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Issues for Organised Crime Control—A Hong Kong Perspective

*by D. M. Hodson**

Crime and particularly organised crime is very much a feature of the society in which it exists. It is affected by the culture, customs and life-style of that society and must be studied in context or inaccurate assessments are likely to result. Some criminal organisations have their origins in historical political developments and have managed to enmesh themselves in religious and cultural aspects of the community. It is difficult and almost meaningless to separate these various aspects and study them in isolation.

Social customs and norms also vary from one society to another. The same applies to crime and criminal organisations. Most observers fully appreciate that social values and practices vary dramatically between Western Europe and the Far East yet all too often these same observers fail to appreciate, for example, that an Italian crime model does not readily transplant to Chinese society. Rigid hierarchies with percentages of illicit earnings being paid to ranking members is not a feature of ethnic Chinese crime syndicates. The relationships and linkages that exist tend to be more informal and dependent on the task to be achieved. These relationships do not exist in isolation but are intermingled with many others, both legitimate and illegitimate, that form the range of contacts that are the life blood in a society that places great emphasis on power and influence. Great care is needed by criminal analyists to separate these complex linkages and draw accurate inferences.

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Aspects of Organised Crime

The classic definition of organised crime whilst helping to describe a particular phenomena can be limiting if viewed in isolation. Describing organised crime can be like describing the shape of an amoeba or the colours in a spectrum which blend into one another. The fact that an amoeba has no definable shape does not mean that it does not exist, it merely indicates the type of organism that it is. Certain varieties of organised crime are similar. Looking at the range of activities that are generally considered to be component parts of a complex criminal enterprise, these may be present to a greater or lesser extent depending on the nature of the actual criminal organisation.

Illegal Activities

Not all organised criminal activities are typically a component of the type of criminal grouping being described. In the Hong Kong context, many crimes are committed by gangs that develop a degree of expertise and tend to stick to their trade. Examples are pickpocketing, burglary and armed robberies.

The type of illegal activities that are often organised and inter-related are:

Drug Trafficking;
Gambling, Bookmaking, etc.;

Loansharking;
Prostitution;
Alien Smuggling;
Credit Card Crime;
Counterfeiting;
Smuggling.

Protection and Extortion of Legal Activities

Many legal activities are particularly vulnerable to protection and extortion. These businesses often depend on a physical presence in the street in circumstances that make them more vulnerable to harassment or pressure from street gangs. Typical examples are:

The Entertainment Business;
Construction;
Transport;
Parking;
Hawkers;
Markets;
Flat Decoration;
Video Distribution.

Commercial Enterprises

Criminal enterprises do not limit their activities to illegal activities. The more sophisticated become involved in legal commercial activities for a variety of reasons. It can be a useful front to disguise contacts or to give an appearance of legitimate wealth. Also it may be that the particular activity can be made particularly profitable if free market forces can be limited by illicit pressure. A wide range of activities are popular. Examples are:

Film Industry;
Video Distribution;
Gambling Casinos;
Night Clubs and Entertainment;
Massage/Sauna;
Billiard Saloons;
Forex;
Finance and Loan Companies.

Influence

Sophisticated criminal organisations attempt to create an environment which is favourable for their activities. They may wish to give an aura of respectability to themselves by mixing with credible social figures or by receiving endorsement from Government officials. Lawyers and other professionals are employed as part of the criminal enterprise to give a veneer of legality. The media is manipulated to create inaccurate impressions on issues of concern. In capitalist societies which place emphasis on free speech, freedom of association, and human rights, it is difficult to separate lobbyists who act on behalf of criminals. Target groups are:

Political Organisations;
Legal Profession;
Charities;
Media;
Government Officials;
Trade Associations;
Status Organisations.

Fronts

It is common for criminal groups to operate under cover of "front" organisations. Traditional criminal gangs that have a particular historical background can usurp traditions and customs as cover for criminal activities. Triad societies are a style of criminal gang, active in Hong Kong and many Chinese communities, that have managed to use Chinese festivals as a front for extortion. Other aspects of cultural life have become polluted by their involvement. Typical examples of fronts are:

Traditional fronts;
Festivals,
Lion Dances,
Martial Arts,

Geomancy,
Organisation;
Ethnic Organisations,
Societies.

Money Laundering

Any group involved in a criminal enterprise of any real consequence must have the capacity to launder the proceeds of their criminal activity. This may well be through innocent third parties or it may be achieved through front organisations or commercial enterprises that are owned or influenced by the group.

The objectives of money laundering in simple terms are to:

Conceal the source of money;
Create the perception of a legitimate source;
Conceal ownershop;
Retain control of the assets.

Symptoms

The symptoms of organised crime are many and varied, however a few obvious indicators are worth monitoring as they may well reveal otherwise unnoticed and unreported problems.

Violence
Non-domestic violence where there is no obvious explanation.

Damage
Unexplained criminal damage, such as super-glue in shop locks, spray paint on doors may be the first stage of harassment by debt collectors and loansharks. Another example is damage to machinery at construction sites, or to parked vehicles.

Intimidation
Criminal intimidation that forms a pattern and intimidation of witnesses may well be an indicator.

Public Disorder
It is not uncommon for street gangs that control a particular area to get involved in overt displays of power with rival gangs. This can be mistaken for a dispute over some unconnected issue if it is not carefully investigated.

Restriction of Free Enterprise
When criminal groups engage in legitimate activities either by providing a "protection" service or by actually running the business it is common for free competition to be restricted or limited. It is often possible to test the reasons for this state of affairs by pro-active police action, such as posing as competitors.

Disproportionate Prices
When free market forces are restricted there is a tendency for prices to rise. Unreasonable prices can therefore be an indicator of restrictions being placed on free competition which may result from criminal activity.

Unacceptable Lobbying
Lobbying is generally regarded as an acceptable feature of a free society however it does not mean that officials, particularly police, should allow themselves to be influenced by those with criminal intentions. Attempts to seek endorsement by public association with the police therefore need to be carefully examined.

Public Concern
Many common indicators of criminal activity do not function where the "satisfied customer" syndrome exists. In many cases the public does not express concern about organised crime activities. However public concern often expressed indirectly through the media can be a useful indicator of organised crime activity. Usually this does not surface until it has become a

major concern.

Corruption

Corruption of Law enforcement officers and the legal profession in particular can be an important symptom. In this context corruption should be construed in its wider meaning and not just to bribery. Illicit attempts at influencing are of equal significance.

Types of Criminal Associations

In the proceeding paragraphs an attempt has been made to outline the range of activities that can constitute what is generally referred to as organised crime. Different types of organisation exist that are active in the various areas described.

Youth Gangs

Youth gang members are usually aged between 12 and 18 years and generally come from poor backgrounds and, in many cases, broken homes with the resultant lack of parental control. They are easily influenced by their elders and join gangs for a form of identity. Such gangs will often dress in similar clothes and have a favourite hang-out such as a cafe or amusement games centre. They will often refer to themselves by the name of the brand of an item of clothing that they all wear, such as Adidas, or Marlboro after the cigarettes they smoke, or by the name of the location which they use as a base, such as MacDonalds or Circle K, etc. Generally, whilst some members will be triads, the majority will not have any triad allegiance and will simply be out for a good time. The activities they will get involved in will place them in the juvenile delinquent category. Some of the members of these groups will leave the gang as they change school, move home or take up employment, but others will, after joining a triad society, eventually graduate into a street gang and a life of crime.

In the Hong Kong context, the next stage in the development of crime is the "Street Gang." This is a more structured gang and is more intent on criminal activities.

Street Gangs

Street gang members are normally aged between 16 and 25 years, although some are younger, and live away from the home; the majority are members of a triad society. Some gang members have regular jobs but others are unemployed, having dropped out of school without any academic qualifications.

Street gang leaders are often triad office bearers and their activities are more organised towards street level crime, such as:

(a) extortion of shopkeepers and hawkers;
(b) protection of premises within their territory;
(c) debt collection;
(d) prostitution; and
(e) street level drug distribution.

Street gangs, due to the nature of their activities, are more inclined to use violence to enforce their demands, to protect their territory from other rival gangs, or simply in retaliation or revenge in support of one of their members who has a grievance against a rival gang member. Violence used against innocent victims is often indiscriminate and senseless, with the victim hopelessly surrounded and outnumbered by 9 or 10 assailants armed with weapons such as baseball bats and metal pipes, some of whom may be high on soft drugs and alcohol. Such gang attacks are usually ferocious with little mercy or remorse exhibited towards the victim.

At street level, gang members openly and purposely present themselves as triads. They are very noticeable, particularly in communal areas in housing estates, including playgrounds. Cafes, cooked food stalls, gymnasia, billiard saloons, mahjong

schools, amusement, games centres, bar lounges and places of public entertainment are also favourite gang haunts. In some areas their presence gives the impression of complete dominance, with rival gangs often attacking each other upon encounter, much to the alarm and frustration of residents. The underlying effect of this behaviour on the gangs themselves is to create a virtual sub-culture in which members find an identity amongst peers and a life style and set of values different from the norm, values which they have grown to despise and rebel against.

Criminal Gangs

Youth and street gangs often have a Territorial base as many of their activities are related to protection and extortion of legitimate activities that are particularly vulnerable. Criminal Gangs on the other hand tend not to operate in a particular area but rather specialise in a particular type of criminal activity. Members of these gangs may acquire considerable skill in the technical aspects of their criminal activity and adopt a particular "modus operandi" (M.O.). Classic examples are pickpockets, burglars, and at the violent end of the spectrum armed robbers. A feature of these criminals is that they seldom get involved in other criminal activity. Members of the gangs can remain active at this level for many years, whilst others particularly armed robbers move on to multi-crime syndicates after acquiring their capital.

These gangs often rely on services provided by criminal groups, for example to dispose of stolen property and in particular stolen documentation such as passports, identity cards and driving licences. Armed robbery gangs usually rely on others to supply firearms and perhaps smuggle persons willing to carry out the actual robbery from another country.

Multi-Crime Syndicates

Increasingly crime gangs or syndicates are involved in a range of overlapping criminal activities that are complimentary. This can produce a formidable criminal organisation that can be very active on the international scene. For example, a few years ago drug syndicates stuck very much to their trade. Nowadays some become involved in a wide range of crime activity from credit card crime, to arms and alien smuggling. As an integral part of their criminal activities an essential feature is the ability to launder money, creating the perception of a legitimate source. It is therefore usual for organisers in this area of crime to run legitimate commercial organisations to create this perception. A complex system of layered commercial organisations can be used to conceal ownership of assets whilst retaining control.

There is much speculation on the relationship between triads and ethnic Chinese drug syndicates that operate internationally. In Hong Kong, street level trafficking is undoubtedly under their influence as territorial control is relevant to this activity. The more sophisticated the organisation becomes the less relevant territorial control becomes.

The more sophisticated a trafficker becomes the less likely he is to be involved in traditional triad activities. A major international trafficker may well be a member of a triad society, perhaps joining a triad society as a youth but in most cases his triad affiliation has little bearing on his international trafficking activities. His success comes from his business acumen and his defence is secrecy, not street level muscle.

Experience has shown that individuals with different triad backgrounds are willing to co-operate at this level. They are more concerned with their partner's "professional" ability than his membership in a particular triad society.

Organised Crime or Enterprise Crime

As criminals distance themselves from the violence and overt aspects of crime that are apparent in many "hands-on" crimes they graduate into the most subtle and complex organisations. At this end of the crime spectrum it is often difficult to actually identify the criminal activity itself and to distinguish it from legitimate manipulation of the free enterprise system that is considered acceptable in capitalist economies.

However the type of manipulation that occurs can result from an injection of fear or corruption that is often difficult to clearly identify. Groups that play a key role in this unacceptable behaviour are lawyers and other professionals such as accountants and, of course, politicians. Corrupt Law enforcement officers also play an important part in this type of criminal activity.

The best legal brains that are available to these groups are used to prevent active criminals being caught and to block Government moves to legislate and control activities that are particularly lucrative such as money laundering. Public opinion is influenced through media outlets under the control of the group. Concerns regarding human rights are exaggerated to inhibit enforcement action. Legitimate community leaders are sometimes enmeshed in the activities of the organisation and, once compromised, are used to further mask the criminal activities.

It is not easy to distinguish between those who have legitimate concerns about the powers of police and human rights and those who are acting on behalf of criminals.

In a capitalist society which places emphasis on free speech and freedom of association it is very difficult to separate "lobbyist" acting on behalf of those who are criminally active from legitimate political activity. Their activities are subtle and are aimed at tipping the free enterprise system in their favour by using fear or favour in an unacceptable manner. Lawyers, accountants, politicians and others who have a privileged position in society are usually involved in this activity.

Strategy for Action

In devising a strategy for action it is probably best to look at each component part of both organised crime activities and of the various types of criminal organisations and devise a separate plan for each element.

Illegal Activities

Provide legal alternatives to reduce demand; Strengthen crime prevention measures; Vigorous enforcement action.

Extortion, Protection of Legal Activities

Obtain confidence of legal operators; Pro-active police action; Education and Publicity.

Commercial Enterprises

Licensing to exclude undesirables; Monitoring; Financial investigations.

Influence

This is a sensitive and complex area and action to restrict the influence of criminals must be carefully devised so that it does not impinge on basic human rights of freedom of speech and association. However some action is possible. Examples are:

Licensing to exclude undesirables;
Briefings to officials ("Know the enemy");
Co-operation of professional associations;
Counter influence;
Ethics.

Fronts

With traditional ethnic organised crime groups it is common for festivals and local cultural and religious events to be used as fronts. Driving a wedge between these aspects can be difficult and sensitive. Accu-

rately recognising what is in fact occurring is probably half the battle. Counter action can therefore include:

Government recognition;
Licensing;
Ethics.

Money Laundering

Undoubtedly the most effective weapon for dealing with money laundering is strong Legislation. If this can be coupled with international agreements so that effect can be given to confiscation orders, etc. between countries, so much the better. The second issue is for the relationship between Government and the financial community and the role expected of that community to be clear. If their co-operation can be obtained so they assist law enforcement agencies to identify attempts to launder money then so much the better but this is probably wishful thinking in view of vested interests.

Symptoms

Symptoms are indicators of more significant problems, therefore they must be accurately identified and interpreted. Symptoms of organised crime problems can themselves give very positive lines for investigation. For example non-domestic violence may be an indicator of intimidation related to criminal activity. Incidents of violence can produce valuable witnesses who may be willing to testify to the core activity. In other circumstances the same people would probably remain unwilling to co-operate. Dealing with symptoms in isolation may be a useful public relations exercise but is unlikely to have long term benefit.

Youth Gangs

Many youths join gangs because of a lack of alternatives. It is therefore helpful to ensure a healthy range of alternative clubs, associations and sporting facilities are available. The Police may well have a very positive role to play in providing these alternatives as it can bring youths and police into contact in a positive environment.

Initial criminal activity involving youths can often be quite minor but if not handled sympathetically by police can result in the culprit being pushed towards the criminal fraternity. A second chance at this stage can often be a constructive move. Discretion schemes to deal with youths who have committed minor crimes can produce positive results and make the youth realize the error of his ways.

Street Gangs

The street gang depends very much on its physical dominance of its territory. The gang usually exerts an overt presence. To neutralise this, police must themselves act overtly and show that they are not subordinate to these gangs. An overt presence of uniformed officers is a good start. The police must be seen to be taking physical action so that the public are not intimidated by the gangs and loose confidence in the police.

At this level there is a struggle to win the confidence of the public and re-assure them of the ability and competence of the police. This is particularly important in regard to victims and witnesses. This issue is usually witness reassurance rather than witness protection.

In order to demonstrate the willingness of police to tackle street gangs it is usually necessary for police to take the initiative and pose as potential victims themselves rather than sitting back passively waiting for the public to make reports.

Criminal Gangs

Criminal gangs as they are described in this paper are usually engaged in single activities in which they develop a degree of technical skill. Classic examples are pickpockets, burglars, and armed rob-

bers. The strategy for dealing with these groups is firstly to recognise the value of methodically processing criminal intelligence and then concentrating appropriate resources to counter the problem. It may be advantageous to counter the expertise of the gangs by having special police units dealing with the various groups so that specialisation is matched by similar specialisation in the police.

Multi-Crime Syndicates

In dealing with multi-crime syndicates or criminals who are well entrenched in sophisticated criminal activities such as drug trafficking or credit card crime a range of counter measures are essential for effective action to be taken.

— There must be a conspiracy law.
— It must be possible to use accomplices as prosecution witnesses, probably testifying under immunity.
— Police must be permitted to undertake undercover operations in which they are authorised to participate in criminal activities themselves.
— Police must be able to obtain from the appropriate authorities, permission to allow informers to participate in crime under an immunity from prosecution.
— Controlled deliveries and other measures which permit criminal activities to continue under controlled circumstances until it is opportune to take enforcement action must be permissible.
— Witness protection. A full programme for both witness protection and subsequent re-integration into society must be available.
— International co-operation must be extended to co-operating law enforcement agencies overseas.

Enterprise Crime

Enterprise crime is subtle and at this level criminal activity is blending into legitimate commercial activity. It is unlikely that the significance of the criminal enterprise will be recognised unless the range of activities that the organisation is engaged in can be seen in full. In many legal systems this is difficult or impossible as each separate activity is seen and presented to the judiciary in isolation. Other measures found useful in some communities are electronic surveillance and compelling witnesses to testify against others. It is also important to be able to motivate accomplices to testify against their organisers. Generally accomplices can be motivated if they themselves are in jeopardy of prosecution for an offence carrying a heavy penalty. This is the case in drug trafficking where drug couriers usually face severe punishment if convicted, however in most other "organised crime" activities it is not the case except personal violence. It would therefore be beneficial if serious "hands-on" offence can be identified and provided for in law.

There is a need to discipline professionals who compromise their ethical standards. This is probably best left to the various professional associations if they themselves are not compromised by criminal organisations. Generally these organisations have a very poor record for maintaining standards and preventing enterprise crime from exploiting the "lawyer-client" privileged-relationship, for example.

Obviously effective measures for dealing with corruption and witness protection are essential to effective law enforcement.

Legal Issues

Many complex legal issues are raised by the tactics outlined in the strategy for action. It is not intended to do more than identify areas which need to be considered further:

Accomplice witnesses;
Witness protection;
Police participation in crime;

Participating informers;
Human rights issues;
— invasion of privacy,
— right of silence,
— prejudicial evidence,
— full disclosure of evidence,
— right of free association and assembly.

Each of these issues requires detailed elaboration beyond the scope of this paper. However it is necessary to find the appropriate balance between the concerns of an accused person, human rights and the need to take effective action against organised crime in the interests of society and individuals.

Mutual Assistance as a Means to Combat Organized Crime: The Thai Experience

*by Kanit Nanakorn**

I. Introduction

It is a great honor and privilege for me to be here at the kind invitation of UNAFEI to discuss with you my experience concerning effective measures to control organized crime. As I have only a limited time to be with you, I would like to focus our discussion on international aspects of organized crime, particularly on international cooperation as a means to fight organized crime. Since my Office has recently been designated as the central authority by the Treaty between Thailand and the United States on Mutual Assistance in Criminal Matters, my presentation today will very much rely on our experience from that Treaty.

Realizing that all of you are high ranking officials in the administration of justice in your respective countries, I also look forward to learning from your valuable experience and to taking home with me new and useful approaches to the tackling of organized cross-border crimes which seem to be an ever increasing problem.

A comparative study of organized crime in many countries indicate that the evolution and the forms of organized crime vary from one country to another, which may be the results of the different social, economic, historical, and legal factors. Although the universal definition of organized crime has not yet been developed, it is commonly understood as being a relatively large group of continuous and controlled criminal activities. Members of the organized crime group are united together because of various factors ranging from race, religion or sometimes just for the sake of convenience in conducting criminal activities. In conducting their illegal activities, they are relatively well-trained; their operations are mostly well-planned and well-financed. Illegal activities often committed by organized crime groups are, among other things, drug trafficking, contraband, counterfeiting, gambling, prostitution, etc.

Apart from the above mentioned features, another characteristic which makes organized crime different than ordinary crime is that it may also simultaneously involve legal economic activities, using proceedings obtained from illegal activities and, sometimes, employing illegal means to achieve advantages in their operations. This latter aspect of organized crime has made organized crime a lot more dangerous than ordinary crime because it may create disruption to the economy on a large scale.

It is evident that organized crime nowadays is not confined to the boundary of any one country but has long ago crossed national borders and become a transnational problem. This is most evident in the areas of drug trafficking, terrorism, and, more recently, prostitution. Since law enforcement have to perform their function within their own territory but international criminals do not, these organized crime groups often take advantage of such opportunity to escape punishment. Moreover, the advancement of new technology enables members of organized

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crime groups to operate with high mobility and sophistication, and, thus, aggravating the already adverse situation. As a result, I believe that international cooperation between law enforcement agencies of all countries is vital for the effectiveness of controlling organized crime.

II. Mutual Assistance as a Means to Help Combatting Organized Crime

Before going into more details, I would like to make sure at the outset that we all have the same understanding about the terms "international cooperation" and "mutual assistance," the terms which create much confusion even among experts. By "international cooperation" I intend to refer to cooperation in a broader sense of the word, that is, any form of collaboration in criminal matters. In general, there are four areas of international cooperation that are well recognized in criminal areas: extradition, execution of criminal judgments or transfer of prisoners, and transfer of proceedings are the first three. The fourth area involves cooperation in gathering information and evidence for investigations and proceedings, such as the taking of statements, serving documents, executing searches and seizures, transferring witnesses to testify in requesting countries, etc. This fourth area of cooperation is the so-called "mutual assistance" which is the topic for our major discussion today. So for the purpose of our discussion and, I believe, for what is already accepted as a term of art in areas of international cooperation, the term "assistance" here will be narrowly construed to mean only the limited areas of assistance mentioned above.

International cooperation on extradition, transfer of prisoners and transfer of proceedings are, in their nature, different from mutual assistance and are often concluded as separate treaties. Extradition is actually the oldest form of international cooperation in criminal areas, and, probably, the most drastic. This is because it has the purpose of subjecting a person who is staying in the requested state to the sovereign power of the requesting state. Likewise, transfer of proceedings and transfer of prisoners also have quite different objectives from other types of mutual assistance, for one of their main purposes is to let the accused, defendants or prisoners, as the case may be, return to be tried or to receive penalties in their home countries so as to achieve better rehabilitative purposes as well as to reduce prison's population.[1]

What is mutual assistance in criminal matters?

Mutual assistance generally involves cooperation in gathering information and evidence for investigations and proceedings short of extradition. Most mutual assistance treaties also exclude assistance on arrest warrants, for, similar to extradition, it also drastically violates individual rights. The types of assistance included in this kind of treaty normally are assistance during investigations, prosecutions and proceedings, such as taking evidence or statements from persons; serving documents; providing documents, records and evidence; executing requests for searches and seizures, etc. In a more recent treaty that the United States made with other countries (including Thailand) some quasi-criminal proceedings which are ancillary to the enforcement in criminal laws but may be civil or administrative proceedings in nature were also included into the scope of mutual assistance. One example of this is the forfeiture proceeding which, in my opinion, is one of the most effective means to fight international organized crime such as drug trafficking.

In short, mutual legal assistance treaty is a treaty which imposes a *binding obligation* on the treaty partners to render specific categories of assistance to each other in designated types of criminal investiga-

tions, prosecutions or proceedings. It will normally create an organ called the "central authority" within the two countries to act as the center for direct exchange of information and assistance between them, thus bypassing the normal diplomatic channel which is a time-consuming process.

Why is Mutual Assistance Treaty needed?

Though there are limited ways that law enforcement agencies of one country can obtain information and evidence outside their national borders, mutual assistance treaty is not the only means of cooperation. Apart from mutual assistance treaty, international assistance for information and evidence can be obtained by other means, namely by the methods of letters rogatory or by informal channels. These methods of cooperation have been very useful but there are certain limitations which are inherent in the nature of such assistance.

Letters rogatory, or judicial assistance, is another kind of international assistance whereby courts or law enforcement agencies of different countries exchange assistance in criminal and civil matters. The assistance is done on the basis of reciprocity and comity among nations. The process is still widely used in many countries especially in the common law traditions.

As all of you may realize, there are several disadvantages to the method of letters rogatory. To begin with, it is a time-consuming process. Letters rogatory has to pass through the diplomatic channel, that is from the requesting agency to the court who will upon its discretion pass the request through diplomatic means. Once the request is received it also needs formal judicial action. In practice, it may take months or even years to complete the process, which is too long for criminal litigation. Moreover, as letters rogatory is based on the concept of comity with no formal legal basis, there is no assurance that assistance will definitely be obtained. The success or the effectiveness of letters rogatory depends on several factors, such as the attitude of the courts of the two countries towards each other which may vary from one individual judge to another, the diplomatic relations between the requested and the requesting states, the nature of the assistance requested, etc. In addition, as the court is at the center stage in this process, assistance is limited to those instances after criminal charge has been filed to the court. Requests cannot be obtained during the pretrial period.

Besides letters rogatory which concentrates more on court proceedings, informal assistance is a popular method through which law enforcement authorities obtain assistance from one another for investigative purposes. Informal assistance can be obtained directly through law enforcement authorities attached to foreign embassies, or indirectly through Interpol (International Criminal Police Organizations). Although informal cooperation in some situations are most useful and convenient, like the process of letters rogatory, there is no guarantee that the assistance requested will be forthcoming, for the requested state is not obligated to provide assistance. Moreover, the requested agency has a limited means of obtaining information or evidence: they can only use the non-compulsory means to implement the task. Assistance, therefore, can be rendered only in cases where the holder of such information or evidence is willing and legally able to surrender it. Compulsory measures such as the issuing of search and seizure warrants cannot be applied to this kind of assistance. In addition, problems often arise regarding the validity of information or evidence in court proceedings for lack of authentication.

Because of the limitations of existing mechanisms, many countries have entered into treaties on mutual assistance in crim-

inal matters, which is perhaps the only way to overcome the limitations placed on the traditional methods of obtaining information and evidence from foreign countries mentioned above. Mutual assistance treaty will impose binding obligations on treaty partners to assist each other in the types of assistance as mutually agreed by both parties. It will also cut down the lengthy process of judicial assistance by setting up central authority as a direct exchange organ on this matter. The signing of a treaty will also compel the contracting states to implement domestic laws to facilitate mutual assistance requested.

The United States has played a significant role in promoting international cooperation through these treaties. She has first entered into mutual assistance treaty with Switzerland which entered into force since 1977. From then on she has successfully convinced several countries to conclude similar treaties: those countries are namely Turkey, the Netherlands, Italy, Canada, Great Britain, the Bahamas, Mexico, Belgium, etc.[2] These treaties have been proved very useful and have substantially facilitated treaty partners in obtaining information, evidence or other types of assistance abroad.

Apart from the United States, the United Nations and its affiliated agencies have also played a major role in promoting mutual assistance treaties. The Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Milan, Italy in 1985 adopted the Milan Plan of Action in which a Draft Model Treaty on Mutual Assistance in Criminal Matters was prepared and studied; this draft was later adopted by the Eighth Congress in 1990. This model treaty has made negotiations and conclusions of mutual assistance treaty much more convenient. In addition, regional United Nations organizations on crime prevention such as UNAFEI have also played a constructive role in organizing international and regional training or seminars for concerned criminal justice officials and experts, such as the one that we are having now, which, I am sure, are most useful for the promotion of regional as well as international cooperation in criminal areas.

III. Thailand and Mutual Assistance in Criminal Matters

Prior to 1992, Thailand did not have any legislation which directly involves assistance in criminal matters besides extradition and transfer of prisoners. As a result, assistance can be obtained only on a case by case basis through diplomatic channels or through the court by means of letters rogatory or by informal means.

Realizing the benefits of international cooperation in combatting international crime, Thailand signed the Treaty on Mutual Assistance in Criminal Matters (hereinafter referred to as the Thailand-United States Treaty) with the United States on March 19, 1986. This treaty provides a means for direct mutual assistance in criminal matters between the two countries. The types of assistance provided include but are not limited to:[3]

(1) taking the testimony and statement of persons;
(2) providing documents, records, and evidence;
(3) serving documents;
(4) executing requests for searches and seizures;
(5) transferring persons in custody for testimonial purposes;
(6) locating persons;
(7) initiating proceedings upon request;
(8) assisting in forfeiture proceedings.

The Treaty also establishes the central authorities which will have direct responsibility in providing and requesting assistance in criminal matters in the two coun-

tries.[4]

In Thailand a treaty that the government concludes with another country is not self-executing. To enforce a treaty, there must be an enactment of domestic legislation for implementation. In this connection, the government has set up a committee to draft an act called the Mutual Assistance in Criminal Matters Act of 1992 (hereinafter referred to as the Mutual Assistance Act), which has already been approved by the National Legislative Assembly and was promulgated into law on April 7, 1992. The Act came into force on July 7, 1992. Even though the Mutual Assistance Act has already been enforced, the Thailand-United States Treaty has yet to be entered into force. According to the Treaty there must be an exchange of instruments of ratification between Thailand and the United States before the Treaty shall be formally entered into force. To my knowledge, the process of ratification will be made in the very near future.

The Thailand-United States Treaty and the Mutual Assistance Act are a big step forward for Thailand toward international cooperation in criminal fields. The Thailand-United States Treaty could very well be a model treaty for Thailand when negotiating similar treaties with other countries. Moreover, the Mutual Assistance Act itself provides a good framework for assistance to be systematically and effectively rendered. Since domestic legislation is an indispensable part for successful international cooperation, particularly in Thailand where a treaty is not self-executing, the Mutual Assistance Act will also serve as a good basis for the implementation of new mutual assistance treaties to be entered into in the future.

Like in other mutual assistance treaties, the Central Authority will act as a coordinating agency in carrying out its task. For Thailand, the Central Authority is the Attorney General or a person designated by him.[5] After receiving the request, the Central Authority will make a preliminary determination whether the request is within the scope of this Act, and whether the requesting state has properly followed the process and included all necessary supporting documents. If it is of the opinion that assistance can be granted, it will then forward the matter to the "competent authorities."[6] In the case of the request for taking statements of persons or providing documents, articles, and evidence out of court, the request for serving documents, the request for searches and seizures, and the request for locating persons, the competent authority is the Police Department.[7] As for the request for taking the testimony of persons and witnesses or adducing documents and evidence in court, as well as the request for forfeiture or seizure of properties, the competent authority is the Chief Public Prosecutor for Litigation.[8] The request for transferring persons in custody for testimonial purposes shall be forwarded to the Director General of the Corrections Department.[9] Finally, the Police Department and the Chief Public Prosecutor for Litigation will handle the request for initiating criminal proceedings.[10]

Apart from the Office of the Attorney General which, in the capacity of the Central Authority, has the duty to consider whether assistance should be rendered, there also exists a Commission which shall provide opinion to assist the Central Authority in its consideration and determination on whether the assistance requested will affect national sovereignty, security, crucial public interests or international relations, or, in any way, relate to political or military offenses.[11] According to the Act, unless the Commission specifies otherwise, the Central Authority's decision must be submitted to the Commission for its opinion.[12] If there is a conflict of opinions between the Central Authority and the Commission, the matter must be referred to the Prime Minister who will make the

final decision.[13]

It should be noted that, according to the Mutual Assistance Act, Article 9 (1), assistance can also be requested by a country having no mutual assistance treaty with Thailand. However, in such instance, the requested country must pledge to assist Thailand in the same manner if requested, or, in other words, assistance will be given on the basis of reciprocity. In addition, assistance in such case has to be submitted through the diplomatic channel.[14]

IV. Some Interesting Issues in the Thailand-United States Treaty and Mutual Assistance Act

1. Double Criminality

It is interesting to note that double criminality which is the cardinal principle in many international cooperation treaties, especially extradition, is not applicable here. According to Article 1 (3) of the Thailand-United States Treaty, it is provided that:

> Assistance shall be provided without regard to whether the acts which are the subject of the investigation, prosecution, or proceeding in the Requesting State are prohibited under the law in the Requested State, or whether the Requested State would have jurisdiction with respect to such acts in corresponding circumstances.

I believe that this is a development towards the right direction, for, unlike extradition, mutual assistance treaty does not include extreme measures that encroach upon the rights and liberty of an individual. It only involves the activities of collecting evidence for the purpose of finding truth in criminal proceedings.

Although the Thailand-United States Treaty does not require double criminality, the Mutual Assistance Act does not provide unqualified exception as such. Article 9 (2) of the Act stipulated that the conduct which is the basis of the assistance requested must be punishable by Thai laws unless Thailand and the requesting country have a Mutual Assistance Treaty between them *and* the Treaty provides otherwise. This means that according to the Act double criminality will be applicable if there is no clear exemption stipulated in the Treaty between Thailand and the requesting country.

2. Central Authorities

Unlike in most treaties, the central authority for Thailand in the Thailand-United States treaty is not the Minister of Justice. According to the treaty, the central authority for Thailand is the Minister of Interior or a person designated by him.[15] The reason that the Ministry of Interior was chosen to shoulder such responsibility was because in Thailand there is a division of labor between the Ministry of Interior and the Ministry of Justice in the administration of criminal justice. The police, the prosecution and the corrections, at the time that the treaty was concluded, were under the purview of the Ministry of Interior. Unlike in most countries, the main duty of the Ministry of Justice in Thailand is just to oversee the administration of the court of justice. The Ministry of Interior was thus in a more suitable position to coordinate the task of rendering assistance than the Ministry of Justice.

The organ in the Ministry of Interior believed to be most suitable for the task was then the Public Prosecution Department. This was because prosecutors have to work closely with both the police and the courts and as a result were in a unique position to coordinate and follow up the assistance requested. However, on March 1, 1990, the Public Prosecution Department, which was also the organization that spearheaded the negotiation and signing

of the treaty, was transformed into an independent entity under the name of the Office of the Attorney General and was transferred from the Ministry of Interior to be under direct supervision of the Prime Minister. To solve this problem, the Government has made a decision that the Office of the Attorney General should assume the role of the central authority. As a result, according to the Mutual Assistance Act, Article 6, the Central Authority for Thailand is not the Minister of Interior but the Attorney General.

