is needed for taxpayers to approve the cases offering mutual legal assistance, for example, where beneficiaries of the system are citizens of other states on the reciprocity principle.

48 Having this conception, Sheptycki (2000: 165) predicts that the responsibilised financial institutions for a global AML system will become cogs in the global tax collection systems in the future.

countries and in Japan, AML costs are borne by responsibilized institutions and ultimately passed on to the customer. In order to ensure full cooperation with the industry it is recommended that they be informed of the significance of their compliance obligations. In fact all interviewees understand the burden on the industry of compliance, although none of them mentioned the conflicts with the industry.[49] In recognition of this burden some government agencies have taken steps to motivate the industry by, for example, liaising on a regular basis, issuing guidelines and giving feedback of information.

1. Interaction with the Industry

First, information sharing is the most universal tactic, as Johnston (1992: 192) pointed out. In order to facilitate STRs with intelligence value, good sanitised cases and negative examples are provided through web-sites or newsletters by every FIU. In addition, the Suspicious Transaction Report Office (STRO) in Singapore has regularly organised outreach programmes to discuss the STR scheme and obtain feedback. The STRO believes that these programmes contribute to a mutual understanding and build a close relationship with the industry. Similarly in Ireland, an interviewee pointed out how regular meetings with banks that are held twice a year and a bi-monthly steering committee with industrial representatives are important in establishing a good relationship.

2. Providing Guidelines

Almost all interviewees perceived the significance of supporting the industry by providing routine procedures to comply practically with the rules. Guidelines for AML compliance are issued by regulating authorities and industry organisations. Even where the government provides them, authorities welcome industrial participation to make them practical. In Britain, consultation papers for rules[50] and guidelines[51] have been circulated to incorporate opinions since before the first guidelines were published in 1990. In Hong Kong, the HKMA has published and updated the guideline entitled the 'Prevention of Money Laundering' since 1993. The draft guidelines and updates involved consultation with the industry. Coping with recent developments of FATF recommendations after the 9/11 event, and the issuance of the paper 'Customer Due Diligence for Banks' by the Basel Committee on Banking Supervision, the 'Supplement to the Guideline on Prevention of Money Laundering' was drafted in consultation with banks. Many questions and comments submitted to clarify the requirement in a practical context are quite helpful to establish a feasible system. Through the consultation process, these guidelines have become the product of the co-operative work.

3. Feedback Systems for STRs

The feedback systems for STRs in two jurisdictions are remarkable. The GBFI in Ireland is obliged to give feedback on the status of investigation to the reported institution every six months until the content of the feedback becomes 'no further action'. A MLRO of a bank set a high valuation on the system, not only because the two-way communication is crucial to mutual understanding. Rather, the information is useful to improve the internal reporting system by providing sanitised good and bad cases as materials in annual training classes and newsletters for bank staff.

Similarly in Singapore, the police are responsible for giving feedback for emergency telephone calls and complaints within six months in order to maintain the service level, and the feedback system for STRs was established by improving this system. The STRO is responsible for giving notice to those who lodge a STR, whether the police will proceed with the case or not, within fourteen days.

By contrast, the CTIF-CFI in Belgium is prohibited by law from providing information to reporters. FIUs and law enforcement agencies in Hong Kong and the UK are in between these two cases; i.e. they sometimes provide feedback. However, no feedback is given for the majority of reports. A current issue that has arisen in the UK is how to improve the communications between the industry and law enforcement agencies.

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49 A British interviewee referred to the estimate by the think-tank KPMG that calculated the total compliance costs for all the British banks at ninety million pounds per year.
50 Issued by the FSA.
51 Issued by the British Banker's Association, Association of British Insurers, etc.

Without doubt, feedback would be welcomed by the complying party in general and might increase overall performance of the AML system. Are not compulsory feedback systems feasible in other jurisdictions? One reason why the larger jurisdictions like the UK (67,000 STRs in 2002) and Japan (18,768 STRs) do not apply such systems may be that responding within a certain period of time is not feasible, unlike in smaller jurisdictions like Ireland (4,398 STRs) and Singapore. The organisational structure might be another factor, e.g. the FIU and the user of financial intelligence are separated or many agencies use the intelligence.[52] As the Belgian system prohibits disclosing the confidentiality of investigations, the sensitive nature of investigative information can be another reason for hesitating to disclose information.

However, the author thinks a compulsory feedback system should be introduced to larger jurisdictions rather - because they are more complicated and thus require more transparency. As far as the information is sensitive, the FIU may maintain confidentiality by just informing the complying party that the case is ongoing. Granted that the majority of feedback messages will state that it is ongoing, and no further information will be provided for a long period because of limited human resources and organisational arrangements, for example in the UK and Japan; such a situation would be far better than having no feedback at all.

In the UK, there are 50,000 backlogged STRs to be processed and even if some reports are distributed 'to the local police forces, there is very often nobody there to deal with them'.[53] If there has been no active investigation of an STR for a long time, it may be assumed that the value of the STR has decreased.[54] As in many other policing spheres, criticism may be needed to improve systems and the absence of open criticism may merely reflect the absence of evaluation rather than that systems are working well. Thus, the feedback system might place FIUs and law enforcement agencies under surveillance. If there is no (or poor) feedback because of the insufficiency of investigative resources, then the heaviness of the industrial burden cannot be justified. Therefore, the government has to allocate resources proportional to the compliance costs of the industry rather than calling for ever more STRs.

C. Reasonable Burden Sharing for Telecoms Policing

1. Subsidising Telecoms Policing

In summing up the interviews - policies for the subsidisation of telecoms policing may be categorised into three types. (1) The first option is to compensate the initial compliance costs. The arrangement in the UK for installing interception capabilities[55] and for retaining data[56] falls under this. (2) The second one is to subsidise in exchange for fruits of the initial compliance. The Belgian subsidy scheme for 'usage fees of interception capabilities' and 'the purchase of retained data' epitomise this method. The US applied a similar reimbursement system for interception capabilities.[57] The governmental standards of 'pay-per-use' disbursements for (only operational) costs are always defined irrelevantly to the actual costs incurred initially by the industry and may be disproportionately low to the latter. However, paying only corresponding sums of usage might be more rational, at least for the states, than pre-paying. Because, in adopting the pre-payment scheme, it would be extremely difficult to determine the installation costs of interception capabilities and data retention functions integrated into sophisticated network systems without affecting the domestic free competition market. (3) Finally, if the government does not subsidise at all, the industry would face the 'price of doing business'.[58] The same applies to the Japanese policy on interception capabilities provided that the costs are reasonably low.[59] Both in Ireland and in Japan, not complying with the requirement of capabilities is not illegal. However, unlike in Japan, the conditional licensing policy of Belgium guarantees that the industry will comply.

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52 Both criteria are applied to Japan and the UK.

53 "A few tips about suspicious transaction reports". Complinet, 23rd April 2003.
http://www.complinet.com/ml/dailynews/print_display.html?ref=45552.

54 Of course, there is some possibility of having later 'hits' on the same individual or on intermediaries working with him/her. Nevertheless, the chronic delay in processing might spoil the secondary effect as well.

55 Section 14 of RIPA.

56 Section 106 of ATCS.

57 See AOUSC (2003: 11).

58 See APIG (2003: para. 144).

59 Again, the definition of 'reasonableness' comes into question.

If the burden of financial policing is settled by adopting para-taxation systems after all, then the tactics might be applicable to telecoms policing in general as well without resort to the regulatory powers. Because, the author does notice internet-widening rather than net-widening. The para-taxation systems can be justified for several reasons.

2. Justifications for the Para-taxation Systems

First, unlike the condition of real world policing, there was neither a crime opportunity nor a victim in cyberspace. Thus, policing powers were not necessary at all. The balance was lost when the 'new social space'[60] was created. Although major telecoms services were state owned (e.g. the Japanese telephone network)[61] or monopolised for research purposes (the Internet) in the beginning; unfortunately the crime opportunity was facilitated with the earliest forms of cyberspace. Both the opportunity and victimisation of crime has increased since then. Second, presumably the customers of telecoms policing, i.e. criminals, are unevenly distributed among the customers of the telecoms service who pay for the services as well as state tax, than non-customers who pay tax only. Further, within the community of netizens, the more the netizens pay for the services, presumably the more criminal opportunities would be available for them. Almost the same applies to the distribution of potential victims. Third, the trans-border nature of crime facilitated by telecoms services 'is in conflict with the territoriality of national law enforcement authorities' (Council of Europe 2001: para. 8). Although the capabilities and experience of state-funded policing has increased, on the one hand, such policing practices might threaten the sovereignty of foreign countries (see Sheptycki 2000: 161), and on the other, they would be less accountable to domestic taxpayers than domestic policing. Thus, diverting the costs for policing in cyberspace to netizens would be justified by the fact that the costs of real-space policing are supported by the state's tax-collection from citizens under the jurisdiction.

Thus, the netizens would naturally shoulder the costs of counter-crime mobilised in cyberspace just as citizens do for crime in real space. The author does not mean that the industry caused criminals to commit crime. On the contrary, it is evident through the studies in previous chapters that they have been always willing to defend their integrity.[62] However, they have unfortunately faced two fundamental limits. The telecoms industry should, on the one hand, provide a universal service (Hayashi and Tagawa 1994), and, on the other, comply with the constitutional request to keep confidentiality of telecommunications, the freedom of expression and the ban on censorship.[63] In other words, the industry had been *incapacitated from contributing to controlling crime.* From this perspective, the responsibilization process is serving the remedial purposes by immunising as long as it is appropriately grounded.

3. Feasible Steps Forward

Nevertheless, such a utilitarian solution would not work if adopted aggressively. First, though involvement should be limited being beyond the scope of this paper, concerns of citizen or *netizen* rights should be settled by establishing appropriate due process systems. In addition, such a cost-redirection policy would arouse the hostility of smaller sized or new entrant service providers and benign customers. More substantially, the issues of international competitiveness of the domestic industry should be taken into consideration. Providing that the responsibilizing degrees are unbalanced, customers of domestic services are vulnerable to differentiated (1) redirected costs, (2) degrees of inconvenience, and (3) at least Orwellian unpleasant feelings. By the nature of cyberspace, sensitive customers with sufficient motivation would migrate from nuisance domestic services to 'offshore' (APIG 2003: para. 159) or elsewhere. In addition, there is no reason for would-be offenders to hesitate to do so (para. 162). Thus, there is the danger of both the 'hollowing out' of the industry and the negative effect of the displacement of crime. In effect, the strategy might ironically cause damage to the national interests.

After all, domestic responsibilization policies without due consideration would not be advisable. Rather, the solution should be facilitating the international harmonisation of (1) the extent and the justification of diverting costs to customers, and (2) the extent of telecoms policing capabilities, i.e. the potential degree of

60 See Manning (2000).
61 The service was privatised in 1985 (Hayashi and Tagawa 1994: 216).
62 The reason why the industry was often reluctant to comply would be the weak justification of diverting costs, the Orwellian concerns of reputation and the anxiety of losing competitiveness. As subsequently discussed, these spells should be broken.
63 Article 21 of the Constitution, for example in Japan.

restriction on human rights. There may be at least two approaches to harmonise the disparities of domestic conditions.

First, law enforcement agencies as well as regulatory agencies of telecommunications need to organise a collective policy on policing needs and regulating telecoms services. The Convention on Cybercrime is a monumental first step. In addition, there are comparable forerunning projects. The feasibility of the responsibilization policy is proven by AML movements. As FATF have powerfully tackled problems of inter-jurisdictional ML, establishing, for example, a Telecoms Action Task Force (TATF) or some other body for the resolution of the *inter-net* issues of telecoms policing might be worth considering. The agenda of the TATF would resemble that of the *FATF*. The main issue may be how to distribute costs and functions of telecoms policing among those jurisdictions that i) are the hosts of the hub of an international network; ii) have intense competition; or iii) provide offshore services. Some existing practical problems in conducting mutual legal assistance might be naturally resolved through these discussions. However, the author does not advocate establishing only the TATF, because such a top-down solution might be less accountable for the time being than the approach discussed below.

Second, the most recommended approach would be to facilitate the standardisation of *technology* (see Grabosky et al. 2001: 206). Because, all components of cyberspace are microscopically interconnected in only a technical dimension, by neither market pressure nor political dynamism nor law, as Lessig (1999: 207) puts it, 'code is law'. Through the sober standardisation process, a technically rational system design would be obtained. Thus, the friction arising from introducing telecoms policing measures might be smoothened if it conforms to legitimate technical standards. A part of the standardisation effort in conjunction with lawful interception capabilities has already been established by the ETSI. The standardisation may not necessarily be bound within the purely technical sphere. As ISO 9000 and 14000 series[64] standardised not purely technical matters but managerial, the standards of telecoms policing may treat security matters in a wider sense. The 'security-related function' may contain functions of surveillance, incapacitating criminals, the removal of illegal contents, the retention of data for the access of law enforcement, etc. The functions of the internationally average level of due processes should be embedded with policing functions. Above all, the standardisation processes should be operated in an open and democratic way. All stakeholders, e.g. not only the service providers and manufacturers, but also representatives of customers, human rights advocates and law enforcement agencies, should have access to the process. Especially, law enforcement officials have to take the trouble to persuade by explaining the significance of telecoms policing capabilities. At the same time, governments would be well advised to ensure that the costs of cybercrime control do not become an impediment to the creative and productive use of digital technology.

The author neither assumes such a prescription to be the Utopia nor advocates realising the Orwellian surveillance society. The absence of police, surveillance, control and responsibilization is the largest happiness of the greatest number provided that there is no crime or victim. Rather, we, who enjoy the current prosperity and convenience brought forth by telecommunication and financial services, should duly be responsibilized to solve the difficult problems derived from the utility.

64 http://www.iso.ch/.

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THE DEPARTMENT OF SPECIAL INVESTIGATION (DSI): COUNTERMEASURES IN REGARD TO THE INVESTIGATION OF ECONOMIC CRIMES AND SPECIAL CRIMES IN THAILAND

*Sutthi Sookying**

I. INTRODUCTION

Thailand has experienced and suffered from many kinds of economic crimes for a long time. The economic crisis in 1979 and in 1997 partly erupted from the fraudulent activities and malpractices of the financial institutions and the stock market. The country is also faced with drug trafficking, money laundering, underground banking, cheating and fraud on the public. Yet, typical economic crimes such as corruption, tax evasion, and government procurement fraud are prevalent.

At present, Thailand has successfully enacted new laws and established new agencies to combat the prevailing threats of economic crimes which I elaborate on later in this paper. Although, some favourable signs of achievement have been observed in combating offences like corruption, drug trafficking and money laundering, the success of implementation and enforcement of laws in relation to other economic crimes, is yet to be ascertained. Particularly, after the economic crisis of 1997 until now, the government has failed to punish the malpractice executives and the wrongdoers. So, Thai society has come to realize that some existing agencies and the old system of criminal justice are not capable of fighting economic crimes and other serious crimes.

The failure of the criminal justice system stirred up the awareness of society and caused the government to put its effort and resources into coping with economic crimes. Also, the struggles for political and legal reform of the Thai people over decades have resulted in the Constitution of the Kingdom of Thailand B.E. 2540 (1997) which led to the reform of the whole criminal justice system. The establishment of the Department of Special Investigation (DSI) in October 2002 is also the outcome of the reform and the effort of fighting against economic crimes.

II. THE SITUATION AND THE PROBLEMS OF INVESTIGATION OF THE ECONOMIC CRIMES IN THAILAND

A. The Situation of Economic Crimes

As mentioned above, Thailand is faced with many kinds of economic crimes. However, the recent trends in the economy have created serious problems in the arena of the stock market and financial institutions such as fraud in financial institutions, price manipulation in the stock market, insider trading, crimes relating to securities, etc.

In 1979 Thailand had its first experience of economic crime relating to the stock market in the Raja Finance case. Raja was a big finance and securities company that lent a substantial amount to its associates in order to manipulate its share price on the Securities Exchange of Thailand (SET) which started operations in 1975. As Raja's financial position was weakened by a collapse of the stock index, depositors who had lost confidence in Raja, withdrew their deposits and Raja was eventually closed down. The depositors further withdrew money from other finance companies due to a lack of confidence in the sector. Then, the economic crisis occurred.

In 1983, four years after the collapse of Raja, Thailand encountered another banking crisis. This was caused by loopholes in the supervisory power of the Bank of Thailand to regulate bank executives against malpractice. A number of finance companies could not redeem their deposits and some were closed down and the government had to take direct ownership of several weak financial institutions.

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During the 1980s, Thailand was faced with a scheme of cheating and fraud on the public when "Mae Chamoi," a Thai woman, set up an investment scheme to lure the public into investing in a "Share Fund" or "Chit Fund." Mae Chamoi promised to pay high returns to her members at no risk. It was a kind of high yield investment programme or money pyramid scheme. In fact, those returns were actually generated from the principal of members who joined later. The scam expanded until it finally collapsed when Mae Chamoi mismanaged the cash-flow and some members started to withdraw their money. Again, the economy of the country went down.

In 1992, Thailand established the Securities and Exchange Commission (SEC) to supervise and develop the capital market. The SEC launched its first preliminary investigation into a price manipulation case known as "Sia Song" or the "Song Wacharasirote' case. However, the accused was later acquitted by the Supreme Court.

The economic crisis in 1997 partly erupted from the fraudulent activities and malpractices of financial institutions and the stock market, particularly the Bangkok Bank of Commerce (BBC) and many related cases. The patterns of the case were similar to the Raja case in 1979 and the malpractice of the executives of the banks in 1983. However, until now the related government agencies, or in other words, the criminal justice system failed, to punish the malpractice executives and the wrongdoers.

B. The Existing Investigative Apparatus

Before the establishment of the DSI, the following were the related agencies dealing with economic crimes in Thailand.

1. The Bank of Thailand (BOT)

Established in 1939 and started operation in June 1940, the BOT served as the central bank of the country. Among other functions, the BOT is responsible for the supervision of commercial banks, finance companies, and other kinds of financial institutions.

In the fraudulent cases committed by the bankers or financial crimes involving financial institutions or financial transactions, the BOT has the power of administrative and preliminary investigation after that the case is referred to the Economic Crime Investigation Division (ECID) of the police.