In order to implement the task provided in the treaty, the Office of the Attorney General has set up a new division, called the Mutual Assistance in Criminal Matters Division, within the Legal Counsel Division to handle the work of the Central Authority. At present, there are 6 government attorneys working in the Division.

3. Limitations of Assistance

Like in most treaties of this kind, the Thailand-United States Treaty allows judicial assistance to be refused when the execution of the request would prejudice the sovereignty, security, or other essential public interests of the requested state.[16] The requested state can also deny assistance if the request relates to a political offense.[17] Military offenses are also excluded from the scope of the treaty.[18] The same is true with the request for the execution of arrest warrants,[19] for it is the type of assistance that directly violate an individual's rights of privacy and liberty which are the main sphere of basic rights that the requested country cannot afford to relinquish.

It is also interesting to note that assistance in this treaty is limited only to "criminal law enforcement authorities" and not for "private parties."[20] The accused and criminal defendant are thus denied access to the channel provided in the treaty. This may, in my opinion, raise the problem of due process in the future since equality between the parties is the integral part of the success of the adversary system.

4. Limitations on Use

The Thailand-United States Treaty provides that evidence obtained under the treaty shall not be used for purposes other than for those stated in the request without prior consent of the requested state.[21] The Treaty also provides that when necessary, the requested state may require that evidence and information provided be kept confidential in accordance with stated conditions except to the extent that disclosure is necessary as evidence in a public proceeding.[22]

5. Assistance on Forfeiture

The Thailand-United States Treaty also provides for assistance in forfeiting the fruits or instrumentalities of crime located in the requested state. However, it does not go as far as creating an obligation on the part of the requested state to forfeit foreign assets forfeitable under foreign law which is located in the territory of the requested state. It simply provides that when being notified by the requesting state that property which may be forfeitable under the law of the requested state is located in its territory, the requested state should submit the matter to the competent authority. For Thailand, the competent authority in this case is Chief Public Prosecutor for Litigation. After receiving the matter, the competent authority will look into the matter to see whether any appropriate measures should be taken.

As pointed out earlier, assistance on forfeiture is different than other types of assistance. While other types of assistance involve collecting information and evidence for investigation and proceedings, the nature of assistance on forfeiting foreign assets is more inclined toward execution of judgments or enforcement of criminal law which is a far more sensi-

tive issue involving the sovereignty of the requested state. Whether assistance on this matter will be rendered or not depends on the law of the requested state. In my opinion, this is quite satisfying, for the appropriate channel has already been made for law enforcement of the contracting parties to cooperate with each other within the scope permitted by their domestic law. I think that it is good that the parties in the Treaty are obligated to affirmatively consider the possibility of providing assistance on forfeiture but are not required to provide such assistance.

According to the Mutual Assistance Act, the competent authority, after receiving the matter from the Central Authority will submit a petition to the Court having jurisdiction over the property to pass judgment for the forfeiture of such property or pass an order for its seizure.[23] The Court is empowered to confiscate the property if there is a final judgment from the foreign court allowing such action *and* the property is forfeitable under Thai law.[24] In case of seizure of property, the Court is allowed to use its discretion to seize the property if the foreign court has given an order for such action, provided such property is seizable under Thai law.[25]

In order to solve the problem which may arise regarding the jurisdiction and competency of the court, the Act also provides that the forfeiture or seizure of property according to the Act is effective even though the cause for such forfeiture or seizure may not happen in Thailand.[26] The Act also provides that the relevant provisions in the Criminal Procedure Code and the Penal Code is applicable, *mutatis mutandis*, to this matter.[27]

As to the question of who should keep the forfeited assets, Thailand has a different approach than other countries. For instance, in the United States-Switzerland Treaty and the United States-Italy Treaty there are provisions permitting the requested state to transfer the proceeds of the forfeited assets to the requesting country. But, according to the Mutual Assistance Act, it is clearly provided that the forfeited assets will become the property of the Thai government.[28] In my opinion, although the Swiss and Italian approaches may sound good in theory, it obviously raises question on the lack of mutuality of interest since the requested state may be forced to undertake what could be a prolonged judicial proceeding, and to assume the responsibility for managing the property even though it does not have any present or future interest. I personally believe that Thailand's position is, for all practical purposes, an effective means to encourage assistance on forfeiture which is vital to the efforts to tackling international organized crime.

6. Search and Seizure

Assistance on search and seizure is different than other types of assistance provided in the Treaty. This is because search and seizure is considered a compulsory measure which violates individual rights of the person involved. For this reason, according to the Thailand-United States Treaty, a request for search and seizure shall be executed only when it includes the information that justifies such measure under the law of the requested state.[29] For instance, if a request for search and seizure was submitted to the United States, the United States Central Authority, that is the International Affairs Division of the Justice Department, has to satisfy that the information provided by Thailand constitutes "probable cause" for search and seizure according to the law of the United States before further action can be taken, and *vice versa*. In other words, unlike in other types of assistance under this Treaty, the principle of double criminality applies in the area of search and seizure.

7. Applicable Law and Procedure

Incompatibility of legal systems has long been a major obstruction to smooth international cooperation. This is, perhaps, the reason why international and judicial cooperation in the past was rendered only among countries with the same legal traditions.[30] Such unwillingness to enter into formal cooperation on the part of those countries is quite understandable since there is no other area of law which has so much diversity between the civil and the common law systems as in the area of criminal procedure.

According to the Thailand-United States Treaty, the central authorities of both contracting parties are directed to do everything in their power to execute a request.[31] A request is generally executed according to the law of the requested state except to the extent that the Treaty provides otherwise.[32] However, the requested state must follow the method of execution specified in the request insofar as it is not incompatible with the laws of the requested state.[33]

In mutual assistance treaties, one of the most difficult issues for negotiation is which procedure, that of the requested or the requesting state, should be applicable to the assistance requested. On this matter, an expert in the field of international cooperation in criminal matters once wrote:

> The judicial assistance procedure is a procedure *sui generis*. The employment of organs of the prosecution departments in the requested state and the application of general provisions of criminal procedure in executing the request for judicial assistance are due to practical considerations and do not transform the judicial assistance proceedings into criminal proceedings, ... Criminal proceedings in the state in which they take place presuppose a right of prosecution on the part of that state, whereas judicial assistance proceedings are based on principles of international law and agreements and their object is to enforce a foreign state's right of prosecution.[34]

This concept is, in my opinion, the key to the successful cooperation in criminal fields. But it would be quite difficult, if not impossible, in practice to adopt the law of the requested state, for the authorities in the requested state would understandably feel reluctant to use foreign law and procedures. In my opinion, the position adopted in the Thailand-United States Treaty is the most logical one which should be acceptable to parties involved.

The dissimilarities in laws and practices have long been hindrances to international cooperation in legal matters. However, it is hoped that once people are familiarized with the idea of internationalization of the criminal processes and aware of its usefulness and values, such idea will gain more and more acceptance.

V. Conclusion

As I have mentioned earlier that international criminals are not subject to any limitations in their cross-border operations, whereas the authorities of law enforcement in each country cease at the boundary, it is, therefore, vital that we—law enforcement authorities—join hands in the attempt to increase cooperation and coordination among ourselves. Closer cooperation will ensure that criminals cannot escape punishment merely on ground that incriminating evidence abroad cannot be obtained. I believe that mutual assistance treaties will certainly be useful in tackling international organized crime problems and thus should be strongly supported by all nations. As there is a rapid increase in transnational organized crime, there is a great need for collective response by the international community and greater cooperation and coordination among responsible agencies of all countries in order to fight organized crime effectively.

One of the major barriers to effective mutual assistance is the lack of knowledge of laws and procedures of other countries. I believe that more international and regional seminars and training should be organized. In this regard, UNAFEI's efforts throughout the years in bringing us together have been most commendable.

Last but not least, I believe that closer cooperation will not only bring mutual benefits in crime suppression, it will also create the opportunity among criminal justice officials, which usually are closed organizations rarely having any interrelation with one another outside their own national spheres, to get out of the nutshell and learn more about and from each other. This will create a sense of comradeship among criminal justice officials which will not only help promoting international cooperation but will also allow them to share knowledge and experience which will directly improve the standard of criminal justice administration in general.

References

1. It should be noted however that in the Thailand-United States Treaty on Mutual Assistance in Criminal Matters, Article 14 also includes "initiation of proceedings upon request" within the scope of assistance to be rendered between the two countries. This is rather exceptional since initiation of proceedings has not been included in most of the United States mutual assistance treaties in the past. The purpose of this type of assistance is similar to the transfer of proceedings which has normally been excluded as separate treaty.
2. For more information about the United States treaties on mutual assistance in criminal matters, see, e.g., R. Pisani and R. Fogelnest, "The United States Treaties on Mutual Assistance in Criminal Matters," in V.P. Nanda and M.C. Bassiouni, *International Criminal Law: A Guide to U.S. Practice and Procedure* (1987).
3. The Thailand-United States Treaty, Article 1 (2).
4. Ib., Article 3.
5. Mutual Assistance Act, Article 6.
6. Ib., Article 11.
7. Ib., Article 12 (1).
8. Ib., Article 12 (2).
9. Ib., Article 12 (3).
10. Ib., Article 12 (4).
11. Ib., Article 8. According to the Act, the Commission shall consist of representatives from the Ministry of Defence, the Ministry of Foreign Affairs, the Ministry of Interior, the Ministry of Justice, the Office of the Attorney General and no more than 4 members appointed by the Prime Minister. The Commission shall appoint a public prosecutor as its secretary.
12. Ib.
13. Ib.
14. Ib., Article 10.
15. The Thailand-United States Treaty, Article 3.
16. Ib., Article 2 (1)(a).
17. Ib., Article 2 (1)(b).
18. Ib., Article 1 (6).
19. Ib.
20. Ib., Article 1 (4), (5).
21. Ib., Article 7.
22. Ib.
23. Mutual Assistance Act, Article 32.
24. Ib., Article 33.
25. Ib.
26. Ib.
27. Ib., Article 34.
28. Ib., Article 35.
29. The Thailand-United States Treaty, Article 11.
30. See, for instance, Curt Markees, "The Difference in Concept Between Civil and Common Law Countries as to Judicial Assistance and Cooperation in Criminal Matters," in *A Treatise on International Criminal Law Vol. II.* ed. by M. Cherif Bassiouni and V.P. Nanda, pp. 171–188.
31. The Thailand-United States Treaty, Article 5 (1).
32. Ib., Article 5 (3).
33. Ib.
34. H. Grutzner, "International Judicial Assistance and Cooperation in Criminal Matters," in *International Criminal Law* p.194.

Appendix A

TREATY BETWEEN THE GOVERNMENT OF THE KINGDOM OF THAILAND AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS

The Government of the Kingdom of Thailand and the Government of the United States of America, desiring to maintain and to strengthen the longstanding bonds which unite the two countries, and to undertake effective mutual assistance in criminal matters, have agreed as follows:

ARTICLE 1

Obligation to Assist

1. The Contracting States agree, in accordance with the provisions of this Treaty, to provide mutual assistance in connection with investigations, prosecutions, and other proceedings relating to criminal matters.

2. Assistance shall include but not be limited to:

(a) taking the testimony and statement of persons;
(b) providing documents, records, and evidence;
(c) serving documents;
(d) executing requests for searches and seizures;
(e) transferring persons in custody for testimonial purposes;
(f) locating persons;
(g) initiating proceedings upon request; and
(h) assisting in forfeiture proceedings.

3. Assistance shall be provided without regard to whether the acts which are the subject of the investigation, prosecution, or proceeding in the Requesting State are prohibited under the law in the Requested State, or whether the Requested State would have jurisdiction with respect to such acts in corresponding circumstances.

4. This Treaty is intended solely for mutual assistance between the criminal law enforcement authorities of the Contracting States and is not intended or designed to provide such assistance to private parties.

5. A private party may not rely upon any provision of this Treaty to impede the execution of a request, or to exclude or suppress evidence obtained under the Treaty.

6. This Treaty shall not apply to the execution of arrest warrants or to military offenses. For the purposes of this Treaty, military offenses are violations of military laws and regulations which do not constitute offenses under ordinary criminal law.

ARTICLE 2

Limitations on Compliance

1. The Requested State may refuse to execute a request to the extent that:

(a) the request would prejudice the sovereignty, security, or other essential public interests of the Requested State; or
(b) the request relates to a political offense.

2. Before refusing the execution of any request pursuant to this Article, the Requested State shall determine whether assistance can be given subject to such conditions as it deems necessary. If the Requesting State accepts the assistance subject to these conditions, it shall comply with the conditions.

3. If the execution of a request would interfere with an ongoing criminal investigation, prosecution or proceeding in the Requested State, execution may be postponed by that State, or made subject to conditions determined to be necessary by that State after consultations with the Requesting State.

4. The Requested State shall promptly inform the Requesting State of the reason for refusing or postponing the execution of a request.

ARTICLE 3

Central Authorities

1. A Central Authority shall be established by each Contracting State.

2. For the United States of America, the Central Authority shall be the Attorney General or

a person designated by him.

3. For the Kingdom of Thailand, the Central Authority shall be the Minister of Interior or a person designated by him.

4. Requests under this Treaty shall be made by the Central Authority of the Requesting State to the Central Authority of the Requested State.

ARTICLE 4

Contents of Requests for Mutual Assistance

1. A request for assistance shall be submitted in writing in the language of the Requested State. All accompanying documents shall be translated into the language of the Requested State. Such translations shall be certified by a sworn or approved translator in accordance with the laws or practices of the Requesting State.

2. The request shall include the following:

(a) the name of the authority conducting the investigation, prosecution, or proceeding to which the request relates;
(b) the subject matter and nature of the investigation, prosecution, or proceeding;
(c) a description of the evidence or information sought or the acts of assistance to be performed; and
(d) the purpose for which the evidence, information, or other assistance is sought.

3. When appropriate, a request shall also include:

(a) available information on the identity and whereabouts of a person to be located;
(b) the identity and location of a person to be served, that person's relationship to the investigation, prosecution, or proceeding, and the manner in which service is to the effected;
(c) the identity and location of persons from whom evidence is sought;
(d) a precise description of the place or person to be searched and of the articles to be seized;
(e) a description of the manner in which any testimony or statement is to be taken and recorded;
(f) a list of questions to be answered;
(g) a description of any particular procedure to be followed in executing the request;
(h) information as to the allowances and expenses to which a person appearing in the Requesting State will be entitled; and
(i) any other information which may be brought to the attention of the Requested State to facilitate its execution of the request.

ARTICLE 5

Execution of the Request

1. The Central Authority of the Requested State shall promptly comply with the request or, when appropriate, shall transmit it to the authority having jurisdiction to do so. The competent authorities of the Requested State shall do everything in their power to execute the request, and shall issue subpoenas, search warrants, or other process necessary in the execution of the request.

2. When execution of the request requires judicial or administrative action, the request shall be presented to the appropriate authority by officials of the Requested State at no cost to the Requesting State.

3. Requests shall be executed in accordance with the laws of the Requested State except to the extent that this Treaty provides otherwise. However, the method of execution specified in the request shall be followed except insofar as it would be incompatible with the laws of the Requested State.

ARTICLE 6

Costs

The Requested State shall pay all costs relating to the execution of the request, except for the fees of expert witnesses and the allowances and expenses related to travel of persons pursuant to Articles 12 and 16, which fees, allowances, and expenses shall be borne by the Requesting State.

ARTICLE 7

Limitations on Use

1. Information and evidence obtained under this Treaty, as well as information derived therefrom, shall not be used for purposes other than those stated in the request without the prior consent of the Requested State.

2. The Requesting State may require that the application for assistance, its contents and related documents, and the granting of assistance be kept confidential. If the request cannot be executed without breaching the required confidentiality, the Requested State shall so inform the Requesting State which shall then determine whether the request should nevertheless

be executed.

3. The Requested State may require that information or evidence furnished, and information derived therefrom, be kept confidential in accordance with conditions which it shall specify. In that case, the Requesting State shall comply with the conditions, except to the extent that the information or evidence is needed in a public trial resulting from the investigation, prosecution, or proceeding described in the request.

ARTICLE 8

Taking Testimony and Statements and Producing Evidence in the Requested State

1. Upon a request that a person be summoned to give testimony, make a statement, or produce documents, records, or articles in the Requested State, that person shall be compelled to do so in the same manner and to the same extent as in criminal investigations, prosecutions, or proceedings in the Requested State.

2. If the person referred to in paragraph 1 asserts a claim of immunity, incapacity, or privilege under the laws of the Requesting State, the evidence shall nonetheless be taken and the claim made known to the Requesting State for resolution by the authorities of the Requesting State.

3. The Requested State shall furnish information in advance as to the date and place of the taking of the evidence.

4. The Requested State shall authorize the presence of such persons as specified in the request for the taking of testimony or a statement during the execution of the request and allow such persons to question the person whose testimony or statement is sought, insofar as it would not be prohibited by the laws of the Requested State.

5. Business records produced under this Article shall be authenticated by the person in charge of maintaining them through the use of Form A appended to this Treaty. No further certification shall be required. Documents authenticated under this paragraph shall be admitted in evidence as proof of the truth of the matters set forth therein.

ARTICLE 9

Providing Records of Government Offices or Agencies

1. The Requested State shall provide copies of publicly available records of a government office or agency.

2. The Requested State may provide any record or information in the possession of a government office or agency, but not publicly available, to the same extent and under the same conditions as it would be available to its own law enforcement or judicial authorities. The Requested State in its discretion may deny the request entirely or in part.

3. Documents provided under this Article shall be attested by the official in charge of maintaining them through the use of Form B appended to this Treaty. No further certification shall be required. Documents attested under this paragraph shall be admitted in evidence as proof of the truth of the matters set forth therein.

ARTICLE 10

Serving Documents

1. The Requested State shall effect service of any legal document transmitted for this purpose by the Requesting State.

2. Any request for the service of a document requiring the appearance of a person before an authority in the Requesting State shall be transmitted a reasonable time before the scheduled appearance.

3. The Requested State shall return as proof of service a dated receipt signed by the person served or a declaration signed by the officer effecting service, specifying the form and date of service.

4. A person, other than a national of the Requesting State, who has been served pursuant to this Article with a legal document calling for his appearance in the Requesting State, shall not be subjected to any civil or criminal forfeiture, or other legal sanction or measure of restraint, because of his failure to comply therewith, even if the document contains a notice of penalty.

ARTICLE 11

Search and Seizure

1. A request for search, seizure, and delivery of any article to the Requesting State shall be executed if it includes the information justify-

ing that action under the laws of the Requested States.

2. Every official of the Requested State who has custody of a seized article shall certify, through the use of Form C appended to this Treaty, the continuity of custody, the identity of the article, and the integrity of its condition. No further certification shall be required. Such certificate shall be admitted in evidence as proof of the truth of the matters set forth therein.

ARTICLE 12

Transferring Persons in Custody for Testimonial Purposes

1. A person in custody in the Requested State who is needed as a witness in the Requesting State shall be transported to that State if the person and the Requested State consent.

2. A person in custody in the Requesting State whose presence in the Requested State is required for the purpose of confrontation may be transported to the Requested State if the person and the Requested State consent.

3. For the purposes of this Article:

(a) the receiving State shall have the authority and obligation to keep the person transferred in custody unless otherwise authorized by the sending State;

(b) the receiving State shall return the person transferrred to the custody of the sending State as soon as circumstances permit or as otherwise agreed;

(c) the receiving State shall not require the sending State to initiate extradition proceedings in order to obtain the return of the person transferred; and

(d) the person transferred shall receive credit for service of the sentence imposed in the sending State for time served in the custody of the receiving State.

ARTICLE 13

Locating Persons

1. The Requested State shall take all necessary measures to locate persons who are believed to be in that State and who are needed in connection with a criminal investigation, prosecution, or proceeding in the Requesting State.

2. The Requested State shall communicate as soon as possible the results of its inquiries to the Requesting State.

ARTICLE 14

Initiating Proceedings upon Request

1. When one State is competent to initiate proceedings but wishes the proceedings to be carried out by the other State, the Central Authority of the former shall officially notify the Central Authority of the latter of the facts of the case. If the Requested State has jurisdiction in this regard, it shall submit the case to its competent authorities with a view to initiating criminal proceedings. Those authorities shall issue their decision in accordance with the laws of their country.

2. The Requested State shall report on the action taken regarding the notification and transmit, as appropriate, a copy of the decision issued.

ARTICLE 15

Assisting in Forfeiture Proceedings

1. If the Central Authority of one State becomes aware of fruits or instrumentalities of crime located in the other State which may be forfeitable or otherwise subject to seizure under the laws of that other State, it may so inform the Central Authority of that other State. If that other State has jurisdiction in this regard it shall present this information to its competent authorities for a determination whether any action is appropriate. Those authorities shall issue their decision in accordance with the laws of their country, and shall, through their Central Authority, report to the other State on the action taken.

2. The Contracting States may assist each other to the extent permitted by their respective laws and this Treaty, in proceedings relating to the forfeiture of the fruits or instrumentalities of crime.

ARTICLE 16

Appearance in the Requesting State

When the appearance of a person who is in the Requested State is needed in the Requesting State, the Central Authority of the Requested State shall invite the person to appear before the appropriate authority in the Requesting State, and shall indicate the extent to which the expenses will be paid. The response of the person shall be communicated promptly

to the Requesting State.

ARTICLE 17

Safe Conduct

1. No person in the territory of the Requesting State to testify or provide a statement in accordance with the provisions of this Treaty shall be subject to service of process or be detained or subjected to any other restriction of personal liberty by reason of any acts which preceded his departure from the Requested State.

2. The safe conduct provided for by this Article shall cease when the person, having had the opportunity to leave the Requesting State within 15 consecutive days after notification that his presence was no longer required by the appropriate authorities, shall have nonetheless stayed in that State or shall have voluntarily returned after having left it.

ARTICLE 18

Returning Documents, Records for Articles

The Requesting State shall return any documents, records, or articles furnished in execution of requests as soon as possible unless the Requested State waives their return.

ARTICLE 19

Compatibility with Other Treaties and National Laws

Assistance and procedures provided for by this Treaty shall not prevent either of the Contracting States from granting assistance through the provisions of other international agreements to which it may be a party or through the provisions of its national laws.

ARTICLE 20

Ratification and Entry into Force

1. This Treaty shall be subject to ratification; the instruments of ratification shall be exchanged at Washington as soon as possible.

2. This Treaty shall enter into force upon the exchange of the instruments of ratification.

ARTICLE 21

Termination

Either Contracting State may terminate this Treaty by means of written notice to the other Contracting State at any time. Termination shall take effect six months following the date of notification.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed the present Treaty.

Done at Bangkok, in duplicate, in the Thai and English languages, each text being equally authentic, this nineteenth day of March in the two thousand five hundred and twenty-ninth year of the Buddhist Era, corresponding to the one thousand nine hundred and eighty-sixth year of the Christian Era.

FOR THE GOVERNMENT OF THE KINGDOM OF THAILAND

Air Chief Marshal, Siddhi Savetsila
(Siddhi Savetsila)
Deputy Prime Minister and Minister of Foreign Affairs of Thailand

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA

Edwin Meese III
(Edwin Meese III)
Attorney General of the United States of America

FORM A

CERTIFICATE OF AUTHENTICITY OF BUSINESS RECORDS

I,....., attest on penalty of
(Name)
criminal punishment of false statement of attestation that I am employed by.....,
(Name of Business from which documents are sought)
and that my official title is.....,
(Official Title)
I further state that each of the records attached hereto is the original or a duplicate of the original of records in the custody of.....
(Name of Business from which Documents are sought)

a) such records were made at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters;
b) such records were kept in the course of a regularly conducted business activity;
c) the business activity made such records as a regular practice; and
d) if such record is not the original, such record is a duplicate of the original

.....
Signature

.....
Date

FORM B

ATTESTATION OF AUTHENTICITY OF DOCUMENTS

I,....., attest on penalty of criminal
(Name)
punishment for false statement or attestation that my position with the Government of.....is.....
(Country) (Official Title)
and that in that position I am authorized by the law of.....
(Country)
to attest that the documents attached and described below are true copies of original official records which are recorded or filed in
.....which is an office or
(Name of Government Office or Agency)
agency of the Government of.....
(Country)

Description of documents:

.....
Signature
.....
Title
.....
Date

FORM C

I,.....certify that I am
(Name)
.....employed in the.....
(Title) (Name of Government Office or Agency)
I received custody of the articles listed below from.....
(Name of Person)
on....., at.....
(Date) (Place)
I relinquished custody of those articles to.....
(Name)
on....., at.....in the same
(Date) (Place)
as when I received them (or if different as noted below).

Description of articles:

Changes in condition while in my custody:

.....
Signature
.....
Title
OFFICIAL SEAL .....
Place
.....
Date

Appendix B
(Unofficial Translation)

THE ACT ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS, B.E. 2535 (1992)

Section 1

This Act shall be called the "Act on Mutual Assistance in Criminal Matters, B.E. 2535."

Section 2

This Act shall come into force after ninety days upon its publication in the Government Gazette.

Section 3

All other laws, regulations, rules, decrees, and announcement already provided in or inconsistent to this Act shall be replaced by this Act.

Section 4

In this Act:

"Assistance" means assistance regarding investigation, inquiry, prosecution, forfeiture of property and other proceedings relating to criminal matters;

"Requesting State" means the state seeking assistance from the Requested State;

"Requested State" means the state from whom an assistance for the Requesting State is sought;

"Central Authority" means the person having authority and function to be the coordinator in providing assistance to a foreign state or in seeking assistance from a foreign state under this Act;

"Competent Authorities" means the official having authority and function to execute the request for assistance from a foreign state as notified by the Central Authority under this Act.

Section 5

The Prime Minister shall be the guardian of this Act and shall have the authority to issue Ministerial Regulations necessary for the implementation of this Act.

Ministerial Regulations shall become effective upon publication in the Government Gazette.

CHAPTER 1

Central Authority

Section 6

The Central Authority shall be the Attorney General or the person designated by him.

Section 7

The Central Authority shall have the following authority and functions:

(1) To receive the request for assistance from the Requesting State and transmit it to the Competent Authorities;
(2) To receive the request seeking assistance presented by the agency of the Royal Thai Government and deliver to the Requested State;
(3) To consider and determine whether to provide or seek assistance;
(4) To follow and expedite the performance of the Competent Authorities in providing assistance to a foreign state for the purpose of expeditious conclusion;
(5) To issue regulations or announcement for the implementation of this Act;
(6) To carry out other acts necessary for the success of providing or seeking assistance under this Act.

Section 8

There shall exists a board comprising representatives from the Ministry of Defence, the Ministry of Foreign Affairs, the Ministry of Interior, the Ministry of Justice, the Office of the Attorney General, as well as other distinguished people not more than four persons as its members and one public prosecutor designated by the Board as its Secretary. The Board shall provide opinion to assist the Central Authority in consideration and determination of the providing for or seeking assistance from foreign states where such matter may affect national sovereignty or security, crucial public interests, international relation, or relate to a political or military offence.

When an assistance is sought under Section 10 or Section 36 and the process under Section 11 has already been completed, the Central Authority shall promptly refer the matter to the Board for its opinion unless the process has been otherwise established by the Board.

If there shall be a dissent between the opinion of the Board and the determination of the Central Authority, then the latter shall refer the case to the Prime Minister for his ruling in accordance with Section 11 paragraph five or Section 38 paragraph two as the case may be.

CHAPTER 2

Providing of and Seeking for Assistance

Part 1: General Provisions

Section 9

The providing of assistance to a foreign state shall be subject to the following conditions:

(1) Assistance may be provided even there exists no mutual assistance treaty between Thailand and the Requesting State provides that such state commits to assist Thailand under the similar manner when requested;
(2) The act which is the cause of a request must be an offence punishable under Thai laws unless when Thailand and the Requesting state have a mutual assistance treaty between them and the treaty otherwise specifies provides, however, that the assistance must be conformed to the provisions of this Act;
(3) A request may be refused if it shall affect national sovereignty or security, or other crucial public interests of Thailand, or relate to a political offence;
(4) The providing of assistance shall not be related to a military offence.

Section 10

The state having a mutual assistance treaty with Thailand shall submit its request for assistance directly to the Central Authority. The state which has no such treaty shall submit its request through diplomatic channel.

A request for assistance shall conform to the forms, regulations, means and conditions defined by the Central Authority.

Section 11

Upon receipt a request for assistance from a foreign state, the Central Authority shall consider and determine whether such request is eligible for the providing of assistance under this Act and has followed the process correctly as well as accompanied by all appropriate supporting documents.

If such request is eligible for the providing of assistance, and in line with the process, as well as accompanied by all appropriate supporting documents, the Central Authority shall transmit the said request to the Competent Authorities for further execution.

If such request is not eligible for the providing of assistance, or must be subject to some essential conditions before the assistance is provided, or if it is not in line with the process or has not been accompanied by all appropriate supporting documents required, the Central Authority shall refuse to provide assistance and notify the Requesting State the reasons thereof, or indicate the required conditions, or the causes of impossibility to execute the request.

If the Central Authority is of the view that the execution of a request may interfere with the investigation, inquiry, prosecution, or other criminal proceeding pending its handling in Thailand, he may postpone the execution of the said request or may execute it under certain conditions set by him and notify the Requesting State thereabout.

A determination of the Central Authority with regard to the providing of assistance shall be final, unless otherwise alternated by the Prime Minister.

Section 12

The Central Authority shall transmit the request for assistance from a foreign state to the following Competent Authorities for execution:

(1) The request for taking statement of persons, or providing documents, articles, and evidence out of Court, the request for serving documents, the request for searches, the request for seizures documents or articles, and the request for locating persons shall be transmitted to the Director General of the Police Department;
(2) The request for taking the testimony of persons and witnesses or adducing document and evidence in the Court, as well as the request for forfeiture or seizure of properties shall be transmitted to the Chief Public Prosecutor for Litigation;
(3) The request for transferring persons in custody for testimonial purposes shall be transmitted to the Director General of the Correctional Department.
(4) The request for initiating criminal proceedings shall be transmitted to the Director General of the Police Department and the Chief Public Prosecutor for Litigation.

Section 13

Upon receipt a request for assistance from the Central Authority, the Competent Authorities shall execute such request and, after completion, submit a report together with all documents and articles concerned to the Central Authority.

In case of impediment or impossibility to execute the request, the Competent Authorities shall report to the Central Authority the causes thereof.

Section 14

When the Competent Authorities finished the execution of a request and have already reported to the Central Authority, the Central Authority shall notify the result thereof as well as deliver all documents and articles concerned to the Requesting State.

Part 2: Inquiry and Producing Evidence

Section 15

Upon receipt the request for assistance from a foreign state to take statement of persons or gathering evidence located in Thailand at the stage of inquiry, the Competent Authorities shall direct an inquiry official to execute such request.

The Inquiry Official shall have authority to take statement of persons or gathering evidence as requested under paragraph one and, if necessary, to search and seize any document or article in accordance with rules, means, and conditions set forth in the Criminal Procedure Code.

When the taking statement of persons or gathering evidence has been finished, the Inquiry Official shall report and deliver all evidence derived therefrom to the Competent Authorities.

Section 16

If the mutual assistance treaty between Thailand and the Requesting State requires a document to be authenticated, the Competent Authorities shall have the power to instruct the person in charge of keeping the said document to attest it in accordance with the forms and means specified in the treaty or as defined by the Central Authority.

Section 17

Upon receipt the request for assistance from a foreign state to take the testimony of witness in Thai Court, the Central Authority shall direct the public prosecutor to execute such request.

The Public Prosecutor shall have the power to apply to the Court having jurisdiction over the domicile or residence of the person who will be the witness or who has in possession or keep the documents or other evidence, and request for the testimony or adducing of the evidence, and the Court shall have the power to try the case conforming to the provisions enshrined in the Criminal Procedure Code.

After the completion of testimony, the Public Prosecutor shall apply to the court requesting for the record of testimony as well as other evidence and deliver all to the Central Authority for further operation.

Part 3: Providing of Documents and Information in the Possession of Government Agencies

Section 18

Upon receipt the request for assistance from a foreign state to provide documents or information in the possession of the agencies of the Royal Thai Government, the Central Authority shall transmit the request to the agency having such documents or information in its possession, and the said agency shall submit the said documents or information to the Central Authority.

Section 19

If the documents or information sought under Section 18 are those should not be published and the agency maintaining such documents or information considers it impossible to disclose or should not disclose the said documents or information, or possible to disclose them under certain conditions, the said agency shall acknowledge the Central Authority the causes of impossibility or the conditions required for the disclosure of such documents or information.

Section 20

In providing of documents according to the request for assistance from a foreign state under this part, the official in charge of keeping such documents shall attest them, in accordance with the forms and means defined by the Central Authority unless otherwise specified by the treaty, then the provisions of the treaty shall be prevailed.

Part 4: Serving Documents

Section 21

Upon receipt the request for assistance from a foreign state to serve legal documents, the Competent Authorities shall execute such request and report to the Central Authority.

If the legal document to be served under the request is such that requiring the appearance of a person before an authority or the court in the Requesting State, the Competent Authorities shall serve the said document for a reason-

able time prior to the scheduled appearance.

The result of service of documents shall be reported in accordance with the forms and means defined by the Central Authority unless otherwise specified in the treaty, then the provisions of the treaty shall be prevailed.

Section 22

The provisions regarding penalty in case of non-compliance with the lawful instruction of the authority or of the Court shall not be applied to the person served with a document calling for his appearance before an authority or the court in the Requesting State, if he is not a national of such state.

Part 5: Search and Seizure

Section 23

Upon receipt the request for assistance from a foreign state to search or seize and deliver any article, the Competent Authorities shall have the power to search or issue a warrant of search and seize in accordance with the law, if there shall be a reasonable ground to do so.

Section 24

As regards the search and seizure under Section 23, the provisions relating to Search under the Criminal Procedure Code shall be applied, mutatis mutandis.

Section 25

The Competent Authorities conducting search or seizure of article in compliance with the request for assistance shall certify the continuity of custody, identity of the article, as well as integrity of its condition, and shall deliver the said article together with the certificate thereof to the Central Authority.

The certificate thereof shall be in the form and in line with the means defined by the Central Authority.

Part 6: Transferring Persons in Custody for Testimonial Purposes

Section 26

Upon receipt the request for assistance from a foreign state to transfer a person in custody in Thailand to testify in the Requesting State or to transfer a person in custody in the Requesting State to testify in Thailand, the Central Authority, upon determining it necessary and the person to be transferred consents thereto, shall notify the Competent Authorities to transport or admit the said person.

The transportation and admission of the person under paragraph one shall be in line with the rules, means and conditions set forth in the Ministerial Regulations.

Section 27

The period during which a person is transferred to testify in a foreign state under the custody of the Requesting State shall be deemed as the period he is in custody in Thailand.

Section 28

The Competent Authorities shall have the power to keep the person transported from a foreign state in custody for the purpose of testimony during his presence in Thailand, and shall report to the Central Authority when such testimony has been finished.

Section 29

Upon receipt the report from the Competent Authorities under Section 28, the Central Authority shall promptly return the transferred person to the Requesting State.

Part 7: Locating Persons

Section 30

Upon receipt the request for assistance from a foreign state to locate the person, required by the Requesting State for the purpose of investigation, inquiry, prosecution or other criminal proceedings, who is believed to be in Thailand, the Competent Authorities shall detect his location and report to the Central Authority.

Part 8: Initiating Proceedings upon Request

Section 31

Upon receipt the request for assistance from a foreign state which is competent to initiate criminal proceeding but wishes the proceeding which is subject to the jurisdiction of Thai Court to be initiated in Thailand, the Central Authority shall consider whether it is appropriate to initiate the proceeding requested, if so shall notify the Competent Authorities under the Criminal Procedure Code to carry out the said proceeding and shall have such Competent Authorities to report the result thereof.

Part 9: Forfeiture or Seizure of Properties

Section 32

Upon receipt the request for assistance from a foreign state to forfeit or seize properties located in Thailand, the Competent Authorities shall apply to the Court having jurisdiction over the location of the properties for passing the judgment forfeiting such properties or for the

issuance of an order seizing them.

Under paragraph one, the Competent Authorities shall, if it is necessary, conduct an inquiry himself or authorizes any inquiry official to conduct an inquiry on his behalf.

Section 33

The properties specified in the request for assistance from a foreign state may be forfeited by the judgement of the Court if such properties have been priory adjudicated to be forfeited by the final judgement of a foreign court and they are forfeitable under Thai laws.

If the properties were adjudged to be seized by a foreign court before the Court passed its judgement or after the passing of the judgment to forfeit such properties but the judgement has not become final yet, the Court may deem it appropriate to order the properties to be seized provides that they are seizable under Thai laws.

The forfeiture or seizure of properties by the judgment or order of the Court under this Section shall be effective even the offence which is the cause of such forfeiture or seizure may not have taken place in the territory of Thailand.

Section 34

The provisions related to forfeiture of properties set forth in the Criminal Procedure Code and the Penal Code shall be applied to the inquiry, the application of motion, the trial, the adjudication, and the issuance of an order to forfeit or seize of properties in this regard, mutatis mutandis.

Section 35

The properties forfeited by the judgment of the Court under this part shall become the properties of the State, but the Court may pass judgement for such properties to be rendered useless, or to be destroyed.

Part 10: Seeking Assistance

Section 36

The agency seeking assistance from a foreign state shall present its request to the Central Authority.

Section 37

The request to seek assistance from a foreign state including all documents to be sent theseto shall be in line with the forms, rules, means, and conditions defined by the Central Authority.

Section 38

The Central Authority shall consider whether it is appropriate according to regulations, details, facts and supporting documents, to request assistance from a foreign state, and then notify the requesting agency his determination theseabout.

A determination of the Central Authority in regard to the request seeking for assistance shall be final unless otherwise instructed by the Prime Minister.

Section 39

The requesting agency shall comply with the commitment of Thailand towards the Requested State regarding the use of information or evidence for the purposes specified in the request.

The requesting agency shall also comply with the commitment of Thailand towards the Requested State regarding the confidentiality of the requested information or evidence unless such information or evidence is necessary for the public trial which is the consequence of the investigation, inquiry, prosecution or other criminal proceeding referred to in the request.

Section 40

No person entering to testify or give statement in Thailand in accordance with this Act shall be subject to service of process or be detained or subject to any other restriction of personal liberty by reason of any acts which preceded his departure from the Requested State.

The safeguard in paragraph one shall cease when the person, having had the opportunity to leave Thailand within fifteen consecutive days after notification that his presence was no longer required by the appropriate authorities, shall have nonetheless stayed in or voluntarily returned after having left Thailand.

Section 41

All evidence and documents derived under this Act shall be deemed as admissible for hearing.

CHAPTER 3

Costs

Section 42

All costs related to the providing of assistance to a foreign state and in requesting assistance from a foreign state shall be in line with rules, means, and conditions set forth in the Ministerial Regulations.

Recent Legislation in Germany with the Aim of Fighting Organised Crime

*by Johan Peter Wilhelm Hilger**

I. Introduction

The aim of my lecture is to give you some information on the new German legislation passed for the purpose of fighting Organised Crime—i.e. particularly on the Act to Suppress Organised Crime (*Gesetz zur Bekämpfung der Organisierten Kriminalität / OrgKG*)[1]. I shall explain, in critical terms as well, the most important measures for which provision has been made in the Act. In conclusion I shall indicate which of the demands addressed to Parliament have not been taken up, and I shall also indicate the areas where there is a need for further action.

II. Current Position

1. Analysis

Organised Crime has also become a challenge to state and society in Germany. Because of its legal system, of its prospering economy and its stable currency, its infrastructure and its geographical position, the Federal Republic of Germany faces special danger from Organised Crime. This type of crime is concentrated in certain offence spheres guaranteeing high criminal profits where, at the same time, the risk of detection is reduced because there are either no immediate victims or the victims are not willing to lay a criminal charge and to make a statement to the prosecuting authorities.

The predominant motive for Organised Crime is profit. According to United Nations estimates the annual turnover from Organised Crime amounts to about 500 billion dollars. Profits from Organised Crime make it necessary for illegal money to be "laundered." Money laundering lies at the intersection between illegal proceeds from crime and the legal flow of finance. After all, profits from crime are usually the "working capital" for preparing future criminal offences.

In the first place, the development of Organised Crime over the past years has been marked by an alarming increase in drug trafficking offences. Drug crime has increased not only worldwide but also in the Federal Republic of Germany. Drug abuse has grown on a scale previously unknown. The number of first consumers of hard drugs known to the police has gone up considerably (1991: 13,000). The total number of consumers of hard drugs is estimated at 120,000. They cover their needs mainly by conducting illegal business transactions and by committing criminal offences. So there has been a corresponding increase in drug crimes (1991: 117,000 narcotic drug offences). To this must be added the crimes of procurement (in 1991: at least 79,000 cases). Finally, there has been a substantial increase in the number of deaths following drug consumption (in 1991: 2,125 deaths). This development, which has taken on similar dimensions in some of the states of Western Europe, is evidence of enormous pressure to sell, on the part of international drug dealers, on the European market as a whole and in the Federal Republic of Germany in particular.

There are growing indications that in-

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ternationally organised drug syndicates are not only bringing drugs into the Federal Republic of Germany by means of couriers but are also building up marketing organisations and taking steps to launder and recycle the money earned from drug trafficking. Experts have estimated the annual turnover from drug trafficking in the Federal Republic of Germany at 2 to 4 billion marks. With the high profits being made, the string-pullers can build up criminal organisations and pay accomplices.

There are also signs that money earned from illegal drug trafficking has quite often been transferred to other lines of criminal activity yielding particularly high profits, for instance in the field of money and cheque forgery or as regards the "red-light" crime which is largely impermeable (pimp rings, operation of illegal gambling casinos).

Drug crime is only one part of Organised Crime—even if this part is particularly important and must be combated with special urgency.

Also, in other spheres of crime we can see the development of a substantive qualitative change: the increasingly organised mode of commission. To a growing extent, criminal organisations are coming to the fore in special spheres of crime such as counterfeiting money, gang theft and theft by burgling, with handling rings waiting in the background, and particularly as regards removal of high-grade assets to foreign countries, illegal arms trafficking, "red-light" crime connected with prostitution and "night business," and extorting protection money. As far as possible, the activities of such organisations are arranged so that the main figures do not stand out conspicuously. It is usually only the crimes of peripheral figures that can be cleared up with traditional means of investigation, i.e. of figures lacking insight into the structure and composition of the organisation as a whole. These peripheral offenders are interchangeable and replaceable at will, with the result that their arrest does not really disturb the criminal activities of the organisation. Persons who inevitably know of the crimes committed are restrained from making statements by hush money, by orders not to talk, by threats and by intimidation. Where a lone offender is caught, the organisation quite often renders material support to the members of that person's family and assumes responsibility for defence costs so as to obtain compliance and to prevent disclosure of information concerning the organisation[2]. Altogether, the crimes committed show that criminal offenders—who are usually interconnected on the international level—exploit personal and business connections with enormous criminal energy and financial strength in order to make large illegal profits. Conspiratorial preparation and execution of criminal offences make the fight against crime more difficult. Its success depends on the extent to which the people acting behind the scenes and the organisers concerned are convicted of committing criminal offences and are deprived of the financial resources for committing further crimes.

2. Consequences

Since the mainspring of Organised Crime is the pursuit of profit, effective suppression must begin with siphoning off the profits. Siphoning off profits means that Organised Crime is deprived of its financial resources. When there is access to the proceeds of an offence criminal offenders can be deprived of investment capital, particularly for the commission of further crimes.

Severer penalties for offences committed in the context of Organised Crime may increase the deterrent effect and make appropriate punishment possible. This particularly applies to drug crime committed by organised rings—which makes up the core of Organised Crime. Traditional methods of investigation are often inadequate because of the special structures found in Organised Crime and in the light of the

progressive professionalism of the offenders operating in this sphere. Through improving the instruments of investigation prosecuting authorities must be enabled to penetrate the core of criminal organisations. Furthermore, provision must be made for regulations and measures for a better guarantee of the safety of informers, particularly witnesses. Only when the safety of imperiled informers is effectively ensured will it be possible to expect statements from them, with the aid of which those operating behind the scenes and pulling the strings in criminal organisations can be brought to trial and convicted.

III. The OrgKG

1. General Principles

The German Parliament has taken appropriate action and, in the *OrgKG,* it has brought in the measures to which reference has already been made[3]. While the bill was being discussed before Parliament individual proposals in the bill were the subject of fierce controversy. There was less doubt about the fundamental need for legislative measures. However, individual proposals were criticised for being constitutionally objectionable, not necessary or—on the contrary—inadequate[4]. But the German *Bundestag* (Federal Parliament) passed the bill with minor corrections of individual provisions. The Act entered into force on 22 September 1992. Experience over the months and years to come will show whether the provisions in the Act are sufficient or whether further measures are necessary. Demands for more far-reaching measures are already being discussed in Germany.

2. General Conditions

In selecting and structuring the statutory provisions desirable for combating Organised Crime Parliament does not have unrestricted freedom of manoeuvre. First of all, the constitution sets limits. Provisions allowing substantive or procedural encroachment, under the criminal law, on basic rights protected by the constitution[5] are only admissible if, and to the extent that, a restriction of basic rights protection is permissible under the constitution in Germany, the Basic Law, thus making encroaching provisions possible; moreover, such provisions are only admissible to the extent that they are absolutely necessary in the preponderant state interest. Finally, the general principle of proportionality must also be complied with[6].

In addition, any provisions being planned must fit into existing criminal and procedural law without there being inconsistency. In particular, the pre-existing, standard and system of regulation of the original legislation already in force must be adhered to.

These conditions made the legislative work on the *OrgKG* much harder. Provisions demanded from the police point of view for criminal prosecution measures were not feasible, or not as comprehensively as called for. Complicated and detailed wording had to be found for some of the provisions, the content and consequences of which are now only comprehensible to, and capable of interpretation by, specialists.

3. Definition of Organised Crime

The *OrgKG*—and this may come as something of a surprise to the reader of the Act—does not actually define what Organised Crime is. Also, it does not make the admissibility of its measures depend on this definition.

The reason for this is that no-one has managed to develop a formula of words (definition) that is sufficiently accurate, precisely circumscribed, and yet short enough to be fit for a statutory definition.

This will become apparent from the following. A working party comprising representatives from the police and the judicial system worked out (in 1990) the

following description of Organised Crime after intensive discussions:[7]

"The planned commission of criminal offences, inspired by the pursuit of profit or power, constitutes Organised Crime where such offences are of substantial importance either individually or as a whole and if more than two participants collaborate within a division of labour over a longer or indefinite period of time:

a) by using commercial or business-type structures;
b) by using force or other means suited to intimidate; or
c) by exerting influence on politics, the media, public administration, the justice system or the economy.

This definition does not include criminal offences of terrorism."

The working party then went on to state that:

The manifestations of Organised Crime are multifarious. Besides structured, hierarchically developed forms of organisation (often also underpinned by ethnic solidarity, language, customs, social and family background), there are links—based on a system of criminally exploitable personal and business connections—between criminal offenders with varying degrees of commitment among themselves, whereby it is the particular criminal interests concerned that determine the actual moulding of such links.

Organised Crime is predominantly observed in the following spheres of crime:

— drug trafficking and smuggling;
— arms trafficking and smuggling;
— crimes linked with night life (above all procuring, prostitution, slave trafficking, illegal gambling and cheating);
— extorting protection money;
— illicit job procurement and illicit employment;
— illegal smuggling of aliens into the country;
— forging trade marks (trade mark piracy);
— gold smuggling;
— capital investment fraud;
— subsidy fraud and evasion of import duties;
— forgery and misuse of means of non-cash payment;
— manufacturing and disseminating counterfeit money;
— illicit removal particularly of high-quality motor cars, and of lorry, container and ship's freight;
— fraud to the detriment of insurers;
— theft by burgling dwellings, with centralised disposal of the loot.

In addition to these spheres of crime there are also first signs of Organised Crime in the area of illegal waste management and of illegal technology transfer.

Indicators suggesting consignment of a particular factual constellation to the sphere of Organised Crime might take the following forms:

Preparation and Planning of the Criminal Offence

— precise planning,
— adjustment to market requirements by exploiting gaps in the market, identifying needs, etc.,
— working to order,
— high investment, e.g. by prefinancing from non-discernible sources.

Commission of the Criminal Offence

— professional, exact and qualified execution of the offence,
— use of relatively expensive, unknown or scientific devices and knowledge, of a kind that is difficult to apply,
— activation of specialists (from foreign countries as well),
— collaboration with division of labour.

Disposal of the Loot from a Criminal Offence
— with a strong profit orientation,
— re-entry into legal economic circulation,
— alienation in the context of one's own (legal) activities,
— money laundering measures.

Conspiratorial Offender Conduct
— counter-surveillance,
— seclusion,
— aliases,
— coded oral and written communication.

Offender Links/Interrelationships
— supra-regional,
— national,
— international.

Group Structure
— hierarchical structure,
— dependent and authoritarian conduct as between several suspects, which is not readily explicable,
— internal sanctioning system.

Assistance for Group Members
— assisting with escapes,
— briefing certain lawyers, with their fees being paid by third persons,
— carrying prepared powers of attorney for lawyers,
— high bail offers,
— threatening and intimidating parties to the proceedings,
— disappearance of witnesses,
— typical nervous silence on the part of witnesses,
— unexpected appearance of defence witnesses,
— taking care of persons in remand custody/under sentence of imprisonment,
— supporting family members,
— reacceptance following release from custody.

Corruption
— taking part in the luxurious life-style of the offenders,
— inducing dependence (e.g. through sex, illicit gambling, usurious interest rates and credit),
— payment of bribes, making holiday accommodation and luxury vehicles available, etc.

Monopolisation Efforts
— "taking over" business operations and partnerships,
— managing business operations through front men,
— control of certain lines of business (casinos, brothels),
— "protection" against payment.

Public Relations
— controlled or tendentious publications,
— conspicuous patronage, *inter alia* at sports events,
— deliberate seeking of contact with persons in public life.

This list of indicators is not conclusive and does not refer to special offence spheres.

This all goes to show that the phenomenon of "Organised Crime" cannot be defined in such a way that the definition itself would be suitable for inclusion in a statute.

The *OrgKG* thus links its provisions to particular groups of offences and offence spheres where experience has shown them to be preferred fields of activity for Organised Crime[8]. Furthermore, it falls back on certain types and forms of commission that have long since been formulated in criminal and in criminal procedure law and which are taken to be typical manifestations of Organised Crime[9].

4. Amendments to the Criminal Code

The *OrgKG* includes:

— extensions to the range of punishment for some offences and the creation of new qualifying offences;

— the new criminal offence of money laundering; and
— changes in the system of sanctions through the new legal institutions of the property fine and extended forfeiture.

The new forms of sanction, i.e. the property fine and extended forfeiture, are structured as blanket provisions; they are only applicable when a penal provision refers to them. Because of the ban on retroactivity in section 2, I to V of the Criminal Code (*Strafgesetzbuch / StGB*) the new provisions apply only to acts that were completed after entry into force of the Act.

a) Aggravated Gang Theft (Section 244a *StGB*)

Section 244a introduces a new independent criminal offence (with punishment ranging from 1 to 10 years' imprisonment). It presupposes that an aggravated theft (section 243 I 2 StGB), e.g. theft following burglary of a house, or armed theft (section 244 I no. 1, 2 *StGB*), has been committed by a member of a gang in collaboration with another member of a gang where the latter have come together for the purpose of recurrent commission of robbery or theft.

b) Gang Handling of Stolen Property, and Gang Handling of Stolen Property on a Business Basis

The new handling offence by a member of a gang (section 260 I no. 2 *StGB*; punishment ranging from 6 months to 10 years) has been added as a further case of handling in section 260 *StGB* (handling stolen property on a business basis). The prerequisite for this is that the offender must have acted as a member of a gang who have come together for the purpose of recurrent commission of robbery, theft or handling. In other words, this provision covers both the case where several handlers join together in a gang and the case where a member of a gang of thieves acts as a handler.

The new section 260a *StGB* contains a new, independent, qualifying criminal offence (with punishment ranging from 1 to 10 years' imprisonment) of gang handling of stolen property on a business basis. This offence is committed when the handling of stolen property, as just described, is additionally done on a business basis.

c) Money Laundering (Section 261 *StGB*)

The complicated new offence of money laundering can only be dealt with in outline. Basically, the offence consists in concealing property deriving from criminal acts (prior acts), disguising its origin, preventing or jeopardising its detection, forfeiture, confiscation or seizure of such property (section 261 I *StGB*); moreover, the procurement, preservation or utilisation of such property is penalised—by way of addition to subsection 1—if the offender was acting in bad faith at the time of acquisition (section 261 II *StGB*)[10].

Property to which the criminal act of money laundering must relate means all valuable assets and rights which—also in the wake of a chain of acts of utilisation—derive from a specific criminal offence committed by another offender, i.e. from (any) serious crime (*Verbrechen*), or from a less serious crime (*Vergehen*) under section 29 I no. 1 of the Narcotic Drugs Act (*Betäubungsmittelgesetz / BtMG*) (cultivation, production, trade, importation, exportation, etc. of drugs), or from a less serious crime committed by a member of a criminal association (section 129 *StGB*); this also includes the case where such prior act was committed abroad and attracted criminal liability there (section 261 VIII *StGB*).

Punishment for intentional commission ranges from a fine to imprisonment of up to 5 years, and in particularly serious cases (commission on a business basis or in gangs) from 6 months' to 10 years' imprisonment (section 261 IV *StGB*).

In this connection reference must be

made to the Profit Tracing Act (Gewinnaufspürungsgesetz) which is currently before Parliament but has not been passed yet[11]. The object of this legislation is to enable effective prosecution of the offence of money laundering, for practical experience shows that it is not sufficient to stop further use of the profits of Organised Crime and also to impose criminal liability for money laundering, i.e. for the reintroduction of illegally acquired property into the legal flow of finance. Since the act of money laundering itself is usually hard to detect—because it is mostly well-camouflaged and cannot be distinguished, from legal financial transactions—effective suppression of money laundering calls for efficient controls over certain financial and economic transactions. Indications of money laundering transactions must be signalled to the prosecuting authorities. Further, in criminal investigation proceedings the prosecuting authorities must be able to have access to documents recording financial transactions and particularly the persons involved in them. Finally, economic undertakings must take measures to protect themselves against being misused for the purpose of money laundering.

This is supposed to be achieved by the proposed Profit Tracing Act.

Under this Act banks and other persons engaged in business will be obliged to identify certain customers. Certain financial transactions amounting to more than DM 30,000 and also cash transactions of more than DM 50,000 are to be covered. Banks and persons engaged in business are supposed to find out who the economic beneficiaries are in a financial transaction. A record is to be made of this information and kept for several years. The planned legislation also establishes a duty to identify and report cases to the prosecuting authorities where credit and financial institutions as well as gambling casinos suspect a case of money laundering. A relevant provision is supposed to ensure that suspicious facts are notified by the administrative authorities to the prosecuting authorities. Undertakings facing the possibility of money laundering are required to take internal safeguards to protect themselves against money laundering and to facilitate criminal prosecution.

d) Organising a Game of Chance on a Business or on a Gang Basis

A new section 284 III *StGB* contains a new, independent, qualifying criminal offence of unauthorised organisation of a game of chance on a business or on a gang basis, with punishment ranging from 3 months' to 5 years' imprisonment.

e) Gang Trafficking (Section 30a *BtMG*)

As a serious crime involving imprisonment from 5 to 15 years, a new section 30a BtMG penalises gang dealings in not inconsiderable quantities of narcotic drugs, in the form of trading, cultivating, producing, importing and exporting such drugs.

f) Foreign Criminal Association (Section 30b *BtMG*)

Section 30b *BtMG* extends the criminal offence of forming a criminal association (section 129 *StGB*) to cover those foreign criminal associations whose purpose or activity is geared towards the illicit distribution of drugs.

g) A New Section 43a *StGB* Introduces a New Criminal Sanction, namely the property fine[12]. Until then German criminal law only had the criminal sanctions of fine and imprisonment. The new property fine is a pecuniary penalty, the upper limit of which is set by the value of the convicted offender's entire assets. Contrary to this somewhat misleading term, when a property fine is imposed it is a sum of money that has to be fixed, not necessarily covering all the offender's assets, and frequently it is not supposed to do so. An individual type of punishment range has to be

set, circumscribed by the extent of the offender's assets, within which the property fine has to be assessed as a pecuniary penalty in accordance with general sentencing rules.

The imposition of a property fine is only admissible in addition to a sentence of imprisonment of more than two years (section 43a I 1 *StGB*). When sentence is imposed, the amount of disadvantage the offender is supposed to suffer through the punishment imposed, which is also not to exceed just retribution in terms of guilt (section 46 *StGB*), will be made up of the prison sentence and the property fine. So, to start with, the prison sentence actually reasonable in terms of the offender's guilt must be determined. As a second step, there must be a determination of the extent to which this sanction may be replaced by the property-oriented pecuniary penalty.

The extent of the offender's assets can be estimated for the purpose of sentencing. Pecuniary benefits subject to a forfeiture order (section 43a I 2 *StGB*) are left out of account. In other words, forfeiture comes before the property fine. If the latter cannot be recovered, imprisonment in lieu of payment can be enforced.

A property fine can only be imposed on commission of those offences for which this is expressly permitted. This mainly happens in the following cases:

— counterfeiting money (section 146 *StGB*), forging blank Eurocheques and Eurocheque cards (section 152a *StGB*), in each case provided also that the offence in question was committed by a gang (section 150 I 1 *StGB*);
— aggravated slave trafficking (section 181 *StGB*) and procuring in a directing function (section 181a I no. 2 *StGB*) when committed by a gang (section 181c *StGB*);
— gang theft (section 244 I no. 3, III *StGB*) and aggravated gang theft (section 244a III *StGB*);
— gang handling of stolen property (section 260 I no. 2, III *StGB*) and gang handling of stolen property on a business basis (section 260a III *StGB*);
— money laundering committed by a gang (section 261 VII *StGB*);
— gang organisation of a game of chance pursuant to sections 284 III 2, 285b I *StGB*; and
— in terms of section 30c *BtMG*, a considerable number of the criminal offences under the *BtMG*.

h) Extended Forfeiture

Section 73d *StGB* (being a new addition) extends the possibilities of forfeiture under section 73 *StGB* in two respects:[13]

— It is not necessary that the object whose forfeiture is to be ordered should have been acquired from, or for, the offence indicted; on the contrary, it will suffice if the object derives from (any) unlawful acts—which do not have to be covered by the indictment or form part of the conviction.
— It will suffice if circumstances justify the assumption that the object was acquired from of for unlawful acts. In other words, a certain concrete likelihood is sufficient. Proof to convince a judge is not necessary[14].

As in the case of the property fine, extended forfeiture may only be ordered where this is expressly authorised by statute. In respect of criminal offences under the Criminal Code this will always be the case if a property fine is also admissible and also if commission was on a business basis, e.g. in the following cases:

— slave trafficking and procuring (section 181c *StGB*),
— handling stolen property on a business basis pursuant to section 260 I no. 1 *StGB* (section 260 III 2 *StGB*),
— money laundering on a business basis (section 261 VII 4 *StGB*) and

— organising a game of chance on a business basis pursuant to section 284 III no. 1 *StGB* (section 285b I 1 *StGB*).

5. *Amendments of, and Additions to the Criminal Procedure Code*
Here the most important provisions are:

— improvements in the protection of witnesses who are at risk;
— regulation of electronic data matching;
— extension of the legality of telephone tapping;
— regulation of the use of technical aids for surveillance purposes;
— regulation of the use of undercover investigators;
— regulation of notification for police surveillance.

The difficulties referred to in the section on "General conditions" were especially encountered in this sphere of regulation. Understandable demands for practice-oriented provisions and corresponding solutions for increasing the effectiveness of criminal prosecution must be balanced against the demand and need for the lowest possible degree of basic right limitation, particularly as regards the protection of personality and of data, and against the demand for far-reaching measures to safeguard criminal proceedings and the demand that defence effectiveness should by no means be impaired.

a) Protection of Witnesses Who Are at Risk

A new version of section 68 of the Criminal Procedure Code (*Strafprozeßordnung / StPO*)[15] aims at a distinct improvement in the protection of witnesses who are at risk. The provisions are graded and adjusted to the relevant risk(s) to which the witness is exposed. In principle, they also apply to interrogations during investigation proceedings (section 168a I 2 *StPO*). Furthermore, the risky situation will also enable exclusion of the public (section 172 no. 1a Courts' Constitution Act/*Gerichtsverfassungsgesetz: GVG*).

Dispensing with particulars of address when taking official notice of a matter (section 68 I 2 StPO)

Witnesses who have taken notice of a matter in their official capacity (for example, police officers on duty)[16] are entitled (but not bound) to state the name of the place where they are on working instead of giving their home address.

Witnesses "at low risk" (section 68 II StPO)

The person heading the interrogation can allow any witness to give his business or service address or some other address where documents can be served, instead of his home address, if it is feared that otherwise he or another person will be at risk in respect of some protected legal interest; on the same conditions, the witness may (as previously—section 68, second sentence *StPO*) be allowed to refrain from giving any details at all on the place where he can be reached.

Witnesses "at high risk" (section 68 III StPO)

A witness's identity may be kept secret (in extreme cases, all personal particulars)[17] if there is reason to fear (a high degree of probability is not demanded by the wording of the Act) that disclosure would jeopardise the life, limb or liberty of the witness or another person. Documents concerning identity will be kept at the public prosecution office, i.e. initially they will not be sent to the court, and for so long they also cannot be inspected. They shall only be placed on file when the danger is over (section 68 III 3 *StPO*). If in the indictment or in a subsequent summons reference is made to witnesses whose identity is not being fully disclosed this fact must be stated (section 200 I 3, 4; section 222 I 3 *StPO*).

Exemption from the duty (on principle) to disclose one's identity does not mean

exemption from the duty—if so requested at the main court hearing[18]—to state the capacity in which one took notice of the matters concerned (section 68 III 2 *StPO*). This provision is particularly aimed at undercover investigators[19].

Exclusion of the public (section 172 no. 1a GVG)

Exclusion of the public, already inferable under existing law[20], is also allowed where a threat to somebody's life, limb or liberty is to be feared in the event of a public hearing. The new provision now makes this expressly clear.

In addition to these ways of protecting witnesses, there still remains the option under current law of excluding a witness from the main court hearing—by analogy to section 96 *StPO*—if that witness cannot be protected in any other way in view of the exceptional risk to which he is exposed[21]. This means that his identity and address will be kept secret by the prosecuting authorities so that he cannot be summoned to appear at the main court hearing. In lieu of his appearance, there will be an examination, as hearsay witnesses, of those persons (police officers, the public prosecutor, the judge) who interrogated him during the investigation proceedings.

All those measures for preventive protection of witnesses, regulated in the legislation dealing with police matters, remain unaffected, for instance escorting measures, or changes of residence or identity with the aid of the police.

The statutory provisions are supplemented by administrative regulations (guidelines)[22] in which measures for the protection of witnesses are listed and explained; they are kept secret from the general public so as to avoid methods of evasion and other counter-strategies being worked out.

It is undisputed that measures for the protection of witnesses at risk may have a considerable effect on the possibilities of finding out the truth and on defence interests. Therefore they are to be used only very sparingly. The assessment of evidence by the curt, particularly indirect evidence, must take account of this danger, and in an individual case[23] great importance may attach to the "presumption of innoncence" principle (in Article 6 II of the Convention for the Protection of Human Rights).

b) Search by Screening

The new sections 98a and 98b *StPO* have created a special statutory basis for so-called screening searches[24]. At the same time there is also a definition of what a screening search means. It is an automated (machine) comparison (matching) of personal data collected for purposes other than prosecuting purposes and in data files kept by agencies other than the prosecuting authorities. Matching occurs by using criminalistic (offender-type) checking criteria specific to the case concerned (screening).

A screening search is only admissible in regard to serious criminal offences set out in a generalising catalogue (section 98a I 1). (Such offences are, for instance, criminal offences of substantial importance in the sphere of illicit trafficking in drugs or in arms, or against life or limb, or committed by the member of a gang). For a screening order it will suffice if there is an initial suspicion (section 152 II) that such an offence has been committed. The automated matching of data[25] is permissible as regards persons who fulfil checking criteria that—depending on the stage investigations have reached in the case—are likely to apply to the offender. The aim is to filter out, from this mass of non-participants in the offence, those persons who largely have the "suspect profile" in the case—which may be founded on criminalistic experience or on the outcome of preceding investigations. The method is to eliminate persons who, although fulfilling criteria applying to the offender, cannot be considered as possible offenders (negative screening search) in

the light of their other data, or to filter out those persons in respect of whom criteria typically applying to the offender are to be found cumulatively (positive screening search)[26].

Section 98a II illustrates the nature of search by screening in two steps. This section provides that the private or public agency storing the data needed for matching, which typifies screening searches, is under a duty to filter these data out of its inventory and transmit them to the prosecuting authorities. But sections 98a and 98b also apply when the data have been given to the prosecuting authorities voluntarily. The agency requested to transmit data is not allowed to collect data for the purpose of the planned search by screening. Moreover, there is also provision to the effect that, if the public prosection office so demands, the storing agency has to give expert assistance to the matching agency.

The admissibility of the measure is limited by a subsidiarity clause. According to this clause a prognosis has to be made in terms of success and difficulty in clearing up the case[27]. If this prognosis shows that full clarification of the criminal case by using other investigatory measures could nowhere near be achieved with the same measure of success as would seem possible with a screening search, the latter may be undertaken.

Section 98b contains procedural provisions relating to screening searches. In principle, matching and data transmission are the subject of a judicial order. If, however, the public prosecution office has ordered a screening search on the basis of an emergency power, it has to apply for judicial confirmation without delay. If this is not given within three days the order will become invalid. Knowledge based on a screening search can be used for the purposes of criminal prosecution to a limited extent only, i.e. as evidence in the prosecution of another criminal offence only when such offence is likewise a catalogue offence under section 98a[28].

c) Telephone Tapping

Telephone tapping to clear up serious criminal cases has been legal since 1968 (section 100a *StPO*). The *OrgKG* has expanded the use of this investigatory measure to additional offences in the sphere of Organised Crime (gang theft, handling stolen property on a business basis).

d) Use of Technical Means of Surveillance

These provisions (sections 100c, 100d, 101 *StPO*) form a focal point within the *OrgKG*. They were the subject of great controversy among politicians, legal scientists and the public both before and during the parliamentary discussions on the bill. The main reason for this was the fact that such measures may constitute a deep invasion of the personal sphere, particularly the intimate sphere, of those affected. The latter may not only be the accused themselves but also others who may be affected by such a measure (contact persons or those affected by chance).

These provisions[29] regulate the following:

— production of photographs and visual recordings during surveillance,
— use of other technical devices for surveillance purposes, and
— technical monitoring and recording, outside a dwelling, of words not spoken in public.

Section 100c regulates which technical means may be used, against whom they may be used and under what conditions.

Photographs and visual recordings (section 100c I no. 1a StPO)

Such pictures may be taken of the accused outside a dwelling without his knowledge. This applies to criminal offences of all kinds, and also always to the police—without prior permission from the public

prosecution office being needed. The precondition for taking such pictures is that any other way of trying to find out the facts or where the offender is would be less likely to succeed or more difficult to achieve. Practically speaking, this means general admissibility, limited only by the general principle of proportionality. As regards persons other than the accused admissibility is limited only by a strict subsidiarity clause (much less likely to succeed or much more difficult to achieve) (section 100c II 2 *StPO*).