2. The Stock Exchange of Thailand (SET)

In July 1962, a private group established and organized the stock exchange as a private company named the "Bangkok Stock Exchange Co., Ltd. (BSE)." However, the BSE was inactive and stocks continued to perform poorly. Without government support, the BSE finally ceased operations in the early 1970s.

In May 1974, the Securities Exchange law was enacted and the Securities Exchange of Thailand (SET) officially started trading in April 1975. On January 1, 1991, the SET changed its name to "The Stock Exchange of Thailand (SET)".

As the SET is the immediate monitor of securities trading information, whenever any suspicious practices in securities trading occur, the SET holds primary responsibility for inspection and gathering all related evidence and facts for further action and coordination with the Securities and Exchange Commission of Thailand (SEC) and the police at the ECID.

3. The Securities and Exchange Commission of Thailand (SEC)

In spite the fact that the Thai capital market has been playing a pivotal role in the country's economic development, in the past, the supervision and development of the Thai capital market was governed under various laws and regulations. To emanate the new legal framework and mark a new era for the Thai capital market, the Securities and Exchange Act B.E. 2535 (1992) was enacted on March 16, 1992.

The Act was promulgated and came into force in May 1992. This law empowered the office of the Securities and Exchange Commission of Thailand (SEC) to be the independent state agency to reinforce the unity, consistency, and efficiency in supervision and development of the capital market of the country.

The SEC is empowered to examine unfair securities trading practices such as trading securities by using inside information, causing unusual price movement by the continual practice of price manipulation, dissemination of misleading information related to the facts of securities to the public, etc. Such cases are referred to the police at the ECID and the office of the Attorney General respectively.

4. The Fiscal Policy Office (FPO)

The Fiscal Policy Office of the Ministry of Finance has the power of administrative and preliminary investigation according to some particular laws such as the Royal Proclamation Governing Fraudulent Borrowing B.E. 2527 (1984) and offences relating to cheating and fraud of the public or so called "Chit Fund" cases.

5. The Revenue Department, the Excise Department, and the Customs Department

The Revenue Department is mainly responsible for the collection of Individual and Corporate Income tax, and Value Added tax while the Excise department is mainly responsible for the collection of excise taxes and duties, such as liquor, tobacco, specific electrical appliances, specific vehicles, etc. and the Customs department is mainly responsible for the collection of customs taxes and duties.

In tax and duty evasion cases, the above related departments have the authority to carry out an administrative and preliminary investigation.

6. The Anti-Money Laundering Office (AMLO)

Established in 1999, the AMLO has been actively fighting against money laundering in Thailand particularly in narcotic and corruption cases. In 2003, the AMLO played a very important role in the war on drugs; which has been a very successful operation of Thailand.

However, the AMLO has power only on the civil asset forfeiture side. On the criminal provisions of money laundering, the AMLO has to refer the cases to the local police station (but in the future the case will be referred to the DSI.)

7. The Office of the National Counter Corruption Commission (NCCC)

Before 1975 corruption investigations were carried out by the normal government agencies and inspections were carried out by the supervisors within the relevant agencies themselves.

In 1975, the Counter Corruption Act was promulgated and established the Office of the Commission of Counter Corruption (CCC). However, the CCC did not have much power to combat corruption because of its limited jurisdiction.

In 1999, the office of the National Counter Corruption Commission (NCCC) was established according to the provisions of the Constitution 1997.

In 2003, the NCCC and the office of Criminal Litigation against Persons Holding Political Position of the office of the Attorney General were successful in filing law suits against the former Deputy Minister of the Ministry of Public Health and other high ranking politicians and convincing the Supreme Court to convict them.

8. The Economic Crime Investigation Division (ECID)

In 1987, the Police Department set up a special task force to fight against economic crimes, and later in 1991, developed the Economic Crime Investigation Division (ECID). This division is under the Central Investigation Bureau (CIB) of the police.

During the economic crisis, ECID was criticized for its role and performance. Since the establishment of the DSI, the function and future of the ECID is under consideration.

9. Office of the Attorney General (AG)

The AG has occasionally established special offices to handle economic crime cases. For instance, the AG set up the Department of Economic Crimes Litigation, Department of Intellectual Property and

International Trade Litigation, Office of Money Laundering Control Litigation and the Department of Tax Litigation.

Although, the AG set up special offices to handle economic crime cases, the Thai public prosecutors still have no power in the investigation process. They have to wait for the cases from the police before taking further action. This problem will be discussed later.

10. The Specialized Courts

The courts of Justice of Thailand are classified into three levels consisting of the Courts of First Instance, the Court of Appeal and the Supreme Court.

Like the AG, the Courts have occasionally developed efficiency in handling cases by establishing the specialized divisions or specialized courts such as the Tax Court, the Intellectual Property and International Trade Court, and the Bankruptcy Court.

C. The Problems Investigating Economic Crimes

1. The Basic Problems

The justice system in Thailand has been confronted with basic problems: the excessive power of the police and the police's abuse of power, the lack of cooperation and coordination among agencies in the criminal justice system, the delay of criminal process, the unnecessary detention of the accused during trial, the lack of compensation for the accused later acquitted, etc.

The movement for reform of the criminal justice system started a long time ago and many problems have been solved. However, in the area of criminal investigation, particularly for economic crimes, there is still a search for a suitable solution.

2. The Problems of the Criminal Investigation Process

In many countries, criminal investigation is the joint responsibility of the police and the prosecutor, with the former under the supervision and guidance of the latter. But according to the Criminal Procedure Code B.E. 2478 (1935 AD.) of Thailand, there is an almost complete separation between the investigative and prosecutorial functions.

The prosecutor has a passive and limited role in the criminal investigation. The prosecutor's role begins only after the police have finished their investigation and submitted the file of inquiry to him/her. The prosecutor will then review the file, which also includes the police recommendation on whether the case should be prosecuted. If the prosecutor is of the opinion that the file of inquiry is incomplete and more investigation is needed before a decision can be made, he/she can direct the police to conduct additional investigation. However, since the power of investigation belongs exclusively to the police, the prosecutor can only request the police to conduct the investigation on his/her behalf and cannot initiate it himself/herself.

Therefore, the police are the only organization who can initiate a criminal investigation and are in a position to monopolize the state's power to invoke criminal enforcement. Such complete control of the pre-trial criminal process by the police without an adequate opportunity for supervision and control by other organizations has left the police virtually unchecked to freely perform their functions with very minimal review from the other criminal agencies.

However, after the establishment of the National Counter Corruption Commission (NCCC) and Department of Special Investigation (DSI), the powers of criminal investigation in special cases are vested to those new agencies which are the result of legal reform.

3. The Problems of Investigation of Economic Crimes

In Thailand, there are many agencies involved in the process of investigation in economic crimes. These agencies work independently to conduct investigation in their jurisdiction. The other agencies have to wait until the investigation files are submitted to them. For example, in a securities offence, the Stock Exchange

of Thailand will gather and analyze information or conduct the preliminary investigation and then submit the case to the Securities and Exchange Commission (SEC). The SEC will conduct an administrative and preliminary investigation and submit the case to the ECID. The ECID, will conduct the criminal investigation, interview witnesses, review (the same) documents, and give their opinion on whether the case should be prosecuted, then submit the file to the prosecutor at the DECL. Again, the prosecutor will review the whole file before making a decision to prosecute or drop the case. This may take 4-5 years and in many cases end up with the failure to punish the criminal.

III. DEPARTMENT OF SPECIAL INVESTIGATION (DSI) : THE COUNTERMEASURES IN REGARD TO THE INVESTIGATION OF ECONOMIC CRIMES AND SPECIAL CRIMES

A. The Pressure from Society and Development of the Concept

In 1997, two important events occurred by coincidence in Thailand - the economic crisis and the promulgation of the new Constitution - which led to the radical reform of the legal system and socio-economic structure and also the reform of the government administrative system, including the establishment of the Department of Special Investigation (DSI) .

1. Economic Crisis in 1997 : Turn Crisis into Opportunity

The economic crisis known as "Tom Yum Kung Disease" caused more than fifty financial institutions in Thailand to collapse. The crisis stemmed from the rapid expansion in real estate, construction and financial sectors that generated over-investment and a high level of external short-term loans. Also, the crisis partly erupted from the fraudulent activities and malpractices in the financial institutions and stock market, particularly in the Bangkok Bank of Commerce (BBC) and related cases. The crisis erupted when export slowed and the country lacked cash-flow. To resolve the problems, the Thai government sought help from the International Monetary Fund (IMF) and the international community, particularly from Southeast Asian nations and Japan.

As a debtor, Thailand had to follow the guidance of the IMF in many ways, including the amendment of business laws. During the three years under the IMF programmes from 1997 - June 2000, Thailand amended eleven statutes that obstructed a solution to the economic crisis.

However, after the crisis, scholars and activists criticized those laws for being in favour of creditors. They suggested that the laws should respect both the creditors and the debtors' rights. The debates, led to a proposal to reform the whole system of business laws. Now the process of reform is still going on.

Furthermore, after the crisis, the public demanded that the government investigate the cause of the crisis and declare who should be blamed. In particular, the public demanded that the government punish the wrongdoers who were involved in the financial fraud and caused the crisis.

However, under the old system of investigation in which the investigation power belongs exclusively to the police, the police and the whole criminal justice system failed to do so. This later led to the acceleration of the establishment of the Department of Special Investigation (DSI) in order to cope up with the problems of investigation of economic crimes and other special crimes.

2. The Constitution B.E. 2540 (1997) : The Outcome of Public Awareness

On June 24, 1932, a group of young intellectuals, educated abroad staged a bloodless coup demanding a change in the Thai government system from absolute monarchy to a democracy with a constitutional monarchy. King Prajadhipok (Rama VII) agreed and thus ended 700 years of Thailand's absolute monarchy.

However, over six decades of democracy has undergone a long process of refinement and struggle. In the early period of democracy, the armed forces took control of the country then the people demonstrated and demanded democracy. Many pupils, students, and others sacrificed their lives for democracy during the demonstrations demanding real democracy in October 1973, October 1976, and May 1992.

The bloodshed demonstrating for democracy in May 1992 and the struggles of the Thai people over the decades, led to political and legal reform. The Constitution of the Kingdom of Thailand B.E. 2540 (1997) is the significant outcome of the event.

The Constitution has reformed the whole structure of the country. It created a new kind of check and balance system, not only of the three branches of traditional powers - the Judiciary (Court), Legislature (Parliament) and Executive (Government), - but also the powers of the people, community, and new independent agencies such as the Election Commission, an Ombudsman, Human Rights Commission, Administrative Court, Constitutional Court, State Audit Commission and the National Counter Corruption Commission (NCCC).

The Constitution also set up a new era of the Court and the Ministry of Justice. The Ministry of Justice had been the secretariat of the Court responsible for the administrative work of the Judges. But under the new Constitution, the Court is totally separate from the government. The Court has its own budget and administrative office. It is the duty of the government and the parliament to provide a sufficient budget for the Court.

Before the promulgation of the Constitution, the justice affairs agencies were scattered under many Ministries. The result of that caused problems of cooperation and coordination. By the provisions of the Constitution, the Ministry of Justice is the centre for the administration of justice affairs of the country. By this, all government agencies relating to the administration of justice affairs - such as the Office of the Attorney General, Office of Anti-Money Laundering, Office of Narcotics Control and Correction Department, - have been transferred to the Ministry of Justice. It is also necessary to set up the new agencies under the Ministry of Justice such as the Central Forensic Science Office, Office of Justice Affairs, Department of Rights and Liberty Protection, and importantly, Department of Special Investigation, (DSI); the new law enforcement agency entrusted with the detective and investigative powers.

B. The Process of Establishment of the Department of Special Investigation (DSI)

After the political turmoil in May 1992, there was an increase in the public's demand for political and legal reform, particularly reform of the Constitution and the criminal justice system as mentioned above. This process took many years of development and struggle.

In 1995, the Committee on Administration and Judicial Affairs of the Senate, after thorough study, proposed to restructure the Ministry of Justice. In their paper the Committee of the Senate also stated the problems of investigation carried out by the police; therefore, they recommended establishing the DSI to be entrusted with investigative power in complicated and serious criminal cases.

In 1997, as mentioned above, Thailand had a new Constitution which entrusted the Ministry of Justice to be the centre of the administration of justice affairs.

In 1998, the Prime Minister set up a special committee to study and design the model and structure of the Minister of Justice. The committee reported to the Prime Minister and recommended establishing the DSI to be the independent agency under the direct supervision of the Minister of Justice.

In conclusion, from the year 1995 - 2002, the legal scholars and practitioners, particularly the Committee of the Parliament, from time to time, held academic seminars and research and finally suggested establishing the DSI.

Finally, after taking a long time to gain public support and political will, in the year 2002, by the proposal of the Government, the Parliament passed the Bill for Reformation of the Government Agencies. This law came into effect in October 2002, establishing many new government agencies, including the DSI.

However, according to the Act for Reformation of the Government Agencies and the Ministerial Regulation of the Ministry of Justice, the DSI has only administrative power. It is necessary to have a special law to authorize the detective and investigative power and other authorities of the DSI - that is the Special Investigation Bill which came into effect in early January 2004, when the King signed the Bill.

C. The Role of the DSI in Fighting Economic Crimes

1. The Central Unit for Fighting Economic Crimes

The Special Investigation Act B.E. 2547 (2004) which came into force after the King signed the Bill in

January 2004, authorizes the DSI to be the central unit of the investigation of economic crimes and special crimes at the very beginning.

The concept of working in an interdisciplinary manner will be applied. The DSI can appoint or invite any related persons or experts to join the investigation team, including from the international community. The DSI will work closely with the prosecutors and other agencies as a team. The Government and the Parliament allow the DSI to pool the resources of the country to fight economic crimes. For instance, the DSI can request officers from other agencies to work at the DSI for a certain period.

2. Seeking Cooperation and Bringing in Experts

The Special Investigation Act aims to solve the problems of lack of cooperation and coordination among agencies in the criminal justice system. The Act authorizes the Special Investigation Board (the Board) to pass a resolution or adopt a Memorandum of Cooperation and Coordination among agencies. The Board headed by the Prime Minister, comprises of the heads of the criminal justice agencies and scholars. If there are conflicts among agencies, then the problems will be solved by the Board.

According to the Special Investigation Act, the DSI will consult and work closely with the prosecutors. In particular cases, such as transnational crimes and crimes committed by influential persons or politicians, the DSI and the prosecutors are jointly responsible for investigation.

The Act also allows the DSI to appoint experts from various fields and organizations, including from international communities to join the investigation team.

3. The Special Power of the DSI

The DSI can request a Court to issue a warrant to access the accounts, computer, communication instruments or equipment, electric mail, data, or any electronic telecommunications of the suspects for no longer than a ninety day period. The DSI can also operate a sting operation or set up a mobile unit or commando unit if necessary.

4. The Jurisdiction of the DSI

According to the Act, the DSI is responsible for crime prevention and suppression and for investigating specific crimes, such as Financial and Banking crimes, Intellectual Property Rights crimes, Taxation crimes, Consumer Protection and Environmental crimes, Technology and Cyber or Computer Crimes, Corruption in Government Procurement, and other serious crimes that have a seriously negative effect on public peace and order, morale of the people, national security, international relations, and the economic or financial system. The DSI will also have responsibility for investigations involving Transnational and Organized Crimes and also other white collar crimes.

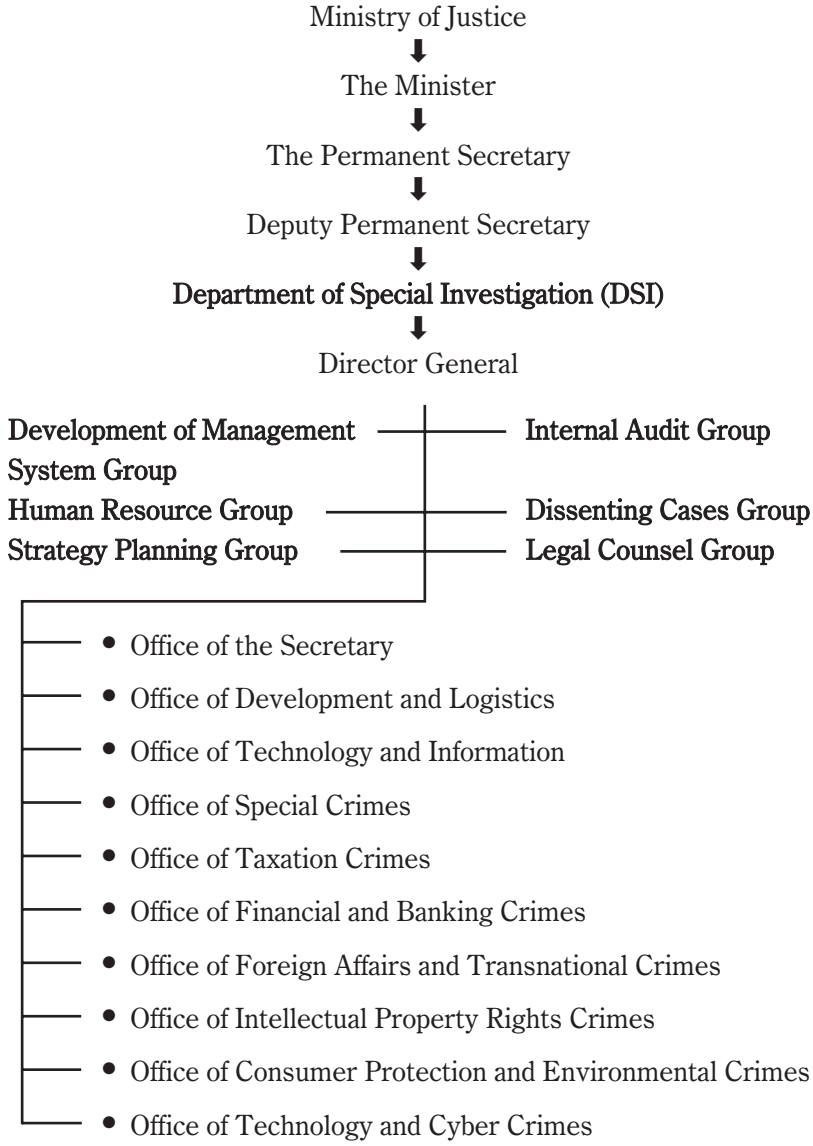
The Act aims to promote the DSI to be the experts in the investigation of those kinds of special crimes.

D. The Difference Between the Roles of the Police and the DSI

The Government and Parliament intend to entrust the DSI with the power to investigate serious, complicated and sophisticated crimes and particularly economic crimes or white collar crimes, transnational and organized crimes; while the police have the power to maintain peace and social order and have the power to investigate street crimes.

The DSI will operate on the basis of a data collection and technology base; therefore, it is like an Intelligence Unit rather than an Army. While the Police still need a foot patrol operation, the DSI will not, but it may be necessary to have a sting operation or sleeper unit to spy on a specific organization or area.

E. The Organizational Structure of the DSI



IV. CONCLUSION

Since special crimes under the jurisdiction of the DSI have modus operandi that differ from other crimes in various aspects, the DSI will train its officers to be well equipped with specific knowledge along with superior skills, tactics and teamwork that will be necessary to conduct successful investigations.

The DSI expects itself to be an interdisciplinary organization aiming at proactive operations to deliver justice to society and to reduce financial loss. Also it aims to work towards ensuring the safety, security and wealth of the nation and the world community possessing accountability and integrity in order to be well respected by the public and the world community.

COUNTRY REPORT: ZIMBABWE

*Samson Mangoma**

I. INTRODUCTION

The Land Reform Programme adopted by the Zimbabwe Government in the year 2000 and the subsequent smart sanctions imposed by the Western Countries has resulted in the mushrooming of various forms of serious economic crime. The inflation rate stands at 600% and this is a good breeding ground for economic crime. The most notable forms of economic crime manifest themselves in corruption, market manipulation by multinational corporations, insider trading, externalisation of foreign currency, and embezzlement of funds both in private and public sectors and a thriving parallel market. This paper shall enlighten you on the current situation in the country, problems and countermeasures in the investigation and trial of economic crime, prevention of economic crime and ways of strengthening the legal framework for the punishment of economic crime.

II. THE CURRENT SITUATION AND THE PROBLEMS OF SERIOUS ECONOMIC CRIME IN ZIMBABWE

As alluded to earlier, the Land Reform Programme brought both positive and negative aspects to the country. The Zimbabwean economy is agro-based and thus the Land Reform Programme affected the growth of the economy.

The few whites who owned the land and who were supported by masters of industry and multinational companies were not supportive of the reform. As a result, they worked in cahoots to derail the reform and at the same time involved themselves in various forms of economic plunder as pointed out earlier. Thus today, Zimbabwe is in a very serious economic problem of high inflation and high unemployment rates. This scenario tends to promote economic crime. The statistics shown in Appendix A portray the situation for the year 2002/2003.

As can be seen from the statistics, serious economic crime was on the increase in 2002 while in 2003 it has been on the decrease. This is attributable to the measures put in place to combat economic crime. The Police as an organisation have also put various strategies into effect to fight economic crime such as -

i) Crime awareness campaigns
ii) Seminars with the stake holders on prevention of economic crime
iii) Beat and patrols, etc.
iv) Surveillance
v) Effective use of informers
vi) Lobbying the courts to pass stiffer sentences on the would be criminals
vii) Lobbying the courts to remand such people in custody

Most of the perpetrators who commit serious economic crimes are leaving the country for Botswana, South Africa, Britain, Australia, Canada, and the United States of America. When these criminals leave the country heading to Western countries, they falsely claim political asylum and their extradition to face trial becomes difficult. Since these criminals are enjoying this protection and proceeds of the crime, more and more people are getting involved, as there is no fear of arrest and prosecution.

A. Drought

In Southern Africa, there have been successive years of drought. The drought has worsened the economic situation forcing law-abiding citizens to engage in criminal activities to make ends meet. Donor agencies have come forward to assist by providing food aid. However, people entrusted with the distribution of the aid are corruptly enriching themselves at the expense of the intended beneficiaries.

B. Urbanisation

In Zimbabwe many people have migrated from rural set ups for major cities in search of jobs mainly due to the persistent droughts that have affected the whole of southern Africa. However, the people find it is difficult to secure jobs since some companies are closing down due to the reasons mentioned above, and

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thus, they are forced to commit crime in order to make ends meet.

The following are the economic crimes mostly committed in Zimbabwe under Common Law:
i) Fraud
ii) Theft by false pretences
iii) Theft by conversion
iv) Extortion
vi) Forgery and uttering
vii) Receiving stolen property

For definitions and essential elements see Appendix B

As mentioned earlier on, the following are just a sample of the serious economic crimes under the statute laws of Zimbabwe:
i) Corruption
ii) Smuggling
iii) Money laundering
iv) Externalisation of foreign currency
v) Trading in foreign currency
vi) Insider trading
vii) Flouting tender procedures, etc.

III. PROBLEMS AND COUNTERMEASURES IN REGARD TO THE INVESTIGATION AND TRIAL OF ECONOMIC CRIME

In Zimbabwe, the police are constitutionally mandated to investigate all criminal matters and bring the matters before the Courts for judicial investigation, and prosecution. The police and the prosecutors operate independently although there is some co-operation, which exists. The Police complete investigations and compile their criminal dockets which they hand over to the prosecutors who scrutinises them. If they are happy with the evidence, they take the matter for prosecution and if they are not happy with the evidence, they indicate this and return the dockets to the police for further investigation. However, economic crimes are difficult to prosecute let alone to investigate and some specialised training is required for both the prosecutors and the police investigators. A number of the cases take a long time to be finalised at court and the main reasons are lack of manpower at the courts and also that sometimes the prosecutors do not possess the capabilities to deal with such matters. Sometimes, the relationship of the prosecutors and police is affected by these delays as there is mistrust between the two departments. The other problem we have is on investigations and extraterritorial connotations, as some of the member countries are not ready to assist or to respond to requests. This contributes to the delay in the completion of our cases.

The following are the types of Courts found in Zimbabwe:
i) Magistrate Court
ii) Provincial Magistrate Court
iii) Regional Magistrate Court
iv) High Court
v) Supreme Court

1. Magistrate Court

This type of court is presided over by a junior magistrate and is for minor offences. Also juveniles and young persons are tried in this court.

2. Provincial Court

This court is presided over by Provincial Magistrates who may sentence someone for up to twelve months imprisonment or two thousand dollars fine.

3. Regional Court

This court is presided over by Regional Magistrates for offences of a serious nature and may punish someone with up to seven years imprisonment or twelve thousand dollars.

4. High Court

Judges preside over this Court which deals with cases of an extremely serious nature like murder and they may impose the death penalty or life imprisonment.

5. Supreme Court

This is the highest court of appeal in Zimbabwe which also deals with matters involving the constitution.

Ordinarily the Regional and the high Courts mostly deal with serious economic crimes in the country. These institutions play an important part in the fight against economic crime by imposing stiffer sentences on the accused persons in order to deter them from committing such crimes.

IV. INVESTIGATIVE APPARATUS

The Zimbabwe Republic Police is an establishment of the Zimbabwe Constitution and is mandated to maintain Law and Order in the country. The Police organisation is further given powers by various Acts of Parliament notably the Criminal Procedure and Evidence Act Chapter 9:07. Thus, the police have all the investigative powers in the country though the President of the country can establish a commission to carry out investigations if it is deemed necessary. The police are independent of any other body when carrying out investigations.

The Fraud Squad has been set up to deal with all serious forms of economic crimes nationally and has set up their offices in the two major cities of Harare and Bulawayo. The office in Harare is headed by an Assistant Commissioner and deputised by a Chief Superintendent whilst the Bulawayo Office is headed by a Chief Superintendent and deputised by a Superintendent. Where expertise that cannot be found within the police is required, such experts can be hired to carry out tasks like auditing, accounting, etc. The organisation is aware of the challenges brought about by technology and has constantly been providing on the job and off the job training to keep the officers abreast of new trends in criminal activities. However, resources have not been adequately supplied to meet the required levels. Computerisation of the Fraud Squad is still to be fully implemented to meet operational requirements. This is to keep the branch abreast with the new technology in order to fight the criminals of today who have become technologically advanced. The Bulawayo office is yet to be computerised.

Organisations Involved In the Fight against Serious Economic Crimes:

i) Police
ii) Courts
iii) National Economic Conduct Inspectorate
iv) Anti Corruption Unit
v) Bankers Security Unit
vi) Customs Investigations Unit
vii) Reserve Bank of Zimbabwe Investigation Unit
viii) Controller and Auditor General
xi) Attorney General's Office

As mentioned earlier on, the Police have all the powers to investigate crimes in Zimbabwe. However, the above organisations marked iii) to viii) assist the police by way of gathering evidence and hand it over to the police for further investigations whilst the courts prosecute accused persons involved in serious economic crimes.

V. COLLECTION OF INFORMATION IN ORDER TO INITIATE THE INVESTIGATIONS

A. Information

In offences committed in the public sector, co-operation is very high, as the authorities are forthcoming in supplying all relevant information that is relevant to the commission of the offence. However, in the private sector, if the management is involved, there is a tendency to conceal evidential information.

The police as an organisation have set up various means of collecting or receiving information, which include:

(i) Suggestion Boxes
(ii) Hotlines

(iii) Informers
(iv) Community based policing practises such as:
  (a) Neighbourhood Watch Committees
  (b) Home Officer Schemes
  (c) Police Junior Call

The community-based approach has yielded very pleasing results as members of the public come forward to give tip-offs.

When crimes are committed against the corporate sector, they are forthcoming in lodging formal complaints to the police. This has always been the traditional means of alerting the police of crime.

Criminals, themselves sometimes give information of other criminals. Syndicates usually are aware of what other groups are doing and if approached are sometimes helpful in supplying useful information in order to fix their criminal counterparts.

B. Protection of Whistle-Blowers

The prevention of Corruption Act Chapter 9:16, provides for the prevention of victimisation of whistle - blowers. Section 14 (2) provides that: -

- Any person who without lawful excuse;
(a) Prevents any other person from giving any information concerning any corrupt practice or
(b) Threatens or does any other thing calculated or likely to deter any other person from giving any information or
(c) Does anything calculated or likely to prejudice any other person because the other person has given any information shall be guilty of an offence.

The Police Act Chapter 11:10 also provides for protection of informers. The police are not compelled to disclose the source of their information.

C. Collection of Evidence and Securing an Appropriate Adjudication

The collection of evidence and securing an appropriate adjudication is covered by the Criminal Procedure and Evidence Act Chapter 9:07.

D. Search and Seizure

Section 48 of the Criminal Procedure and Evidence Act deals with search and seizure of articles, documents, or substances with or without a warrant. The Act empowers a police officer to search any person or container or premises for the purpose of seizing any article. These powers conferred upon the police enables police officers to collect and secure articles that can be produced as evidence before the courts. The Police can search premises without warrant if they believe that the delay in obtaining the warrant may defeat the course of justice and that the warrant may be obtained latter. They can also enter any premises for the purposes of interviewing and obtaining names and addresses of a person, who on reasonable grounds, is suspected of having committed an offence.

E. Acquiring Banking Transaction Records and Protecting their Confidentiality

This is covered under sections 286-289 of the Criminal procedure and Evidence Act chapter 9:07. Section 286(2) provides that: Any banker's documents shall be admissible as prima-facie evidence of the matters of transactions recorded therein or endorsed thereon on proof of being given by the affidavit of any director, manager or officer of the branch concerned or by other evidence that such documents: -

(a) have been received or executed and kept by the bank in the usual and ordinary course of business; or
(b) are in or come immediately from the custody or control of the bank.

The issue of confidentiality is provided for by section 288, which provides that a bank shall not be compelled to produce its banker's books or any banker's documents in any criminal proceedings unless the court specially orders that such banker's books or banker's documents shall be produced.

The Banking Act Chapter 24:20 also provides for the preservation of secrecy under section 76 of the Act. However, at times, the banks take a long time to avail the requested evidential information required by the Police in their investigations and this causes unnecessary delays in the finalisation of cases.

F. Questioning of Suspects and Witnesses

Questioning of suspects is dealt with under the Criminal Procedure and Evidence Act Chapter 9:07. Suspects who are accomplices are provided for under section 267 of the Criminal Penal Code. The Act clearly spells out guidelines on how suspects should be questioned and how statements should be obtained i.e., a suspect has the right to remain silent, the right to legal representation and the right to have his family informed of his arrest.

Witnesses are dealt with under sections 229-237 of the Criminal Procedure and Evidence Act. The provisions of the Act adequately cover the securing of witnesses to attend court and further provides for their punishment when they default. Granting of immunity and plea-bargaining is dealt with under accomplice evidence. Sections 290 to 293 of the Code deal with the privileges that are accorded to a witness. Measures have been put in place to provide effective protection from potential retaliation or intimidation in criminal proceedings.

VI. PREVENTION OF ECONOMIC CRIME

In Zimbabwe, the law enforcement agencies' main priority is the prevention of crime; however, economic crime is difficult to prevent unlike other crimes where the presence of a Police Officer serves as a deterrent to the would be criminals. A number of programmes have thus been put in place as a means to prevent economic crime. The most effective strategy are the Public awareness campaigns as for the other strategies see page one of this report. For the success of these strategies, the co-operation of the public is necessary.

A. Regulation of Economic Activities

There are a number of regulations in place to control economic activities. These are:

(i) Companies Act Chapter 24:05
(ii) Exchange Control Act Chapter 22:05
(iii) Banking Act Chapter 24:01
(iv) Building Societies Act Chapter 24:02
(v) Insurance Act Chapter 24:07
(vi) Corruption Act Chapter 9:16
(vi) Gold Trade Act Chapter 21.03
(vii) Mines & Minerals Act Chapter 21:05
(viii) Criminal Procedure in Evidence Act Chapter 9:07
(ix) Reserve Bank Act Chapter 22:15
(x) Copper Control Act
(xi) Extradition Act Chapter 9:08
(xii) Rates of Exchange & Money Laundering Act
(xiii) Postal & Telecommunications Services Act Chapter 12:02
(xiv) Sales Tax Act Chapter 23:08
(xv) Estate Agents Act Chapter 27:05
(xvi) Audit & Exchequer Act Chapter 22:03
(xvii) Companies Act Chapter 24:03
(xviii) Public Accountants & Auditors Building Societies Act Chapter 27:03

These Acts are effective, though sometimes criminals circumvent the provisions in order to enhance their criminal activities.

To compliment these economic activities the Police have put in place a number of strategies to fight economic crime.

B. Corporate Governance

In Zimbabwe Corporate Governance is viewed as an effective tool in strengthening the foundation for sustained performance by corporations. It also helps fight (inter-alia) corruption, corporate scandals, poverty and ensures that managers of corporations avoid serving their own interest. Actually it encourages fairness, responsibility, accountability and transparency in the way the affairs of the corporations are run.

Measures have therefore been put in place through the above mentioned legislation such as:

(i) Independent Risk Management Departments
(ii) Independent Internal Audit Departments
(iii) Composition of Executive Directors

The legislation encourages financial institutions to have the above critical areas addressed. The National Reserve Bank is responsible for monitoring and ensuring compliance of the regulations.

C. Establishment and Implementation of a Corporate "Compliance Programme"

As pointed out above, monitoring and compliance is the responsibility of the Reserve Bank of Zimbabwe. Banks are encouraged to set up compliance departments to ensure that the particular institutions adhere to the statutes. The Reserve Bank reserves the right to withdraw the Banking Licence. Inspectorate Units to monitor activities of the Banks are in place.

(i) Banks are compelled to submit monthly returns
(ii) Control banking activities
(iii) Require certain information from Banks

D. Establishment of a System to Monitor Economic Activities

The National Reserve Bank has, through various regulations, established a system to monitor economic activities such as:

(i) Control of Banks, Building Societies, Discount Houses and Financial Houses
(ii) Submission of Financial Statements by corporate companies
(iii) Implementation of the Stock Exchange Act
(iv) Monitoring the importation and exportation of goods, etc.

All these measures are calculated to serve as preventive steps in curbing economic crime.

VII. STRENGTHENING THE LEGAL FRAMEWORK FOR THE PUNISHMENT OF ECONOMIC CRIME

The continuing rise of economic crime and their harmful effects, especially on an emerging economy, has resulted in the legislature coming up with new laws to criminalize new types of harmful economic activities. In Zimbabwe, the following laws and bills have been put in place.

(i) Serious Offences (Confiscation of Profits) Act Chapter 9:17, an Act to provide for confiscation of profits of crime, and to provide for matter connected therein or incidental thereto.
(ii) Bank Use Promotion and Anti-Money Laundering Bill, 2003, to provide for the encouragement of the use of the banking system for major money transactions while at the same time discouraging the use of the financial system to launder the proceeds of serious crime.
(iii) Anti-Corruption Commission Bill, 2003, to provide for the establishment for an independent, powerful and high profile body to spearhead the battle against corruption and provide mechanisms to investigate corruption at all levels and in all sectors.
(iv) SADC Protocol against corruption - to foster the development and harmonisation of policies and domestic legislation of the state parties relating to the prevention, detection, punishment and eradication of corruption in the public and private sectors.

VIII. RATIFICATION AND UTILISATION OF INTERNATIONAL STANDARDS

Zimbabwe is not merely involved in International Conventions but is actively participating in the Southern African Development Community (SADC) to fight crime. Various protocols, including the SADC protocol against corruption, have been signed and ratified.

Zimbabwe is moving towards meeting the United Nations Conventions against Transnational organised crime, which is intended to promote co-operation to prevent and combat Transnational Crime. A few examples of articles of the UN Convention against Transnational organised crime are: -

(i) Article 7 - Measures to combat laundering
(ii) Article 8 - Criminalisation of corruption
(iii) Article 9 - Measures against corruption
(iv) Article 11 - Prosecution, adjudication, and sanctions
(v) Article 18 - Mutual legal assistance.

Under the FATF, 40 recommendations, the critical problems faced by Zimbabwe are measures to detect or monitor the physical cross-border and transportation of cash and bearer negotiable instruments. In 2003, Zimbabwe faced a critical shortage of banknotes after they had been exported to neighbouring countries resulting in chaos in the banking industry. The situation was only alleviated by the introduction of negotiable Bearer Cheques with expiry dates.