Other technical means specially intended for surveillance purposes (section 100c I no. 1b StPO)

They may be used for trying to find out the facts or where the offender is when a criminal offence of substantial importance is the subject of the investigation. Such means are homing devices, mobile alarm units, motion detectors, etc.—in other words, devices that do not record conversations.

The use of such means is likewise linked to a subsidiarity clause with a low threshold, namely that finding out the facts or where the offender is residing would be less likely to succeed or more difficult to achieve if some other means were used.

Linking the use of these special surveillance devices to a "criminal offence of material importance" gives those involved in practice the indispensable flexibility needed for an effective criminal prosecution even if, initially, certain difficulties do not seem to be excluded because of this concept being really indefinite. It would not have been proper to link use to a catalogue of particular crimes because the use of such means must be possible—with a view to practical prosecution needs—in a large variety of offences. Apart from this aspect, the concept has become established in legislation on police matters; otherwise, there is no alternative of a form of general clause.

It is made amply clear that the use of such technical means, in a manner consistent with the principle of proportionality, should only be allowed in relation to offences above the threshold of petty crime. In each case an individual assessment will be necessary taking into account the general principle of proportionality.

As for third persons, the measure is only admissible if it is to be assumed that the former are connected with the offender or that such a connection is being set up (contact persons), that the measure will lead to finding out the facts or where the offender is residing, and that using some other means would be futile or be much more difficult (section 100c II 3 *StPO*).

Monitoring and recording of words not spoken in public (section 100c I no. 2 StPO)

This provision on the monitoring and recording of the spoken word is much more restrictive, and it is modelled in large measure on the provisions on telephone tapping (section 100a, 100b). The monitoring and recording, outside a dwelling, of words spoken by the accused, but not in public, is admissible with technical means (e.g. using directional microphones), but only when certain facts establish a suspicion that one of the serious offences (e.g. murder, kidnapping, hostage-taking, extortion, robbery, gang theft, arms or drug trafficking), listed in the catalogue of criminal offences in section 100a (telephone tapping), has been committed. A further requirement is that any other means of finding out the facts or where the offender is residing would be futile or be much more difficult. Hence, this provision closely follows section 100a *StPO*. In practice, the identical subsidiarity clauses might lead to difficulties if, for instance, telephone tapping is being planned but it cannot be established that clarification by some other means would be futile because monitoring itself might not be entirely unsuccessful. But usually in such cases it can be said that clarification would be much more

difficult without the simultaneous use of both measures, for if only one of the two measures were used clarification would probably take much longer.

Section 100c only allows measures that do not encroach on the inviolability of the home (Article 13 of the Basic Law).

Monitoring the words spoken by a third person who is not the accused and who is not speaking in public, is only admissible, under even stricter conditions, in respect of contact persons from whose surveillance important indications are (or may be) expected for the purpose of clarification. Monitoring may be ordered in respect of non-accused persons only if it is to be assumed on the basis of certain facts that they are connected with the offender or that such a connection is being set up, that the measure will lead to finding out the facts or where the offender is residing, and that using some other means would be futile or be much more difficult (section 100c II 3 *StPO*). These three requirements are cumulative. The higher threshold of action and the subsidiarity clause correspond to the provision made in section 100a (telephone tapping). The wording is intended to make it clear that the mere possibility of contact, or of the establishment of contact, and of successful clarification will not be enough; rather, certain facts must indicate a higher likelihood of there actually being a connection between the offender and the contact person, or of such a connection existing in future, and that successful clarification is not only seen to be a possibility but is to be expected in all probability.

Section 100c III *StPO* makes it clear that these measures may also be applied when third persons are inevitably going to be affected by them. Here it is ensured that there is no need for such measures to be dispensed with when a person who is not actually the target of the measure—but only the partner of a target person or a non-participant affected by chance—is included in pictures or films or when conversations are being monitored.

Section 100d deals with important parts of the proceedings. Monitoring and sound recording equipment can only be used if a judge so orders, or where danger is imminent the order may be given by a public prosecutor or by his auxiliary officials. In the event of an order by way of emergency power an application for judicial confirmation must be made without delay. If confirmation is not forthcoming within three days the order ceases to have effect. The order must be made in writing, must contain the name and address of the person against whom the order is directed, and it must also state the nature, extent and duration of the measure. The order shall be limited to three months at the most, and as extension may be obtained for not more than three months at a time so far as the conditions for an order, as set out in section 100c I no. 2, are fulfilled. If these conditions are no longer fulfilled, the measures must be stopped immediately. The judge must be informed of this termination. Documents acquired by virtue of the measure are to be destroyed without delay under the supervision of the public prosecution office if they are no longer needed for the purpose of public prosecution; a record must be made of the destruction in question.

Subsection 2 provides—just as in the case of a search by screening—that knowledge got by monitoring measures may be used in other criminal cases to a limited degree only[30].

e) Use of Undercover Investigators

Sections 110a to 110e *StPO* regulate the use of undercover investigators. In a fundamental sense there is no constitutional objection[31]. This measure is not often used[32]. Its implementation is accompanied by considerable difficulties. But it is indispensable in the sphere of Organised Crime. The provisions are largely oriented towards current operational practice[33].

Undercover investigators (legal definition in section 110a II 1 *StPO*) are investigating police officers who have a new and lasting identity conferred on them (a "legend," in particular with a new name, a new address and a new occupation/profession). In other words, they investigate—using a false name—without disclosing their status as police officers or the fact that they are investigating. Relevant documents can be drawn up, altered and used for the purpose of building up and maintaining the legend (section 110a III *StPO*). Undercover investigators are allowed to take part in legal transactions using their legend (section 110a II 2 *StPO*), e.g. they may also enter into contracts and found undertakings. Using their legend they may also enter dwellings when allowed to do so by the person with a right of entry (section 110c *StPO*); but any pretence of a right of entry going beyond this is inadmissible. In certain circumstances the identity of an undercover investigator can also be kept secret in the relevant criminal proceedings (section 110b III, section 110d II *StPO*). Acting as an undercover investigator is not a ground justifying the commission of criminal offences oneself.

Pursuant to section 110a I *StPO* the use of undercover investigators is already admissible where there is an initial suspicion (section 152 II *StPO*), but only in respect of certain criminal offences in a general catalogue. These are offences of substantial weight in the sphere of drug or arms trafficking, of forging money or official stamps, of state security, or those offences that have been committed on a business or habitual basis, by the member of a gang or in some other organised way, as well as those offences where there is a definite risk of repetition. Here the subsidiarity clause applies, i.e. that trying to find out the facts using some other means would be futile or be much more difficult. In the case of serious crimes committed without risk of repetition, being crimes that are not part of the general catalogue, the use of undercover investigators is admissible where the offence is of great significance and other investigatory measures would be futile. All in all, the catalogue of offences in respect of which this measure is admissible is not fully identical to the catalogue for screening searches.

The use of undercover investigators is also admissible in a search for a person accused of a catalogue offence. Further, it is admissible for an undercover investigator to carry out several mandates at once, e.g. in several criminal cases, or repressive mandates in addition to preventive ones; in each case the relevant requirements for applying the measure must be fulfilled, and in the case last mentioned the restrictive provisions of the *StPO* must be complied with—also when they are stricter than police law. The carrying out of a mandate is not to suffer on account of such multifunctional activity.

During operative action the undercover investigator has all powers generally at the disposal of police officers under the *StPO* or other statutes[34].

In practice the use of undercover investigators is increasingly running into difficulties. Groups of criminals into which undercover investigators are supposed to be infiltrated are increasingly cutting themselves off from "strangers" (as new members). Moreover, new members of the group have to undergo unlawful "tests of innocence"; undercover investigators then fail the test because as a matter of principle they are not allowed to commit any criminal offences.

Section 110a III provides that documents may be drawn up, altered and used for an undercover investigator's operational activities if this is indispensable for building up or maintaining his legend (e.g. passports, driving licence, school certificates, etc.). This authorisation to draw up the necessary documents does not, however, mean that changes can be made in public

books and registers.

Section 110b I, II deals with questions of competence in respect of operations. On principle, an operation is only admissible with the consent of the public prosecution office. Only where there is imminent danger and the public prosecutor's decision cannot be obtained in time may the operation be ordered by the police. The public prosecutor's consent then has to be obtained without delay; the operation is to be stopped if the public prosecution office does not give its consent within three days.

Pursuant to section 110b II a judge's consent will be required if the undercover investigator is not only on the "scene" to clear up the circumstances of an offence or to get information on an offender whose identity is still unknown but is also deliberately operating against a specific accused person—whether by finding out the facts or where he is residing; the same applies if, during an operation, the undercover investigator enters a dwelling to which there is no general access. Only where there is imminent danger will the public prosecutor's consent suffice. If the latter's consent cannot be obtained in time, the police may approve the operation although they have to obtain the public prosecutor's consent without delay. Furthermore, the public prosecutor has to obtain the judge's consent, and if he does not give his consent within three days, the measure has to be stopped.

Consent by the public prosecutor and the judge must be given in writing and for a limited period. No provision has been made for a maximum period. The period will be governed by the circumstances of the individual case. An extension is possible so long as there is fulfilment of the preconditions for the operation.

Section 110b III deals with individual questions concerning the secrecy of an undercover investigator's identity, particularly in criminal proceedings. The principle that applies is that the undercover investigator's identity can be kept secret after the operation has been stopped. What is meant here is true identity, i.e. his real name and other personal particulars, including the fact that he was (is) an undercover investigator. He can continue to act in legal transactions using his legend. The decision on secrecy is at the discretion of the police. The public prosecutor and the judge who are responsible for the decision on consent to the operation may, however, demand that the undercover investigator's true identity be disclosed to them. Moreover, in a criminal case, i.e. in an operation or in other criminal proceedings where the undercover investigator is due to appear—e.g. as a witness, his true identity must on principle be disclosed at the main court hearing. Keeping a true identity secret is only possible in accordance with section 96 *StPO*, i.e. when it is to be feared that disclosure would threaten life, limb or liberty of the undercover investigator or some other person, or that it would jeopardise continued use of the undercover investigator. The decision on secrecy is taken by the highest service authority having due regard to all the circumstances of the individual case. Sweeping general secrecy is not allowed since every instance of secret identity and its relevant treatment in the files might reduce the legal protection of the person affected. When the decision is being made the legal interests at variance must be carefully weighed and the facts of the case assessed as a whole. Where facts requiring secrecy so permit, the criminal court shall be informed at the time the prohibition is declared—for the court must be able to examine the lawfulness of the prohibition at least as regards manifest errors. Reasons for the prohibition must be explained to the court so that it can work actively to eliminate any barriers and provide the best evidence possible.

If the true identity of the undercover investigator is not protected, pursuant to section 96 *StPO*, by a decision of the high-

est service authority, the undercover investigator must, on principle, testify as a witness in criminal proceedings using his real name. If necessary, he can be afforded protection by the provisions on the general protection of witnesses (section 68 *StPO*). If his true identity is kept secret during the criminal proceedings, the undercover investigator will generally testify as a witness using his legend. If this is not enough to eliminate danger, the undercover investigator can be prohibited from taking part altogether—by analogy to section 96 *StPO*[35].

f) Police Surveillance

Finally, section 163e regulates police surveillance for the inconspicuous ascertainment and collection of facts for the purpose of drawing up a (selective) "picture of movements" on the part of the person being kept under surveillance. As a rule, the object is to identify connections and cross-links within a group of criminals.

This measure is applied as follows: the personal particulars of persons under surveillance are noted during police checks that have already been ordered and are in force for other reasons and where the checking of personal particulars is permitted (e.g. border or airport controls). The data thus collected are then evaluated, giving a picture of place-to-place movements by the person under surveillance, particularly as regards the journeys undertaken by that person.

Surveillance of an accused person is admissible in respect of all criminal offences of material importance where finding out the facts using some other means would be much less likely to succeed or be much more difficult. By virtue of the same subsidiarity clause other persons may also be covered if it is to be assumed that they are linked with the offender or are setting up such a link and that police surveillance would also be qualified by success. Vehicle registration plates may also be covered for surveillance purposes. The data of accompanying persons may also be reported (section 163e III *StPO*). The judge is responsible for making the order, and in emergency cases the public prosecutor; in the latter case, the order will cease to have effect if not confirmed by a judge within three days.

IV. Further Demands Addressed to Parliament; Further Need for Action

1) Monitoring Words Spoken in a Dwelling

At the moment there is intense discussion in the political arena of the demand being made for a statutory provision[36], allowing the use of technical means for monitoring conversations held in a dwelling. The reason given for this demand is that this kind of monitoring is indispensable because gangs operating in the sphere of Organised Crime are secluding themselves to an ever-increasing extent from undercover investigators. But a statutory provision in the *StPO* would first require amendment of the constitution, i.e. a limitation of the right to inviolability of the home (Article 13 of the Basic Law). Criminal procedure regulation would, moreover, have to be very strictly limited to those cases in which this kind of monitoring is indispensable, i.e. particularly where a substantial deficit in clearing up the matter would otherwise arise. Very strict procedural safeguards would also be needed.

2) Witness Protection

Wider-ranging demands for improvement of witness protection were not given effect in the *OrgKG*. It is true that in the legal policy discussion there was a demand, *inter alia*, for a provision allowing optical and acoustic shielding of a witness who is exposed to substantial risk during the main court hearing. However, this proposal was not adopted in the bill. It raises problems because this kind of procedure would, in large measure, be detrimental to finding out the truth and to the effectiveness of the defence.

3) Law Regulating Custody

There has also been discussion of an amendment to the law regulating custody (section 112, 112a *StPO*) to make it easier for remand custody to be ordered where offences have been committed in the sphere of Organised Crime. I regard these proposals with scepticism. When properly applied, sections 112 and 112a *StPO* are quite sufficient for ordering custody in cases where this is necessary, i.e. where there is a risk of flight or of evidence being suppressed or of repetition.

4) Conduct Appropriate to the Milieu

While the *OrgKG* was being discussed there were calls for a statutory provision allowing undercover investigators to commit criminal offences where this is indispensable in connection with their operations. Here consideration was given to the possibility of, for instance, allowing them to take part in illicit games of chance or to commit other criminal offences not encroaching on the protected legal interests of other persons.

This demand was not followed up. An important argument here was that a state based on the Rule of Law should not descend to the level of crime—not even for the sake of fighting Organised Crime. In any case, a provision of this kind would not have solved the problems concerned; for genuine "tests of innocence" with the object of testing whether a new gang member is an undercover investigator (e.g. by demanding that he commit a rape or inflict bodily harm on persons who are not involved) would not be hindered by this.

5) Witnesses for the Prosecution ("State's Evidence")

There was also discussion about introducing a special provision, in the interest of clearing up Organised Crime, relating to witnesses who turn "State's evidence"; it was supposed to enable the court to mitigate punishment in large measure or to dispense with punishment altogether where a gang member's testimony makes a marked contribution towards clearing up or preventing such crimes.

What militates against this kind of provision is that it is highly questionable whether it would lead to a marked improvement in clearing up or preventing criminal offences emanating from the sphere of Organised Crime. What is more, section 46 *StGB* affords sufficient opportunities for clear mitigation of punishment in appropriate cases.

6) Informers

There was also discussion whether—as in the similar case of undercover investigators—a statutory provision might also be necessary to allow the use of informers to help clear up serious criminal cases. Informers are persons who are not on the staff of a prosecuting authority but who are nonetheless willing to assist the prosecuting authorities, on a confidential basis and for some time, in clearing up criminal cases; their identity should generally be kept secret[37].

The *OrgKG* has no statutory provisions on this. This is not necessary, and indeed it would be wrong. Informers are simply normal witnesses—no more and no less. They have no special powers. What they know has to be used by the prosecuting authorities just like the knowledge of other witnesses. Special protection is possible for informers in terms of the provisions in the *OrgKG* relating to the protection of witnesses (section 68 *StPO*)[38].

7) Surveillance for Longer Periods

Surveillance of an accused person or of contact persons for a longer period is a method of investigation under criminal procedure which is indispensable. The statutory basis for the admissibility of longer periods of surveillance is currently to be found in sections 161 and 163 *StPO*. But, for constitutional reasons, special statuto-

ry regulation of this matter would be desirable. The provision should define what long-term—as opposed to short-term—surveillance is, and it would have to define the circumstances in which such surveillance may be ordered. The *OrgKG* does not contain this kind of provision yet. It is to be introduced in another parliamentary bill.

8) Precursory Investigations

For quite some time now there has been discussion of the question whether clearing up cases of Organised Crime might be intensified by so-called precursory investigations[39].

According to section 152 II *StPO* criminal investigations begin only when there is an initial suspicion, i.e. when there are sufficient factual indications. The latter will be given if, on the strength of concrete factual circumstances, there is a certain probability, being at least a slight probability, that a criminal offence might have been committed. This probability must go beyond the general theoretical possibility of crimes having been committed.

And this is the very point where the call for admissible precursory investigations crystalises. This demand is aimed at "acquiring" suspicion, i.e. at first establishing an initial suspicion. Here one has terrain in mind where, on past experience, the commission of crimes or the detection of an initial suspicion is to be expected, e.g. in big insurance companies where indications of insurance fraud might be found through examining a large number of files, or in large industrial enterprises where cases of criminal breach of trust might come to light when a large number of files are studied; for want of relevant experience or of the necessary expertise, the undertakings in question would not have discovered these cases at all.

I have fundamental legal policy misgivings about a statutory provision permitting such precursory investigations below the threshold of an initial suspicion, for the limiting function of an initial suspicion in terms of section 152 II *StPO* is of material importance in a state based on the Rule of Law. It protects an individual against being made the object of exploratory enquiry—for no reason. Investigations below the threshold of an initial suspicion would derogate from the citizen's rights or personal liberty.

Furthermore, regulation, under criminal procedure, of precursory investigations would entail numerous problems of detail requiring solution in the Criminal Procedure Code.

9) Data Files

It is essential to build up data banks where the prosecuting authorities can collect, constantly update, and evaluate all knowledge relating to Organised Crime. There are data files of this kind in police departments and public prosecution offices in the Federal Republic of Germany, particularly on a centralised basis at the Federal Criminal Police Office. Nevertheless, clear statutory provisions are necessary to regulate the admissibility of such data files for purposes of criminal prosecution. This statute is being worked on at the moment.

10) International Co-operation

International co-operation is just as important. It cannot be confined to mutual (bilateral) legal assistance between states. What is important is that there should be a multilateral exchange of experience and data, and especially that common strategies should be evolved to fight Organised Crime.

Interpol could be helpful here. But that is not enough. At present, in the Federal Republic of Germany we are examining how International Co-operation might be improved. This also embraces the question as to international co-ordination of transfrontier suppression as well as the question of setting up an internationally accu-

mulated and accessible data collection for the fight against Organised Crime. Numerous problems emerge in this connection—problems concerning data protection, difficulties over sovereign rights, problems resulting from differences of system as well as from differences in the legal standard found in the various European countries. But I am confident that these problems may soon be solved.

V. Concluding Remarks

Having come to the end of my observations, I should like to put forward some postulates—more or less by way of conclusion:

1) By the legislation passed to date, particularly the *OrgKG* and the Profit Tracing Act, the Federal Republic of Germany has largely created the legal provisions needed for those measures required for fighting Organised Crime in Germany.

2) What we now need to do—on the basis of these clear statutory preconditions for admissibility—is to intensify the work of the prosecuting authorities so as to use all permissible measures for the purpose of fighting Organised Crime effectively.

3) The future will show whether additional statutory provisions will be needed for further measures. For an assessment of this question it will be indispensable to have up-to-date reports from prosecuting authorities on successes and difficulties encountered in practice. If possible, such an assessment ought to include reports by foreign prosecuting authorities on their experiences as well as the findings of studies in comparative law.

4) In this assessment it must be borne in mind that current statutory provisions and the measures they permit are increasingly bordering on the limits of what is possible and feasible in a state based on the Rule of Law. Effective criminal prosecution also has its limits in this respect. Criminal prosecution cannot be pursued at all costs, and this also applies to Organised Crime. Human rights, liberty, the general right of personality, including data protection, and the other basic rights of citizens must be respected. They have an inviolable core; and also where Parliament has allowed restrictions of these rights, they are to be confined to the extent that is indispensable for an effective fight against Organised Crime.

5) Urgent attention must now be paid to examining the areas where, and also how—bearing in mind postulate no. 4), international co-operation can be developed and intensified for the fight against Organised Crime. Effective international co-operation is ultimately more important than the preservation of national sovereign rights. In the framework of international co-operation an effort must be made to co-ordinate internationally the transfrontier fight against Organised Crime. Bearing in mind the above principles, we should strive for largely uniform procedures, uniform standards and uniform techniques for fighting Organised Crime. But in each case where the national legal standard is higher, it should not be diminished by compromises being made for the benefit of international unification, co-operation and co-ordination.

References

1. Bundesgesetzblatt [Federal law Gazette] (BGBl) 1992, p. 1302.
2. Compare (Cf.) the Gesetzentwurf des Bundesrates zur Bekämpfung des illegalen Rauschgifthandels und anderer Erscheinungsformen der Organisierten Kriminalität [Bill introduced by the Federal Council to Suppress Illegal Drug Trafficking and Other Manifestations of Organised Crime] (OrgKG) of 25 July 1991—Drucksache des Deutschen Bundestages (BT-Drs.) 12/989, p. 1, 20, 21—and also the Beschlußempfehlung und Bericht des Rechtsausschusses des Deutschen Bundestages of 4 June 1992—BT-Drs. 12/2720 p. 2–3.

3. Cf. 1). By way of elucidation the statutory provisions on money laundering as well as on the use both of technical means for surveillance and of undercover investigators are enclosed in the annexes (1 to 3).
4. On the discussion see e.g. the expert reports in the protocol of the hearing before the Bundestag Legal Affairs Committee, number 31 of 22 January 1992. Cf. also Boll in Kriminalistik 1992, p. 66; Hassemer in Kritische Justiz 1992, p. 64; Krey/Haubrich in Juristische Rundschau (JR) 1992, p. 309; Meertens in Zeitschrift für Rechtspolitik (ZRP) 1992, p. 205; Ostendorf in Juristenzeitung (JZ) 1991, p. 62; Hilger in Neue Zeitschrift für Strafrecht (NStZ) 1992, p. 457 with further references.
5. See e.g. Article (Art.) 1 (protection of human dignity), 2 (safeguarding the general right of personality), 10 (protection of the privacy of telecommunications), 13 (inviolability of the home), 14 (guaranteeing property): Grundgesetz/GG [Basic Law].
6. Cf. Seifert, Kommentar des Grundgesetzes, 1988 3rd. edition, p. 29, 33. On the problems involved see also Krey/Haubrich in JR 1992, p. 309, Lorenz in JZ 1992, p. 1000, Rogall, Informationsangriff und Gestzesvorbehalt im Strafprozeßrecht, Tübingen 1992 as well as BT-Drs. 11/1878 (data protection in criminal proceedings).
7. Cf. the "Gemeinsame Richtlinie der Justizminister/-senatoren und der Innenminister/-senatoren der Länder über die Zusammenarbeit von Staatsanwaltschaft und Polizei bei der Verfolgung der Organisierten Kriminalität" [Joint Guidelines of the Ministers of Justice and the Ministers of the Interior relating to Co-operation between Public Prosecution Offices and the Police in the Prosecution of Organised Crime] in Kleinknecht/Meyer, Kommentar der Strafprozeßordnung, 40th. edition, A 14 p. 2066. For the problems involved see also BT-Drs. 12/1255.
8. Apart from drug crime, particular account must be taken here of counterfeiting money, theft and handling stolen property, illicit gambling, extortion, slave trafficking and illegal arms trafficking; cf. also BT-Drs. 12/1255, p. 2.
9. Particularly commission on a gang and on a business basis.
10. Pursuant to section 261 VI StGB there is no criminal liability under subsection 2 (but not possible criminal liability pursuant to subsection 1 as well) if a third person has previously acquired the property without thereby committing a criminal offence.
11. Entwurf eines Gesetzes über das Aufspüren von Gewinnen aus schweren Straftaten [Bill on the Tracing of Profits from Serious Crimes], BT-Drs. 12/2702; Gegenaüßerung der Bundesregierung zur Stellungnahme des Bundesrates, BT-Drs. 12/2747 [Counter-statement by the Federal Government on the Comments submitted by the Federal Council].
12. This provision largely derives, unchanged, from a bill introduced by the Federal Government: cf. BT-Drs. 11/5461. While the bill was before Parliament the Social Democratic parliamentary group raised objections to this provision on constitutional grounds: cf. BT-Drs. 12/2720, p. 41.
13. Consequent amendments in sections 74e and 76 StGB. For details see the full explanation in the Government draft adopted for the OrgKG, BT-Drs. 11/6623.
14. For more on this and on the extent of the continuing judicial duty to investigate see BT-Drs. 11/6623 p. 6. The reasons are based on the fact that the court, in the context of its comprehensive duty to clear up the matter, will do everything in its power to establish lawful acquisition when weighing up all factors. The object's origin in unlawful acts must appear as the "most probable" origin and it must "really obtrude upon an objective observer." Thus, in the end result, the reasons call for a particularly high degree of probability, to which, however, the wording used in the Act does not give expression without more.
15. This provision also applies to interrogation of experts (section 72 StPO). Consequent amendments in sections 168a, 200, 222 StPO, section 172 GVG.
16. The same applies as well to all other office-holders, but not in cases where notice is taken of a matter in a business context; here, if need be, recourse may be had to section 68 II 1 StPO.
17. Where a witness a risk has been given a "new identity" it may be sufficient—and therefore necessary in terms of the propor-

tionality principle—for only the new identity to be kept secret.

18. This duty does not apply to interrogations during investigation proceedings.
19. As regards those questions to which the accused's right to put questions also applies, the fact that the prosecuting authorities used undercover investigators may be revealed during the main court hearing. If this is to be definitely avoided such witnesses will have to be dispensed with.
20. Kleinknecht/Meyer §172 GVG margin reference (m.f.) 5.
21. On this see Kleinknecht/Meyer §96 m.f. 12.
22. On this see Krehl in Neue Juristische Wochenschrift (NJW) 1991, p. 85.
23. Perhaps where the evidence is doubtful and where the defence's chances of examining the sources of evidence and the evidence itself, e.g. by conducting their own enquiries, have been restricted because of the need to protect witnesses.
24. A screening search is not to be confused with simple electronic matching of data that the prosecuting authorities have been able to collect themselves with the aid of powers of encroachment given by the law of criminal procedure. Section 98c StPO makes it clear that this kind of machine matching is allowed, i.e. automated comparative evaluation of data that the prosecuting authorities have obtained from using the investigatory measures provided in the StPO. Furthermore, it is permissible for these data to be matched with preventive data files. It does not matter how the police collected such data provided they were entitled to do so.

    This machine matching is permissible without its being linked to a catalogue of criminal offences, without a subsidiarity rule and without a judicial order since it is only knowledge already "in stock" that is being used.
25. Name, address, other personal criteria specific to the individual case, e.g. outward appearance, occupation, ownership of a particular vehicle; attributes, modes of conduct, e.g. that payments are made in cash or with a particular credit card.
26. *Example*: if it is suspected that a criminal offender was driving a red Toyota motor car, built in 1985, model X, while escaping after committing the offence and that the car may have been from Hamburg because the official registration number of the vehicle began—according to the observations of witnesses—with the letters HH, it will be possible, with the aid of the motor vehicle licensing authority's data files, to find out which persons in Hamburg are the owners of such a vehicle. If, moreover, it is known (e.g. from the observations of witnesses) that the offender pays his bills using a certain credit card, the data of these vehicle owners (name, address, etc.) can be compared by machine with the customer data of the credit card company, thus "screening out" the fact that only very few of the owners concerned are at the same time holders of this credit card. Traditional criminal procedure methods can then be used for further investigation of the latter persons to see whether they come into question as possible offenders.
27. Admissible only if finding out the facts or where the offender is residing using some other means would be much less likely to succeed or be much more difficult. On the problems see Rieß in Gedächtnisschrift Karl-Heinz Meyer, 1990, p. 367.
28. On the problems here see Rieß, Verwertungsverbote bei der Aufklärung von Katalogtaten in: Schriftenreihe der AG Strafrecht des deutschen Anwaltvereins, Vol. 6, 1989, p. 141; Kleinknecht/Meyer § 100a m.r. 18.
29. The use of mere visual aids like binoculars, the recording of words spoken in public and the mere monitoring of words not spoken in public do not fall under these limiting provisions since they are permissible without restriction pursuant to sections 161, 163 StPO—i.e. within the confines of the principle of proportionality, which is generally applicable. Also, preserving traces of an offence, e.g. the subsequent taking of photographs at the scene of a crime for the purposes of preserving and evaluating evidence, does not fall within the sphere of section 100c StPO but is permissible in terms of sections 161, 163 StPO.
30. In section 101 StPO there is regulation of the cases where, and when, affected persons have to be informed of the measures and when (for how long) documents relat-

ing to certain measures will not be made part of the case files but will first be deposited at the public prosecution office for safety reasons.

31. Federal Constitutional Court in NJW 1992, p. 168.
32. Cf. BT-Drs. 12/1255.
33. The statutory provisions are supplemented by a "Gemeinsame Richtlinie der Justizminister/-senatoren und der Innenminister/- senatoren der Länder über die Inanspruchnahme von Informanten sowie über den Einsatz von Vertrauenspersonen und Verdeckten Ermittlern im Rahmen der Strafverfolgung" [Joint Guideline of the Ministers of Justice and Ministers of the Interior of the States of the Federation on Recourse to Sources of Information and on the Use of Informers and Undercover Investigators in the Prosecution of Crimes]—see Kleinknecht/Meyer A 14 p. 2062.
34. Under section 110e StPO knowledge acquired by an undercover investigator may be used in other criminal proceedings to a limited degree only—cf. 28).
35. See above III 5 a) and 21).
36. See Zachert and Hassemer in Deutsche Richterzeitung 1992, p. 355. See also BT-Drs. 12/2720 p. 5, 43 and the Entschließung zur Bundesrats-Drucksache BR-Drs. 388/92.
37. Kleinknecht/Meyer A 14 p. 2062.
38. See Hilger in NStZ 1992, p. 457.
39. On the problems here see e.g. Dörmann, Organisierte Kriminalität—wie groß ist die Gefahr? Bundeskriminalamt (BKA) Forschungsreihe 1990 p. 115, Dölling, Polizeiliche Ermittlungstätigkeit und Legalitätsprinzip, BKA-Forschungsreihe 1987, p. 267, 272 and also Hund in ZRP 1991, p. 463 with further references.

Annex 1

Section 261 (Money Laundering)

(1) Imprisonment up to five years or a fine shall be imposed on any person who conceals, disguises the origin, or prevents or jeopardises detection of the origin, the location, the forfeiture, the confiscation or the seizure of any property which derives from:

1. a serious crime (*Verbrechen*) committed by some other person,
2. a less serious crime (*Vergehen*) committed by some other person pursuant to section 29 subsection 1 number 1 of the Narcotic Drugs Act, or
3. a less serious crime (*Vergehen*) committed by a member of a criminal association (section 129).

(2) The same punishment shall be imposed on any person who, in respect of the property referred to in subsection 1:

1. acquires such property for himself or a third person, or
2. possesses or uses such property for himself or a third person, knowing, at the time of receipt, the origin of such property.

(3) An attempt shall be punishable.

(4) In particularly serious cases the punishment shall be imprisonment from 6 months to 10 years. A particularly serious case usually exists where the offender acts on a business basis or as the member of a gang that joined together for the purpose of recurrent commission of money laundering.

(5) Whoever in the cases contemplated in subsections 1 or 2 recklessly fails to realise that the property derives from the unlawful act of another, referred to in subsection 1, shall be punished with imprisonment up to 2 years or a fine.

(6) The offence shall not be punishable under subsection 2 if a third person has previously acquired the property without committing a criminal offence when doing so.

(7) Property to which the criminal offence relates may be confiscated. Section 74a shall be applicable. Sections 43a, 73d shall be applied if the offender acts as the member of a gang that joined together for the purpose of recurrent commission of money laundering. Section 73d shall also be applied where the offender acts on a business basis.

(8) The property referred to in subsections 1, 2, and 5 shall be on an equal footing with property that derives from acts committed outside the area of application of this Act provided the acts are punishable at the place of commission as well.

(9) Punishment for money laundering shall not be imposed on any person who:

1. voluntarily reports the offence to the competent authority or voluntarily causes such a report to be made unless the offence had already, wholly or partly, been detected and the offender knew this or must have anticipated this on reasonable consideration of the facts, and
2. in the cases contemplated by subsections 1 or 2 under the conditions referred to in number 1 causes the property, to which the criminal offence relates, to be seized.

(10) The court may, at its discretion, mitigate punishment (section 49 subsection 2) in the cases contemplated by subsections 1 to 5 or dispense with punishment under these provisions if the offender by voluntarily disclosing his knowledge has substantially helped to make it possible for there to be detection of the offence, going beyond his own contribution thereto, or of an unlawful act of another, referred to in subsection 1.

Annex 2

Section 100c
(Use of Technical Means of Surveillance)

(1) Without the knowledge of the affected person:

1. there may be a) production of photographs and visual recordings, b) use of other technical means specially intended for surveillance purposes for trying to find out the facts or where the offender is residing when a criminal offence of material importance is the subject of the investigation, and if finding out the facts or where the offender is residing using other means would be less likely to succeed or be more difficult to achieve.
2. words not spoken in public may be monitored and recorded with technical means when certain facts establish a suspicion that someone has committed a criminal offence referred to in section 100a, and finding out the facts or where the offender is residing using other means would be futile or be much more difficult.

(2) Measures pursuant to subsection 1 may be applied against the accused only. Measures pursuant to subsection 1 number 1a shall only be admissible against other persons if finding out the facts or where the offender is residing using other means would be much less likely to succeed or be much more difficult. Measures pursuant to subsection 1 number 1b, number 2 may be ordered against other persons only if it is to be assumed on the basis of certain facts that they are connected with the offender or that such a connection is being set up, that the measure will lead to finding out the facts or where the offender is residing, and that using some other means would be futile or be much more difficult.