However, most of the recommendations have been put in place. As pointed out earlier. Money laundering has been criminalised and it is an offence in Zimbabwe to obstruct the due process of law either by physical force, threats, or intimidation.

IX. REPATRIATION OF CONFISCATED PROPERTY

In Zimbabwe, confiscated or seized property is dealt with under section 58-63 of the Criminal Procedure and Evidence Act Chapter 9:07. Articles involved in offences committed outside Zimbabwe are, on the order of the court, delivered to a member of the police force established in such country who may remove it from Zimbabwe. This is further strengthened by Civil Matters (Mutual Assistance) Act Chapter 8:02, which provides for the enforcement in Zimbabwe of Civil judgements given in foreign countries.

X. CORPORATE SANCTIONS

The Criminal Procedure and Evidence Act Chapter 9:07, Section 385(6) provides that, when an offence has been committed, whether by the performance of any act or by the failure to perform any act for which any corporate body is or was liable to prosecution, any person who was, at the time of the commission of the offence, a director or employee of the corporate body, shall be deemed to be guilty of the offence, unless it is proved that he did not take part in the commission of the offence and shall be liable to prosecution therefore, either jointly with the corporate body or apart therefrom, and shall upon conviction be personally liable to punishment therefor.

Administrative sanctions are dealt with by Section 385(7)(b), which provides that any document, memorandum, book or record, which was drawn up, entered up or kept in the ordinary course of that corporate body's business or which was at that time in the custody or under the control of any director, employee or agent, shall be prima-facie evidence of its contents.

XI. CONCLUSION

Concerted efforts to put mechanisms in place to control serious economic crime are being made by Zimbabwe. National Policies, Regional Protocols, and International Conventions have been entered into by Zimbabwe. In this global village, both regional and international co-operation is required to control all forms of crime. Results of the efforts are pleasing though remarkable results could have been achieved had it not been for the inadequate resources provided for in the fight against crime. As has been pointed out earlier, the economy is not doing well; thus, resources are not easy to come by.

APPENDIX A

MONTHLY CRIME STATISTICS: JANUARY - NOVEMBER 2002 AND JANUARY - NOVEMBER 2003

	JAN		FEB		MAR		APR		MAY		JUN		JUL		AUG		SEP		OCT		NOV		TOTALS	
OFFENCE	**2002**	**2003**	**2002**	**2003**	**2002**	**2003**	**2002**	**2003**	**2002**	**2003**	**2002**	**2003**	**2002**	**2003**	**2002**	**2003**	**2002**	**2003**	**2002**	**2003**	**2002**	**2003**	**2002**	**2003**
FRAUD	74	50	82	61	43	69	68	58	75	65	90	68	114	72	75	73	76	81	81	99	70	94	848	760
THEFT BY FALSE PRETENCES	60	30	38	25	24	20	38	22	55	23	60	34	42	30	36	14	31	22	39	20	24	30	447	270
THEFT BY CONVERSION	18	16	19	6	9	7	7	8	15	9	31	8	16	3	10	8	15	9	19	20	12	6	171	100
PREVENTION OF CORRUPTION ACT	1	6	1	2	1	3	1	3	1	0	5	5	11	5	0	1	0	3	3	0	2	0	26	28
EXCHANGE CONTROL ACT	1	4	0	3	0	2	0	3	3	5	2	2	10	1	0	1	1	2	1	2	0	2	18	27
TOTALS	**154**	**106**	**140**	**95**	**77**	**101**	**114**	**94**	**139**	**101**	**188**	**117**	**193**	**111**	**121**	**97**	**124**	**117**	**142**	**141**	**108**	**132**	**1510**	**1185**

APPENDIX B

DEFINITIONS AND ESSENTIAL ELEMENTS

A. Fraud

It consists in unlawfully making, with intent to defraud, a misrepresentation which causes actual prejudice or which is potentially prejudicial to another.

1. Essential elements
   i) Unlawfully
   ii) Making a misrepresentation
   iii) Causing
   iv) Prejudice

2. Other forms of frauds
   Cheque fraud
   Transit Fraud
   Charity Fraud
   Master Card Fraud
   Insurance Fraud

B. Theft by False Pretences

Consists in unlawfully making with intent to steal, a misrepresentation which effects a *contractatio* of property capable of being stolen.

Essential Elements
i) Unlawfully
ii) Making a misrepresentation
iii) Intent to steal
iv) Property capable of being stolen
v) Contractatio
vi) Effecting

C. Extortion

Consists of taking from another some advantage by intentionally and unlawfully subjecting him/her to pressure which induces him/her to submit to the taking.

Essential Elements
i) Some advantage
ii) Intention
iii) Pressure
iv) Unlawfulness
v) Inducement

D. Forgery

It consists of unlawfully making, with intent to defraud a false document which causes actual prejudice or which is potentially prejudicial to another

Essential Elements
i) A document
ii) Which is false
iii) Making the document false
iv) Intent to defraud
v) Causing
vi) Prejudice
vii) Unlawfulness

E. Uttering

It consists in putting off, unlawfully and with intent to defraud, a false document which causes actual prejudice or which is potentially prejudicial to another.

Essential Elements

i) A document
ii) Which is false
iii) Unlawfulness
iv) Intent to defraud
v) Causing
vi) Prejudice

F. Receiving Stolen Property Knowing It to Have Been Stolen

It consists in unlawfully receiving possession of stolen property knowing it to have been stolen.

Essential Elements

i) Unlawfully
ii) Stolen property
iii) Receiving possession
iv) Mens Rea

G. Theft by Conversion

This depends on the circumstances in which the conversion is done but this occurs where someone is entrusted with goods or money on behalf of a company or organisation. Instead of honouring his/her obligation, he/she converts such goods or money to his/her own use.

REPORTS OF THE SEMINAR

GROUP 1

ECONOMIC CRIME IN A GLOBALIZING SOCIETY~ ITS IMPACT ON THE SOUND DEVELOPMENT OF THE STATE

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I. INTRODUCTION

The work of the group was preceded by plenary sessions during which individual presentations of participants from the respective countries, lectures and professional guidance by experts and UNAFEI professors were made. These presentations provided a lead to the seminar's content and the issues of focus for the group's discussion.

The Group discussed and explored ways of confronting the menace of economic crime in this globalizing society. Indeed consideration was given to the forms and manifestations of economic crime as they occur in the individual countries, and the problems they present to their respective criminal justice systems. Efforts were made to identify various countermeasures as far as investigations and trials are concerned.

Emphasis was also laid on the mechanisms of preventing the scourge and the need to develop, sharpen and improve the requisite tools and institutions in the criminal justice system so as to create a disincentive for the economic criminal.

II. CURRENT SITUATION AND THE PROBLEMS OF SERIOUS ECONOMIC CRIME IN PARTICIPATING COUNTRIES

We are confronted with the traditional types of serious economic crimes and the new types. In regard to the traditional type, corruption was identified by all countries as a serious economic crime largely responsible for the continued economic instability in many developing and some developed countries. In regard to the new types, we also agreed cyber fraud, securities crime, credit card fraud, drug/narcotic trade offences, money laundering, smuggling, trademark and copyright offences need to be addressed with the recent rapid development in communications technology and transportation. Specifically, serious problems in Cameroon are fraud related crimes by offenders referred to as feyman, embezzlement and corruption. In Egypt, large scale money laundering effects the national income. In Ghana, serious economic crimes take the form of fraud by agents of state and in the private sector who usually have a considerable amount of power. In Indonesia, the advancement in telecommunications and computers has opened up possibilities for the commission of many economic crimes. In Laos, the extent of economic crime is quite low but tax evasion, falsification of accounts and the illegal use of checks or banknotes are harming the economy. In Japan, underground banks have sent a huge amount of money to overseas illegally.

In all countries, the serious problems of weak capacities and inaccessibility to information of law enforcement officers greatly hamper the investigation and the detection of these offences. In addition, the current criminal legal framework has become inadequate to combat economic crimes.

III. PROBLEMS AND COUNTERMEASURES IN REGARD TO THE INVESTIGATION AND TRIAL OF ECONOMIC CRIME

Several issues were identified as major constraints in the trial and pre-trial processes. However, the group focused its discussions on problems critical to the investigative apparatus and the collection of

evidence relevant to securing an appropriate adjudication.

A. The Investigative Apparatus

Economic crime has been traditionally investigated by the conventional law enforcement agencies such as the police, prosecution services, customs, tax offices and so forth. However, because of the proliferation of economic crime and globalizing society, etc., we came to face difficulties in investigating serious economic crime by the conventional investigative apparatus. This situation led to the recent creation of special investigative bodies to exclusively investigate serious economic crime (see Appendix).

The functioning of these conventional and special bodies in some countries is nonetheless hampered by various problems, which were observed to be similar and common in nature.

(i) Lack of independence in initiating and conducting investigations
(ii) Lack of expertise of investigative bodies
(iii) Inadequate and inappropriate human and material resources

1. Elaboration of Item i and its Countermeasures

The group observed that even though investigative agencies derive their authority from relevant legislative provisions to initiate investigations into serious economic crimes, there are in some countries, certain restrictive provisions that require them to initially seek executive authorization before certain classes of persons can be investigated. In other countries even though such express legal provisions don't exist, investigators still wait on orders from the executive. These express or implied impediments to the effective functioning of investigators and prosecutors are prevalent where top officials of Government are major suspects.

It is therefore recommended that these restrictive laws, which provide some privilege (immunity) to a certain category of persons, be reviewed to enable investigative agencies to operate independently.

The institution of watchdog units from the general public is an appropriate mechanism to monitor the investigative apparatus and guard against interference and undue influence.

2. Elaboration of Item ii and its Countermeasures

Participants observed that due to the advancement in telecommunication and computer technology as well as developments in the stock market, the economic criminal has become more sophisticated. Criminal acts such as insider trading, market manipulation, cyber fraud, embezzlement and various forms of corruption in public and corporate life require technical and professional expertise to investigate them.

In some countries, there is no special body to investigate serious economic crime. In such countries, the establishment of a special independent or autonomous investigative body with sufficient expertise should be encouraged.

Where however such special investigative bodies have been established, great attention should be given to building the appropriate expertise. The first suggestion is that special training in the relevant areas of economic activities such as legislative knowledge (newly introduced legislation), accounting, auditing, management and stock brokerage should be provided to the investigators.

Secondly, relevant experts like certified public accountants (CPA), lawyers, bankers and computer technologists should be invited. For this purpose a list of experts should be established to assist investigators and prosecutors. This requires the selection of renowned experts who possess the skill and useful knowledge relevant in detecting the commission of economic crime.

3. Recommendations Concerning Item iii

Participants noted the inability to appreciate the dimension of the harm caused by serious economic crime. This has led to the low prioritization by governments in providing adequate budgetary allocation to the agencies in charge of investigation of such crime. It was therefore recommended that raising public awareness is most appropriate to increasing the political will required to secure adequate financial and human resources.

B. Collection of Evidence and Securing an Appropriate adjudication

1. Search & Seizure

(i) Authorization for basic search and seizure

The mandatory practice in most countries is for search and/or seizure warrants to be issued by the court or the public prosecutor. Delays in obtaining these orders constitute a constraint to the effective investigation of modern economic crimes whose modus operandi necessitate prompt interventions for the collection of relevant material evidence. As an example, warrants cannot be obtained during holidays and weekends in some countries. Adopting the system where a judge and prosecutor are both available in office around the clock was recommended for ensuring that warrants are obtained whenever necessary. Participants however noted that the putting in place of a system should ensure a careful balance between the need for an expeditious process in obtaining warrants and the respect for the human rights of the suspect and his/her relations.

(ii) Interception of communication

Another point of observation made was that in some countries, investigators are empowered by law to intercept electronic communications and conversations of criminal gangs in cases of murder and narcotic trading but under very strict conditions. It was recommended, these laws could be extended to cover situations involving serious economic crime in order to facilitate the process of investigation.

(iii) Trans-border search and seizure

A real and practical constraint relating to search and seizure, involves trans-border money laundering. Investigators are yet to overcome the legal technicalities in conducting search and seizure beyond national borders notwithstanding the ratification by their countries of relevant treaties or Conventions. As an effective strategy to overcome this difficulty, the establishment of bilateral and/or multilateral agreements necessary to strengthen international cooperation and collaboration is recommended. Beyond this, investigative agencies within the member countries are further encouraged to establish inter-agency links by having memorandum of understanding (MOU).

2. Banking Transactions and Protecting Confidentiality

A major common problem faced by investigators is that the crime proceeds obtained from economic crime are lodged in banks to hide their links, and it is sometimes difficult for investigators to access information on the state of the account owing to restrictive laws or special complex procedures that provide confidentiality and protection to the banking sector. In addition, in countries with no centralized banking data system for financial institutions accessing information of suspicious' accounts poses an enormous difficulty in detecting the movement of crime proceeds.

It has now become necessary to review or reform these laws and practices in order to enable investigators to have necessary access to information on any account credited with illegal proceeds.

A centralized data system for banks will provide easy access and facilitate the process of investigations.

In order to effectively detect proceeds of crime in bank accounts, every financial institution in the world should institute and apply policies favourable to better knowing their customers. Recommended practices include "Customer Due Diligence" and a "Suspicious Transaction Reporting (STR) System" provided by the Financial Action Task Force (FATF) 40 Recommendations. Governments are recommended to report every financial transaction beyond a specified amount of money.

3. Securing and Protecting Witnesses

A major constraint identified in collecting evidence was the difficulties in securing the appearance of witnesses in serious economic offences for several reasons; fear, time and money.

(i) Fear

Witnesses to such crimes express fear and feel insecure about being identified where the suspects are high-ranking political officials or members of organized criminal groups and likely to retaliate against their person, property and family members.

As a countermeasure, investigators must ensure that witnesses are not confronted with suspects at an investigational stage. At the preliminary enquiry and trial stage, countries should endeavour to

provide screens or partitions to protect the identities of witnesses, or where possible use video-links. To guarantee protection after trial, witness protection programmes such as relocation and the provision of a new identity might deserve some consideration. Intimidation towards witnesses should be criminalized and punished severely.

(ii) Time-consuming procedures caused by the delay in the justice system

There are many causes resulting in the delay of the criminal justice system. The complicated nature of economic crime sometimes requires a lengthy period to carry out investigations and trial, and in some countries, the trial is repeatedly adjourned.

As a countermeasure, it was recommended that countries put in place mechanisms to expedite both the investigative and trial processes to avoid such undue delays that could keep off vital witnesses.

(iii) Lack of funds for travel expenses

Sometimes witnesses personally have to incur travel costs to testify, thus placing on themselves a financial burden without compensation. In some cases, witnesses are often reluctant to turn up when summoned.

As an incentive to secure the appearance of witnesses, it was recommended that a compensation scheme be instituted to cover travel expenses for such witnesses. In countries where such a scheme exists, its implementation should be made more effective and timely.

4. Questioning Suspects

Each country was found to possess a procedural system that recognizes the right of the suspect to give evidence free of duress and renders inadmissible evidence induced or extorted from the accused. These legal requirements notwithstanding, the practice was found to be tainted with cases of violations by investigation officers. The group identified the growing concerns of the society on the increasing use of confessions in the investigation of serious economic crimes and the extent to which such statements are realistically made through the free will of the deponents.

To install public confidence in the use of confession as an evidentiary tool and strengthen the guarantee of the accused rights during investigations, reforms in the investigative process to guard against any possible violations were recommended. Appropriate countermeasures should include, reforms which allow defence counsel to be present at all stages of interrogating suspects and/or the use of video tapes to record such questioning sessions.

IV. PREVENTION OF ECONOMIC CRIME

A. Public Awareness

Participants took cognizance of the enormous resources it demands from governments as well as the insurmountable difficulties they encounter in detecting and investigating serious economic crimes. Repressive measures were thus becoming increasingly insufficient to reverse the growing trend in the commission of this class of offence. Prevention through public awareness was considered an appropriate strategy to involve all segments of the society in overcoming the complexities and peculiarities that characterize detection and investigation of serious economic crime. To ensure any success in the use of this option, a framework for designing and implementing a public awareness programme that targets serious economic crime was proposed.

1. The Approach

Public awareness as a prevention option calls for raising the level of consciousness and responsiveness to serious economic crime in the general public.

Participants concluded that through public awareness, public collaboration can be better guaranteed as informed citizens willingly provide information on suspicious activities or groups and will exhibit greater tolerance with protracted judicial processes. Most importantly, citizens are more likely to guard against victimization by unscrupulous offenders.

The content of public awareness programmes should therefore focus on the identified types of serious economic crime, their impact on the national economy, the vulnerability of the public and the importance of

public collaboration for prevention.

2. Institutional Framework

Each country was found to have put in place some mechanism relevant to creating public awareness on some serious economic crimes. Nevertheless, the measures adopted were either at an embryonic stage or ill-adapted to emerging forms of serious economic crime. With regard to existing institutional arrangements, these were sectoral based with the investigative and prosecution agencies having the sole responsibility of informing the public. In other countries, commissions with public awareness functions have been established to combat specified economic crime such as corruption and fraud. Extending this approach to other forms of serious economic crime is favourable to harmonizing action by various institutions, which can also provide statistics for the number of various economic crimes as basic information for public awareness. It was agreed that governments should be encouraged to institute multidisciplinary approaches involving government institutions, the private sector, NGO's and local community institutions.

3. Communication Channels

Strategic tools and channels for communication were found to differ with countries. However, for effective results, the option of communication channels should be determined based on the serious economic crime targeted:

4. Publicity by the Mass Media

The arrest of politicians and high ranking government officials for bribery and other forms of economic crime, and the search of premises relating to securities fraud always make sensational news in many countries. It was agreed that this information delivered by the mass media is the most effective method to raise public awareness about serious economic crime and deter them from committing it. However in some countries the state controls the public media and often due to political reasons censors information for public consumption. The situation does not promote transparency and obviously tends to shield wrongdoers in responsible positions of trust who misconduct themselves whilst in public office.

As a recommendation Governments should create an enabling environment that will ensure press freedom and enable the mass media to operate freely and independently.