(3) The measures may also be applied when third persons are inevitably going to be affected by them.

Section 100d

(1) Measures pursuant to section 100c subsection 1 number 2 may only be ordered by a judge, and where danger is imminent by the public prosection office and their auxiliary officials as well (section 152 of the Courts' Consti-

tution Act). Section 98b subsection 1, second sentence, section 100b subsection 1, third sentence, subsections 2, 4 and 6 shall apply correspondingly.

(2) Personal information acquired through the use of technical means under section 100c subsection 1 number 2 may be used in other criminal proceedings for evidentiary purposes only to the extent that, on evaluation, knowledge is acquired which is needed to clear up a criminal offence referred to in section 100a.

Section 101 shall be amended as follows:

a) Subsection 1 shall be worded as follows;
"(1) The persons concerned shall be informed of the measures taken (sections 99, 100a, 100b, 100c subsection 1 number 1b, number 2, section 100d) as soon as this can be done without jeopardising the purpose of the investigation, public safety, life or limb and the possibility of continued use of an operative official investigating official on a non-open basis."

b) The following subsection 4 shall be inserted;
"(4) Decisions and other documents on the measures under section 100c subsection 1 number 1b, number 2 shall be kept at the public prosecution office. They shall only be placed on file when the conditions in subsection 1 have been fulfilled."

Annex 3

Section 110a (Undercover Investigators)

(1) Undercover investigators may be used to clear up criminal offences when there are sufficient factual indicators showing that a criminal offence of material importance has been committed:

1. in the sphere of illicit drug or arms trafficking, of forging money or official stamps,
2. in the sphere of state security (sections 74a, 120 of the Courts' Constitution Act),
3. on a business or habitual basis, or
4. by the member of a gang or in some other organised way.

Undercover investigators may also be used to clear up serious crimes (*Verbrechen*) when there is a risk of repetition in view of certain facts. Their use is only admissible if clearing up the criminal offence using some other means would be futile or much more difficult. Undercover investigators may also be used to clear up serious crimes (*Verbrechen*) where the special significance of the offence makes the operation necessary and other measures would be futile.

(2) Undercover investigators shall be officers in the police force who carry out investigations with a changed and lasting identity (legend) being conferred on them. They shall be entitled to take part in legal transactions using their legend.

(3) Where it is indispensable for building up or maintaining a legend relevant documents may be drawn up, altered and used.

Section 110b

(1) The use of an undercover investigator shall only be admissible after the public prosection office has given its consent. Where there is imminent danger and the decision of the public prosecution office cannot be obtained in time, it shall be obtained without delay; the measure shall be stopped if the public prosecution office does not give its consent within three days. Consent shall be given in writing and for a limited period. An extension shall be admissible so long as there is fulfilment of the preconditions for the operation.

(2) Operations: 1. that are directed against a specific accused person, or 2. where the undercover investigator enters a dwelling to which there is no general access, shall require the consent of a judge. Where there is imminent danger the consent of the public prosecution office shall suffice. Where the decision of the

public prosecution office cannot be obtained in time, it shall be obtained without delay. The measure shall be stopped if the judge does not give his consent within three days. Subsection 1, sentences 3 and 4, shall apply correspondingly.

(3) The undercover investigator's identity can also be kept secret after the operation has ended. The public prosecutor and the judge who are competent to take the decision on consent to the operation can demand that his identity be disclosed to them. Otherwise in criminal proceedings maintaining secrecy of identity in accordance with section 96 of the Criminal Procedure Code shall be admissible particularly when there is reason to fear that disclosure would threaten life, limb or liberty of the undercover investigator or some other person, or that it would jeopardise continued use of the undercover investigator.

Section 110c

Using their legend undercover investigators may enter a dwelling with the consent of the person with a right of entry. Consent may not be induced by pretence of a right of entry going beyond use of the legend. In other respects the powers of an undercover investigator shall be governed by this Act and by other legal provisions.

Section 110d

(1) Persons whose dwelling the undercover investigator has entered, there being no general access to such dwelling, shall be informed of the operation as soon as this can be done without jeopardising the purpose of the investigation, public safety, life or limb and the possibility of continued use of the undercover investigator.

(2) Decisions and other documents on the use of an undercover investigator shall be kept at the public prosecution office. They shall only be placed on file when the conditions in subsection 1 have been fulfilled.

Section 110e

Personal information acquired through the use of an undercover investigator may be used in other criminal proceedings for evidentiary purposes only to the extent that, on evaluation, knowledge is acquired which is needed to clear up a criminal offence referred to in section 110a subsection 1; section 100d subsection 2 shall remain unaffected.

Present Issues for Organized Crime Control in U.S.A.

*by Paul E. Coffey**

It could be argued in one sense that organized crime is a most remarkable and praiseworthy organization, that is, it is free of political bias, it is nondiscriminatory in the services it provides, and it is blind to the social and ethnic backgrounds of its clients. And, although there are exceptions to the rule, organized crime is certainly hardworking in its pursuit of revenues. It is, in other words, big business. In fact, a famous crime boss once claimed that organized crime in the United States was bigger than General Motors. Whether or not that was true, I dare say that in recent years it has fared better financially than many of America's best known companies. Nor is organized crime's very powerful and profitable influence limited to the United States; as our presence today at this conference dramatically attests, it is a worldwide problem.

Organized crime has many faces and, indeed, many names. It is known variously in Italy as the Sicilian Mafia, the Camorra, and the 'Ndranghetta. In America it is known as La Cosa Nostra (commonly called the "LCN"). In Japan, it is the Boryokudan; in Colombia, the Medellin cartel (among others). And yet, until recently, many of us would have considered these groups to be separate species of organized crime, located in distinct geographic spheres and lacking common interests or networks. In the United States, for example, the LCN and the Boryokudan are generally considered by our organized crime experts to be separate crime problems, whereas the Sicilian Mafia and the LCN are occasionally lumped together because of their common heritage. But the evidence is growing that La Cosa Nostra has ties to the Boryokudan, and that the Colombian cartels frequently exchange heroin for cocaine with La Cosa Nostra. We should assume then that heretofore separate branches of the organized crime tree have been joined at the base.[1]

It goes without saying that law enforcement communities must strengthen their ties as well. We can take heart that because organized crime operates more or less the same from one country to another—just as automobiles are pretty much the same the world over even though some perform more efficiently than others—investigative and prosecutive techniques that have succeeded in one country ought to work well in others despite the inevitable differences in laws and procedures among such countries. In this regard let us consider the subject of vice, a term that usually encompasses gambling, loansharking, extortion, prostitution, and illegal drugs. Vice *is* organized crime. Every organized group that I know of generates its principal revenues from one or more of these basic activities. Significantly, they do so in pretty much the same way. Drug dealing is, after all, still drug dealing whether it involves the Mafia or the Tongs of Hong Kong. The same is true of loansharking and extortion; such differences that we might encounter reflect only degrees of sophistication and competence. Of course, some organized crime groups are like criminal city-states which have been around for a few centuries and which have elevated vice virtually to a science; as the years go by, only the names of

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their leaders have changed. These are the groups that most concern us because their power is unequaled, their techniques are handed down from generation to generation and their very existence explains why we are here today; organized crime is a deadly enemy that recognizes no borders and no laws.

In coming to grips with this enemy, we are confronted with a formidable wall of languages, customs, and laws, all of which unintentionally stall our response to this common problem. The premise of my address is that while organized crime will never be eliminated in our lifetimes—the public's thirst for vice is too great for that to happen—its spread can be controlled through the internationalism of basic law enforcement techniques. In particular, we must act immediately to control an aspect of vice that threatens us all: Money laundering. As you know, vice generates income that must be purified. Every day, satellites and ground-based computers become more essential to the movement of this income. Especially alarming these days is how quickly organized crime identifies new techniques for moving money around the world and how quickly organized crime passes this information amongst its component groups. Perhaps 10 years ago we could have taken some comfort that drug and money-laundering networks tended to use well-defined international connections, such as financial institutions in Switzerland and the Bahamas. Even though these networks were often difficult to interdict, we were at least fairly certain of what we were dealing with.

This is no longer true. Money, negotiable instruments, and electronic records can now be moved around the world in minutes instead of days. Incriminating records can almost as quickly be erased. And money laundering is no longer a one-way street; it is a vicious circle whereby large assets can be sent out of a country in one form and be returned minutes later in another. The acquisition of real estate and legitimate businesses by organized crime has become an end in itself, the means by which organized crime figures acquire great influence in the legitimate channels of government and society. Gone are the days of American gangsters, uneducated, dressed outlandishly in black, satisfied to live on and rule the mean streets of the underworld. Today's gangster would shun bank robbery as permissible but crude. He is far more likely to *own* the bank than to rob it!

So our challenge in the 1990s is how to preempt this purification of vice. Given the similarities in how crime groups operate—and how effectively they launder their criminal proceeds—the average citizen might expect law enforcement techniques worldwide to be equally similar. Sadly, this is not the case. Since prosecutors and investigators are only as effective as the statutory tools placed at their disposal by the political process, the effectiveness with which societies control organized crime varies greatly from country to country. Indeed, it can vary greatly from region to region within a single country. For example in the United States, there is one set of laws governing our Federal courts plus 50 separate sets of state laws.[2] You can imagine then what the differences can be between countries.

It is beyond my abilities, therefore, to propose a system for controlling organized crime that would work smoothly in your countries. Our respective societies are simply too dissimilar. Instead, I will summarize how the United States attempts to control its indigenous organized crime. We have had some success—but I want to be clear that I make no claim that our approach is necessarily the best or that our programs have always been the wisest. Indeed, our recent successes against La Cosa Nostra are chiefly the result of trial and error. If anything, the fact that we continue to bring such cases underscores the

fact that we still have a serious organized crime problem in the United States. Having said that, I think some important advances have been made which deserve your consideration.

Investigation

We can start with two basic principles. First, every citizen has a basic right to privacy; in the United States we have a saying, "A man's home is his castle." This means that police authorities and their laws must respect the citizen's lawful expectations of privacy. On the other hand, that right of privacy does not protect criminal conduct or conversation. Since organized crime groups go to great lengths to hide their plans from the police, it is essential that the police be able to infiltrate such groups under carefully prescribed rules. The two most important controls in this regard are electronic surveillance and undercover operations.

1. Electronic Surveillance

The single most important law enforcement weapon against organized crime is electronic surveillance. No other technique even comes close. In the United States virtually all of the major mob prosecutions in the past 20 years were predicated to some degree on wiretaps or oral monitoring devices (known as "bugs"). I say without fear of contradiction that in the 21st century no country will be able to cope with international crime without laws strongly supporting (but carefully controlling) electronic surveillance.

Here are some important issues to consider when embarking upon an intensive electronic surveillance program:

a. It is essential that police have the authority to monitor a target's oral conversations as he moves from place to place. Known as a "roving" interception, this form of electronic surveillance is permissible in the United States only when the police can satisfy a judicial officer in advance that the target is intentionally attempting to defeat law enforcement efforts by acting erratically or avoiding set routines.[3]
b. No electronic surveillance should be initiated until police authorities have carefully determined (as much as possible) who the likely interceptees are, what language they speak, and what their daily routines are. Taking these precautions might seem self-evident, but I can assure you that important organized crime investigations in the United States have sometimes come to a grinding halt because physical surveillance teams and their monitoring counterparts were not adequately prepared when interceptions began.[4] The monitoring team must be thoroughly familiar with the codes and normal routines of the targets.
c. It is equally important that the monitoring team be carefully briefed on all statutes governing electronic surveillance. United States statutes require the suppression of electronic evidence, no matter how dramatic and inculpatory, if the court believes that conversations of innocent persons were also intercepted or that the tape recordings in question were not promptly sealed and protected from tampering.[5] I suspect that most countries that permit eavesdropping have very strict limitations that must be observed in order for the results of the eavesdropping to be admissible. You might be amazed how quickly the prosecutors and agents can forget what it takes to comply with the rules of eavesdropping.
d. Finally, the supervisors of the monitoring team must have the commitment, if necessary, to continue electronic surveillance for many months (assuming this is legally permissible). In our experience it is very unusual to infiltrate the

top levels of a crime family in only 30 or 60 days. It isn't worth the effort that it takes to put eavesdropping devices in place if the commitment is lacking to spend months if necessary to develop a good case.

2. *Undercover Operations*

When it comes to organized crime control, undercover operations are second only to electronic surveillance; indeed, the two techniques often go hand-in-hand. There was a time, perhaps 10 years ago, when this technique was much easier to employ in the United States because organized crime groups, as opposed to narcotics rings, were unaccustomed to long-range undercover operations by the government. This is no longer the case. United States agencies have attempted to infiltrate LCN families in a big way—and those efforts have received a lot of public attention. This publicity in turn has made LCN bosses more cautious than ever of dealing with "newcomers." Unlike narcotics king pins, who often have to deal with middlemen whether they like to or not because that's what their business demands, an LCN boss can be much more selective. That is why the first undercover project against a crime boss must be so well prepared: Once that cat is out of the bag, it is doubly hard to get a second chance.

Of course, no technique carries the potential for greater success than the undercover approach. If successful, law enforcement secures a credible witness (the undercover agent) to the most secret conversations of a crime family. Combined with eavesdropping, the undercover approach provides comprehensive coverage of the targets' day-to-day activities. But this technique also carries the potential for disaster and requires exceptional preparation. For one thing, there is always the physical safety of the undercover agent to consider. To prevent the premature disclosure of his (or her)[6] identity, the agent must be provided with a fully substantiated past history (called "backstopping") and careful briefings of the targets' modus operandi. Every conceivable scenario that might make the targets suspicious of or hostile to the agent must be brainstormed in advance. And the undercover agent himself must undergo careful testing (including, if necessary, psychological profiling) to ensure that he possesses the intangible qualities whereby he will "fit" comfortably into his new identity.

A different danger altogether in an undercover case—the prevention of which requires equal planning—is that the innocent public will be injured physically or financially by the undercover activities. At first blush, you might ask what this issue has to do with control of organized crime? The answer is that undercover operations themselves have a great deal to do with controlling a crime family; hence it is critical that this technique receive strong support from the government and from the public. The quickest way to lose public support for undercover operations is to operate them in a way that victimizes the public.[7] Unlike eavesdropping, which is relatively passive, undercover operations frequently deal with—and sometimes intentionally mislead—the public. For example, suppose there is an undercover business selling products to the public while advertising itself unofficially to the underworld as a place where stolen property can be taken. Not only would the government be liable for any defects in the products it sells to the public, it might be indirectly responsible for encouraging thieves to steal property by virtue of supplying them with an outlet. Somehow, through some secret law of the unwise, it seems that the most important undercover operations develop issues along these lines. Solving them requires great care.

In order to balance these concerns correctly, our Department of Justice has set up an Undercover Review Committee,

comprised of senior prosecutors and investigators, to review, approve, and control all sensitive Federal Bureau of Investigation (FBI) undercover operations.[8] To be approved, an undercover proposal must:

1. Be in writing;
2. Contain a full factual description of the suspected criminal activity and the participants therein;
3. Set out in detail the proposed undercover scenario, the expertise of the undercover team, the duration of the project (not to exceed six months unless extended), and the anticipated legal issues (such as entrapment[9]); and
4. Project costs and reflect a system for accounting for monies.

There are, of course, many more investigative techniques for controlling organized crime than just electronic surveillance and undercover operations. Traditional steps such as witness interviews, forensic analysis, and physical surveillances are still important aspects of most organized crime investigations. And some very sophisticated scientific advances have been used in organized crime cases, including DNA testing,[10] psychological profile testing,[11] and age-imaging.[12] However, the manner in which organized crime insulates its leaders limits the value of these traditional investigative techniques. While there is no substitute for hard work, we must be imaginative if we are to stay one step ahead of organized crime. Electronic surveillance and undercover operations are the two techniques most likely to elevate an investigation of a "foot soldier" into an all-out prosecution of the commander-in-chief.

Prosecution

Let us turn, then, to the other half of making a successful organized crime case, the prosecution. The goal of every such case is to indict and convict the leaders of a crime group, not just their underlings. In the 1970s in the United States, most organized crime prosecutions charged a relatively small number of defendants, usually fewer than six. Moreover, even when such a prosecution was successful, it rarely had a lasting impact because crime families easily replaced those convicted defendants.[13] So we completely revised our approach; in the 1980s we initiated complex racketeering investigations designed to produce what we call the "enterprise case" in which a crime family's top leaders are charged in a single count with committing many crimes.

1. Racketeering Statute

Obviously, the goal in every organized crime case is to convict the highest levels of a crime family. To do so, prosecutors need the proper tools. First and foremost, prosecutors need an "enterprise" or "racketeering" statute designed specifically for this purpose.

Several countries already have enacted such legislation. Italy, for example, has an anti-Mafia statute; Japan, our host country, recently enacted statutes directed against the Boryokudan. And officials from Russia, Great Britain, and from several countries in South America have recently shown interest in "enterprise" legislation. An "enterprise" statute in this context is one that explicitly prohibits participation in a crime group through specified unlawful activity.

In the United States, the most famous of all anti-racketeering laws is called RICO, an acronym for the Racketeer Influenced and Corrupt Organizations Statute. In general, it provides heavy penalties (up to life imprisonment under certain circumstances) when a defendant conducts (or conspires to conduct) the affairs of an enterprise through a pattern of specified acts (known as "predicate" crimes). An "enterprise," in turn, can include anything from a corporation, to a labor union, to La Cosa

Nostra. In one sense the RICO statute did not actually create a new offense because murder, arson, extortion, and all sorts of business crimes (to name but a few of RICO's 46 predicate categories) were already outlawed when RICO was enacted in 1970. But RICO was still a dramatic legislative initiative because it permitted many of these generically different crimes to be charged in a single indictment, indeed, in a single count, so long as those crimes were part of a defendant's single pattern. In addition, there are some features of RICO that are particularly effective in organized crime cases. For example, as long as one of the predicate crimes alleged against a defendant occurred within the last 5 years before the indictment is brought, the next previous crime in the pattern of racketeering need only be within 10 years of the most recent crime. The third most recent crime need only have occurred within 10 years of the second act and so on. The reach-back feature of RICO, therefore, can extend 15 or 20 years or more into the past. (Except for statutes like RICO, which are rare, indictments in the United States cannot generally allege crimes that occurred more than 5 years prior to the date of indictment.[14])

RICO's reach is not only long, it is broad. As noted, the predicate crimes which qualify as RICO predicates (perhaps pillars or prongs would be more accurate) run the gamut from several forms of violence to fraud, securities offenses, most forms of vice (gambling, extortion, obscenity, prostitution, etc.), and illicit investment in legitimate businesses. Were it not for RICO, most United States judges would prohibit the prosecution of such diverse crimes in a single case, especially if 10 or more defendants were charged. Instead, the court would most likely require a series of smaller trials, which is exactly what crime families hope for because they understand that the best way to conquer a prosecution is to divide it: In a series of trials no one jury gets to see the entire picture. Organized crime, by contrast, is a picture composed of many crimes, all linked by a single chain-of-command. Any effective prosecution of a crime family would thus necessitate proof of these many crimes in a single trial. RICO permits this. In bringing a typical RICO prosecution, for example, we charge six or more racketeers with perhaps a dozen predicate crimes covering a decade. In each alleged predicate crime, some, but usually not all, of the defendants are named. Only by reading the entire charge does the reader see that each defendant is charged with *at least* two of the dozen or so alleged crimes and that each is accused of sufficient participation in the enterprise to conclude that he conducted its affairs to a significant degree.

As powerful as RICO is, very few RICO prosecutions were actually brought against organized crime (or against anyone else!) until the early 1980s. Part of the reason was that RICO has always been a very complicated and powerful instrument; it took nearly 15 years for Federal prosecutors to feel comfortable enough about RICO to make it the centerpiece of mob prosecutions. Put another way, it took a long time to teach new tricks to old dogs. Another reason was that the investigative techniques necessary to build a suitable RICO case, such as electronic surveillance and undercover operations, were not routinely used against mob bosses in the 1970s. To be sure, there was a lot of investigation and prosecution of racketeers for street crimes, but these cases rarely pierced the insulation behind which big crime bosses hid.

In the early 1980s, as I have already noted, the Federal Government (primarily the FBI) made a determined effort to infiltrate the secret headquarters of LCN bosses, listening to their plans and reconstructing their crimes. In turn, Federal prosecutors agreed to bring more and more complicated RICO charges. As a re-

sult, more successful cases against crime bosses have been brought in the last 10 years than in the prior 80! In fact, prosecutors discovered that RICO worked equally well whether the defendants were mobsters charged with murders and extortions or public officials charged with taking bribes.

Naturally, due to their sensational revelations, RICO mob cases received extensive media coverage.[15] At this point it is clear that control of organized crime in the United States would be inconceivable without RICO. In addition, RICO was the key charge against Panamanian dictator Manuel Noriega and the Philippines' President Ferdinand Marcos. RICO cases have also been brought against hundreds of police officers, judges, and public officials for official misconduct, and against terrorist groups, radical hate groups, street gangs, stock manipulators, and drug cartels.

But, I should add a word of caution. RICO is not different from any other powerful tool: It can easily be abused. There were times, for example, when RICO indictments simply charged too many defendants (15, 20, or more) or too many crimes, or both. Sometimes the pattern of crimes alleged covered 20 years or more. Even though these RICO charges were based on legally sufficient evidence, the resulting trials got completely out of hand.[16] Juries couldn't remember events described early in the proceedings, or couldn't tell which evidence related to which defendant. Called "mega-RICOs" by our media, these very large RICOs gave the statute a bad reputation and threatened its very existence. There was a loud clamor in the late 1980s in our Congress to repeal RICO or confine it to crimes of violence. Naturally, the loss of this statute would have taken the wind from our sails just when the most progress against organized crime was being made.

But RICO survived this crisis. To protect against potential abuses and reduce the controversy surrounding RICO, the Organized Crime and Racketeering Section (OCRS) has a special unit of attorneys who carefully review all proposed RICO indictments for legal and factual sufficiency. The unit also ensures in every case that RICO is *necessary*; when other, less powerful statutes would do just as well, the use of RICO charges is not approved.[17]

2. Organized Crime Units

Having an effective tool to perform a job well is only half the battle. I'm sure you've heard the adage that a hammer is only as good as the carpenter wielding it. The same is true of law enforcement. I suspect that most countries have special units for investigating organized crime groups. It is equally important, however, to create special units to *prosecute* organized crime cases. In our experience it takes years for prosecutors to develop an expertise in this area: They are routinely frequently called upon during the investigatory stage to draft search warrants, electronic surveillance requests, and grand jury subpoenas that play critical roles in whether a legally sufficient case will result. They then wage war against the country's most powerful defendants, who have the best defense attorneys that money can hire. Their trials can take months and often involve the trickiest issues known to the law. Even a seemingly minor mistake can explode into a major complication. From investigation to trial, their biggest cases literally take years to complete.

In the United States, we have LCN families operating in 24 geographic locations. To contain these racketeers, the Department of Justice has created 24 special prosecutive units called Strike Forces, which are assigned the principal responsibility for prosecuting LCN and Asian organized crime cases. These specially trained prosecutors are generally career prosecutors who are experts in electronic surveillance, undercover techniques, and

RICO cases. Every case that they initiate, every indictment or wiretap order that they draft, every trial that they undertake must be approved and supervised by Washington Headquarters. They are only allowed to work on organized crime matters; there are strict rules prohibiting their regional supervisors from assigning them to non-organized crime cases—no matter how important those other matters might be.

In short, these Strike Forces are indispensable in the war against organized crime. Perhaps over 95% of the convictions obtained in the United States against LCN members since 1968 have been achieved by these career prosecutors. Indeed, just a few weeks ago I hosted an annual meeting of the attorneys-in-charge of these Strike Forces to discuss plans for 1993. I recall realizing that I have closely worked with many around the room for over 15 or 20 years. Every effective organized crime program needs this type of elite corps.

3. Punishment

Let us now assume that the conviction of an organized crime member has occurred. It is then important that his punishment be certain. As we all know, the less that crime is punished, the less the criminal is deterred. This is especially true of the career criminal who deliberately balances his chances of making money against how long he will likely spend in jail if he is caught. There is a saying on the streets of America: "If you can't do the time, don't do the crime!"

It is my contention that punishment of organized crime must be certain—and that this certainty must be effectively communicated to the criminal underworld. This was not always the case in the United States. Prior to recent changes in our sentencing laws, a sentence of 10 years incarceration was actually far less than that. At most, the defendant was required to serve a little over six years and, in most cases, less than 4 years.[18] Assuming the defendant behaved himself while in prison, he rarely served the bulk of his sentence. Even a racketeer sentenced to 15 years in jail under RICO could well have expected to be released in 5 or 6 years. Moreover, there were special provisions in our laws allowing the sentencing court to permit release of the defendant even earlier than the 5-year mark, if, for example, the crimes involved were not violent. For professional, hardened criminals, sentences that actually involve less than 10 years in jail are often shrugged off as the cost of doing business.

A few years ago, we received new sentencing laws that make punishment more uniform and certain and, for serious crimes, more severe. A 15-year RICO sentence now means the defendant will actually serve pretty close to 15 years. And statutory guidelines exist that require the court to impose such sentences in cases where the crime is serious and the defendant has a prior criminal history. While some of our Federal judges complain that these sentencing guidelines are occasionally too harsh, longer sentences are naturally popular with prosecutors. One point in particular demonstrates why. Prior to the mid-1980s, only one person had ever publicly testified in a United States court about his membership in La Cosa Nostra, even though violent mob wars and prosecutions had been a part of America's public life since the 1920s. Only one person! Since 1985, however—the approximate point when the Federal Government aggressively began use of RICO-murder prosecutions against La Cosa Nostra bosses, 16 LCN members have defected and publicly cooperated! Just recently, Federal prosecutors created a sensation in the United States by securing the public testimony of Al D'ARCO, the boss of the Lucchese LCN family, and Sal GRAVANO, the underboss of the powerful Gambino

LCN family. Their cooperation has allowed the Government to file numerous additional RICO cases against their fellow mob bosses in New York City. What is important here is that D'ARCO and GRAVANO elected to cooperate because each was facing a certain life sentence on RICO-murder charges under the new sentencing guidelines. There was only one way out: Cooperation. Under the sentencing laws, the defendant cannot reduce his potential sentence unless he convinces the prosecution to make such a recommendation to the court based on cooperation. The prosecution can elect to make such a recommendation but is not required to do so. Hence, the sentencing guidelines create a strong motive for mobsters to cooperate. It probably shouldn't come as a surprise that when sufficient pressure is put on organized crime bosses, they will desert their comrades as quickly as anyone else.

Once again, however, I should insert a word of caution. In a typical RICO-murder case, a cooperating racketeer has been charged with and admitted to several homicides for which he would normally receive a mandatory life sentence. With cooperation, however, he might well be offered a maximum 20-year sentence. (At least now he would serve almost all of it!) In reaching such an agreement, prosecutors must remember their responsibility for the public's safety. It is all too easy for prosecutors, caught in the excitement of turning a mobster into a star witness, to forget that such a defendant often fits the description of a serial killer. One of the unavoidable but distasteful aspects of our efforts to control organized crime is that we have to deal with individuals such as the aforementioned Gravano. Mr. Gravano, for example, admits that he killed or conspired to kill 19 persons. Instead of serving a life sentence, his cooperation agreement limits his jail exposure to 20 years. Did we draw the line correctly? On the one hand, his cooperation will help to dismantle the current leadership of several very powerful mob families in New York City. On the other hand, 20 years in jail is the most that he will serve for participating in many murders. We have to constantly remind ourselves that there comes a point where a mobster must be required to answer sufficiently for his crimes regardless of his value as a prosecution witness. Moreover, when cooperation agreements are negotiated, they must be done uniformly so that one racketeer guilty of murder does not receive a greatly reduced sentence while another does not. For an organized crime program to be effective it must be implemented uniformly; fairness must be just as certain as punishment. In the United States we attempt to accomplish this through strict monitoring of Federal organized crime plea agreements by the central government.

Governmental Oversight

Let me now turn away from specific issues involved in building an organized crime case to the general oversight of an organized crime program. Organized crime simply cannot be controlled through individual cases, as significant as their results might be.

The key factor in controlling organized crime is the degree to which the national government supports that program. Local police and prosecutors will rarely have the resources to effectively cope with a powerful crime group. In the United States, for example, we have achieved only sporadic success against LCN families at the local level. For one thing, local agencies often lack the statutory authority to conduct electronic surveillance. For another, local agencies cannot afford long undercover operations; in some cases they cannot even afford the cost of protecting key witnesses.

In recognition of this fact, the Attorney General of the United States announced in 1990 a National Strategy to attack organ-

ized crime. To implement it, he created the Attorney General's Organized Crime Council, the members of which are the heads of the Federal Bureau of Investigation, the Drug Enforcement Administration (DEA), the Division of Enforcement of the Securities and Exchange Commission, the Secret Service, the Marshals Service, the Customs Service, the Postal Inspectors, and Federal law enforcement agencies. The Council meets as necessary, and at least once annually, to set the official priorities of the Federal Government's organized crime program.[19] In order to set these priorities, each agency and the country's 94 top Federal prosecutors (called United States Attorneys) are required each year to file written plans for attacking organized crime groups in their districts. The Department of Justice's Organized Crime and Racketeering Section then reports its analyses of these plans to the Council. The most important feature of this system is control: It obligates the regional prosecutors and agents to keep consistent pressure on La Cosa Nostra and Asian crime groups,[20] and prevents them from succumbing to periodic temptations to assign prosecutors and agents to non-organized crime cases. If the central government could only discourage this diversion, rather than forbid it, effective pressure against the mob would wax and wane like the tide. The United States' approach, while not perfect, is designed to outlast the constant change in government personnel, the passage of time, the occasional defeats, and the impact of occasional fiscal crises. In effect, it establishes an elite corps of organized crime experts at the district level, rewards their efforts, and protects their "turf." The program remains essentially the same, year in and year out. It is this single-minded, dedicated approach which has finally broken down the perceived "invulnerability" of La Cosa Nostra in the United States.

By the same token, we find that career prosecutors and agents—as opposed to officials in office for shorter periods—are more successful in developing an esprit de corps with their peers in other countries. As you will appreciate, it takes time before officials from different countries—even ones who have long-standing friendly ties—to establish sufficient trust whereby confidential information can be shared. Let's face it: All the treaties in the world are of little help until trust at the personal level is established! The best chances of establishing this trust lie in the professional ranks—as our presence here today clearly demonstrates. Much progress towards the international attack on Asian organized crime, for example, occurred at the Asian organized crime conference attended by 11 countries in September 1991, in San Francisco.[21] Even more important is the conference on Asian organized crime to be hosted by Japan several days from now; I hope that this second conference will create an impetus to make these conferences an annual event.

I also believe that the very existence of these conferences reflects the growing international control of organized crime. A good example is the Italian-American Working Group, which was formed to coordinate overlapping investigations of the Sicilian Mafia and its American LCN counterparts in the wake of the famous Pizza Connection cases of the mid-1980s. This working group has been fertile ground for successful exchanges of intelligence information out of which many strong personal relations have been established between Italian and American prosecutors and investigators. These relationships, established years before in the Working Group, resulted in substantial cooperation between Italian authorities and the FBI during last year's investigations into the murders of Italian prosecutors Giovanni Falcone and Paolo Borsellino. And these relationships were evident last month when Salvatore Riina, Italy's number one fugitive for the past 20 years and the boss of bosses of Italy's

Sicilian Mafia, was arrested in Palermo. While the lion's share of the credit there goes to the Italian authorities, the American FBI was credited with substantially assisting the investigation. Let us hope that similar working groups can be established between countries participating in this conference.

Another important feature of international cooperation that should be emphasized is the *identification* of the most important international crime targets, even though countries might understandably be reluctant to disclose when sensitive investigations of those targets are underway. After all, the single most important step in preventing or punishing a crime is to identify who the culprit is. In the Asian organized crime field, as an example, United States law enforcement officials have only marginal knowledge of Asian crime bosses. On the other hand, we have very good knowledge of the current LCN hierarchy—information that may be important to those countries with an LCN problem. International conferences can lead to an exchange of that information. I urge you to consider increased participation in such efforts.

Additionally, conferences can create a momentum for adopting techniques that are gaining acceptance worldwide. I have already briefly touched on this point. In San Francisco, participants learned that aggressive asset forfeiture laws had been enacted or were planned in Canada, New Zealand, Thailand, Singapore, and in the United States. Japan, meanwhile, is considering stronger drug forfeiture laws. And new money laundering laws called for by the United Nations' Vienna Convention of 1988 are in place or planned in Canada, the Netherlands, and the United States. Finally, many of the San Francisco participants emphasized the importance of participation in INTERPOL. I believe such measures can create a snowballing effect in countries which might be inclined to adopt them but which are still uncertain whether they will work. The fact that these techniques or statutes have worked in other countries can be a real factor in helping a country decide what it wants to do in that regard. Imitation, it is said, is the sincerest form of flattery.

Conclusion

In December 1992, a United States Congressional subcommittee report observed that "law enforcement efforts too often stop at international borders." The subcommittee noted that, while the rhetoric of cooperation was often positive, international exchange of information and documents and efforts to locate organized crime figures too often broke down in actual cases. In order to improve international assistance, the subcommittee made a number of recommendations:

- —Extradition laws and rules should be simplified;
- —United States agencies (such as the FBI and DEA) should increase their efforts to train foreign officials to the extent requested;
- —The roles of the United Nations and of INTERPOL should be increased;
- —The staffs of legal attachés and embassies should be increased; and
- —International sanctions against drug sanctuaries should be strengthened.