5. Public Shame List

The publishing of a 'shame list' modelled after the Corruption Perception Index of the German based Transparency International and Current list of Non-Cooperative Countries and Territories of the Financial Action Task Force showing the number of public officials in various ministries implicated in acts of corruption and other economic crimes was considered an appropriate public awareness strategy that will act as a catalyst for Government and people concerned to do more to restore some sanity into the system. Where necessary, the names of high-ranking public officials convicted can also be published on the 'shame list'. In order to respect the rights of the accused person this approach should be adopted when judgments have been finalized.

6. Community Awareness

In many countries chiefs and community leaders wield influence and traditional power over their subjects and can influence decisions in their communities.

The group suggested that these leaders could be used as a mouthpiece for various public awareness programmes where the dangers in giving and or accepting bribes as well as other crimes of an economic nature can be further espoused.

7. Pamphlets and Posters

In some countries the Department of the Ministry of Information or the Mayor's office collates information on important events and informs the public through a public address system or distribution of pamphlets and materials. It is recommended that such an approach be adopted for serious economic crimes.

(i) Youth awareness

It was noted that a strong impact could be made in preventing economic crimes, such as cyber-crime, if the Internet generation, especially the youth are targeted and made to benefit from an

appropriate awareness programme. A start could be made in schools by incorporating into the schools' activities special programmes that seek to educate the youth on the various forms of economic crime and the harm to the nation's economy.

(ii) Publication of declared assets

A useful approach adopted by some countries to combat corruption and misappropriation of public funds is the mandatory requirement for politicians and high-ranking public officials to declare their assets before they assume office. The enforcement and effective outcome of this approach has been fraught with a lot of difficulties. It is in this regard that the publication of declared assets in the national gazettes and the print media is recommended as appropriate to procuring the public alert and detection of any investments from illegal proceeds by high-ranking officials.

(iii) Complaint centres

The institution of a private Consumer Centre by some countries was found to be effective in receiving all kinds of complaints from consumers relating to fraudulent commercial behaviours of corporations, forwarding the same to investigative bodies and feeding back results to the public.
Based on the successful output of these centres in preventing victimization the adoption and adaptation of a similar system to other economic crime was encouraged.

(iv) Creation of a website on economic crime

Considering the rapid increase across the globe of Internet users, public information through the web constitutes an appropriate channel to create awareness in the global community on serious economic crime. It is recommended that an 'alert system' be created on the Internet for its users to learn more about these crimes. The group suggested that investigative bodies and other law enforcement agencies in the countries work together with various Crime foundations, NGOs and the International Police Organizations (INTERPOL) in making this operational.

V. STRENGTHENING THE LEGAL FRAMEWORK AND COUNTERMEASURES OF ECONOMIC CRIME

Priority was given by the group to issues relevant to criminalizing new types of harmful economic activities and recovery of damage.

A. Criminalization of New Types of Harmful Economic Activities

Economic activities have been diversified by reason of the development of communications and transportation. As a result, we are confronted with conceivable harmful economic activities. We recognized that the following crimes emerging from harmful economic activities have a negative impact on the economy.

- Obstruction of justice
- Theft or espionage of data or information (e.g. illegal access to data)
- Piracy (e.g. illegal copyying of software, CD, DVD, etc.)
- Money laundering of proceeds derived from old crimes and emerging harmful economic activities
- Securities crimes (e.g. insider trading , manipulation of stock prices)
- Environmentally harmful activities
- Mal usage of automatic teller machines (ATMs)
- Possession of forged payment cards (e.g. credit cards, telephone cards)
- Non-delivery of contract documents, including important contents to consumers in advance

In some countries, some of the above-mentioned have recently been criminalized. In others, apart from money laundering arising out of the drug trade, proceeds from other predicate offences such as smuggling, human trafficking, organized criminal activities, etc. that generate money laundering have not been criminalized. It was also observed that in other countries some of these harmful activities have not yet emerged, and are therefore not criminalized.

Participants agreed that all of the countries should endeavour to criminalize these harmful activities regardless of the extent of damage on the state's economy, since these activities are often committed beyond the borders. To facilitate international mutual legal assistance, we recommended the establishment of a convention to criminalize these emerging harmful economic activities to enhance international cooperation.

B. Recovery of Damage

It was noted that the conventional notion of the purpose of the criminal procedures was primarily to punish the offenders and deprive them of the proceeds of crime. Therefore, recovery of damages of the victims has been set aside as secondary in terms of criminal procedures. However, we originally passed a criminal code to prevent victimization in a sense, and it is a matter of course and very important to make the offenders compensate for damages caused by their criminal acts. We need to make efforts to recover the damage of economic crime as much as possible.

Quantifying damages and the capacity of criminal processes to ensure compensation, was identified as a real challenge to attaining this objective.

1. Quantum of Damage

A lot of difficulties are encountered in identifying the damage caused by economic crimes. Some serious economic crimes such as consumer fraud and Internet fraud generate numerous victims, and sometimes it is almost impossible to identify all the victims. Furthermore, it is very difficult to identify the quantum of damages in some serious economic crimes like corporate crime and securities crime. To overcome such substantial problems, there is a need to establish appropriate procedures to ensure considerable compensation. Specifically, the courts need to pay attention to equality of compensation in the course of recovery of damages.

2. Criminal/Civil Process

In some countries the law allows the criminal court to make orders for compensation to the victims of economic crime, yet in other systems recovery is restricted to the jurisdiction of the civil court. However, in other systems, upon the classification of an economic crime as a felony the court becomes incompetent to address any issue of compensation. However, the pursuit of civil action in some countries is again made unattractive by certain judicial procedures and obstacles that come in the way of the victim.

For example, the subsequent institution of a criminal action leads to an adjournment sine die of the civil action pending the determination of the criminal action. In other systems, the success of the civil action is further unlikely where the prosecutor loses his/her criminal action. In addition most legal systems have no support facility by way of legal assistance for a civil action especially where the victim is not in a position to pay for the services of counsel. Participants also noted the existence of international legal assistance in civil matters which can support a victim's claim but apparently the procedure is cumbersome and disadvantageous.

3. Countermeasures

In the light of the foregoing observations participants called for a review of existing legal procedures as follows:

(i) Empower criminal courts to make compensation orders as is appropriate and equitable based on the evidence adduced. In addition for a time and cost effective approach, the criminal courts should encourage negotiations or settlement between the parties, especially where the defendant pleads guilty. However, the court should take due cognizance of the interest of other victims who may not be listed in the indictments.

(ii) Keep civil and criminal actions as independent and separate processes particularly where civil action by a victim precedes the criminal litigation. Where the existing criminal procedures are favourable, a consolidation of the criminal and civil action should be encouraged.

(iii) Institute a legal support system for victims who are financially weak to procure the services of counsel in a civil action.

(iv) Countries should further facilitate access to international legal assistance in civil matters for victims of massive economic crimes who are compelled to take civil action against perpetrators who may have crossed borders. To overcome the complex procedure involved in executing civil judgments and pursuing illegal proceeds abroad, countries should be encouraged to ratify the existing international instruments relevant to recovery of damages, e.g. the United Nations Convention against corruption and the United Nations Convention against transnational organized crime.

(v) To overcome delays in the recovery of damage process arising out of appeals from defendants, the courts should be empowered to make such provisional execution orders as it deems appropriate for recovery, particularly in countries where the courts have no such powers.

APPENDIX

SPECIAL INVESTIGATIVE AGENCIES FOR ECONOMIC CRIME

States	Investigative Agencies
Cameroon	National Commission for Corruption, Economic Crime Unit of the Police and the Gendarme
Egypt	Economic Crime Units of the Police, Special Prosecution Unit for Financial, Commercial and Smuggling matters, Special Prosecution Unit for Tax Evasion/Corruption
Ghana	Serious Fraud Office, Narcotic Control Board, Economic Crime Unit of the Police
Japan	Fair Trade Commission (FTC) for Anti-Monopoly Law, Securities and Exchange Surveillance Commission (SESC), Consumer and Environmental Protection Division of the National Police Agency, Special Investigative Department of the Public Prosecutors Office
Laos	Economic Crime Department of the Police
Indonesia	Corruption Commission, National Narcotic Board, Economic Crime Investigation Division of the Police

GROUP 2

ECONOMIC CRIME IN A GLOBALIZING SOCIETY~ IT'S IMPACT ON THE SOUND DEVELOPMENT OF THE STATE

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I. INTRODUCTION AND THE CURRENT SITUATION AND THE PROBLEMS OF SERIOUS ECONOMIC CRIME IN PARTICIPATING COUNTRIES

A. Introduction

This group was assigned the task of deliberating on the issue of the current situation and problems of serious economic crime in the participating countries. Further, the problems and countermeasures in regard to the investigations and trial were discussed at length, as seem to be the core to reducing the spread of economic crime.

In view of the challenges posed by globalization, and technical developments, the reinforcement of multi-lateral cooperation is essential. All nations over the world should therefore be actively involved in the framing of new international regulations aimed at securing the smooth operation of financial markets, and in particular at combating economic or financial crimes. We may also need to launch more initiatives targeting the enhancement and effectiveness of the international fight against financial crimes.

The politico-financial history of the last thirty years reveals a worrying correlation between financial crimes, indebtedness and poverty. At the moment, it may be impossible to calculate the financial losses to developing countries associated with offshore activities. Tax havens may seem far removed from the problem of poverty, but we must bear in mind that they are intimately connected. Unlawful debt and economic crime against human developments definitely undermines the interest of developed countries much less the poor or developing countries. Faced with this scarcely encouraging situation, the question that remains to be answered is: will the twenty-first century eventually see justice prevail over the institutionalized accumulation of fraudulent wealth?

Thus, the establishment of international financial justice has really become essential for all the nations to exist. This involves juridical-economic changes at the national and international levels. In this environment, the most sophisticated institutions realize the need to upgrade skills and techniques in this area. They also need to share and disseminate knowledge and best practices. In this context, effective models must be developed for international cooperation between regulators and judicial investigative authorities around the world. As a significant step to tackle economic crimes, we must be able to provide a coordinated approach to combating serial, complex and multi-jurisdictional financial economic crimes.

All the governments will have to continue to work with the relevant stakeholders and other countries to prevent, detect and prosecute those who seek to commit economic crimes. In doing this, all concerned must reaffirm their commitment to work with the law enforcement agencies and the international community to achieve this. Therefore, it goes without saying that the approach for the eradication of economic crimes imposes the need for creating an organized, mutual approach and cooperation of the authorized investigative services for the exchange of data and information.

We are about fighting economic crimes, but we lack the data, the analysis, agreed priorities and organizational structure to tackle this type of crime effectively. Therefore, if we are really to make any progress, we need to be able to access the data and better analyze which economic crimes cause the greatest detriment in terms of their impact on society.

B. Current Situation

For the purpose of the group workshop sessions the course was divided into three 3 groups alphabetically. Each group comprised of representatives from six different countries, in order to add variety and diversity to the discussions. This group consisted of participants from Japan, Mongolia, Nepal, Papua New Guinea, the Philippines and St. Christopher and Nevis. Each participant gave a summary highlighting the current situation and problems encountered as a result of serious economic crimes in his/her country as outlined below:

Japan

The number of persons who commit economic crimes shows a general upward trend, and its' modus operandi is becoming sophisticated and well organized. We therefore, need further legislative adjustment to tackle them effectively.

The problems are as follows: As we face difficulties in getting the information that leads us to serious economic crimes or corruption acts, we need effective legal methods to get the reliable information such as utilizing whistle-blowers that is now under discussion. We also face difficulties in securing testimony in the investigations; "Witness Immunity" would be a very useful method to adopt.

Mongolia

The Republic of Mongolia has undergone a transition period from a so-called closed society to an open society. During the last few years, the country experienced an increased number of cases that are considered economic crimes such as corruption, bribery, and tax evasion. However, it is really difficult to investigate such crimes because some of the prosecutors and even some of the judges are corrupt.

Other contributing factors in dealing with those economic crimes are the apparent inability of investigators because they do not posses the necessary skills and knowledge in those fields; lack of physical equipment and resources; the absence of a sound legal framework; and the inadequate compensation packages offered to the judiciary, prosecutors and law enforcement officials, which makes them so vulnerable to be bribed or get involved in corrupt practices.

Nepal

Nepal is facing serious problems caused by major economic crimes like corruption, tax evasion and illicit drug trafficking. Corruption, the most prevalent of the economic crimes in Nepal is deep rooted in all facets of the society. Reasonable investment toward development activities are allocated every year, but the output in terms of benefit is worsening and decreasing.

The new Prevention of Corruption Act, 2002, New Special Court Act, 2002, and Commission for the Investigation of Abuse of Authority Act 1991 (Amendment 2002) made the CIAA powerful and active, but still there are some problems in combating corruptions in Nepal. These are: protection (enjoyed by the corrupts'), lack of accountability and transparency in the service delivery system, social prestige for those who gain materially, ineffective internal management audits in the concerned agencies and lack of a reward and punishment system.

Papua New Guinea

The investigation of Economic Crime in Papua New Guinea is still very challenging to law enforcement officials. Despite international Conventions and seminars and the best of police cooperation, the obstacles of the legal system, police practices and sovereignty are brought into the equation, and this makes it more difficult to bring offenders to justice or recover lost assets.

Police have tried desperately in the past to bring the situation to a manageable level, and it has now proved to be too difficult without the cooperation of the community, thus forcing the Police to embark upon community policing.

Philippines

In the Philippines today, the most serious economic crime, so far, is graft and corruption. Of course, this is not to say that other forms or types of economic crimes like stock market manipulation, insider trading, and computer and cyberspace crimes, do not really exist within the territorial jurisdiction of the country.

As a result of the inefficiency in the collection of the much needed revenues brought about by the serious problem of corruption, the country is now facing a budgetary deficit which is likely to affect the socio-economic and political development of the country.

The anti-graft bodies, particularly the Ombudsman and Sandiganbayan are seemingly confronted with difficulties in the prosecution of the cases, due to several factors and unforeseen events thus, requiring direct intervention from the executive department.

In response thereto, the present administration has launched an intensive campaign against corruption that has resulted in the dismissal from the services and imposition of heavy administrative sanctions against those public officials involved, especially those in the Department of public works and Highways (DPWH), Bureau of Customs (BOC) and the Bureau of Internal Revenue (BIR).

St. Christopher and Nevis

As a young country, thriving in less than favourable economic conditions worldwide, it is very difficult to protect our economic image. Gravitating towards a tourism and financial services based economy, economic crimes, have been the focus of law enforcement officials in recent times.

In this era of globalization, and the advent of technology, we are no longer only experiencing the traditional economic crimes such as embezzlement, drug trafficking and common fraud, but we are confronted with modern economic crimes that occur at the touch of a button and have no boundaries, such as Money Laundering, Credit Card Fraud and other Financial Crimes. However, lack of resources, skills and knowledge has made it rather complicated in some instances to successfully investigate and prosecute the perpetrators. Consequently, the necessary machinery has been initiated based on specific legislation, education of the relevant stakeholders and the establishment of specialized investigative arms, such as the Financial Intelligence Unit (FIU), and the soon to be office of the Ombudsman.

II. PROBLEMS AND COUNTERMEASURES IN REGARD TO THE INVESTIGATION AND TRIAL OF ECONOMIC CRIMES

A. The Investigative Apparatus

In the workshop each participant discussed the problems of investigation and trial of serious economic crimes in their various countries and shared the experiences in a detailed manner. This aspect "the Investigative Apparatus" was chosen because it was recognized that this is an integral part of the mechanism required to initiate meaningful changes in order to combat economic crimes. In addition, an efficient investigative apparatus was seen as a preventive measure to serious economic crimes. During the discussions the advisors raised different, but relevant issues to the participants' problems regarding the Investigative Apparatus. Problems on the investigative systems varied and were different from country to country, but it was evident that we all had common problems.

Each country to some extent is affected by serious economic crimes, such as corruption, bribery, tax evasion, market manipulation, money laundering, illicit drug trafficking and credit card fraud. From amongst the economic crimes highlighted and discussed, it was clear and unambiguous that corruption was the most prevalent crime. Corruption is rampant in four of the representative countries, Japan, Mongolia, Nepal and the Philippines. The other two countries, Papua New Guinea and St. Christopher and Nevis do not have such a serious problem of corruption, but money laundering is fast becoming a worrying issue for them and the appropriate preventative measures are instituted.

B. Overview of Existing Apparatus

It was also discovered that of the six participating countries of the group, in two countries namely Mongolia and Papua New Guinea, the Police were the sole investigative body for economic crimes. The remaining four countries, Japan, Nepal, the Philippines and St. Christopher and Nevis all had separate and

specialized agencies, in addition to the police that dealt with serious economic crimes. The breakdown can be seen in the Appendix.

The success of investigations of economic crime depends largely on the independence of the investigative agencies involved. From within the group it was discovered that some countries already have such apparatus in place guaranteed by law and constitution. These include Japan's SID of the PPO, Nepal's CIAA, Philippine's Ombudsman and St. Kitts and Nevis's FIU. However, in Papua New Guinea, there is an ombudsman commission, which is not really an investigative apparatus, but rather plays an integral part in imposing accountability on the country's leaders.

C. Common Problems

During the discussions, it was revealed that common problems existed within each country. These problems are outlined below, together with suggested countermeasures.

1. Lack of Skilled Manpower

As a result of globalization and information technology, fighting economic crime has become increasingly difficult. Consequently, the criminal justice officers' must be equipped with the requisite competencies, knowledge and skills, in order to stay current or even ahead of criminals. Specialized skills in forensic accounting and auditing, computer science and new methods of detection of these crimes should be prioritized. This can serve both as a deterrent and at the same time enhance efficiency and the detection rate.

In view of the foregoing, the following recommendations were presented to reduce the effects of a lack of skilled manpower within the participating countries:

- International cooperation, such as AUS-Aid - where funds are provided to train prosecutors, detectives and lawyers (e.g. Papua New Guinea)
- Incorporating skilled persons in specialized fields from other entities (from both the public and private sectors)
- Provide specialized training for law enforcement personnel and criminal justice officials.