To the above recommendations, on which for the most part we might all agree, I would add two: (1) We should encourage countries to enact electronic surveillance and racketeering statutes; and (2) we should work very hard to identify the world's most important organized crime bosses. Perhaps this last recommendation needs the most immediate attention, because all the cooperation in the world will be of limited value until we know who the enemy is. In addition, it is critically impor-

tant that prosecutors and agents be equipped with strong anti-racketeering laws. This is so because crime bosses personally stick pretty close to home. It doesn't help much to catch lower-level organized crime figures laundering drug proceeds in Country A, which has strong anti-racketeering laws, if their boss sits in Country B, which does not. If that boss is a natural citizen of Country B, it is unlikely that he can or will be effectively investigated in Country A—even if the two countries enjoy friendly relations. Far better that Country B enact its own anti-racketeering laws and be provided with information from Country A that inculpates the crime boss in question. Please do not misunderstand me: I fully encourage stronger extradition and deportation laws that might accelerate the transfer of an organized crime figure to the requesting country, but I feel that the best hope for control of organized crime lies within the commitment of each country to deal directly with its own crime groups, aided by information sharing.

References

1. The United States Senate, in a report filed in December 1992, noted that the Boryokudan now operates throughout the Pacific Rim, in Europe, in South America, and, of course, in the United States. *See The New International Criminal and Asian Organized Crime Report* (Dec. 1992), Permanent Subcommittee on Investigations, United States Senate, at p. 16.
2. Some states permit court-authorized electronic surveillance, others do not. Some states have local laws designed specifically to attack crime groups (loosely known as "racketeering" statutes), others do not. Not surprisingly, the quality of law enforcement against major crime groups varies considerably at the state level in the United States.
3. There have been so many public prosecutions of LCN bosses in the United States based on wiretaps and vehicular "bugs" that organized crime groups are now taking extraordinary steps to avoid their usual haunts.
4. Nothing is more embarrassing than expending much effort to put together an electronic surveillance team, with its machines, support personnel, and off-site location, only to discover after turning on the eavesdropping equipment that the targets are speaking in an unexpected and unintelligible dialect or, worse still, that they are in the middle of a criminal event that the surveillance team cannot prevent because of inadequate planning.
5. United States prosecutors have on occasion suffered devastating suppression of lengthy and costly monitoring because the original monitoring tapes were not carefully sealed and protected.
6. It is important to recruit and train women for this technique, in part because crime families are more likely to assume that undercover agents are mostly men.
7. By way of analogy, many local police agencies in the United States have recently decided that their officers will not engage in high-speed automobile chases, even though that means that many criminals will escape. (There are, of course, exceptions to this rule.) The *reason* for this decision is that too many police vehicles were crashing into innocent third parties while pursuing criminals, causing great public concern.
8. Not all undercover operations are "sensitive" in this sense. Simple purchases of stolen property or of drugs do not normally require committee review. Examples of sensitive operations include the presence of one (or more) of the following: violence, public corruption, large-scale money laundering, international travel by the undercover officer, or the possible invasion of an attorney-client relationship.
9. In the United States, it is impermissible to encourage a person—even if he has a criminal record—to commit a crime unless the prosecution can later demonstrate that he was disposed to commit the crime or was already contemplating it.
10. An organized crime defendant in the United States was recently convicted of homicide because he was hit by gunfire

during a fatal attack on a victim. Although the defendant escaped without being seen by any witnesses, some of his blood remained and was later matched.

11. Our Federal Bureau of Investigation occasionally analyzes the known personal traits and temperament of several targets in an effort to predict which, if approached secretly, is most likely to cooperate when confronted with incriminating evidence. If successful, this target can then be used, for example, to further an undercover operation. Of course, if the approach backfires, the target will likely tip off his colleagues.
12. The Italian government has credited an FBI computer-enhanced aged image with helping to track down Salvatore Riina, the Sicilian boss of bosses who had been a fugitive for 20 years before his arrest last month in Palermo, Italy.
13. In the 1970s, for example, more LCN bosses in the United States and Sicilian Mafia bosses in Italy were probably assassinated than prosecuted.
14. The principal exception to this rule is homicide.
15. The recent RICO prosecution in New York City of John Gotti, considered to be the most powerful mobster in America, was extensively reported around the world.
16. One or two RICO trials lasted a year or more.
17. All Federal prosecutive offices are supplied official instructions for RICO prosecutions, a 150-page manual detailing what RICO is, how it works, what judicial rules have been imposed upon it, and under what circumstances its use will be approved.
18. An informal survey that OCRS conducted in 1985 found that the average sentence for a RICO conviction was only 4 years, even though every RICO conviction carried a potential sentence of 20 years.
19. At this time, for example, the top target priority of the program is La Cosa Nostra (and Italian organized crime elements within the United States). The number two priority is Asian organized crime.
20. Narcotics cartels, street gangs, and other organized criminal activity are handled by other Federal prosecutors.
21. The countries represented were Australia, Canada, Hong Kong, Japan, Republic of Korea, Malaysia, The Netherlands, New Zealand, Singapore, Thailand, and the United States.

Some Unusual Features of the U.S. Criminal Justice System: The Impact of Federalism on International Criminal Matters and the Plea Bargaining System

*by Thomas G. Snow**

Introduction

Today I would like to discuss two rather unusual features of the United States criminal justice system.

The first feature is the federal nature of the U.S. political system, and the interesting relationship this creates between the federal and state governments on law enforcement matters. In particular, I will emphasize the special problems which arise between the states and the federal government when dealing with international criminal problems. I will discuss in particular problems which arise in handling, (1) the death penalty in international extradition cases, (2) the criminal aspects of international parental child abduction cases, and (3) bounty hunters who seek to forcibly return fugitives from outside the territory of the United States.

The second feature of the U.S. criminal justice system which I would like to discuss is our system of plea bargaining. Many of you were present during my presentation at the Ministry of Justice two weeks ago. That lecture focused on the roles of criminal lawyers in American society, with particular emphasis on their roles in adversarial criminal trials. While the information provided during that presentation was accurate, it really covered only part of the story. In fact, most criminal cases in the United States never reach the trial stage. The defendant pleads guilty prior to trial, often as part of a deal, or plea bargain with the prosecutor. Today I wish to discuss the theory behind the plea bargaining system in the United States, and how it works in practice. I will also touch upon some of the criticisms of the system, and my personal opinion on the future of plea bargaining in the United States.

The Impact of Federalism on International Criminal Matters

Permit me to begin with a brief discussion of the federal system of government in the United States, and the difficulties this can create when dealing with criminal law issues containing an international dimension.

As you know, the fifty stales which make up the United States of America are considered separate sovereigns under the U.S. Constitution. The central or federal government enjoys only those powers that the U.S. Constitution expressly or impliedly grants to it. The 10th Amendment to the Constitution states that, "The powers not delegated to the United States by the Constitution ... are reserved to the States ..."

What does this mean with respect to the criminal law in the U.S.? Well, what it means is that the vast majority of the criminal law is made and enforced by the 50 states — and not by the central government. Of course there are areas in which the Constitution grants the federal government power to enact and enforce criminal laws. For example, the U.S. laws to fight organized crime which we have discussed during this seminar are all federal statutes

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passed by the U.S. Congress in Washington, D.C. The federal government relied upon Article I of the U.S. Constitution — which gives it the power to regulate commerce between the states — as the authority for passing such laws. But that being said, virtually all murders, rapes, robberies, and burglaries are prosecuted by state authorities in places like California, New York, and Arkansas under the criminal laws passed by the legislatures of those states. Even in the narcotics area, although the federal government has passed extensive laws prohibiting the manufacture, sale, and importation of dangerous drugs, most people who are charged with drug offenses in the U.S. are charged under the narcotics laws of the states. In the area of drug enforcement, the U.S. federal government and the state governments enjoy concurrent jurisdiction. In fact, if we have time at the end of this presentation, it might be interesting to discuss what happens when both the state and federal authorities want to investigate and prosecute the same people for the same drug trafficking activity.

Although each state enacts and enforces its own criminal laws, there is often great similarity between those laws. However, sometimes there can be dramatic differences. Take, for example, the laws pertaining to the sale and possession of firearms. As you may know, the 2nd Amendment to the U.S. Constitution protects the right of Americans to keep and bear arms. But you may find it quite interesting how very differently the states have approached the issue of gun ownership and control.

In Washington, D.C., which is not strictly speaking one of the fifty states but which in many ways is like a state, the gun laws are very strict. It is illegal for anyone to possess a handgun in Washington without a license. And unless you are a police officer, it is extremely difficult to obtain a license to own a handgun. However, if you cross over the Potomac River into Virginia, the state where I live, a resident of the state may freely purchase and keep in his home as many guns — handguns or otherwise — as he wishes. It is perfectly legal. In fact, just before I left home for this visit to UNAFEI, there was a debate underway in the State Legislature of Virginia whether to pass a law which would prohibit a person from buying more than one handgun per month. The reason this new law is needed is that people from places where gun laws are more strict — such as Washington, D.C. and New York City, are traveling to Virginia, showing gun dealers phony identification, and purchasing large numbers of guns. Those guns are then carried and used by drug traffickers and other criminals in connection with their crimes. You might think that a proposal which would still allow Virginia residents to purchase one handgun every month of the year would be enacted by the legislature without controversy. If so, you would be mistaken. The advocates of unrestricted gun ownership lobbied hard in an effort to defeat even this mild effort by Virginia to control its gun purchases.

I bring up the example of gun laws today simply to make the point that the fact that most of the criminal law in the U.S. is controlled by the fifty states can make a difference in the way people live. Some behavior that is legal and acceptable in one state is considered illegal and unacceptable in other states. A Virginia resident in a rural part of the state may drive a pick-up truck with a loaded rifle proudly displayed on a gun rack in the back window of the truck. However, should he drive his truck into some other states in the U.S., he would be quickly stopped by the police, and possibly arrested.

While I use the example of guns to show the difference in approach to the criminal law between the states, that is by no means the only example available. Right now, the U.S. Supreme Court continues to recognize a constitutional right of a

woman to obtain an abortion. However, if the Court were to ever change its position and rule that no such constitutional right exists, I suspect that this is another area where there would be great diversity in the criminal laws of the states. Some of the more socially liberal states — such as some of those in the Northeast — would continue to provide legal abortions. Yet other, more conservative states — such as some of those in the South — would likely make it a crime to perform or obtain an abortion.

Now allow me to discuss how the power of the states in the criminal law area can sometimes make things difficult for the U.S. federal government when dealing with international criminal matters. I will start with the example of capital punishment in extradition cases.

The U.S. is a party to over 100 bilateral extradition treaties. Some of the more modern of those treaties contain an article dealing with the treatment of capital cases. These articles usually state that if a party to the treaty requests the extradition of a person who could possibly receive the death penalty for his crime, when the other party does not provide for capital punishment for the same offense, it may deny extradition absent the receipt of assurances that the fugitive will not actually receive the death penalty. In other words, if the country seeking extradition refuses to promise that the fugitive will not be put to death, the country from which extradition is sought may refuse to extradite the fugitive. These articles are included in some of our modern extradition treaties because of the different attitudes toward the capital punishment which exist in the world. While the United States as a government continues to believe that death is an appropriate sanction for certain heinous crimes of violence, in many countries that penalty is seen as barbaric and inhumane. By inserting the death penalty provision described above, it is possible for the U.S. to enter into a workable, modern extradition treaty with another country even if that other country has completely abolished capital punishment.

However, certain practical problems can arise in trying to implement the capital punishment provisions of U.S. extradition treaties. As I described earlier, most criminal cases in the U.S. — including the vast majority of capital cases — involve state rather than federal law. Consequently, when the United Stales requests the extradition of a fugitive in a capital murder case, we do so on behalf of the state authorities in the state in which the murder was committed.

States cannot act in the area of foreign relations. Only the federal government can do so. Thus, all international requests for extradition must come through offices of the federal government — both my office in the U.S. Department of Justice, and afterward the U.S. Department of State. Yet often times when the United States requests the extradition of a state fugitive in a possible death penalty case, the foreign government will make a demand for assurances that if the extradition is granted, the fugitive will not receive the death penalty.

For most governments in the world, this would not pose any particular problem. The appropriate people in the central government would simply decide whether or not to provide the requested assurances. However, it is not so simple in the U.S. We have taken the position that the federal government may not tie the hands of the state prosecution authorities against their will. As a separate sovereign in the enforcement of its criminal law, there could be constitutional problems in forcing a state to agree not to seek or impose the death penalty in one of its own criminal cases.

As a result, when the United States receives a request for assurances from another government in a death penalty extradition case, my office in the Justice

Department contacts the appropriate state officials. We tell them about the request, and ask whether they are prepared to promise not to seek or impose the death penalty if the fugitive they want is returned to them. We also tell them that if they refuse, extradition may be denied, and they may never see their fugitive again.

While it may seem to you like an easy decision for the state authorities, you would be surprised at how difficult obtaining the necessary promises can be. That is because in many conservative or primarily rural states, being perceived as less than a full supporter of the death penalty can be a real political liability. And since many state prosecutors are elected, they do not wish to take any action which will be used by their political rivals to portray them as "soft" on capital punishment.

Some state prosecutors attempt to avoid the dilemma by providing no assurances of their own, but rather by suggesting that the federal government seek a promise from the governor of the state that he will commute any death sentence imposed on the fugitive to some lesser penalty, such as life imprisonment. However, in such cases the same political pressures which make a prosecutor reluctant to promise not to seek capital punishment also make the governor reluctant to promise to commute such a sentence.

Finally, the problem is exacerbated because it is not always immediately clear who in the state actually has the power to promise that a fugitive in a capital case will not be given the death penalty. In some states, if the prosecutor refuses to ask for the death penalty it is legally impossible for that penalty to be imposed. However in other states, even if the prosecutor does not request a sentence of death, the jury or judge on their own may decide that such a penalty is appropriate. In these states, it may be necessary to obtain a separate promise from the governor that he will commute such a sentence, even if the prosecutor agrees not to ask for the death penalty at the time of trial. Or the prosecutor may simply dismiss the charge which carries with it a possible sentence of death and agree to prosecute the fugitive for some lesser offense.

Usually, the federal government eventually obtains the necessary assurances from the appropriate state authorities. Then the U.S. federal government provides the requested assurances to the foreign government without fear of infringing on an area reserved to the sovereign authority of the state. Although it has never happened, if a state were to try and violate its promise and impose the death penalty after extradition, the federal government would go into court and force the state to comply with its promise, thus ensuring that the federal government abides by its international treaty obligation.

Let's turn now to another example. As you know, with the world becoming smaller every day, there are greater and greater numbers of marriages between people of different cultures and countries. Sometimes these marriages fail. When they do, if there is a child involved, in the United States usually one parent is awarded lawful custody, and the other parent is awarded visitation rights. Yet unfortunately, sometimes one of the parents abducts his or her child and leaves the country. In fact, records of the U.S. State Department show that as of July 1, 1992, there were 543 open and active international parental child abduction cases in the U.S. The statistics show that another 3,093 cases have already been resolved.

In many states in the United States, parental child abduction is a criminal offense. Consequently, state law enforcement authorities often approach my office in Washington, D.C. and demand that the United States seek the extradition of the parent who has abducted his or her child and fled abroad. Often the state prosecutor is under tremendous pressure

from the emotionally distraught parent who has lost his or her child, and from the outraged local community.

These situations can put us in a difficult position. Unfortunately, the information we at the Department of Justice must give the state prosecutor is often not very good. In many cases, the applicable extradition treaty does not make parental kidnapping or abduction an extractable offense. Even if the treaty does cover parental kidnapping, many countries — particularly the civil law countries of Europe and South America — do not extradite their own citizens under any circumstances. This is a problem since in most cases, a parent who abducts his or her child returns to his or her own country of citizenship. Finally, even if the extradition treaty does cover this crime, and even if the nationality of the parent is not a problem, we must explain to the state prosecutor that extradition does not guarantee the return of the child. An order of extradition covers only the criminal offender, not the child. If the parent is truly desperate to keep his or her child, he may try to hide the child with friends or other relatives until after he serves any criminal sentence which might be imposed after extradition to the U.S. This information can be extremely frustrating to the state prosecutor, because as a practical matter, it is often the return of the child which drives the criminal case against the parent in the first place.

In short, the U.S. has had a few successes in obtaining the extradition of parents who have violated state law by abducting their own children. But such successes are rare. At present, some in my country question the wisdom of using the criminal law and the international extradition process to handle what in their view should be considered a civil matter. Others believe that abducting one's own child is reprehensible behavior deserving of criminal punishment. They further believe that the federal government should do whatever possible to ensure the extradition and prosecution of such offenders, and that the U.S. should make certain that the crime of parental child abduction is included in any newly negotiated U.S. extradition treaties.

A worthy alternative in such cases, particularly in those cases in which the only real interest is in the return of the child and not in the criminal prosecution of the parent, is the 1980 Hague Convention of the Civil Aspects of International Child Abduction. The parties to that convention have agreed that a child wrongfully removed to a party country shall be promptly returned to the country from which he was removed. Once returned, the courts then determine which parent should have custody, and on what terms. As of May of last year, the Convention was in force in 24 countries. Whenever possible and appropriate, we at the Department of Justice recommend to state authorities that they consider this option.

Permit me to offer one last example which can create difficulties for the federal government when dealing with state authorities. Bounty hunters.

As many of you know, private bounty hunters continue to operate in the United States. Sometimes criminal defendants are released from pre-trial custody on bail. Other times, although more rarely, they are released after conviction but prior to sentencing. If such persons flee before trial or sentencing, the bailbondsman (who posts the bail or a bond with the court on behalf of the defendant) is obligated to pay the full amount of bail set by the judge. In such circumstances, sometimes a bounty hunter will track down the fugitive and forcibly return him to the place from which he fled. For example, if a criminal defendant on bail in Florida flees to Virginia, if the police have not been able to find the defendant in Virginia, sometimes a bounty hunter will do so. If so, he then brings back the fugitive — sometimes against

the fugitive's will and using coercive measures — to Florida. The bounty hunter is then paid a fee by the bailbondsman who posted bail or bond for the defendant.

The problem, of course, is that sometimes bounty hunters do not understand that the rules are not the same when a fugitive has fled to another country. They may be free to physically restrain a fugitive in one state within the U.S. and return him for prosecution to another state. But that very same activity would violate both the sovereignty and the criminal laws of a foreign country.

The U.S. Department of Justice is taking active efforts to communicate to state authorities, and to bounty hunters themselves, that they may not operate outside the United States. This is particularly important in view of the U.S. Supreme Court's decision last year allowing the United States to proceed with the murder prosecution of a doctor abducted by paid agents of the U.S. Drug Enforcement Administration from Mexico. We do not want bounty hunters to interpret that decision as a legal endorsement of their overseas activities. Consequently, we are taking every opportunity to remind state authorities of the following points.

First, a person involved in an abduction of a fugitive outside the U.S. could be subject to criminal prosecution in the foreign country if apprehended there.

Second, such persons could be liable for monetary damages under the civil law of the foreign country.

Third, a person who participates in an abduction in a country outside the United States could be subject to extradition to that country for trial on kidnapping charges. We also point out that this is not an idle threat. In fact, a few years ago two bounty hunters went to Canada and captured a fugitive who had skipped bail in Florida. After returning the fugitive to Florida, the bounty hunters were subsequently arrested in the U.S., extradited to Canada, tried, convicted, and sent to jail there.

In short, bounty hunters are not government agents. They operate independently. Thus, ensuring that they act in a manner which is consistent with U.S. policy, and which recognizes the law and sovereignty of other countries, can pose challenges. It is not as simple as just ordering FBI or DEA agents not to do something. With bounty hunters, we must use a combination of persuasion and threats. We must persuade them that it is neither in their interest, nor in the interest of their country, to engage in the forcible return of fugitives from other countries. And we point out to them quite frankly the harm which may come to them should they decide to engage in such activity anyway. So far, you will be happy to know, the message seems to be getting out, and we have had almost no recent problems with bounty hunters operating overseas.

That is all we have time for today on some of the difficulties which can arise between state and federal law enforcement authorities when dealing with matters containing an intentional dimension. Allow me to turn now to a second interesting feature of the U.S. criminal justice system — plea bargaining. I promise that I will be brief.

The U.S. Plea Bargaining System

As I mentioned at the beginning of this presentation, most U.S. criminal cases never reach the trial stage. Somewhere in the neighborhood of 90 percent of criminal defendants agree to plead guilty. Often they do so as the result of a plea bargain — also known as a plea agreement — with the government.

What is a plea bargain? Well, as many of you well know, it is a deal or agreement between the prosecutor and the defendant. Normally that deal is then ratified or approved by the court. The prosecutor agrees to give something — such a charge

reduction or a desirable recommended sentence — to the defendant. The defendant, in return, agrees to waive his right to a trial, and enter a guilty plea. Both the prosecutor and the defendant gain considerably from such bargains.

Normally the prosecutor faces a tremendous backlog of cases. He is also under significant pressure to quickly and successfully dispose of them. However, should he be forced to take a large percentage of those cases to trial in order to prove the defendant's guilt beyond a reasonable doubt, the criminal justice system would quickly grind to a halt. There are simply not enough prosecutors, investigators, judges, translators, court reporters, or courtrooms, to accommodate a trial for every person charged with a criminal offense in the United States. Moreover, a plea agreement provides the prosecutor a conviction without risking the uncertainty of a trial. The jury system, for all its admirable features, is a constant source of worry to prosecutors. Even with the strongest of evidence, juries can be unpredictable. Finally, sometimes a plea agreement will include a promise of cooperation by the defendant in the prosecutor's investigation and prosecution of other criminal cases.

From the defendant's perspective, a plea agreement can ensure a significantly lesser sentence than he may face if convicted after a trial. This option may seem particularly desirable if the proof against the defendant is strong, and if the agreement offered by the prosecutor is attractive. For example, if the government is willing to reduce a serious felony charge punishable by several years incarceration down to a misdemeanor bringing less than one year in jail, or if the prosecution is willing to recommend to the judge a much lesser sentence than the judge has the discretion to impose, the defendant may see good reason to accept such offers.

Interestingly, until fairly recent times, many U.S. courts which discussed plea bargaining condemned the practice. It was not formally recognized by the Supreme Court until 1970. However, the practice is now seen as a necessity. In 1977, the Supreme court stated, "Whatever might be the situation in an ideal world, the fact is that the guilty plea and the often concomitant plea bargain are important components of this country's criminal justice system. Properly administered, they can benefit all concerned." (See *Blackledge v. Allison*, 431 U.S. 63, at p. 71 (1977)).

Even the Federal Rules of Criminal Procedure now explicitly recognize the propriety of plea agreements. Rule 11 expressly authorizes both charge bargaining and sentence bargaining. In addition, while the rule prohibits the judge from engaging in the negotiation process between the prosecutor and the defendant, it does require that the court find a factual basis for a plea before accepting it. In other words, the judge must be convinced that there exists evidence which supports a plea of guilty, even if the court has already determined that the plea was entered into voluntarily, and not as the result of force or threats. However, while there must be a factual basis for a plea of guilty, it is possible for a defendant to plead guilty while still maintaining his innocence. Our Supreme Court has recognized that it may be in a defendant's interest to enter a guilty plea to a lesser charge to avoid the risk of conviction of more serious charges, even if the defendant claims complete innocence of all charges.

Of course, while the plea bargaining system is now an integral part of the U.S. criminal justice system, it is not without its critics. For example, some legal theorists believe that plea bargaining results in improper coercion of the defendant. These critics argue that in many cases, the so called "voluntary" decision of a defendant to plead guilty as part of a plea bargain is really made under duress. The risk of the much greater punishment which could result from not accepting the bargain

offered by the prosecutor is so great, that sometimes truly innocent people will agree to go along with such bargains. The analogy which is sometimes used is that of a person asked to agree to do something at gunpoint. Agreements struck under such conditions cannot, according to the critics, really be considered fair. They offend our notions of justice.

Other critics attack plea bargaining from a different direction. In their view, the more serious problem is that plea bargaining encourages prosecutors to make concessions which result in guilty people receiving less severe punishment than they actually deserve. This can be especially true when the government enters into a plea agreement with an extremely serious criminal because it is the only way available to the government to obtain critical testimony against other important criminals. In fact recently U.S. prosecutors agreed to a deal which provides only 20 years imprisonment for a witness in a big Mafia trial in New York. That witness has admitted his participation in 19 murders. Critics state that it is not in society's interest to grant this kind of excessive and undeserved leniency in the sentencing of admitted criminals. To do so reduces the deterrent impact of the law, and offends the principle that one's punishment ought to reflect the seriousness of the criminal offense actually committed.

Although there is merit to the arguments of both sets of critics, I am not persuaded that we should give up the plea bargaining system.

The critics who argue that the system coerces defendants into giving up their rights to a jury trial and perhaps even agreeing to plead guilty when they are not, ignore an important point. The alternative to plea bargaining is a trial. And although it would be nice to believe that any truly innocent person would always be exonerated after a full trial on the merits, unfortunately that is not true. Even in an adversary system with rules designed to ensure that only the truly guilty are convicted, it is at least possible that a factually innocent person could be found legally guilty. Is it any more just to force an innocent man against his will to risk a trial which could result in a ruined life than it is to provide him with the choice of accepting a certain, but tolerable punishment? In short, although we do our very best to ensure that innocent people are never charged with a crime, from the perspective of those to whom that unfortunate event may occur, the option of a plea bargain may be considerably more attractive than the alternative.

In a way, the same point applies to the critics who argue that plea bargaining gives criminals less punishment than they deserve. They forget that at trial, even the truly guilty may be acquitted. Thus, a prosecutor might decide that the public's welfare would be better served in a particular case by accepting the certainty of a lower sentence rather than risking a verdict of "not guilty" and no sentence at all. In addition, as mentioned, plea agreements often require the future cooperation of the defendant. The benefit to society such cooperation brings by ensuring that other, more important criminals are prosecuted and punished should not be forgotten. And finally, it is even possible that the goal of deterrence is better served when punishment is swift and sure, rather than when it is severe, but much less certain.

I think these are some pretty good responses to the critics who call for the abolition of the U.S. plea bargaining system. Yet I think one of the most overlooked responses is a purely practical one which I have so far failed to mention. Plea bargaining in some form is likely to continue to exist no matter what. Instead of being explicit as it is today, if abolished, it would simply take on the implicit form it used to have. Those defendants who publicly acknowledged their guilt and who en-

tered guilty pleas — and thus who saved the criminal justice system the time, expense, and effort of a trial — would likely be given some sort of consideration for their cooperation. There would be informal, off the record conversations between prosecutors and defense lawyers. Prosecutors would go a bit easier, either in the charging decision or at the recommended sentence stage, on those who were willing to forgo a trial and cooperate with the government. Judges would often give such defendants favorable consideration at sentencing. Thus, for better or for worse, plea bargaining in some form in the U.S. is there to stay.

I hope these examples of some of the unique features of the U.S. criminal justice system have been of some interest to you. It has been both a pleasure and a tremendous honor for me to be here today. I would be pleased now to answer any questions you may have. Thank you very much.

Present Issues for Organised Crime Control: The Australian Perspective

*by John G. Valentin**

Introduction

Australia—The Nation

An understanding of the Australian political system—and of the sheer size of Australia's continental land mass—are necessary to an appreciation of the various State/Federal mechanisms for law enforcement.

Australia is an island continent with a total land area of 7,682,300 sq. km (2,967,909 sq. miles)—approximately the same size as the mainland United States. Its coastline extends for 36,835 km (22,816 miles). Extensive areas of Australia are virtually uninhabited because of the arid nature of the country. Consequently, a large portion of the coastline, especially the northern and north-western sections is vulnerable to the undetected movement of aircraft, yachts and other sea vessels.

Australia is a culturally diverse society. The population of Australia is more than 16 million, with a large percentage living in the capital cities. The vast majority are immigrants or are descended from immigrants who have arrived in the last two centuries. Many have in fact arrived since 1945. Among the 4.5 million to arrive from some 130 countries are; 1. 8 million from the UK, 400,000 from Italy, 238,000 from Greece, 200,000 from Eastern Europe, 193,000 from Germany, 174,000 from the Netherlands, 193,000 from Yugoslavia and 90,000 from Indochina. During this period the population has doubled. Almost half of the increase has been a consequence of immigration. Today 4 out of 10 Australians are immigrants or the children of immigrants, half of them from non-English speaking backgrounds. Aboriginal Australians comprise less than 2% of our total population.

The immigrant influx has irrevocably changed Australia's ethnic mix. So too has the high rate of intermarriage. As a consequence less than half the population is now of Anglo-Celtic ancestry. Almost one in four Australians has no such ancestry. Australia has absorbed a huge number of people from a wide range of countries. They have brought different cultures. They practise different religions. A considerable number, 1 in 8, speak a language other than English at home.

Broadly, the Australian Federation has a three tier system of government; the Commonwealth or Federal Government, which has responsibility for all matters of national interest; six State Governments, which complement the activities of the Commonwealth Government (the Northern Territory and the Australian Capital Territory are similar to the States and are largely self-governing); and about 900 local government bodies at the city, town, municipal and shire level. While the Commonwealth Government has responsibilities for matters of national interest, the State and Territory Governments meet their own responsibilities for such areas as policing, justice, education, transport and health. Therefore, a number of authorities participate in the administration of laws in Australia. They are:

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Commonwealth
- —Attorney-General's Department
- —Australian Federal Police (AFP)
- —Australian Customs Service (ACS) (including Coastwatch)
- —Department of Health, Housing and Community Services
- —National Crime Authority (NCA)
- —AUSTRAC: Australian Transaction Reports and Analysis Centre
- —Department of Immigration, Local Government and Ethnic Affairs (DILGEA)
- —Director of Public Prosecutions (DPP)
- —Australian Securities Commission (ASC)

States & Territories
- —Police Forces
- —Various Departments, Commissions and Authorities
  - —State Crime Commission NSW
  - —ICAC: Independent Commission Against Corruption NSW
  - —DEA: Drug Enforcement Agency NSW
  - —Criminal Justice Commission QLD (QCJC)
  - —Royal Commissions (All States)
  - —Australian Bureau of Criminal Intelligence (ABCI)

The Problem

Current Situation of Organised Crime in Australia

Organised crime in Australia is an activity engaged in by people of many ethnic origins who live in Australia. It is not confined to any special group. In the past 50 years, Australia has taken in migrants and refugees from many countries. This has seen us become one of the most multicultural nations in the world with ethnic communities whose roots lie in many European and Asian nations.

People of Anglo-Saxon descent make up the largest part of the Australian population and are the oldest ethnically based immigrant group in Australia. Their origins, at the time of the colonisation of Australia in 1788, lie mainly in England and subsequently with Ireland and many other European countries. Criminality of all types abounds within this group, just as it does within other groups, and covers the full spectrum of theft, illicit drug trafficking, prostitution and so on.

Australian immigration policies after 1975 allowed many Asian people, particularly Chinese and Vietnamese, to enter Australia as refugees, skilled migrants, English language students, business migrants and for family reunions. Unfortunately, the flow of migrants brought with it an increase in reported Asian related crime.

The following is a breakdown of the various organised crime groups of concern to the Australia Law Enforcement Authorities which have been identified as existing in Australia. This presentation will cover the activities of Asian organised crime groups (Chinese, Vietnamese, Japanese and Korean) and in lesser detail, South American, Middle East and European groups.

A. Chinese Organised Crime (COC)

From the AFP point of view, probably the most significant organised crime threat against which we operate is that presented by COC. The term COC is used as an indication that there are other ethnic Chinese criminal groups, which are not Triads, but which pose a similar threat to Australian society. The AFP targets the organised criminal activities of Chinese persons from Hong Kong, Macau, People's Republic of China (PRC), Taiwan, Indochina and Southeast Asia. Operational coverage indicates that a significant level of co-operation exists between the different groups. Therefore, it is integral to the AFP that the following five categories are not considered in isolation:

a. Hong Kong Triad Societies

Triad societies constitute the organised crime environment of Hong Kong. They are organised territorially, and all have

ambitions for international expansion. They have access to Golden Triangle heroin, and their marketing strategy is internationally based. The San Yee On is regarded as the most powerful Triad society in Hong Kong and has been identified as homogenous with groups operating in Sydney.

b. Hong Kong and PRC Big Circle Gangs

"Big Circle Gang" or "Dai Huen Chai" (pronounced Die Hwen Chai) is a loose term that refers to any organised crime syndicate composed of mainland Chinese. In Australia, Big Circle Gang members of Cantonese background are well-entrenched in the heroin industry, to the extent that they are now perceived as a threat, instead of a useful ally, by the Triads.

c. Sino-Vietnamese Syndicates

Sino-Vietnamese criminals have become well established in Australia and are well-recorded for their distribution of Chinese-imported heroin. Some of them are also allegedly capable of organising heroin importations independently of Triads, and are increasingly being perceived as a threat in their own right as their networks become established.

d. Malaysian and Singaporean Secret Societies

In heroin trafficking, individual Malaysian and Singaporean Chinese criminals have come to notice for their low-level involvement on behalf of unidentified importers. It is in the area of Asian prostitution that certain Singaporean and Malaysian Chinese criminals gained particular notoriety.

Two Malaysian gangs came to police notice in Australia in 1991: the 18 Gang and the Wah Kee. The former is composed of members who assist Hong Kong Triads in extortion, drug distribution and contract killing. It appears that the Wah Kee Triad was responsible for the murder of the world-renowned heart transplant surgeon, Dr. Victor Chang in Sydney in 1991, in an extortion case.

e. Thai Chinese Syndicates

Thai Chinese drug traffickers of Chiu Chow (pronounced Chew Chow) background came to prominence in an AFP operation that ran from 1984 to 1988, in which approximately 100 kg of Golden Triangle heroin was seized.

The impending return of Hong Kong to Chinese rule will increase the importance of the services provided by Hong Kong suppliers. This will lead to increased demands on PRC suppliers, thus opening further areas for Triad activities in China. This increasing international significance of the PRC as a transit country for high-grade heroin may lead to a decrease in Australian COC reliance on Bangkok suppliers, however there is a real possibility that this route will become increasingly popular as borders liberalise between Hong Kong and mainland China. It has been estimated that almost half the heroin from the Golden Triangle is transshipped through Yunnan Province.