2. Lack of Financial and Physical Resources

It is accepted that all governments have restrictions as it relates to the allocation of its financial resources. However, in light of the consequences that can follow as a result of the prevalence of economic crimes in any society, it is deemed necessary to allocate adequate resources to the cause of fighting the epidemic of economic crimes. As a result of budgetary constraints, it impacts on the human resources requirement, in that the appropriate number of investigators cannot be appointed to carry the workload. The end result is that the investigators are overworked, which leads to undue and unnecessary delays and ultimately a poor quality or sub-standard investigation of the cases.

The lack of human and other physical resources also limits the scope and efficiency of the investigating agencies. It is also believed that due to their vested interests the government deliberately does not allow the criminal justice officials to become efficient and capable of effective investigations. As it relates to the existing workforce, it has a direct impact on the education and training of investigators and judiciary officials. There are also implications on the low pay packages offered in some of the participating countries such as Mongolia and Nepal, where the abnormally low pay structures for very senior public officials ultimately leads to a perverted justification of corrupt practices of public officials.

The appropriate physical infrastructure and equipment are needed to tackle the problems associated with serious economic crimes. It is imperative therefore that adequate building/office space is provided, complimented with the necessary technical infrastructure including laboratories where needed, fully furnished and equipped. Such equipment should include photocopiers, fax machines, computers with internet access, communication and surveillance/intelligence equipment, etc.

This problem depends largely on the state of the economy and political situation of the country at the material time. However, it was recognized by the participants that for this to be successful the following must be instituted:

- Strong political will and commitment by the government; and
- Increased public awareness and sensitization to the issues.

3. Insufficient Coordination Between Enforcement Agencies

In order to fight against economic crimes, we must start a unified front. It was discovered that in some countries the cooperation among relevant agencies is inadequate and quite frankly below an acceptable standard. Therefore, the timely dissemination of information and ideas is essential for the successful investigation of serious economic crimes. Such uncoordinated efforts often result in the waste of the already scarce manpower and "turf wars" amongst the investigative agencies. Furthermore, the absence of an integrated information system makes it difficult to collaborate with other independent investigative agencies.

In order to alleviate this problem, all criminal justice officials should recognize the importance of cooperation and coordination both nationally and internationally and endeavour to work in harmony. Most of all, they should also acknowledge the fact that they are all working towards a common goal.

4. Lack of Effective Management Audit Systems

Most of the developing countries do not have sound management audit systems to monitor the activities of different government agencies. Thus, the opportunity is created for corrupt practices to go undetected because of the lack of transparency in framing policies and taking administrative decisions to the government in the matter of allocation of contracts, the procurement of goods and supplies and the appointment of officers, etc. In this context, for the effective investigation of economic crimes, there should be a good system of monitoring the activities of their subordinate apparatus. Most of the participating countries agreed that each country should create an effective independent management audit system with the capability to raise the red flag to signal fowl play. On completion of the report, it should be published and made available for public scrutiny and recommendations for sanctions for misappropriations be forwarded to the Public Prosecutors Office to take the necessary action.

In some of the participating countries, Transparency International, an International Non Governmental Organization (INGO), and other non governmental organizations are acting as watchdogs for corruption and malpractice behaviours by public officials and it's proving to be effective.

5. Lack of Legislation on Economic Crimes

In order to establish the specialized agencies for tackling the investigation of serious economic crimes, there should be substantive legislation in the country. In addition, to legislation, procedural and administrative regulations should be included clearly outlining the structure of the organizations, qualifying and defining the roles of the persons so employed, the security of independence and the necessary powers to investigate and prosecute offenders. Some of the participating countries do not have any legislation for combating economic crimes (e.g. Nepal has no substantive laws to deal with the offences of money laundering and cyber crime). Therefore, necessary legislation should be enacted to give the investigating agencies the "teeth" required to investigate those serious crimes.

6. Other Problems

Notwithstanding the common problems highlighted earlier, individual countries have other problems noteworthy of mentioning. In Mongolia, corruption is so rampant that even criminal justice officers fall prey to the corrupt practices. This continues to 'deal' a big blow to the investigative apparatus and even pose a threat to the rule of democracy in that country.

Suggestions for Mongolia to alleviate this problem include:

- Strong political will and public awareness
- Establishment of separate investigative agencies (e.g. the office of Ombudsman)
- Involvement of NGOs, INGOs (e.g. T I) and civil society as a watchdog

In Nepal, the CIAA is working well to combat corruption as an independent investigating and prosecuting agency. But there is no direct involvement of prosecutors in corruption cases. So the law should be amended accordingly. Other participants agreed with this fact.

In the Philippines, there is the office of Ombudsman that is guaranteed independence from the government. However, it does not work effectively due to a lack of budget and manpower.

Suggestions regarding this problem were given indicating that raising public awareness and involvement of an NGO should be considered.

III. PREVENTION OF ECONOMIC CRIME

A. Regulation of Economic Activities

Prevention of economic crime was the aspect of the discussion that generated the most energy. Accordingly, we saw the need to deliberate on sections (A) and (E), namely, the Regulation of Economic Activities and Public Awareness respectively. Civil and administrative sanctions as well as laws are in effect not only to protect consumers but also to act as deterrents to economic crimes. This confirmed our belief that the presence of regulatory bodies, sound regulations and the enforcement of these regulations are essential to the prevention of economic crimes. The results of the discussions are hereunder summarized.

Economic Crime is a complex phenomenon, acquiring greater significance in this global era. The offenders do not commit these crimes on the impulse of the moment, but rather they do so in a carefully planned and well-orchestrated manner, so as to leave no trace of their execution. Present day technology also facilitates the opportunity allowing them to do so transnationally without great difficulty. It is imperative therefore, that governments the world over contribute to the fight by taking a unified stance and collaborate by putting in place similar mechanisms to regulate the way business is done in each country. Such regulatory agencies may be strengthened to play a more proactive role, whether formal or informal.

Crime prevention enlists the private sector and citizens in their campaign to fight economic crimes. The preventive measures need not be elaborate, excessively expensive or for that matter too 'high tech'. The government's proactive activities, coordination with the private sector, and international cooperation regionally and internationally are essential tools for the prevention of economic crimes.

1. Establishment of Sound Regulations for Economic Activity

A key component in combating economic crime is effective regulations. Regulations help to suppress some practices that conceal fraud. They also deter migration of trust or substantial financial responsibilities. In some countries, corporations are responsible for setting and maintaining the standards for the best practices and good governance within the industry. Companies and corporations are mandated to have built in mechanisms to monitor and detect irregularities of the executive board and members and regulate with a view to preventing illegal activities and malpractices. For example, in Japan the implementation of a "Corporate Governance Policy" has proved to be very effective. Statutes provide for this self-regulation practice and sanctions are levied for non-compliance. In St. Christopher and Nevis however, the law stipulates that the Eastern Caribbean Central Bank (ECCB) shall be empowered to regulate all financial institutions within the Federation. This system has been working well, as non-compliance with the industry standards can lead to fines and in some cases suspension of services and ultimately closure. In addition, the fact that the compliance officers of the ECCB can at anytime visit and carry out inspections serves to keep the institutions in check.

Although having sound regulations is important, deregulation has also proved to be equally important. Deregulation not only ensures fair competition amongst corporations but also assist greatly in reducing the trend of public officials becoming corrupted as it reduces each ministry's power. The Japanese Government now endeavours to reform regulations in various private sectors by abolishing unnecessary regulations as this has worked to their advantage. However, in the Philippines, the obvious absence of sound legislation has lead to the shortcomings brought about by the implementation of the deregulation process. This has impacted the country adversely and has resulted in increased prices of commodities and basically affects the overall quality of life.

2. Enforcement of Regulations

Enforcement of such regulations plays a vital role in the prevention of economic crime. In some countries however, this is not forthcoming and as a result the involvement of Non Governmental Organizations and the private sector have proven to be effective. They monitor the activities and make recommendations to the government continually, and then coordinate the implementation of the regulations to effect smooth functioning. For instance, the National Vigilance Centre in Nepal makes guidance policy, good governance, transparency and accountability programmes. And the Chamber of Commerce and Industry, which is a self-regulatory body in Papua New Guinea, looks after and monitors the activities of public sectors. In this

context, a self-regulating system such as Due Diligence including the "know your customer rule" and Compliance Programmes by companies and corporations is recommended.

3. Coordination between Regulatory Agencies and the Private Sector

The presence of government regulations is an important step in helping to protect the various industries or sectors of a county's economy. To maximize the benefits of regulations, however, another dimension must be added. That is coordination and cooperation with law enforcement agencies and the private sector. In other words, this has a direct correlation between the regulatory bodies, law enforcement agencies and the Chamber of Industry and Commerce and other NGO's within the community. The result is that the relationship amongst them has to be enhanced significantly.

In many countries the private sector dictates the pace at which the economy grows and without the negotiations and lobbying government may be weighed in the balance and found wanting. Therefore, it is incumbent that governments exercise their best efforts to interact with the law enforcement community, the private sector and civil society as a whole in order to regulate the necessary activities. In an open market economy system the private sector should play the leading role with reference to the conduct of business and trade.

It was suggested that international cooperation is also important and should also be incorporated into the general sphere of operations. It was highlighted that by referring to and conforming with international standards relating to regulations for the prevention of economic crimes the outcome would be much more encouraging. This can be achieved by comparing each other's regulations and harmonizing them amongst countries for enabling legislation in a global context.

B. Public Awareness

As a preventive measure, it is evident that increasing public awareness will play an important role especially in the case where regulations are not well enforced. However, the question is how to achieve that goal? Some countries pointed out that this question must be linked with the socio-economic and political situations that exist in their country. It is essentially important for the government to have a clear concept, proper structure, and process of enforcement for increasing public awareness. For example, in Nepal, problems of poverty and low rate of literacy are obstacles, because when the information is disseminated poverty may hinder the message from reaching the intended target audience, and if it does, it will not be comprehended by the majority of the population. In this context, it is suggested that we develop a sound public education system, as a first step, with the institutional capacity to sell the idea to the layman on the streets and convince them of the benefits that can be derived.

It is recognized that the public awareness activities by law enforcement authorities should be backed up by industry. The National Police Agency in Japan enjoys a cordial relationship with private companies and has held several meetings and distributed brochures with a view to raising awareness in order to prevent malpractice or illegal activities. In Papua New Guinea, the Police visit the private sector and explain their policy. This policy and campaign is based on the newly adopted Community Policy Initiative by the government.

The building of institutional capacity within organizations charged with the duties of delivering the public awareness programmes should be strengthened. In St. Christopher and Nevis, a senior police officer is attached to each school as a liaison officer, and charged with the responsibility of sensitizing the children at an early age of the corporate plan within the Police Force and how they can play a part in preventing and reducing criminal activities. In addition, the use of the print and electronic media has been used as an effective tool to increase public awareness. Police representatives from the public relations office (PRO) regularly participate in panel discussions and write articles in the newspapers, providing useful insights to the public. Although the media has been utilized effectively in some participants' countries, in others the efforts by the government to inform and distribute its policy are seen as insufficient.

The Public Awareness programmes should be linked and coordinated with other regulatory agencies, INGOs, NGOs and the civil society to have maximum effect when attempting to educate the public. For example, in Nepal, the NGOs and the civil society have played the role of the watchdogs in corruption cases.

IV. STRENGTHENING THE LEGAL FRAMEWORK AND COUNTERMEASURES OF ECONOMIC CRIMES

Economic Crimes are non-violent in nature but they have the propensity to cause serious harm to any society, nation or the world as a whole. As a result of the grim and startling reality of this menace, internationally recognized bodies' including the United Nations have frowned on these crimes and instituted measures to combat them. It is also clearly manifested that in this globalizing society the legal framework has to be strengthened and new legislation adopted, if we are to make the world a safer place for all.

The United Nations convention on corruption offers good reason to look at the future with optimism. It is indeed an act of faith and offers all countries a comprehensive set of standards, measures and rules that can be applied to strengthen their legal and regulatory framework to prevent and combat corruption. It is hoped that similar conventions can be ratified relating to all economic crimes.

We recognized that the legal framework within our countries can be significantly strengthened if: the recovery of assets as a result of economic crimes; increased international cooperation through mutual legal assistance in criminal matters and extradition treaties; and obstruction of justice measures are included in the framework. We also saw the need to introduce and implement countermeasures to act as deterrents. Therefore, we focused in this section on the above mentioned aspects and presented our desired countermeasures.

A. Asset Recovery

Our group decided to discuss some critical issues relating to the ratification of the UN Convention against Corruption. This was chosen because as stated earlier, corruption is the economic crime that affects most of the participating countries of the group. Corruption is now a transnational phenomenon, and for this reason it is necessary to harmonize the criminal law and procedure of each country, as well as enhance international cooperation in order to combat it effectively. In this context, each country has to review its domestic legal framework, as some of the legislation that currently exists is not adequate to address the issue of asset recovery. In addition, they must as a matter of urgency ratify the Convention. From within the group, Japan, Nepal and the Philippines have already signed the Convention, and Mongolia, Papua New Guinea and St. Christopher are expected to do so in the near future.

We found that the issue of recovery of assets is one of the most important issues highlighted in the various provisions of the Convention. The proceeds of crime derived from economic crime, including corruption, are often transferred beyond the reach of domestic authorities, and also laundered and hidden in a sophisticated manner. It is also pointed out that in some cases, accomplices pretend to be bona fide third parties, and thus necessary laws and measures should be introduced for the purpose of preventing and detecting such disguising activities. There are countless cases whereby corrupt officials transfer their ill-gotten gains to some foreign countries. There are also cases where even political leaders are involved, for example the former President of the Philippines, Mr. Ferdinand Marcos. He illegally deprived the country of its national assets and transferred them to a bank in Switzerland. However, they encountered difficulty in getting the assets returned from Switzerland because there are no international agreements with Switzerland (bilateral or multi-lateral) and no national legislation in place. In Papua New Guinea, there was a similar case where the suspects transferred assets to Australia and Singapore, but again there is no domestic legislation to apply and make any request to that country other than through diplomatic channels. The perpetrator has since been extradited back to Papua New Guinea and is facing trial.

On the other hand many such cases go uncovered and undetected. Unfortunately, universally the success rate in this area has been very low; moreover, there have been no cases of asset recovery in the participating countries of this group. It is therefore important to enhance international cooperation in this field, so as to increase our chances of success. We should also be aware of the fact that substantial loss of resources of the victim countries can undermine its sound economy and development.

In all of this, the participants recognized that there are some inhibiting factors which impede the asset recovery process, such as:

- The lack of appropriate legal framework which allows the return of assets;
- The lack of political will or arbitrary political influence;
- Ineffectiveness of international cooperation;

- Difficulties in tracing and identifying assets in foreign countries.

However, in some counties such as Japan and St. Christopher and Nevis, there is legislation by which tainted property can be confiscated, but there are no provisions for the recovery of those assets upon conviction. In fact, the trial jurist will determine what should be done with the assets and in most cases they are forfeited to the crown and go to the national treasury. They are subsequently, included in one account as national revenue, and therefore it is difficult to return the particular assets to other countries.

Chapter V of the Convention provides for comprehensive mechanisms and measures to be put in place to ensure the recovery of assets, which gives us clear guidelines to address this issue. In particular, Article 57 (2) requires a State Party to adopt necessary measures to enable its authorities to return confiscated property.

B. International Cooperation

In this era of globalization, international cooperation is deemed one of the most important mechanisms in the holistic and multi-disciplinary approach needed to tackle and control economic crimes. All nations must be concerned about the seriousness of the problems and threat posed to the stability and security of societies, undermining the institutional and ethical values, justice, jeopardizing sustainable development and the rule of law. Economic crimes are no longer national, but rather a transnational phenomenon that often involve vast quantities of assets, which in some instances may constitute a substantial proportion of the resources of the state and subsequently threaten political stability. Convinced that the illegal acquisition of personal wealth can be detrimental to democratic institutions and developing nations, soliciting technical assistance from the international community plays an integral part in enhancing the ability of States, including the capacity and institutional building required to combat economic crimes.

Bearing in mind that the eradication of economic crimes is the collective responsibility of all States, each has to make a concerted effort to cooperate with one another, with the support and involvement of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community based organizations. In addition, they must manifest the will to prevent, detect and deter in a more effective manner international transfers of illicitly acquired assets and to strengthen international cooperation in asset recovery, sharing or return. However, in all this we must acknowledge the fundamental principles of due process of law in criminal proceedings and in civil administrative proceedings in the adjudication of property rights.

Regional and International cooperation should not be limited to cooperation between governments and NGOs, but should also include the persons actively involved in the investigations, such as the law enforcement and criminal justice officials. They should be able to liaise with each other and work closely, familiarizing themselves with, and respecting, the relevant legislative framework and administrative systems to facilitate smooth, harmonizing and effective investigations.

This can only be done if they:

- Create and maintain communication links that will allow the appropriate authorities and agencies to exchange secure, rapid and timely information in connection with the crimes committed or suspected of being about to be committed.
- Determine the identity, whereabouts and activities of persons suspected of being involved in economic crimes.
- Determine the movement of proceeds of crime or property derived from the commission of such crimes.
- Determine the movement of property, equipment or other instruments used or suspected of being used in the commission of such crimes.
- Provide necessary items or quantities of substances for analytical or investigative purposes.
- Promote the exchange of personnel and experts to consolidate their resources to respond to offences committed through the use of modern technology.

Finally, when the crimes extend to more that one country, there should either be bilateral or multilateral agreements, conventions or even just mutual consent, so as to be able to form strategic alliances by establishing joint investigative bodies to maximize their efforts. Sadly, this type of legal framework does not exist within the participating countries.

Extradition

The issue of Extradition is also discussed in chapter IV (International cooperation) of the UN Convention against Corruption. With globalization comes the global criminal. This has caused serious economic crimes to transcend beyond national borders, thus becoming globalized as well. The extradition of criminals back to the country where they committed the crimes is therefore imperative, as it could eliminate safe havens for criminals to hide after committing their illegal criminal activities.

There are two approaches for extradition amongst countries. Some countries such as Mongolia, Papua New Guinea, the Philippines and St. Christopher and Nevis require an international treaty to extradite, while others may however, grant extradition in the absence of binding international obligations. It should also be borne in mind that in cases where there are no formal treaties, there are circumstances, such as the principle of reciprocity and dual criminality, that foster cooperation in extradition matters. However, exceptions of some crimes for dual criminality are dealt with under Mutual Legal Assistance in Criminal Matters treaties.