Significance of COC in Australia

It is in the area of heroin trafficking that the criminal impact of COC on Australian society is the most damaging. The AFP has assessed that the COC importers dominate Australia's heroin market. In 1988 and 1989, Australia witnessed the largest heroin seizures in its history: various individual operations netted quantities of 42 kg, 31 kg and 21.5 kg. These seizures revealed an extremely high level of involvement in heroin importation by Chinese criminals: almost 90 per cent in the AFP's drug seizure statistics for 1988 and 1989.

This is not surprising, taking into account the historical and cultural links overseas, proximity to SE Asian suppliers, and the links local COC syndicates

have with the suppliers of heroin in the Golden Triangle, and more recently, in the PRC.

There have been at least three significant seizures in 1992. One operation in Sydney in February netted 24 kg; a NSW Crime Commission seizure in Sydney in November was 10 kg, and 12 kg was seized when Japanese tourists acting as couriers for a Chinese group were apprehended in Melbourne in November 1992. There have also been a number of 3 kg seizures including one in Dampier, Western Australia, and one in Melbourne, Victoria in July 1992.

COC and the Chinese community in Australia

The majority of COC members live on the fringe of Australian society and many of them have not yet mastered the English language. This tends to limit their employment opportunities to Chinese speaking organisations thus making them more vulnerable to recruitment by the COC groups.

Some high-level COC figures have good connections in the mainstream of Australian society, and may also have associations with Chinese ethnic lobby groups which have high-level political and business access.

It should be emphasised that the majority of the Chinese community in Australia are regarded as law abiding citizens. Although it is difficult to arrive at a reliable figure in relation to the number of Chinese criminals in Australia, many who have been positively identified by various Government agencies, have been identified as being TRIAD or having Triad affiliated associations.

There is no evidence to confirm that the Australian Government's immigration policy is assisting the growth and expansion of COC. Most of the COC members who today play prominent criminal roles in Sydney were originally illegal immigrants and had their status regularised through marriage to a permanent resident or citizen of Australia.

COC criminal activities

Apart from the importation of heroin, certain Triad and Big Circle Gang members have made a reputation in the Australian underworld as reliable brokers of heroin. They form the key links to the interface between COC and non-Chinese organised crime groups.

In the majority of cases where a heroin seizure has been made, the indications were that the heroin was to be delivered to Sydney. On this basis, the AFP has formed the hypothesis that Sydney is the clearing house for heroin in Australia and if landed elsewhere, is usually transported to Sydney for cutting, marketing and distribution.

Money laundering

The efficient and secure concealment of the proceeds of crime is of prime concern to any organised crime group. Infiltration into legitimate business provides vital opportunities for COC members to launder their proceeds of crime. With the enactment of the Cash Transaction Reports Act in 1988, COC groups are increasingly turning to money laundering and underground banking to dispose of their criminal profits.

The international Chinese criminal community is served by a highly efficient supranational underground banking system. This system is based on trust. Money is collected from various individuals and put together in an informal bank-like institution called "hui" (pronounced hwee). The owner of each hui can do what he likes with the money, as long as he pays back each contributor at an interest rate higher than the normal bank rate. It is common for hui owners to set up a business with the money they have obtained, and using that business, they will approach normal banks for large loans. It can be assumed that the underground

banking system will become an increasingly attractive option for COC members in Australia with the enhanced Government scrutiny of cash transactions. Several AFP COC targets have been the subject of suspect cash transaction reports.

Gambling

In each Australian city where significant numbers of Chinese are located, there are a number of gambling dens. The operation of gambling dens goes hand in hand with provision of loan sharking facilities to the clients. It appears that to ensure an uninterrupted and profitable operation of a gambling den, COC frequently needs to obtain "protection" from Australian organised crime.

Prostitution

In recent years the systematic recruitment of Southeast Asian prostitutes, involving immigration fraud, has been the most common method used by COC groups. However, the enforcement efforts by the Department of Immigration, Local Government and Ethnic Affairs (DILGEA) in 1990 and 1991 has caused COC members to look for new sources of recruitment. These include the 40,000 PRC nationals in Australia who came mostly as English Language Intensive Course for Overseas Students (ELICOS) and Special Studies students.

Certain key COC figures are deeply entrenched in the running of brothels in Australia. At least one of them is known to be a major heroin importer, working from Sydney.

Fraud

Malaysian Chinese gangs who have come to police notice in 1991 through their extortion activity in the Sydney Chinese community are now turning to credit card fraud. Counterfeit credit cards are generally imported from Malaysia.

Document and immigration fraud cases involving unregistered and unlicensed "immigration consultants" in Sydney's Chinese community appear to be quite common. These "consultants" are usually PRC nationals with permanent resident status. Several Australian Triad members are believed to be involved in illegal immigration activities, and one of the threats COC poses to Australia is the movement of Triad members from Hong Kong to Australia as stowaways and other means of illegal entry. The length of Australia's coastline makes detection and apprehension of illegal immigrants difficult.

A number of Chinese businessmen have been involved in tariff fraud and breach of copyright, mainly through the clothing or foodstuffs industry. The potential loss to Government revenues through these methods is of concern to the Australian authorities.

Extortion

COC groups have come to notice through extorting Chinese business establishments, usually restaurants, whose owners may have to pay up to AU$400 per week in Chinatown to avoid "trouble" with COC. A recent case of alleged extortion involving the murder of the world-renowned heart transplant surgeon, Dr. Victor Chang, took place in Sydney in 1991.

B. Vietnamese Organised Crime

The past few years have seen the emergence of Vietnamese and Sino-Vietnamese organised crime groups within Australia. While the size of this criminal community is very small it does have a reputation for preying on members of its own community as occurs in the United States and Canada for example. The evidence indicates that from small beginnings in the heroin trade, where individuals were used to provide protection and conduct extortion activities, Vietnamese criminal elements are moving into the retailing end of the market and have also been importing heroin on their

own behalf. The increasing movement of Vietnamese between Australia and Vietnam, with an attendant increase in gold smuggling to Vietnam, has opened new channels for the importation of heroin particularly from Southeast Asia to Australia, and also the laundering of money. The improving economic and political situation in Vietnam, indicates that some criminals are beginning to exploit the opportunities for crime arising from, or in that country.

Sino-Vietnamese

Sino-Vietnamese criminals can easily form links with Hong Kong Triads in Sydney, as both groups can speak Cantonese. High-level Sino-Vietnamese criminals are also using the underground banking system, possibly to raise funds for drug importations. AFP intelligence indicates that the Triads have a preference for dealing with PRC nationals rather than the Sino-Vietnamese.

Vietnamese ethnic crime

As far as Vietnamese organised crime is concerned, at least one group has been accepted by a significant Triad society to distribute heroin on its behalf. Money and gold smuggling to Vietnam is a common occurrence in the Vietnamese community and both activities are open to organised crime manipulation, when the proceeds of crime need to be taken out of Australia.

C. Japanese Organised Crime

In 1991, the resident and long-term Japanese population in Australia was just under 18,000. Almost half live in Sydney, with the second highest concentration, about one quarter, in Melbourne.

Despite Australia's relatively small resident Japanese population, in October 1988, the AFP decided that the potential threat to our country from Japanese organised crime was sufficient to warrant the initiation of an intelligence project aimed specifically at the Boryokudan (Yakuza).

Because of the tradition of co-operation which has existed between Japanese and South Korean organised criminal groups, there is reason to suspect that this co-operation may flow on to their efforts to initiate criminal activities in Australia. Boryokudan case officers and the regional contact officers have therefore been given the additional responsibility of monitoring visits by South Korean organised crime figures.

The current state of boryokudan involvement in Australia

Members of Japanese organised crime groups have been regular visitors to Australia since at least 1986. All Australian states have received visits by Boryokudan members, particularly those states with casinos, but the Gold Coast of Queensland has been by far the most popular destination.

Curiously, any traditional animosity between members of rival syndicates seems to evaporate upon their arrival in Australia, and members of different groups have been seen to fraternise freely. On one occasion, the boss of a Sumiyoshi-kai sub-group was seen to pass a large amount of money to a faction leader of another Tokyo-based gang at a Gold Coast casino. Quite a number of middle and high ranking "gang" bosses including three of the top four leaders of the Yamaguchi-gumi have visited Australia in recent years.

The AFP is investigating the possibility that Yakuza groups are using Australia-based Japanese nationals, not adversely known to police, to represent their interests here. Should this in fact be the case, the potential to disguise the true origin of Yakuza investment in Australia would be greatly enhanced.

Casinos, along with golfing holidays, appear to be the major attraction for visiting Boryokudan members. While casinos can be a venue for laundering the proceeds of crime, no solid evidence of money laun-

dering has so far, been uncovered. Similarly, although there have been a number of suggestions that some of the considerable Japanese investment in Australian business and real estate may be the proceeds of organised crime, there has equally been no evidence to support such a theory. However, some real estate investment by individual Yakuza members has been detected.

The AFP has evidence of Boryokudan involvement in "white slavery," where some young Australian women were recruited as dancers, but who were ultimately forced into prostitution in Japan.

For some time now, Japan has been considered a likely transit country for narcotics destined ultimately for Australia. The reverse might also be true that some illicit drugs destined for Japan may transit Australia. These suspicions about illicit drugs destined for Australia transiting Japan were recently borne out when a Japanese courier, along with three Australians, was arrested in Melbourne with half a kilogram of heroin. The high grade heroin brought into Australia by the courier came from Thailand. The drugs were transported through the Philippines to Japan, and finally from Japan into Australia. The organiser of this international drug syndicate, which had been operating in Australia and Europe for some time, is a Japanese national who resides in Thailand. He was arrested in Japan early last year (1992).

Information suggesting possible links to the Yamaguchi-gumi was obtained during the course of that investigation which was followed by another recent seizure of 13 kg of heroin, also in Melbourne. The second seizure involved at least one member of a Yamaguchi-gumi sub-group. In this case, the heroin was believed to have been imported into Australia from Malaysia, and the possibility of collusion between Japanese Yakuza and Malaysian Triads is being examined.

New anti-Yakuza legislation implemented in Japan in March 1992 has placed considerable pressure on the gangs and their traditional sources of income. It is likely that these countermeasures will provide further impetus for overseas expansion by Japanese organised crime. As the number of Japanese tourists visiting Australia increases, and as the resident Japanese population grows, there will be an attraction for those Boryokudan wishing to expand their operations overseas—including to Australia.

Of particular concern to the AFP is the tendency of Boryokudan members to form alliances with other indigenous organised criminal groups when seeking to commence operations in a foreign country. The high public profile adopted by visiting gang bosses ("oyabun"), together with their obvious financial resources and criminal background, make them an appealing and accessible partner for any local criminal group wishing to expand its illicit operations. For this reason, we will continue to pay close attention to visits to Australia by Japanese organised crime figures, and any relationships with local criminals will be carefully examined.

The value of close international cooperation was highlighted last year, when an Australian national in possession of 5 kg of cannabis resin, which he had transported from Hong Kong, was arrested in Kobe, Japan.

D. Korean Organised Crime

If temporary residents are included, the total figure of the ethnic Korean population in Australia exceeds 30,000. Of these, 95 per cent are located in the Sydney metropolitan area.

If the local Korean population continues to grow at its present rate, the community will, in time, provide an appealing target for Korean criminal groups wishing to expand their activities offshore. The possibility that organised crime groups

could expand into the Australian ethnic Korean community can not be ignored.

Of the four categories of Asian organised crime, by far the most important is COC. Their domination of the heroin trade and extensive involvement in other criminal activities make them the subject of high profile media and law enforcement attention, which is likely to increase due to the impending return of Hong Kong to Chinese rule and the possibility of a further major influx of Hong Kong Chinese into Australia. Apparently both Japanese and Vietnamese organised criminal activity is on the increase in Australia and the possibility remains that Korean criminals could also become more active in this country.

E. South American Organised Crime

The largest South American organisation identified in Australia appears to be connected to the Medellin Cartel in Colombia. This group comprises a number of inter-related Colombian families living in Australia, who originated from the Medellin area. These families have formed a close knit organisation capable of operating either as one cohesive group or as separate family groups. Initially based in Sydney, this organisation has now formed a network throughout Australia. This organisation keeps first line distribution within itself. Each family appears to have control of an area or district where it is responsible for the supply and distribution of cocaine. The family group then sells to other organisations and groups, thereby supplying networks who sell to cocaine users. Residential premises are leased or bought by the organisation for use as safehouses to store cocaine supplies.

The AFP believes that this Colombian organisation was responsible for three large importations during the year, as a result of which some 200 kg of cocaine were seized during August and September 1992.

F. Italian Organised Crime

While there was a significant Italian presence in Australia in the first half of this century, the Italian community expanded rapidly in the late 1940s and in the 1950s. Close knit and large communities were formed in the main cities, particularly Sydney and Melbourne, and smaller groups in a number of rural areas. The former communities were plagued by organised criminal activities, such as extortion and theft, in a similar fashion to that which they had experienced in Italy. The second group experienced similar problems but had the added distinction of being prominent in the growing of large quantities of cannabis in the 1960s and 1970s. Italian organised crime in Australia encompasses not only the activities of the Italian criminal secret societies, the Calabrian based 'Ndrangheta and Sicilian Mafia, but includes several diverse Italian Australian entrepreneurial groups. Some of these, along with the 'Ndrangheta, are heavily involved in the cannabis trade together with significant involvement in the importation and distribution of other illicit drugs and the associated criminal activity which illicit drug trafficking attracts.

Each Australian state has its own distinct Italian regional background. The Italian community in Victoria is dominated by Sicilians then Calabrians, while for New South Wales the reverse applies. In South Australia, Italians from Campania dominate and, in Western Australia, Calabrians and Sicilians are numerically similar. In Queensland, Sicilians dominate followed by Calabrians and Venetians.

Our reporting indicates that the 'Ndrangheta:

— collects funds which are distributed to members of its national executive and regional chairmen under cover of social functions;
— has infiltrated police and the judiciary and has an intelligence capability;

— continues to use the traditional Calabrian initiation rites for the induction of new members;
— has members who buy and sell weapons, including firearms;
— has heavy involvement in the growth and distribution of cannabis and the distribution of heroin.

G. Eastern European Organised Crime

The demise of communism, and the dissolution of the Warsaw pact in Eastern Europe and the former Soviet Union, has led to a dramatic increase in crime in most of Eastern Europe, including drug production and trafficking, arms trafficking and other proliferation problems, money laundering, and so on. Organised crime has become particularly active in the former Soviet Union, particularly Russia, and several Eastern European countries, including Romania, Bulgaria, Poland and Hungary. Other well-established organised crime groups from Italy and South America have established useful working links with criminal groups in Eastern Europe, and these links are likely to increase in importance over the next few years. Of particular significance is the fact that in most of these countries, the police and other law enforcement authorities are not particularly experienced in or effective at dealing with these forms of crime, and they have sought the assistance of Western countries and the United Nations to improve their capabilities in these areas.

Although not necessarily regarded as organised criminals as such, the emergence of neo-Nazi groups, including "skinheads," in Germany and a number of other European countries, adds another dimension to the difficult law and order problems in the area. Such groups have an appeal to certain sections of society in other countries, and they are frequently involved in drug trafficking and other more conventional criminal activities.

With our multi-cultural society and tendency to follow overseas' crime trends, the developments in Eastern Europe have some significance in Australia. The proposed direct air links between Australia, Russia and Eastern Europe will offer greater opportunities for drug trafficking and other criminal activities, and the AFP is aware of the need to maintain a close watch over developments in this area.

H. Middle Eastern Organised Crime

People of Middle Eastern extraction, mostly from Lebanon, have immigrated in significant numbers to Australia. Like the Italians, the Lebanese formed enclaves in the main Australian cities. Criminal elements in these communities engaged in similar criminal activities. The Lebanese, however, were prominent in the importation of hashish and cannabis oil from Lebanon and, in more recent years, of heroin from the same area. Little cannabis oil is imported from Lebanon since there is little demand for it. The ending of the civil war in Lebanon, plus that country's involvement in increasing heroin processing of Golden Crescent heroin, indicate that Lebanon remains a source for these drugs for importation into Australia. Overall, the quantities of illicit drugs imported by members of Middle Eastern organised criminal groups is small when compared with the quantities imported from Southeast Asia.

I. Australian and New Zealand Organised Criminal Activity in Thailand and the Philippines

Persons identified as having organised criminal links in Australia and New Zealand are identified as having over a long period of time strong links to criminal activity in Thailand and the Philippines.

Both the Philippines and Thailand are source countries for high grade cannabis products shipped in multi-tonne consignments to Australia (or New Zealand) using either small craft or containers. The

Australian criminals, whether based in Australia or overseas, frequently use both countries or third countries to conduct meetings (with suppliers, crew, to arrange movement of consignments); arrange payments (for illicit substances, crews, vessels and if necessary legal representation); or simply to be out of the country should the shipment be compromised.

Apart from the criminals being involved in narcotics related activity in the subject countries there is a noticeable involve ment by Australian/New Zealand criminals in the respective vice scenes. They operate bars; are involved in male, female and child prostitution rackets; pornography; and corruption of local authorities. Some are also involved in large scale money laundering and fraudulent activity. To facilitate their movement, or disguise their activities, they often use documentation and identification obtained through illegitimate sources.

There is significant involvement of Australian nationals in organised criminal activity. Such crime is not necessarily as distinctly identifiable as those offences traditionally associated with the particular groups discussed above, but their criminal activities cover the gamut of criminal offences.

There have been allegations of reputed "underworld figures" being associated with criminal enterprises ranging from prostitution and illegal gambling to narcotics importation and distribution, murder, waterfront crime and corruption of authorities. The commodities involved varied considerably, although a typically disturbing feature of such organisations is the difficulty encountered in effectively penetrating the groups and substantiating the allegations made, using traditional investigative techniques. Over recent years some such groups have drawn attention from authorities with coercive powers such as the National Crime Authority, Independent Commission against Corruption and the Queensland Criminal Justice Commission.

There is evidence of other organised criminal activity on a smaller scale, such as motor vehicle theft. The non recovery of stolen vehicles is estimated to cost the Australian community in excess of A$179 million, and it seems likely that certain organised groups are reaping the benefits of such crimes. The extent of overseas movement of stolen vehicles is uncertain, due in part to difficulties associated in comprehensively monitoring vehicle parts transiting the Customs barrier. At least one Australian national, who was arrested in the United States, is an associate of a group dealing exclusively with Porsche cars and has admitted to links with a stolen vehicle network in Australia.

Outlaw motorcycle gangs

Outlaw Motorcycle Gangs continue to expand nationally and there are in excess of 100. The sizes vary between 10–20 patched members up to 200–300 members. Many of our gangs have existed since the 1970s and are now led by members well into the 40 year age bracket. They include men from all areas of society from hardened criminals to professional persons. Younger members are prospected by nomination by existing members to prevent infiltration by law enforcement.

Many gangs and their members are involved in various legitimate businesses, however through the latter part of the 80s, they have increasingly entered more profitable areas. They have been identified as being involved in areas of organised criminal activity which includes drug manufacturing and distribution in particular cannabis and amphetamines, firearm dealing, stolen motorcycles and prostitution.

Paedophilia

In recent years, it has become evident that the problems of child sexual abuse and exploitation are serious, and more

widespread than previously assumed. They are problems both in Australia and overseas and can take the form of child prostitution, child pornography, trading in children, sexual slavery, bogus adoptions or sexual abuse in the family or local environment.

Australian paedophiles appear very well organised and discreet, presenting added difficulties for law enforcement. Indications are that paedophile activities are increasing, although this may reflect law enforcement and social welfare authorities becoming more aware of a serious social and criminal problem in Australia.

Australia is a signatory to the United Nations Convention on the Rights of the Child, ratified in November 1989. Improved cooperation among Australian law enforcement agencies, and between Australia and other countries, through Liaison Officers, especially the Philippines and Thailand, enhances the Government's ability to meet this important obligation.

Current indications are that the paedophile criminal organisations are very sophisticated. For instance, we understand that they now maintain computer databases from which individual members can subscribe or obtain information including pictorial data.

Australian paedophiles are highly mobile, moving from state to state or overseas at short notice, and maintaining contact with their networks both locally, nationally and internationally. They are believed to have a network of safe houses and secret addresses throughout Australia and overseas. Paedophiles often travel in pairs while on holidays and organise information and pornographic material exchange. Intelligence also suggests that the paedophile network utilises pornographic shops and brothels as fronts for distribution of child pornography.

Through the Liaison Officers, relevant information concerning activities in foreign countries, is passed to the authorities in the relevant country, enabling appropriate action to be taken. In the last ten years, many Australian paedophiles have been reported travelling to Asian countries, particularly the Philippines and Thailand. Both the Philippines and Thailand are popular destinations owing to their closeness to Australia.

To alleviate the problems associated with the sexual explcitation of children and young persons, it will require a co-operative effort on behalf of all law enforcement agencies, both in Australia and overseas.

The Solution

Australian Federal Police (AFP)

The AFP is the Commonwealth's primary law enforcement agency and has the mission of ensuring the Australiian Government and Community is free from criminal attack by preventing, detecting and investigating crimes against the Commonwealth, particularly crimes which are multi-jurisdictional and extend beyond State and national boundaries. This entails a wide range of activities, including enforcing laws relating to drug trafficking, fraud against Government revenue and expenditure, other forms of organised crime such as money laundering, politically sensitive matters including official corruption and electoral matters.

The AFP has regional offices in every State and Territory: Brisbane, Sydney, Melbourne, Hobart, Adelaide, Perth and Darwin. The AFP also provides the community policing services for the Australian Capital Territory, which is a separate and autonomous territory encompassing Canberra.

Investigations Department, at the AFP headquarters in Canberra, is responsible for strategic criminal intelligence, investigation of criminal offences against the Commonwealth, international liaison and the coordination of those matters declared as national operations. It also monitors

significant and politically sensitive investigations undertaken in the Regions. The Department investigates special references from the Government which generally involve matters referred to the AFP through the Minister for Justice.

The AFP currently has 23 members attached to the NCA, 25 members attached to the Australian Securities Commission (ASC), and two members attached to AUSTRAC to assist these agencies in their investigations. It also plays a leading role in fostering, on a needs basis, participation in joint investigations with these and other agencies.

National Law Enforcement Agencies

Australian Customs Service (ACS)

The Australian Customs Service is responsible for the interdiction of illicit drugs, prohibited goods and the unlawful movement of people and cargo across our national borders. In support of its role, the ACS operates a surveillance organisation called Coastwatch which plans and coordinates air and sea patrols of Australia's border. Coastwatch's work involves identifying breaches of Australian laws concerning illicit drugs, illegal immigrants, animal and plant quarantine and the Australian Fishing zone.

The Customs Act 1901 covers the illicit import and export of narcotic drugs. The ACS is responsible for drug detection at the Customs barrier, for example, airports, seaports, overseas mail exchanges, or any other point within Australia's 12 mile limit where illicit drugs may be landed or intercepted. The AFP is responsible for drug detection and investigation beyond the barrier. Some of the methods used by the ACS are: drug detector dogs, intelligence liaison with AFP and ABCI, extensive radio communications network, Passenger Automatic Selection System (PASS), Contraband Enforcement Teams (CETs), Marine Group and Coastwatch.

PASS is a computerised facility for rapid on-line checks of all international air and sea travellers against a consolidated listing of people of interest to law enforcement agencies. Contraband Enforcement Teams are small mobile units which have been established to help achieve more effective controls through the application of risk assessment techniques in the examination and containment of cargo and vessels. The ACS maintains a fleet of 25 launches and trailable vessels and a number of open boats which are used for response operations and surface patrol activity.

Coastwatch manages and coordinates the civil coastal surveillance program through regional centres in Darwin and Cairns and a 24 hour a day operations centre in Canberra. Surveillance activities include civilian contract aircraft, offshore patrols by RAAF Orions, RAN patrol boats, complementary effort by Customs vessels and use of additional chartered vessels and aircraft when necessary. In addition, Coastwatch's community awareness campaign encourages members of the public to report suspicious activity, particularly in Far North coastal areas.

Under an agreement signed in January this year, Australia's shipping industry has joined forces with Customs to combat drug trafficking. Information will be shared to ensure that ships are not used for transporting drugs. The agreement between the Australian National Maritime Association (ANMA) and the Customs Service, is under the aegis of the global Frontline anti-drug strategy, endorsed by the Group of Seven Nations.

National Crime Authority (NCA)

The National Crime Authority was established by the Commonwealth Government in July 1984. All States and Territories have since enacted complementary legislation enabling the Authority to operate in these jurisdictions. The primary aim of the National Crime Authority is to use

its special legal powers to take effective action to combat organised crime in Australia. The Authority investigates relevant matters with a view to assembling admissible evidence for the prosecution of offenders and the recovery of the proceeds of crime.

The NCA's investigations are conducted at two levels: general and special. It has general powers to collect and analyse information and intelligence relating to activities specified in the legislation; to investigate specified matters under its general powers and to disseminate information and intelligence to law enforcement agencies or other appropriate authorities.

The NCA has offices in Sydney, Melbourne, Adelaide and Perth. The Authority is staffed by people with a variety of specialised skills including law, accountancy, computer systems, data processing, research and policy information. Semi permanent groups of police investigators drawn from the AFP and State police services are attached to the Authority's offices. In conducting its investigations the Authority relies heavily on the cooperation of other law enforcement bodies.

In November 1990 the NCA chairman's "New Directions" policy, which includes increased cooperation and coordination with law enforcement agencies from the Commonwealth, States and Territories, was approved. This policy is being fostered, in part, by the NCA convening annual intelligence dissemination and debriefing conferences, which involve all Australian law enforcement agencies.

Australian Transaction Reports and Analysis Centre (AUSTRAC)

The Cash Transaction Reports Act 1988 is a Commonwealth initiative to monitor the movement of currency within Australia and also into and out of Australia. The Australian Transaction Reports and Analysis Centre (AUSTRAC), previously the Cash Transaction Reports Agency, was established within the Commonwealth Attorney-General's portfolio to receive reports required by the provisions of the CTR Act and to analyse and disseminate information relating to those reports.

Australian Securities Commission

Until the 1970s, Australia generally approached corporate law as essentially a private affair—between the company, its officers, its shareholders and its creditors. The role of government, apart from occasional legislative changes, was extremely limited. For example, the office of "special investigator"—now abolished—was premised upon the government not having a strong and continuous investigative system and having to engage outside experts to tell it what happened.

By and large, major corporate law investigations were focused solely on the perceived protagonists (usually company controllers). The investigations were often commenced several years after the events in question. The ASC's law enforcement goal is to develop a "deterrent net" against contraventions of the Corporations Law, with investigation of all serious breaches.

State Agencies

State Police Forces

Law enforcement in Australia is a function of Commonwealth, State and Territory police forces. Each police force has responsibility for enforcing the laws of its State or Territory. The AFP is empowered to administer the laws of the Commonwealth as well as undertake a community policing function in the Australian Capital Territory (ACT). Cooperation exists between all police forces, State and Territory Governments and agencies in order to combat illicit drug trafficking. Each police force has a drug squad or unit which is staffed by selected officers who have undertaken specialised training to deal with drug trafficking and abuse. Commonwealth and State legislation is currently

being amended to reflect the requirements of the international drug conventions.

Both New South Wales and Queensland have also established crime commissions as independent statutory authorities to combat organised crime and corruption. Both commissions possess powers greater than normal policing powers.

Queensland Criminal Justice Commission

The Queensland Criminal Justice Commission was established in response to the recommendations of the Fitzgerald Commission of Inquiry, which was appointed following media revelations on crime and corruption in Queensland. The Fitzgerald Report recommended the creation of a new public entity, to be known as the Criminal Justice Commission, which would be permanently charged with monitoring, reviewing, coordinating and initiating reform of the administration of criminal justice and fulfilling those criminal justice functions not appropriately carried out by the police or other agencies.

The Commission was initially established to investigate corruption in the Queensland Police Force and this continues to be one of its main roles.

NSW Crime Commission

The Commission was established in January 1986 as an independent statutory authority under the then State Drug Crime Commission Act 1985 (now the NSW Crime Commission Act). On 3 August 1990, the Government proclaimed the Drug Trafficking (Civil Proceedings) Act, 1990, which allows for the civil forfeiture of the assets of drug traffickers. The Commission was given responsibility for oversight of this new legislation and during 1990/91 action was taken against a large number of defendants.

Charter—To combat illegal drug trafficking and organised and other crime in New South Wales with a view to:

— having offenders dealt with according to law;
— deterring and suppressing the distribution of illicit drugs in the community;
— minimising the harmful effects of illicit drugs in the community.

Any evidence collected by the Commission is provided to the Director of Public Prosecution for action.

Independent Commission against Corruption (ICAC) (NSW)

The Independent Commission against Corruption came into existence in March 1989, and was created as a statutory corporation under its own Act similar to that in Hong Kong.

The Commissioner of the ICAC is appointed by the Governor of New South Wales, and he can only be removed from office on the address of both Houses of Parliament. This condition exemplifies the hallmark of the Commission—its independence from the Government of the day. In its reports on investigations and other matters, the Commission reports directly to the Parliament and not to the Government.

The Commission exists to minimise corruption in the public sector of New South Wales. It fulfils this aim by carrying out three main functions, with the following objectives:

Investigations

To ascertain the facts of stipulated matters and report the results of investigations with a view to exposing and deterring corrupt conduct, and having it prosecuted when appropriate.

Corruption Prevention

To lessen the opportunities for corruption by advising upon the revision of laws and practices, and by assisting public authorities in identifying and implementing systems of work to achieve operational

integrity.

Public Education

To inform members of the public of the detrimental effects of corruption and to persuade them that action should be and can be taken to alleviate the problem.

The Commission receives cooperation from many agencies. This comment applies particularly to those agencies with which the Commission deals most frequently—the New South Wales Police Service and the Director of Public Prosecutions. Special mention should also be made of the Commission's close working relationship with the AFP.

Common Police Services

Australian Police Ministers' Council (APMC)

The APMC was established in August 1980 and comprises Commonwealth, State and Territory Ministers responsible for law enforcement. It provides a forum for discussion and cooperation between all jurisdictions with the principal aim of identifying the important issues which affect law enforcement in Australia and developing appropriate policy responses.

The APMC has been responsible for the creation of a number of national common police services. By 1986, the Australian Bureau of Criminal Intelligence (ABCI), the National Police Research Unit (NPRU), the Australian Police Staff College and the National Exchange of Police Information system had been established.

Australian Bureau of Criminal Intelligence (ABCI)

Established in 1981, the Australian Bureau of Criminal Intelligence is a federal body staffed by all eight Australian law enforcement jurisdictions on an equal basis. The ABCI provides facilities for the collection, collation, analysis and dissemination of criminal intelligence of national interest with a view to providing it to Australian police services to help them combat organised crime in Australia. It does not have an operational arm but relies upon the various law enforcement agencies to provide further information which may be required as a result of its analysis of previously contributed information. The ABCI's charter is to look at organised crime, fraud, drug trafficking and paedophilia. The ABCI has a central database that is utilised for the collection and dissemination of intelligence gathered on paedophile activity. Information is entered into this database from all participating law enforcement agencies within Australia.

Australian Police Staff College (APSC)

The Australian Police Staff College is within the Attorney-General's portfolio and its mission is "to enhance the personal and professional development of Senior Executives of Police, with particular emphasis on continuing to improve the integrity, accountability and performance of Australia Police Forces." The College conducts Senior Executive Officers' Courses, Senior Officers' Courses, specialist training courses, and critical issues seminars, in providing higher education for senior officers.

National Police Research Unit (NPRU)

The National Police Research Unit commenced operations in Adelaide in February 1983 and is fundamentally an institution devoted to applied research. Its mandate is to coordinate, stimulate, sponsor and undertake research programmes for all Australian police forces.

The functions of the NPRU are to:

- liaise with participating forces and other bodies to coordinate research programmes and to disseminate the result thereof; and
- where necessary, undertake research programmes and projects on:

— methods, equipment and techniques in the protection of life and property, prevention of crime, detection of offenders and preservation of the peace;
— effects of sociological trends on police forces and members;
— law enforcement techniques and strategies;
— methods of criminal investigation by police forces both in Australia and overseas;
— police/community interaction and co-operation;
— effectiveness of special police task forces in combating specialised crime;
— police occupational stress; and
— police equipment generally including surveillance, electronic aids, intruder alarms, tape recordings and protective materials.

Government Departments

Attorney-General's

The Attorney-General's Department now has a statutory role, together with the AFP, to provide policy advice on law enforcement matters to the Minister for Justice (who has responsibility for the AFP) and the Attorney-General. In providing policy advice, including advice relating to drug law enforcement, the Department's Criminal Law and Law Enforcement Division consults with relevant departments and authorities including the AFP, the DPP, the ACS; and Departments of the Prime Minister and Cabinet; Health, Housing and Community Services; Foreign Affairs and Trade.

Director of Public Prosecution

The Office of the Director of Public Prosecutions (DPP) was established under the Director of Public Prosecutions Act 1983. While the DPP is within the Attorney-General's portfolio, for all practical purposes it operates independently of the Attorney-General and his Department. The main function of the DPP is to prosecute offences against Commonwealth law, both summarily and on indictment. The DPP is not an investigating agency.

Prosecution of narcotic related offences forms a significant proportion of the DPP's workload, the majority of which relate to the importation of narcotics into Australia.

In addition to its prosecution role the DPP has a criminal assets forfeiture function. It is designed to ensure that offenders are deprived of the proceeds and benefits of crime; and to ensure, where appropriate, that civil remedies are pursued to recoup losses attendant upon criminal activity. This function has arisen out of the recognition that the traditional response of prosecution followed by punishment is seldom by itself an adequate response to large scale criminal activity aimed at accumulating wealth. Greed is the motivation for many offences, including narcotic related offences. It is axiomatic that in conjunction with prosecutions there should be forceful and persistent action to deprive criminals of the benefit of their criminal behaviour. The DPP has three main avenues of achieving this purpose:

— the civil remedies function;
— the Proceeds of Crime Act 1987; and
— in narcotic cases, by seeking a pecuniary penalty under the Customs Act.