Examples of when extradition may be granted in the absence of international obligations are Japan and Nepal.

Both systems have advantages and disadvantages. An advantage of the former is to be able to impose an obligation on the requested country to execute an extradition warrant and to exclude the circumstances that exist. On the other hand, the latter is flexibility, in that it permits governments to extradite based on mutual agreements, common understanding and the principle of reciprocity. However, in the case of Japan, a Japanese citizen cannot be extradited to another country unless there is a current bilateral treaty in effect with the requesting country.

Most of the participants' countries have concluded bilateral treaties with some other countries. Japan has such with United States and Korea; Nepal with India; Papua New Guinea with all Pacific islands and Australia and New Zealand; Philippines and St. Kitts and Nevis with the United States. Mongolia does not have a treaty with anyone, but usually gets assistance informally, as a result of a common understanding with Russia and other neighbouring countries. However, in view of fostering international cooperation through extradition, it is recognized that we need to, as soon as possible, ratify multilateral treaties such as the UN Convention on corruption.

C. Obstruction of Justice

We discussed also the issue of criminalization of certain breaches within the criminal justice system, especially obstruction of justice stipulated in chapter III of the UN Convention, as these acts may thwart the efforts of carrying out investigations and trial of serious economic crimes. Actually, for example in Nepal, there are many acts of obstruction related to corruption, especially the case where influential persons such as Parliamentarians or high-ranking officials are involved. However, it is unable to tackle this phenomenon due to a lack of legislation.

The Convention provides the way to criminalize such an act as the use of physical force, threats, or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony and so on.

In some participants' countries such as Japan, Mongolia and Nepal, an act of physical force or intimidation to witnesses is criminalized; however, they do not have specialized legislation, for example, that makes an act of offering or giving an undue advantage a criminal offence. On the other hand, other countries such as the Philippines, Papua New Guinea and St. Kitts and Nevis have legislation, such as the Financial Intelligence Unit Act, in cases of money laundering and other financial crimes. Nevertheless, some participants pointed out that the legislation available to them does not work well in their countries because they are suffering from political influence in enforcement of the legislation.

It is suggested that we need to legislate specifically for obstruction of justice in order to execute criminal sanctions properly and effectively. And it is also suggested that the establishment of a proper witness protection programme is needed for the physical protection of key witnesses and, if necessary, their immediate family and to guard against undue influence. Furthermore, to increase public awareness with a view to harmonizing legislation and preventing the offence is needed.

D. Countermeasures

(i) All countries should sign and ratify the UN convention as soon as practicable.
(ii) The harmonization of legislation, based on the Convention, should be introduced in order to enable countries to trace, recover or return assets to its original country. It is also a preposition to establish a legal system of freezing and confiscating assets in response to requests from other countries.
(iii) International cooperation should be strengthened in this respect, including information exchange in terms of tracing assets. It should also be emphasized to ensure asset recovery in an expeditious manner.
(iv) Bilateral or multinational agreements should be considered to enhance the effectiveness of international cooperation, undertaken in keeping with the ratification of the convention.
(v) Revise existing extradition treaties to include economic crimes and for those states where there is none hasten the authorities to enact the relevant legislation.
(vi) Mutual recognition and enforcement of judicial decisions: Not only criminal proceedings, but also civil actions should be utilized in this matter. Although some cases have demonstrated the difficulties and ineffectiveness of civil actions where targeted assets are located in foreign countries due to the difference of legal systems and jurisdictional conditions, the participants of this group agreed on its usefulness as an alternative approach, or a mix of both.
(vii) Create or maintain a Financial Intelligence unit to be responsible for receiving, analyzing and disseminating to the competent authorities reports of suspicious financial transactions.
(viii) Create a mechanism for prohibiting the perpetrators from transferring the assets by, for example, installing or maintaining "know-your-customer rules" or freezing assets for forfeiture, which would help to prevent the assets being taken to other countries.

V. CONCLUSION

Economic crimes in this globalizing society have been transformed from the conventional types such as embezzlement, fraud, corruption and breach of trust and have adopted a modern trend such as collusive bidding cartels, insider trading, market manipulation, financial crimes and computer crimes. By the minute they are getting more diversified, complicated and sophisticated. This new wave of crimes has the characteristics such that the perpetrators and or the damage done cannot be easily identified or measured. However, this is not to say that the losses are not significant. In fact, it is quite the opposite, in that they erode investors' confidence and threaten the country's ability to compete.

Corruption, as was indicated earlier, is the economic crime that affects most of the participants of the group's national economies. Corruption is not only a crime in itself, but it also acts as a catalyst in promoting other types of criminal activities and often aids in concealing them. It is a well-known fact that 'Prevention is better than cure' and it can be applied to our fight against economic crimes. Throughout the entire discussions in the group workshop sessions, we found that in some instances there were large variations between each participant country's legal framework, preventive measures, sanctions, recovery of asset, international cooperation and so on because of the differences of each country's culture, politics and economic situation, etc. At the same time however, we discovered that all participant countries have common problems and need common countermeasures for tackling serious economic crimes; such as a need for cultivating a strong political will, securing independence of the investigative authorities and adequate resources, development of personal skills and capacity building of the investigators.

It is therefore imperative that we put in place the necessary infrastructure, such as an efficient investigative apparatus, equipped with sound preventive measures, regulations/legislation and monitoring systems. These measures will ensure the principles of good governance are observed so that an atmosphere of integrity, transparency, accountability and equity can prevail.

In addition, consideration should be given to alternative administrative sanctions and regulatory measures, because it is accepted that criminal punishment alone has only a limited effect on the offenders or offending corporations, where corporate crimes are concerned. We must therefore, 'hit them where it hurts - in their pockets', by putting in place a framework for confiscation and forfeiture of illegal proceeds and ensure that it is thoroughly enforced. This will lead to asset recovery and sharing, which can in turn be factored back into the fight against economic crimes.

To do this, the appropriate legal measures and resources (physical, financial, human and others), should be allocated to those involved in investigating, prosecuting and bringing to justice the perpetrators. Because influential politicians, high ranking public officials, financiers and powerful businessmen are often involved in economic crimes the independence of the investigative agencies should be secured, so as not to be influenced by them. The law enforcement officials should also take advantage of the new technological capabilities to enhance their investigative techniques. Moreover, the whistle-blowing system, which has proved to be very effective in other parts of the world, can be implemented and/or the granting of immunity for persons cooperating in investigations relating to economic crimes.

Cooperation and the timely exchange of information by all stakeholders are vital elements if we are to succeed in our efforts. It is also important that this be done in a well-coordinated manner, at the national, regional and international levels. This can be achieved by networking and sharing the tremendous benefits from the experiences of our counterparts, implementing the required international standards such as UN Conventions, and accepting the suggestions given by visiting experts, and the professors of UNAFEI.

Lastly, but by no means least, the group agreed and decided that each country should agitate towards the establishment of a separate, independent, new criminal justice system for the fighting of serious economic crimes in this globalizing society. Having realized and accepted that international cooperation is imperative to fight against transnational crimes, such as serious economic crimes, we thought that this could be achieved through increased public awareness, specifically geared towards sensitizing the public and harmonizing national legislation to foster international cooperation.

APPENDIX

Country	Investigative Agencies	Scope Of Responsibility	Composition
Japan	Public Prosecutors'Office (PPO) and Special Investigation Department (SID)	General Offences and Serious Economic Crimes including Corruption	Public Prosecutors and Assistant Officers
	National Police Agency	Same as above	Police Investigators
	Securities Exchange Surveillance Commission (SESC)	Securities Offences	Independent Public Officers
	Financial Services Agencies (FSA)	Financial Institutions	Independent Public Officers
	Regional Taxation Bureau (RTB)	Tax Evasion	Independent Public Officers
	Fair Trade Commission (FTC)	Anti-Monopoly Offences	Independent Public Officers
Mongolia	Police	General Offences including Economic Crimes	Police Investigators
Nepal	Commission for Investigation of Abuse of Authority (CIAA)	Corruption cases	Independent Public Officers
	Revenue Investigation Department (RID)	Revenue Leakage	Independent Public Officers
	Tax Authorities (TA)	Tax Evasion	Independent Public Officers
	Police	General Offences	Police Investigators
Philippines	Police	General Offences	Police Investigators
	Ombudsman	Corruption cases	Independent Public Officers
	National Bureau of Investigation (NBI)	Other Economic Crimes	Independent Public Officers
Papua New Guinea	Police	General Offences and Serious Economic Crimes including Corruption	Police Investigators
St. Kitts/Nevis	Police	General Offences	Police Investigators
	Financial Intelligence Unit (FIU)	Money Laundering and other Financial Economic Crimes	FIU Investigators and Public Officers
	Ombudsman (soon to be created)	Corruption cases	Independent Public Officers

GROUP 3

ECONOMIC CRIME IN A GLOBALIZING SOCIETY~ ITS IMPACT ON THE SOUND DEVELOPMENT OF THE STATE

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I. INTRODUCTION AND THE CURRENT SITUATION OF ECONOMIC CRIME

A. Introduction

Economic crime has become a threat to all the States in the global village. The potential damage brought by economic crime has intensified over the past few years. Economic related crime affects the socio-economic development of some countries because of the financial damage, which leads to a rise in unemployment and also to other social evils. This report is based on the information obtained from the informative lectures delivered by the experts in the field and also from the fruitful discussions the members had at their group meetings. Furthermore, the country reports submitted by the members of group 3 also have played a significant role in this exercise. Various topics in relation to the aforementioned subject were discussed, and the group focused on the problems and countermeasures in regard to the investigation and prevention of economic crime. The group also considered various avenues of strengthening the legal framework and countermeasures in combating such crimes.

B. The Current Situation of Economic Crime in Participating Countries

Since Japan has occupied the seat of the second greatest economic power, the problem of economic crime is serious in proportion to the scale. As for traditional forms of crime, such as, fraud, election offences, bribery and bid rigging; they have not been on the decline in the past several decades. In addition, the business depression affected such crimes. Especially after the burst of the 'bubble economy', many executive officers were indicted for offences like breach of trust and obstruction of an auction by concealing assets. Criminal organisations, especially Boryokudan and foreign originated organisations, have gained through various economic crimes. The securities exchange market also has suffered from "market manipulation", "insider trading" and so forth.

The Sri Lankan economy, which was based on agricultural products, changed rapidly producing industrial products with the introduction of a liberalised economy in 1977. As a result, 76% of her national income was based on industrial products in the year 2002. However, a close scrutiny of the economy identifies a rapid and a significant increase in the commission of economic crime, in the guise of bribery and corruption, dangerous drugs, organised crimes, human smuggling, insider dealing, indigenous spoliation inter-alia which finally leads to money laundering. Hence, in combating these offences the Legislature is now contemplating the introduction of new legislation on anti-money laundering, terrorist financing, computer crimes and further amendments to the Intellectual Property Act No. 52 of 1979, in addition to the prevailing laws and statutes.

In Thailand typical economic crimes such as corruption, tax evasion, and government procurement fraud are prevalent. However, the recent trends in the economy have created serious problems in the arena of the stock market and financial institutions. The economic crisis in 1979 and in 1997 partly erupted from the fraudulent activities and malpractices in financial institutions and the stock market, which were later referred to as the "Raja Finance Case (1979)" and the "Bangkok Bank of Commerce (BBC) case (1997)". The country is also faced with drug trafficking and money laundering. At present, Thailand has successfully

enacted new laws and established new agencies to cope up with the prevailing threats of economic crime. For example, the National Counter Corruption Commission (NCCC) and the Anti Money Laundering Office (AMLO) were established in 1997 and 1999 respectively, while the Department of Special Investigation (DSI) was established in 2002, and came into operation in January 2004. Although, some favourable signs of achievement are observed in combating offences like corruption, drug trafficking and money laundering, the success of implementation and enforcement of the new laws in relation to other economic crimes, is yet to be ascertained.

Economic crime is continuously a pervasive problem in Turkey, hindering attempts at economic, administrative and legal reforms and entry into the European Union. Economic crime in the country is so widespread that it functions almost as a rule, and not as an exception. The entrenched economic crime and bribery of public officials at all levels has undermined fair competition in the economy and contributed significantly to the economic and financial crisis in 1994 and 2001 in Turkey. The widespread corruption took the nation to an unprecedented economic and financial crisis in its history in February 2001 and the crisis is not yet over. Turkey is taking some legal measures against economic crime; however, preventing economic crime is as complex as the phenomenon of economic crime itself, and a combination of interrelated mechanisms - including economic, social, cultural measures - is needed for success.

The present living conditions in Venezuela are highly unsatisfactory mainly due to the prevailing political and economic situation. The political rivalry between the two groups, namely the government and the opposition, aggravates the above situation. On the other hand corruption cases are on the increase. The mass media report of the embezzlement of government funds by the corrupt politicians everyday. Although the security agencies are making an endeavour to combat narcotic offences, the country is still severely affected by the menace of drug trafficking.

In Zimbabwe, there has been a marked increase in economic crime due to the current economic environment. The economy is not doing well due to the sanctions and the persistent droughts experienced by the country. The sanctions imposed by the Western countries have resulted in the closure of some of the companies in the country, thereby creating unemployment, which contributes to the commission of economic crime. The most notable forms of economic crimes have manifested themselves in corruption, externalisation of foreign currency, smuggling, a thriving parallel market and embezzlement of funds both in the private and public sectors. Financial institutions have also suffered huge losses as a result of the fraudulent activities. The country has experienced high inflation and high unemployment rates, which have forced people to commit economic crime. Despite all these problems, the government has been successful in implementing effective countermeasures to curb such crime.

II. PROBLEMS AND COUNTERMEASURES OF ECONOMIC CRIME

A. The Problems in the Investigation Stage

Upon a careful consideration of the above mentioned Country Reports and the discussions that took place amongst the group members it was evident that the lack of expertise and lack of co-operation among law enforcement agencies inter-alia have impeded the successful investigations in economic crime.

Further, unlike in Japan, the clear demarcation and the distinction of the functions of the prosecutors and the investigators separating them from each other in countries like Sri Lanka, Thailand and Zimbabwe, was also identified as another significant factor, which obstructed the smooth functioning of the investigations.

In order to remedy the situation, initiating countermeasures in regard to the investigation of economic crime, preventive measures, and the modes of strengthening the legal framework will be considered.

B. How to Overcome the Problems in the Investigation Stage

1. Establishing an Effective Investigative Body

The members jointly identified the departments of police, customs and tax as the already available apparatus in all participating countries. However, the powers of investigation vested with the departments of customs and taxation appear to be limited in comparison with the powers of the police department. The problems confronted by the police departments of all these countries in conducting investigations are found

to be similar in nature. Non-constant liaison between the police and the other independent bodies has always resulted in the overlapping of functions. This scenario leads to the wastage of manpower and the limited resources of the countries.

On the other hand, as for law enforcement agencies, the lack of expertise within their apparatus in the fields of financial transactions, computer technology, telecommunication, forensic sciences and intellectual property, has hampered their successful investigations in relation to economic crime.

Another major fact that has contributed to the ineffectiveness of the prevailing investigative apparatus is political intervention. Some of the policy makers who are expected to ensure the smooth functioning of law and order intervene and hinder the efficient and independent investigations conducted by the police.

Further, the unavailability of a sufficient workforce to meet the demand of rising crimes has widened the gap between the perpetrators and the available law enforcement authorities, which are expected to cover a wide range of crimes. Therefore, establishment of a special body to investigate exclusively into economic crime is an issue that warrants serious consideration.

The group agreed that the body in question may be formed in the following way:
- The body should be created under a special statute by Parliament according to the requirements and the suitability of each country;
- Persons with integrity who are knowledgeable and experienced either in the administration, prosecution or investigation of economic crime should be appointed to the body;
- Any other requirements which are compatible with the purpose of establishing this body also may be taken into consideration in making such appointments;
- Necessary carder provisions be made to accommodate the services of the experts in the legal (jurists/lawyers), financial (auditors, accountants) and technical (computer forensics, technicians) fields to facilitate the success of some of the objectives of the special body, especially in relation to investigations;
- The body itself and its members ought to be free from any political interference. The relevant provisions to maintain its independence can be provided for in the statute by which it would be created; and
- A scheme should be included to secure the assistance of the public and the mass media.

The independent body, shall among other things, be empowered to:
- Conduct investigations and inquiries on its own initiative or on receipt of reports of economic crime from the public and any other authorities;
- Solicit the assistance of law enforcement agencies or other law enforcement agencies when the need arises;
- Secure the prosecution of persons for economic crime as and when it is committed; and
- Follow up the payment of damages by the defendant when awarded by the court.

In certain countries, powerful law enforcement agencies have already been established, e.g. the NCCC, the AMLO and the DSI in Thailand. On the other hand, in Zimbabwe, an independent body to combat corruption is going to be established once the Anti-Corruption Bill, which is currently before the Parliament has been enacted. Similarly, the draft Bill on anti-money laundering that will be presented to the Sri Lankan Parliament shortly, also has made provision for setting up of an autonomous body to curb the offences in the area of money laundering. However, it is noteworthy that the success of the establishment of an independent investigative body largely and mainly depends on the commitment and the will power of the political leaders.

2. Bringing in Experts

Due to globalisation, the modus operandi of economic crimes has advanced and increased. The availability of credit card facilities and easy access to the cyber world has trans-nationalised the crime in issue. Thus, corporate related economic crimes committed on a mass scale have a severe impact on the state economy. The borderlessness of the jurisdiction of the offence has made this crime modernised, complicated and diversified. It is observed that the absence of expertise in specific fields has disrupted the important investigations conducted by the apparatus on numerous occasions. In specialised investigations, the police have to hire or employ people with expertise especially in the areas of accounting, auditing, computing, etc. to assist them in collecting evidence.

For an example, in Zimbabwe, where a company is investigated for the evasion of tax, the police seek the assistance of the National Economic Conduct Inspectorate, a body specialised amongst other things to gather evidence in tax evasion cases. The Public Prosecutors in Japan investigate tax evasion and security exchange law violation cases in cooperation with the National Taxation Unit (Kokuzei-Cho) and the Securities and Exchange Surveillance Commission. In Thailand, the DSI can appoint or invite any related experts from other agencies to join the team of an investigation and work in an interdisciplinary manner. Therefore, it is observed that for the investigations under consideration, the services of the experts are imperative.

Nonetheless, it has been the experience of many member countries that officers who are especially trained in certain fields leave their employment abruptly for better emoluments and better fringe benefits offered by the private sector. Hence, it is important and advisable for the governments of these countries to:

(1) offer these officers a better working environment;
(2) facilitate the usage of modern technology such as computers with an internet connection;
(3) grant the opportunity for special training in the desired field;
(4) grant timely promotions; and
(5) introduce a better salary structure and incentive scheme

if the trained officers are to be retained in their services.

3. Providing Special Training for Law Enforcement Personnel

The group has critically analysed the responsibility of investigation vested with the law enforcement personnel in fighting economic crimes and, as referred to above, has discovered that there is a lack of specialised training in relation to the crime in issue.

Nevertheless, in this exercise it has transpired that in certain Japanese law enforcement agencies, some officers are trained according to the necessity and others are temporarily seconded to the more specialised agencies and vice versa.

To the contrary, in some countries, law enforcement agencies are easily stripped of their trained officers due to the unsatisfactory work conditions as mentioned above. In order to resolve this problem, a special law was introduced in Thailand to secure the status of these seconded officers.

On the other hand, a close scrutiny of the circumstances, reveals that the investigators in the parallel investigations conducted by other expert bodies, are reluctant to impart with their knowledge. This results in the law enforcement personnel confining themselves to the traditional investigative methods whereas the offenders resort to more sophisticated methodology in the commission of their crimes. Therefore, it is recommended that the law enforcement personnel be regularly trained in the special fields in keeping with the demand and the development of modern technology.

4. Improving the Methods of Collecting Information

Information is the key to investigation. The group noticed that various methods of gathering information are applied in the participating countries in order to initiate an investigation. Formal and verbal complaints, rumours, surveillance and tip-offs are frequently made use of for this purpose. Sometimes even the information obtained from other criminal cases and the information given by the mass media are also used to initiate the investigation. However, in launching a search for previous criminal records, management of information technology in relation to the offences under discussion, is a prerequisite. In the circumstances, establishing a database of criminal cases is also imperative.

It is evident that the existence of internal informants of the targeted agencies or organisations is crucial. The Suggestion Box Scheme in Zimbabwe, where any crime related information is accepted anonymously in a box placed at public places is a good example of information gathering. The ‘Hot line’ schemes and Suspicious Transaction Reporting systems are widely applied in almost every country. Information obtained by the specialised agencies such as stock exchanges, financial institutions and related governmental offices is also indispensable to the commencement of a formal investigation.

5. Protection of Whistle-Blowers

According to the Oxford Advanced Learner’s Dictionary, the term ‘whistle-blowers’ stands for ‘a person

who informs people in authority or the public that the company they work for is doing something wrong or illegal'. From this definition, a whistle-blower appears to be a very important person in combating economic crime.

Therefore the threat that can be levelled by him against the organization in which he is employed, is severe. In practise, no organisation is willing to accommodate and appreciate any inside information relating either to administrative or to any other matter being passed on to a third party not belonging to the organisational structure. Thus, the revelation of the conduct of the whistle-blower generally jeopardises the future of his career and brings insecurity as well. Even the members of his family are not spared from the devastating circumstances.

It is therefore imperative that special legal provisions are enacted for the safeguarding of the whistle-blowers from such victimisation.

The discussion revealed that Japan has taken a favourable attitude in this regard. Accordingly, the Diet (Japanese Parliament) will shortly consider a Bill, which provides for the protection and security of the whistle-blowers in their occupation at the respective organisations. It is strongly recommended that the governments of other countries have recourse to similar provisions in their legislation if they are genuinely interested in curbing economic crime.

III. PREVENTION OF ECONOMIC CRIME: CREATING PUBLIC AWARENESS

Numerous surveys conducted in the world and particularly in the participating countries have revealed that victimisation of the public is largely due to "ignorance". On the other hand, their earnest desire for wealth, urge for better comforts in life are also contributory factors to this predicament. It is imperative therefore to create a public awareness to prevent the commission of economic crime, if not to eradicate it.

It is the observation of the members of the group that a long term solution like "public awareness" cannot be created within a short spell of time. In generating public awareness, the members propose that a campaign be launched based on different classifications, aiming at different target groups. Hence, this paper will concentrate on information gathering, dissemination of information, co-operation with law enforcement agencies, establishing of a third eye as a preventive mechanism and educational campaigns.

A. Information Gathering

At the group discussion it was revealed that a fair number of people in almost all the participating countries fail to report crime either to law enforcement agencies (police/related law enforcement, district attorney, state attorney general) or to consumer protection agencies or at least to other entities (personal lawyers, a company or an individual having the ability to assist).

They take an indifferent attitude to the commission of economic crime due to sheer ignorance of the existence of the offence and remedies available. The majority of these people engage in certain high-risk behaviours that could make them susceptible to victimization. Gathering information from the public, using different methodology to make an assessment of the capacity of their "awareness" of "economic crime" before creating or enhancing their knowledge therefore, would be a prerequisite. In order to achieve this purpose a questionnaire could be distributed among people ranging from stakeholders to households for which there would be feedback.

This exercise serves many purposes. One of such is the revelation of the attitude and the experience of the public to the authorities who intend to design a public awareness campaign. Another is the prompt awareness created among the public of the different forms and varieties of economic crimes such as lottery scams, online shopping frauds, counterfeit of currency and goods, charity frauds, etc. cautioning them to be vigilant when confronted with similar situations.

Further, data collected from stakeholders such as bankers, industrialists, manufacturers, agriculturists and investors who are directly related to the economy of the country will depict the statistics of the cases of economic crimes filed by and against them. Such data is a cross section of the prevailing situation of the economy in one's country.

Furthermore, in assembling information, details of the assets and liabilities of the politicians and public officials can be collected, which data can be analysed by the authorities under appropriate circumstances at later times.

B. Dissemination of Information

The mere usage of technical terms such as "economic/financial/white collar crimes" will not lead the public to understand the nature and the different forms of the crime in issue. Therefore, the public should be educated on the various forms in which economic crime can be committed along with the probable ingredients of the offences and the necessity to possess evidence to initiate legal proceedings if they are victimised. They also could be educated on the details of the existing websites which are exclusively designed to assist the victims of economic crimes and the ability to file a consumer referral and the availability of civil injunctive action forcing the discontinuance of deceptive trade practices where appropriate. Furthermore, their minds also should be addressed to the ability to institute criminal proceedings in a criminal court to punish the offender and the possibility of claiming damages from the perpetrator through a civil suit.

The dissemination of information should be effective for the recipient. It is observed that community leaders or the chiefs of certain provinces in some participating countries, such as Zimbabwe are very powerful. So much so that the people in the area have cultivated the habit of turning to these leaders for advice and assistance. Hence making these leaders familiar with offences such as drug trafficking, consumer fraud, corruption, money laundering, bribery, financial frauds, insider dealing, counterfeiting of monies and goods and other offences that come under the umbrella term of "economic crime", together with the preventive measures, in return could be easily communicated to the tribes/villagers.

C. Co-operation with Law Enforcement Agencies

The discussions revealed that the attitude of the people in a country contributes immensely either to the revelation or to the concealment of the commission of a crime. People in certain societies hold back information on crimes due to their "social values" and "ideologies". Revelation of such facts is considered to be scandalous to one's self esteem and, or, to the reputation of the country leading to a social stigma. Such inhibition invariably debars a person from such a background from exposing the facts not only of "economic" but also of "any" crime, for that matter. Hence, effective modes should be implemented to reform the pattern of thinking of the people.

After clearing the inhibitions of the public they also should be informed of the ability and the effectiveness of whistle-blowing. Programmes should be launched to educate the public of the prevailing or the intended legislation meant to safeguard the whistle-blowers from being penalised. Further the persons who give useful information can be rewarded in an appropriate manner (monetary or otherwise) encouraging others who are hesitant to come forward.

D. Establishing a Third Eye as a Preventive Mechanism

Offences such as, bribery, corruption and indigenous spoliation prevalent in participating countries, are found to be committed mostly and mainly by government officials. It is therefore suggested that an independent body be identified to monitor the public affairs handled by the government officials. A non-governmental organisation such as Transparency International (TI) is an example of a useful tool in the preventive mechanism which is widely operating in some countries. This is said to be effectively operative in relation to the offence of corruption. The said organization has adopted a system of bringing out a corruption perception index. The mechanism of this preventive body is advantageous due to the database that is maintained by the organization. Further, they are found to encourage the practice of honesty, by undermining, shaming and naming the dishonest officers.

Similarly, being a common office in many of the participating countries the "office of ombudsman" is identified as another useful device in implementing the "preventive mechanism" in this awareness programme. As an office closer to the public life in grievance, it can disseminate information using effective mechanisms that will have a tendency to attract public attention resulting in the public furnishing prompt information of the corrupt officials.

Publicity given in naming and shaming such identified officers and relevant institutions will caution the public in handling such officials and institutions resulting in complaints being lodged by the public against such officers forthwith, without fear or favour.

E. Educational Campaigns

Collection of data from the public, stakeholders and officials will show the disparity in the general knowledge of existing economic crimes. Hence it is imperative that the authorities use different methodology in creating and enhancing the awareness of the public of the prevailing crisis in issue. Network communities should be established in order to disseminate information and to cater to the needs of different target groups in society.

The usage of a variety of modules will arouse the curiosity of the above target groups. As a medium common to all these target groups, interviews, short films and tele-dramas based on the subject matter can be telecasted and broadcasted. Further, in educating the public about the new trends of economic crimes, literature can either be distributed by way of hand bills or also could be published in the newspapers that have a wider circulation in one's country. The articles, advertisements and posters can be exhibited at public places giving the details of the hot lines and the officers to be contacted in an emergency. Further, panels consisting of erudite persons learned in the field could be made available at different fora availing their advice to the public. Organization of public addresses, art exhibitions, essay competitions and oratory contests also will generate interest among the different targeted groups in identifying the offences, modes of prevention and available legislation.

It is believed that a programme of the above nature is likely to create awareness in the public preventing economic crime.

IV. STRENGTHENING THE LEGAL FRAMEWORK IN THE RECOVERY OF DAMAGE

The group observed the recovery of the loss of assets as the main concern of the victims of economic crime. It was revealed that sometimes victims who are subjected to economic crime are reluctant to lodge complaints with the law enforcement authorities if they perceive that the possibility of recovery of property is remote. In the circumstances, "recovery of damages" becomes a pertinent issue.

Hence, upon the Group's deliberations the members have identified the area of "strengthening the legal framework and countermeasures of economic crime in the recovery of damage" as a suitable topic to concentrate on. Therefore, this part of the paper will deal with the aspects of recovery of damages and legal framework and counter measures in relation to economic crime with identifiable victims.

A. Outline of Recovery Systems

Generally, the recovery systems of participating countries are two fold relating to the court of recovery of damages. On one hand, the criminal court in a country like Zimbabwe has the power to order compensation for the victims. Similarly, in Thailand, the results of criminal cases are very helpful for the victims in the civil cases because the civil courts are bound by the facts and findings of the criminal courts.

On the other hand, procedures of recovery in a civil court and implementation of penal provisions in a criminal court are independent of each other in countries like Japan, Sri Lanka, Turkey and Venezuela.

B. Analysis of the Existing Systems

1. Common Issue

Firstly, a feature common to all the participating countries in the recovery of damages is the protraction of the proceedings. Incomplete documentation, non-availability of witnesses, lethargy and inaction of the investigators in concluding the investigations, incompetency and the lackadaisical attitude of the law enforcement authorities, are some of the reasons that contribute to the delay in question.

Secondly, even if damages are awarded at the conclusion of a lengthy legal procedure, a long period after the date of the commission of the offence, it is unlikely that substantive relief would be achieved by the victim at the end of the exercise, as he/she would have suffered relentlessly by that time.

Thirdly, the heavy costs of legal fees in civil suits has a severe impact on the meagre finances of the victims of economic crime in the participating countries. For example, victims of consumer fraud cases are comparatively financially unsound to that of the defendants, most of those being juristic persons. This disparity of financial condition is thus identified as a vital factor, which prevents the victims from initiating civil cases.

Fourthly, the damages ordered, fine imposed and/or the surcharge levied on the offenders, cannot be recovered by the court or the law enforcement authority, due to the non-availability of assets.

2. Zimbabwe and Thailand's Systems

The victims of economic crime in Zimbabwe and Thailand are privileged to exercise their legislative right in filing a civil suit in a civil court claiming damages in the areas of loss of profit, time, opportunity and any related expenditure incurred by the claimant therein. Thus, at the end of the day economic crime victims in Zimbabwe and Thailand appear to be financially better off than the victims of other regions.

The Criminal Procedure Code B.E. 2477 (1934) of Thailand makes provision for the public prosecutor to apply on behalf of the victim for the restitution or the value of the property when filing the criminal case to the court, in particular cases such as 'cheating and fraud', criminal misappropriation and receiving stolen property, where the victim has the right to claim the restitution or the value of the property. Judgment on the claim for restitution or the value of the property are given as part of the judgment in the criminal case. Most importantly in giving judgment in the civil case, the court is bound by the facts as found by the judgment in the criminal case.

However, there are weak points owing to the fact that civil and criminal procedures are not separated. Criminal courts in Zimbabwe and Thailand cannot make compensation orders for victims who are not related to the offences tried in the court.

3. The System of Independent Civil Procedure

In Japan, Sri Lanka and Venezuela, only the civil court has jurisdiction over cases to recover damages. In awarding damages, the civil courts of these countries are not inclined to accept and adopt the proceedings and the findings of a criminal court. Hence the victim is compelled to incur heavy expenditure in going through a full trial once again.

C. Countermeasures by Strengthening Legal Frameworks

Considering the differences in the legal backgrounds and situations of victimization of participating countries, the members of the group unanimously propose the following for the improvement of the systems in each member country.

1. Settlement Outside Court

In all cases, procedures of court take a long time regardless of it being civil or criminal. Therefore, settlement between the perpetrators and victims made outside court is more beneficial for both parties. For example, in the new Japanese system of reconciliation, parties can settle their disputes outside the criminal court and get the result of the settlement recorded by the court clerks. If the accused fails to agree on a settlement, the victim is free to proceed with a civil suit.

2. Evidence and Findings of a Criminal Court to be Adopted in a Civil Court

In a criminal court the prosecution should prove its case "beyond any reasonable doubt" whereas in a civil case the burden is only "on a balance of probability". In view of this fact it would be fair and reasonable for a civil court awarding damages to adopt the evidence led and the documents marked in the corresponding criminal trial. This course of action will minimize the duration of the trial period as well as the cost borne by the litigants - which has already been proved in the legal systems of Japan and Thailand.

3. Seizure of Property

The "recovery of proceeds of a crime" is a fundamental issue to be addressed in the process of investigating economic crime. It is the considered view of the members that the law enforcement agencies should be encouraged to concentrate on the seizure of the moveable and immovable property acquired through the predicate offences by the suspect at home and abroad.

4. Legal Aid

The legal aid system is introduced in many jurisdictions. However, it is not always available for claimants who are victimized by economic crime. In order to mobilize many victims, the expansion of coverage of the legal aid systems is worth considering. For example, consumer protection agencies should be established to

support victims by providing not only advice but also financial support in retaining legal assistance. Furthermore, the consumer protection agencies can act as the claimant on behalf of the victims or be entrusted with the power to claim the property or damages for the victims.

V. CONCLUSION

However stringent the laws of a country are, if they are confined only to the paper on which it is printed, the economy and the public cannot be protected from the evil of economic crime. In order to achieve the purpose of implementation of countermeasures to prevent economic crime, it is mandatory to create and arouse the public awareness. In addition, strengthening the legal framework to recover damages may encourage the active participation of the public in curtailing the negative consequences of economic crime. When the public are aware of their vulnerability to victimisation they will willingly involve themselves in the crime prevention mechanism and will give effect to the countermeasures in a more meaningful manner. Furthermore, this awareness of the public also perhaps would result in applying pressure to the government or to the policy makers to introduce effective countermeasures to combat economic crime.

APPENDIX

COMMEMORATIVE PHOTOGRAPH

- *126th International Senior Seminar*

The 126th International Senior Seminar

Left to Right:
Above:
Mr. Vlassis (U.N.), Prof. Shinkai

4th Row:
Mr. Inoue (Staff), Mr. Miyake (Staff), Mr. Miyakawa (Staff), Mr. Nakayama (Staff), Mr. Koyama (Staff), Ms. Masaki (Staff), Ms. Yanagisawa (Staff), Ms. Yamashita (Staff), Ms. Fujimura (Staff), Ms. Aruga (Staff).

3rd Row:
Mr. Tanaka (JICA), Mr. Saito (Chef), Mr. Tada (Staff), Mr. Kongchi (Laos), Mr. Sunada (Japan), Mr. Uchimura (Japan), Mr. Suharto (Indonesia), Mr. Oya, (Japan), Mr. Saito (Japan), Mr. Dursun (Turkey), Mr. Amarsaikhan (Mongolia), Ms. Miyagawa (Staff), Ms. Nagaoka (Staff).

2nd Row:
Ms. Dohgansin (Cameroon), Mr. Sutthi (Thailand), Mr. Kauba (Papua New Guinea), Mr. Acharya (Nepal), Mr. Perez (Philippines), Mr. Mangoma (Zimbabwe), Ms. Jinasena (Sri Lanka), Mr. Garcia (Venezuela), Mr. Moriyama (Japan), Mr. Mizuno (Ghana), Mr. Oduro (Japan), Mr. Abo Salem (Egypt), Mr. Queeley (Saint Christopher and Nevis).

1st Row:
Mr. Cornell (L.A.), Mr. Ezura (Staff), Prof. Teramura, Prof. Senta, Prof. Takasu, Dep. Director Akane, Mr. Mehta (India), Ms. Mehta (India), Director Sakai, Mr. Singh (Singapore), Mr. Kiernan (U.K.), Prof. Miura, Prof. Tanabe, Prof. Someda, Prof. Yokochi, Mr. Fukushima (Staff).