Immigration, Local Government and Ethnic Affairs (DILGEA)

DILGEA operates a similar system to PASS which is used to identify illegal migrants, those with stopped visas or illegal passports. This system is called MAL (Migrant Alert List).

AFP's Relations with International Agencies

The International Division of the AFP, through its network of strategically deployed Liaison Officers in 13 countries

throughout the world, provides the Federal Police with the proactive capacity in combating the increasing complexity and sophistication of criminal activity which has no regard for national jurisdictional boundaries. In addition, an AFP officer is attached to the International Criminal Police Organisation (Interpol) in Lyons, France as head of Drug Sub-Division 3.

The main role of the AFP liaison officers are to facilitate the interchange of drug and crime related intelligence between the Federal Police, Australian state police services and foreign law enforcement agencies. The Liaison Officers also coordinate visits for Australian and foreign law enforcement officers. The Liaison Officers are located in the following countries:

UK	London
Italy	Rome
France	Lyon
Cyprus	Nicosia
Pakistan	Islamabad
Thailand	Bangkok
	Chiang Mai
Hong Kong	Hong Kong
Philippines	Manila
Singapore	Singapore
Malaysia	Kuala Lumpur
United States	Los Angeles
	Washington
	Honolulu
Argentina	Buenos Aires
Indonesia	Jakarta

The Australian Delegation to the 35th Session of the United Nations Commission on Narcotic Drugs actively supported and debated agenda issues. The delegations included and AFP member as one of its advisers. The United Nations sponsored HONLEA meetings have become a very valuable meeting for law enforcement agencies and has helped to create a close regional network of senior enforcement officers in both Customs and Police. Australia welcomed participants to the 16th Asia and Pacific Region Meeting held in Canberra in October 1991 which was jointly organised by the AFP and the Australian Customs Service. The Dublin Group Meetings are attended by AFP members either as delegation members or observers whenever circumstances permit.

In addition to these functions, the AFP provides the community policing role in Christmas Island, Cocos Islands and Norfolk Island; it has police advisers in Papua New Guinea, the Solomon Islands and Vanuatu; and is involved in peace keeping operations in Cyprus and Cambodia.

Interpol

The National Central Bureau (NCB) of Interpol is established within AFP headquarters. It maintains a good working relationship with a number of Government departments and valuable assistance is provided by the NCB in a number of matters, such as extraditions to and from Australia. During 1991–92, 39,763 communications relating to criminal inquiries and 358 relating to humanitarian matters were handled by the Bureau. On 1 June 1991, the NCB in Canberra became the Regional Communications Centre to service all South Pacific member nations of Interpol. All communications directed to and from these member nations are transmitted through the NCB in Canberra.

The AFP has a commissioned officer seconded to Interpol, attached to the General Secretariat in Lyon as the head of Group 2, Drugs Sub-Division. The officer is responsible for the daily activities of a group of police officers from representative countries dealing with information on cocaine and psychotropic substances, including the movement and illicit use of precursor and essential chemicals.

Mutual Assistance Matters

The AFP's International Division is responsible for liaising with International Branch, Attorney-General's Department

for coordinating requests for Mutual Assistance to and from Australia. Attorney-General's Department is responsible for the administration of the Mutual Assistance in Criminal Matters Act 1987. It is not essential that a Mutual Assistance Treaty be in place for requests to be made. For example, some requests may be for the formal taking of evidence under the Letters Rogatoire process, others for service of subpoena.

Mutual assistance in criminal matters concerns the granting to, and requesting of, other countries assistance in criminal matters relating to:

a. the investigation and prosecution of crime; and
b. the proceeds of crime.

The object of the Mutual Assistance in Criminal Matters Act 1987 is to facilitate the provision and obtaining by Australia of international assistance in criminal matters including:

— the obtaining of evidence, documents or other articles;
— the provision of documents and other records;
— the location and identification of witnesses or suspects;
— the execution of requests for search and seizure;
— the making of arrangements for persons to give evidence or assist investigations;
— the forfeiture or confiscation of property in respect of offences;
— the recovery of pecuniary penalties in respect of offences;
— the restraining of dealings in property, or the freezing of assets, that may be forfeited or confiscated or needed to satisfy pecuniary penalties imposed, in respect of offences;
— the location of property that may be forfeited, or needed to satisfy pecuniary penalties imposed, in respect of offences;
— the service of documents; and
— access to cash transaction reporting information.

Australia has revised its extradition legislation and adopted new mutual assistance legislation (with particular attention to the proceeds derived from crime). Through its program of negotiations, Australia has, since 1985, concluded many new bilateral extradition and mutual assistance arrangements. It has taken a leading role in the development of a reciprocal Mutual Assistance scheme and participated in the Financial Action Task Force established by the Heads of State or Government of seven major industrial nations and now has a membership of 26 nations. Australia has also taken a leading role in the activities of the Financial Action Task Force and assumed its presidency in 1992.

See Appendix 1 for countries with which Australia has treaties.

In 1988 a Memorandum of Understanding (MOU) concerning mutual assistance between Customs agencies was signed between Australia and the Republic of Korea. One of the objectives of the MOU is the exchange of information to assist in the prevention and detection of customs offences. Australia and New Zealand signed a similar MOU in 1985 and Australia and Canada signed one in 1987. A similar MOU was initialled with the United States and Letters of Understanding were with Japanese Customs in February 1990.

The Extradition Act 1987 came into force in December 1988 and codifies Australia's extradition law and deals with modern international problems such as temporary surrender, accessory extradition and the prima facie case rule. Since 1985, negotiations for 41 new bilateral extradition treaties or arrangements have been undertaken, of which 29 are in force. The London Scheme for the Rendition of Fugitive Of-

fenders governs Australia's extradition arrangements with some 62 Commonwealth countries and a special extradition relationship exists with New Zealand. These treaties and arrangements enable extradition for drug offences and complement Australia's extradition relations arising under the international drug conventions. Extradition relations between Australian and a further 23 countries are still governed by treaties negotiated by Great Britain to which Australia has succeeded.

Measures to Counter Criminal Activity

A. Legislation, Sentences and Penalties

All States and Territories have separate legislation concerning the possession, use and trafficking of illicit drugs. Generally, uniform penalties in line with those of the Customs Act apply, except in the case of Queensland, where the Drugs Misuse Act 1986 provides for judicial discretion in sentencing certain trafficking, supplying and possession offences. See Appendix 2 for variations in penalties.

Australia ratified the Single Convention on Narcotic Drugs 1961 on 1 December 1967 and the Protocol Amending the Single Convention on Narcotic Drugs on 22 December 1972. Australia signed the Convention on Psychotropic Substances 1971 on 23 December of that year, and effected ratification on 19 May 1982 following the introduction of relevant legislation in all States and Territories.

The 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances was ratified by Australia in November 1992.

Although the signed convention may not be ratified immediately, Australia adheres to the provisions of the treaties after signature. The convention must be ratified by both the Federal and relevant State Governments which may take up to 18 months.

B. Cash Transaction Reports Act

The CTR Act, passed by Federal Parliament in 1988, provides for details of suspicious financial activity and major cash movements to be reported to AUSTRAC, analysed and made available to the Australian Taxation Office and law enforcement authorities in Australia. The CTR Act also sets out to eliminate the use of false name accounts with banks and other cash dealers. The Act creates an offence of opening or operating a false name account and requires verification of identity in the opening of accounts.

The CTR Act is a platform for targeting persons operating in the cash economy and evading tax. Importantly, it is part of the armoury that is being developed in Australia to focus on the financing of criminal activity and on the laundering of the proceeds of crime. The CTR Act provides a window into the Australian financial system.

The regime of the CTR Act is as follows:

- Reports by financial institutions and other cash dealers on cash transaction of AU$10,000 or more.
- Reports by members of the public on cash transfers (into and out of Australia) of AU$5,000 or more.
- Reports on suspicious financial activity (suspect transaction reports) are required to be filed by cash dealers.
- Requiring identification and verification of new account holders became effective 1 February 1991. Coupled with this requirement is the prohibition on opening or operating false name accounts.
- Reports international telegraphic transfer instructions between financial institutions.

C. Operational Techniques

Various techniques are employed by all law enforcement agencies in the apprehension of criminals. These include; listening devices, telecommunications interceptions,

undercover operatives and surveillance teams. Each agency has dedicated and trained surveillance teams which provide support to operations.

Telecommunications interception and listening devices

Legislation permitting the interception of telecommunication throughout Australia has been in place since May 1960. Initially the interception of telecommunications was restricted to matters of "national security," however in 1979 the Telecommunications (Interception) Act was expanded to include "narcotic offences."

The interception of telecommunications can only be commenced following the issue of a warrant by a Federal Court Judge, on information being presented in the form of an affidavit. Warrants are issued for a maximum period of 90 days, however warrants may be extended by a Judge after consideration of further information.

The Act was further amended in 1987 to allow both Federal and State law enforcement agencies to apply for warrants. Additionally the offences for which warrants could be issued was expanded and categorised under two classes:

— a "class 1 offence," including—murder, kidnapping and narcotics.
— a "class 2 offence," including offences punishable by at least 7 years imprisonment involving loss of life or injury, trafficking in narcotic drugs, serious fraud or serious loss of revenue of the Commonwealth or of a State.

All law enforcement agencies are subject to strict and closely controlled record keeping in relation to telecommunication interception and listening devices. A twice yearly audit of agencies is undertaken by the respective Commonwealth or State ombudsman.

For the period 1 July 1991 to 30 June 1992, 467 warrants were issued to law enforcement agencies in Australia for telecommunications interception.

Listening devices are available to and used by all Australian law enforcement agencies. They are issued under the Customs Act 1901 and the AFP Act in relation to narcotics related offences. They are generally issued for a period of 30 days and may be renewed on application.

D. Access to Taxation Information

The Commonwealth Government in 1990 amended the Taxation Administration Act 1953 to allow the Commissioner of Taxation, at his discretion, to provide taxation information relating to serious (indictable) offences to law enforcement agencies. Information gained in this manner may be used for investigative purposes but cannot be used as evidence in a court for non-tax prosecution, except in relation to a proceeds of crime order where a person has been convicted of a serious offence.

E. Proceeds of Organised Crime

Stripping offenders of the proceeds of their crime (Proceeds of Crime Act 1987) is a very effective strategy to combat crimes which are aimed at the accumulation of wealth. The deterrent effect of Proceeds of Crime legislation, cannot be calculated, but is undoubtedly significant. This Act is conviction based.

The following Table 1 is taken from the DPP's Annual Report 1990–91. It represents the Proceeds of Crime Act—Forfeitures—1 July 1990 to 30 June 1991.

The following Table 2 is taken from the DPP's Annual Report 1990–91. It represents the Proceeds of Crime Act—Restraining Orders current at 30 June 1991.

F. Strategic Intelligence Assessments

In response to Government requirements, the AFP has expanded its strategic intelligence capabilities to provide the Government with high quality strategic criminal assessments. In addition to the

Table: 1

	Number of Forfeitures	Estimated Value of Property Forfeited (i) $	Number of Forfeitures Realised	Amount Realised from Forfeited Property (ii) $
NSW	6	633,613	4	205,696
Vic	1	4,000	1	24,196
Qld	1	120,000		
WA			2	175,784
SA				
ACT				
Total	8	757,613	7	405,676

(i) Does not include cases where property has been realised; these cases are included under "amount realised from forfeited property."

(ii) Includes amounts realised from property forfeited in previous years.

Table: 2

	Number of Restraining Orders	Net Value of Property Restrained $	Estimate of Potential Confiscation Order $
NSW	39	28,379,712	37,815,725
Vic	34	6,616,178	5,000,000
Qld	2	363,806	363,806
WA	4	365,000	285,000
SA	4	600,000	500,000
ACT	4	450,000	200,000
Total	87	36,774,696	44,164,531

intelligence required to support national and international drug investigations, the additional responsibilities include the acquisition, analysis and dissemination of all relevant information concerning fraud and general crime within Australia and overseas which may affect the interests of Australia.

The major thrust of AFP Headquarters-based intelligence activities is to pursue non-operational strategic assessments while maintaining a support structure able to service national operations and overseas requirements. As the AFP maintains and develops its criminal intelligence capability, a more sophisticated approach to understanding the Australian criminal environment is currently being developed. The principal activity of regional based intelligence units is to pursue regional operational and tactical assessments as well as supporting national operations or headquarters' references.

G. Witness Protection Programme

In the early 1980s the AFP set up an informal group to protect witnesses in drug related cases, who were under threat of death if they chose to give evidence against their co-conspirators. At that time witnesses were offered 24-hour close protection by police and were constantly moved from location to location.

In 1983 a more formally structured group was established to provide professional protection for witnesses who agreed

to give testimony against organised crime figures. The Australian Federal Police Witness Protection Program as it became structured in 1983 was loosely based along the lines of the United States Marshals Service.

Currently there are in excess of 400 persons receiving some form of protection within Australian jurisdictions. The program has been developed with a national law enforcement focus and is directed to the protection of the high level, high risk witness (organised crime, official corruption).

The Australian Federal Government has proposed legislation to support an Australian National Witness Protection Program, which will be administered by the AFP. That legislation has passed through Cabinet and is now awaiting the passage of the Parliamentary procedures.

In the context of the fight against organised crime it is clearly in the interests of the State to provide protection to witnesses. Without such protection the principals of organised criminal groups will not be brought to trial. It is in this sense that the provision of effective witness protection is of primary importance in the investigation of organised criminal activity.

H. Training

The AFP plays a leading role in the development and presentation of courses which improve the investigative skills not only of its members and staff members but also of representatives of other organisations invited to participate. A Corporate Crime Investigators Course is currently being designed with the aim of providing Investigators with detailed practical skills and knowledge for the area. A strategy to increase the skills of Investigators in Fraud Detection and Investigation is the basis of a joint project between Training Division and Monash University in the design and delivery of a Graduate Certificate in Business (Banking). This course is currently providing AFP Fraud Investigators with broad-based knowledge of how the Australian Financial Markets operate, including an understanding of the law governing those operations, particularly as it relates to the banking industry.

The Management of Serious Crime (MOSC) was developed to prepare senior officers who are likely to lead, manage or coordinate a major investigation into serious crime, in the managerial aspects necessary to that role.

During 1991–92, the AFP implemented a strategy of marketing of Investigations and Intelligence training to other Federal Agencies with considerable success. Several courses on investigational methodologies were conducted during 1992 and people representing Australia Post, Telecom, Defence, DILGEA, DEET (Department of Employment, Education and Training), Administrative Services, the Australian Quarantine Inspection Service and the ACT Government attended.

I. Australian Bomb Data Centre

The Australian Bomb Data Centre (ABDC) is the national focal point for the collection, collation, interpretation and dissemination of data on explosives/incendiaries, whether commercial, military or improvised. The centre is staffed by six AFP members and two Australian Defence Force members, and aims to ensure the national and international exchange of information on the unlawful use of explosives. The ABDC also provides specialised training to Government departments and agencies in bomb detection and search procedures. Technical advice on bomb-related security and protection against explosive attack, as well as on new methods, equipment and training, also is provided through the conduct of research and development projects.

Examples of Successful Operations

In February 1992, approximately 25 kg of heroin were seized from two vehicles in Sydney. It appears the heroin importation was organised by a Sino-Vietnamese group, the recipient being a well known Australian drug trafficker. Additional seizures confirm research indicating this seizure was part of a larger consignment of heroin imported to Brisbane by ship.

Proceeds of Crime action was taken and restraining orders have been placed on the Australian's assets. These include: A$15m worth of assets in Australia; US$279,235 and A$252,162 identified in accounts in Singapore; US$1.2m identified in accounts in Vanuatu.

In October 1992, 15 kg of heroin, concealed in plastic cassette type cases were seized at Perth International Airport. The couriers (Singaporean Chinese) travelled by air from Singapore to Jakarta, where the heroin was collected, prior to their ultimate detection in Perth.

Since the beginning of 1992, the AFP has seized approximately 212 kg of cocaine. This represents almost a 300 percent increase from the previous years seizures of 74 kg. It is believed that three seizures of 75, 23 and 6 kg in August 1992 and one of 100 kg in September 1992 were imported by an Australian group connected to the Medellin Cartel.

In June 1992, a group of five Japanese nationals and a Malaysian arrived at Melbourne Tullamarine Airport. The group were charged with offences relating to the importation of nearly 13 kg of heroin which was carried by the group and concealed in four samsonite suitcases. It is believed that the heroin was collected in Malaysia although the source country cannot be chemically identified. Apart from the large amount seized, this seizure is significant in that one of the Japanese arrested was later identified as a current member of the Nitta-Gumi Boryokudan Gang.

In mid January 1993, 16.5 kg of 75–80% pure heroin with a street value of A$20m was seized in Melbourne. It had been sent from Malaysia to Perth, Western Australia in 47 blocks which had been concealed inside an industrial heat strapping machine. It was then shipped to Melbourne and is the largest heroin seizure ever in Victoria.

According to Customs, seizures of cannabis at Australia's ports tripled in 1992. One tonne of cannabis compressed into 1.2 kg blocks was seized in Queensland in early January this year. This ten-month operation involving 140 police and customs officers netted the second biggest haul in Australia worth A$28 million. The cannabis had been brought from Thailand and smuggled into Australia by boat through Yeppoon, near Rockhampton in Queensland, and bound for distribution in New South Wales and Queensland.

More than three tonnes of cannabis resin were seized from a yacht by federal police and customs officers in Western Australia in 1992.

In January this year, two Swedes and two Thais were rescued from a dinghy when their ship sank. One tonne of cannabis was recovered from the New Zealand registered yacht. Another 25 kg of cannabis was discovered after a federal police three-day diving operation in the area.

Conclusion

It is Australia's hope that international cooperation is absolutely necessary to combat the spread of international organised crime, including drug trafficking, and so fulfil our obligations to protect our respective communities from the effects of organised criminal activity.

With the breakdown of the former Soviet Union and the formation of the Commonwealth of Independent States (CIS), Hong Kong and Macau returning to Chinese rule, trade routes and borders liberalising, the likelihood of non detection of criminals

increases. It is obvious that organised crime groups, although having their own distinct regional character, are being forced to move more of their operations overseas. As laws in their home countries are more strictly enforced, they are becoming more international in their search for an "easy" operational environment. The law enforcement bodies can make it less attractive to criminals to venture into our territories and this can only be done by improved cooperation and the efficient, timely passage of information, properly framed laws, based on recognition of the international nature of late 20th century crime.

Appendix 1

MUTUAL ASSISTANCE TREATY PROGRESS SINCE 1985 (AS OF 12/10/92)

Treaty in Force	Signed Awaiting Ratification	Negotiations Complete Preparing for Singature	Substantially Completed	Preliminary Negotiations
Austria (1)	Argentina (30.9.90)	Belgium	Egypt	Denmark
Canada (1)	Finland (22.6.92)	Brazil	Uruguay	Liechtenstein
Hong Kong (2)	Italy (28.10.88)	Czechoslovakia	USA	Norway
Japan (4)	Korea (25.8.92)	Ecuador		Thailand
Mexico (1)	Luxembourg (24.8.88)	France		Venezuela
Netherlands (1)	Philippines (28.4.88)	F R Germany		
Spain (1)	Portugal (4.7.89)	Greece		
Switzerland (3)	Switzerland (25.11.91)	Israel		
UK (2)		Hungary		
		Monaco		
		Sweden		
		Turkey		

Appendix 2

Customs Act 1901
Section 233B

Name of Substance	Trafficable Quantity (gs)	Commercial Quantity (kgs)
Cannabis	100.0	100.0
Cannabis Resion	20.0	50.0
Cocaine	2.0	2.0
Heroin	2.0	1.5
Lysergic Acid	0.002	0.002
Morphine	2.0	1.5
Opium	20.0	20.0
Barbiturates	50.0	N/A
Amphetamine	2.0	N/A

Penalties

— The maximum penalty for trafficking in drugs except cannabis leaf is A$100,000 and/or 25 years' imprisonment.
— Cannabis leaf trafficking attracts a minimum penalty of A$4,000 and/or ten years' imprisonment.
— For other offences such ɛs possession of less than the trafficable quantity, the maximum penalty is A$2,000 and/or two years' imprisonment.
— Trafficking in "commercial" quantities of a drug attracts a penalty of life imprisonment without the option of a fine; and
— Second and subsequent offences involving a trafficable quantity of drugs also attracts the penalty of life imprisonment without the option of a fine.

Present Issues of Organized Drug Crime Control: Korean Situation

*by Yoo, Chang-Jong**

I. The Current Situation of Organized Drug Crime and the Countermeasures

A. The Current Situation of Organized Drug Crime

Since the beginning of the human history, man has been fighting against various enemies. In the first place, mankind has wrestled with drought, flood, disease and poverty. These "natural enemies" have mostly been overcome with the development of science in most civilized countries. However, human beings are now confronted by other types of threats that they themselves have created: "Man-made enemies" such as environmental pollution, war and drugs. What foolishness it is for us to manufacture the agents of our own destruction with our own hands!

In spite of all the efforts by the United Nations and each country, a UN report indicates that nearly 40 million drug users spend approximately 500 billion dollars a year on drugs, placing the volume of the drug trade right after that of the international arms trade. The report also mentions that few countries have succeeded in eradicating drugs and drug rings. The number of drug users and the amount of drug seizure have been on the rise in most regions. It seems that we are losing the war on drug rings.

Moreover, the drug crime organizations of today have expanded internationally, and their means of trafficking have become much more sophisticated and gigantic—so much so that they cannot easily be controlled by any one country's law enforcement measures. And drugs have become the major financial source of most organized crime. In this sense, the organized crime may be called the organized drug crime in many cases.

A new trend among the drug rings is that organized drug cartels are beginning to cooperate with each other. They are believed to have been forming an international network.

The key words for the current situation of the organized drug crime are "impregnable," "still growing and spreading," and "global colossus."

The most widely known organized drug crime groups among the public are the Mafia in Italy, La Cosa Nostra in the USA, Medelline Cartel and Cali Cartel in Colombia and Yakuza in Japan. In the past two decades new organized drug crime groups have emerged across the world; Outlaw Motorcycle Gangs, Rastafarian, Mexican Mafia, Herra family, The Abaqua, Tongs in the USA, Shan United Army in Myanmar and Triads in Hong Kong.

B. The Impact of Organized Drug Crime

Worsening drug problems are posing various social, economic and political threats to the human society. Drugs are undermining the physical and the psychological health of the users and the addicts. They are often the causes of criminal offenses such as murder, theft, prostitution and bribery. Drugs are destroying the peace of the family and the security of the society. Each

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nation is incurring an unendurable financial burden to defend addicts and ultimately the nation itself.

In some countries, the drug menace is eroding the very foundation of the political entity. They are waging a militarized war on drugs with arms and ammunition. And organized drug rings are always behind the scene. These days drug cartels and drug trafficking organizations are the hub of the drug-related crimes. They are serving as a colossal virus which has resulted in the above social epidemic, and in many countries, endemic.

Besides the above-mentioned harms of drug rings, the most significant threat is the loss of the public trust in the criminal justice system. The public has an anxiety that organized drug crime might be invincible. The citizens strongly doubt that the law enforcement and the other concerned authorities are keeping their strenuous committment, sufficient capability and high morale to fight against the social evil of drug rings.

Authorities frequently seem to be helpless and frustrated when confronted by invisible and invincible drug cartels. The law enforcement may be unable to keep innocent citizens from violence and unable to protect the renegading ring members from professional enforcer's cruel revenge. Sometimes the law enforcement and influential figures and paid off. Citizens are reluctant to report the organized drug crime's threats and unwilling to show up as witnesses in fear of violence.

The organized drug crime has achieved its immunity from the ordinary law enforcement efforts by means of its discipline, secrecy, cohesion, violence and bribery. This "de facto immunity" creates a "curtain of silence" around the activities of organized crime. This curtain of silence in turn undermines the effectiveness of the institutions upon which the public rely for a sense of peace and security. Accordingly, such perception contributes to the corrosion of the public confidence in the principles of law.

Organized drug crime is now reaching a point to challenge the single most important function of the government, which is providing security from fear, violence and lawlessness. This intangible impact is the most damaging harm of organized drug crime. We, the law enforcement officials and the public as well have to do something to disperse such frustration.

C. The New Trend of Responses to Organized Drug Crime

There have been continuous efforts and attempts by each nation to revise the legislation concerning drug crimes. Also various international conferences and seminars have been held to come up with more effective solutions for drug calamities. There have been strong differences among drug policies and strategies of every nation. This phenomenon implies not only the severity of drug problems but also the broken function of the present responses.

Organized drug rings are defensive and clever enough to take advantage of the loopholes in the current legislation. They are trying to develop new types of drugs and activities which are not subject to penal sanctions. The so-called "Designer-drugs" are not under control because their molecular structure is slightly different from that of the drugs regulated by the law. Drug rings are attempting to disguise themselves as legitimate business entities to expand into legitimate business. They are making every effort to widen the "de facto immunity." Moreover, the organization itself and the activities of any drug cartel are very easy to transform, whereas the legislation and the law enforcement are not easy to change. Consequently, "nulla poena sine lege" gaps are always left over, and the legislation is always in the unsatisfactory position of catching up from behind.

There are three ways to respond to the new situation of organized drug crime:

First, to strengthen the previous measures. Law enforcement may be strengthened and streamlined with more budget, equipment and personnel to investigate and prosecute organized drug crimes more effectively and efficiently. Much heavier criminal sanctions may be introduced.

Second, to initiate new measures. Especially, more attention is being paid to the destruction of the criminal organizations themselves instead of the punishment of each member of the organization. New aggressive asset forfeiture systems are becoming popular. And new attempts are being initiated to regulate the previously untouched activities of organized drug crime. Money laundering may be regulated. Or, even the act of conspiracy may be punishable under the new laws.

Third, to destroy the drug black markets. The decriminalization theory is based upon the assumption that legalization of drugs is sure to result in disappearance of the black market which is the playground of organized drug crime.

What is the panacea for the menace of the organized drug crime? The drug area is really serving as a drill-ground for criminology and penology in innovations and initiatives.

II. The Guiding Principles for More Effective Control

A. More Fundamental Control

When a medical doctor sees a patient, the doctor always tries to identify the disease which is the cause of several symptoms. Diagnosis procedure is essential to fundamental treatment. It is not enough for a patient merely to get rid of high fever by taking Tylenol. The doctor has to prescribe an appropriate medicine for tonsillitis which is the cause of the high fever. The tonsillectomy may be necessary because of the severity of the tonsillitis. The mere symptomatic treatment cannot be a perfect cure for any disease.

Likewise, there must be two steps in an effort to control organized drug crime. The first step is to identify the activities of organized drug crime and to research the nature, history and the trend of the entity. The second step is to prepare countermeasures to control the very organization—the entire hierarchy and the financial foundation. Mere criminal sanction against individual members is only a symptomatic approach.

B. More Comprehensive Control

The commander waging a war must be cautious in collecting all the information about the enemy. He may need a big map on the wall to keep up with a bird's-eye view of the war. He should understand not only the transfiguration of the frontline, but also the supply base, the supply route and the headquarters. He may decide to take the weakpoint by surprise. However, he has to attack all facets of the enemy to win a complete victory.

The "War on drugs" and the "War on organized crime" must be waged in the same manner. The concept of an all-out war must be introduced in the fight against organized drug crime. When we prepare countermeasures to control organized drug crime, the strategies must be comprehensive in consideration of the all-out control on the production, trafficking, distribution and the consumption of drugs. The Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control (CMO) published in 1988 by the United Nations is a good model of this kind.

In this sense, the control on the consumption and the markets of drugs is also one of several effective ways of attacking organized drug rings.

C. More Prognostic Control

There is a very interesting theory of "round-about method production" by a German economist Roscher. If a fisherman

wants to catch more fish, he should make a net instead of rushing to the sea with bare hands. It is much wiser of him to prepare a boat and to get to know when the best time is and where the best spot for netting is. He may sprinkle a bundle of worms around the netting spot as baits in advance.

We the law enforcement officials and the policy makers also have to follow the same wisdom. Mere hard work on the front is not sufficient to put the drug rings under complete control. Above all, we have to pay more attention to knitting together fundamental and comprehensive strategies even though it seems to be a time-consuming process. From a long-term standpoint, this round-about method produces better prognosis and consequences.

Prevention is the best treatment. Authorities concerned have to formulate preventive measures against organized drug crime and its activities.

D. More Flexible Control

Drug organizations are very agile and vigilent in adjusting themselves to the rapidly changing environment. They can easily restructure their organizations and personnel with the intention of doing their business more successfully. They are utilizing newly developed modern equipment and facilities. Their defensive alertness produces more information concerning new anti-drug organization legislations and more loopholes together with detailed movement of the law enforcement. Practical strategies of the nations must keep up with the changeability of organized drug crime.

A periodic assessment of the current control policy and strategies must be established. This system confirms the feasibility and the practicality of the working-level practices of drug policies and strategies.

E. More Resolute Control

A resolute committment by the authorities concerned is a springboard for the successful control of organized drug crime. The law enforcement is serving as a launching machine for the prepared bullets of comprehensive strategies against organized drug crime. Without the strong will of the law enforcement officials, even the superb measures would become paper-tigers.

In many countries, comprehensive strategies against organized drug crime is being programmed only as an annual routine blue-print or only for the paperwork's sake of reporting to the President and the parliament. Some experts have shown reliable evidence that there possibly exists a secret agreement between organized drug crime and the authorities concerned. This would not astonish us since no sincere efforts to nullify the very organized drug crime have been made in some countries.

Corruption is considered as one of the major reasons for a failure in fighting against organized drug crime in quite a few nations. Many officials, politicians, and sometimes Presidents of some countries have been accused of being involved in organized drug crime. Apathy and ignorance of the public is another reason for the failure on the war on the drug rings.

Whenever the policy makers are lost in complexity or confusion in weaving the anti-drug strategies, these lodestars of the five guiding principles will help find out the right direction. And whenever the anti-drug crusaders perceive the losing atmosphere, they have to reexamine their strategies by these five yardsticks in order to point out shortcomings and weak points of the strategies.

III. The Attack on the Entire Organization

A. The Survival of Organized Drug Crime

Drug organizations have survived repeated crack-downs. Rather, they continue to flourish with their organizations and activities.

1. The Bizarre Code of Conduct

Organized drug crime is a type of conspiratorial organization with high secrecy and dictatorship. Absolute obedience by all members to the leadership is the most prominent code of conduct. Organized crime rings are usually very quick and effective in disciplining their members, associates and even victims. The members understand that the deviation from the code of conduct always evokes a prompt response from other members. Such response may range from a reduction in rank to death. Therefore participants in the rings are unlikely to disassociate themselves from the groups. And even when arrested and investigated, they are reluctant to reveal any information to the authorities. They avoid betraying behavior which will lead to desertion and punishment from their families. They want to keep the "feeling of belonging" together with respect and honor among their families.

To an average person, imprisonment has been regarded as a deterrent to committing criminal activities. However, more imprisonment of the ring members means more contribution to and more sacrifice for the organization. The members are proud of being imprisoned for their involvement with the rings. They and their dependants will receive a reward and protection when they are incarcerated. Even physical detention is not a preventive measure against organized drug crime.

2. The Insulation of the Leadership

Kingpins of drug rings are seldom involved directly in punishable activities. They are usually isolated from the direct participation in the criminal operation. Wirepullers enjoy the bulwark of protection by the arrested members. "Shield of carrot and sword policy" insulates the leadership from a criminal sanction. As a result, high-rankers of organized drug crime are too seldom arrested and punished.

3. The Exchangeability of the Members

The bulk of detected drug offenders consists of users and small dealers. The number of the drug arrestees is continuously increasing. However it has not done any serious damage to the organization. The vacancy of street pushers and other low-rankers is quickly filled up by others. They are used as spare-parts of the rings.

When African couriers of heroin became vulnerable to stricter checks at entry points, they were replaced by Hong Kong-based Chinese. Now there is information that Caucasian people are being recruited to replace Chinese heroin couriers. Attacks on the exchangeable members of organized drug crime is not an effective strategy. We have to concentrate more attention on attacking the very hierarchical entity and the financial stability of the organization.

B. The Arrest of Wirepullers

1. A Compromised Surrender

Long experience indicates that it is a very difficult task to collect enough strong evidence to succeed in bringing a kingpin to jail. The Colombian government officially announced that it had been successful in persuading the Ochoa brothers and other top kingpins to surrender themselves to the authorities on the condition that they would not be extradited to the USA. The rest of the world, however, was doubtful of the sincerity of the tactics. These surrendering kingpins were put in hotel-like prisons with extraordinary freedom. There was news that some of them escaped from the prison in cooperation with some jailors. Recently, the Bolivian government was also carrying out the compromised surrender program.

2. The Witness Immunity

The leniency in sentencing towards a low-level member of a drug ring is justified if his testimony is essential to obtain convictions against a major figure in the ring.

When a prosecutor is confronted with a witness whose testimony is of great value, the prosecutor may agree to a plea bargain or offer immunity from prosecution in exchange for testimony.

The USA enacted the Witness Immunity Act of 1970. The Act allows a prosecutor to compel the testimony of a witness despite the Fifth Amendment claim of the privilege against self-incrimination. There may be a "non-prosecution agreement" which is an informal witness immunity occasionally used by prosecutors in many countries.

As a matter of practice, an immunity is granted only to the minimum number of witnesses in order to obtain convictions against more culpable key figures. The cost of granting a witness immunity must be weighed, case by case, against the cost of securing indictment and convictions of the key figures. The strategy of witness immunity is very effectual in alluring low-rankers of the drug rings to break their code of conduct and loyalty to the rings.

A witness protection program is also very useful in securing testimony against high-rankers.

3. Award Programs

In some countries, an award program for the informant quite often leads to an arrest and conviction of the major figures of organized drug crimes.

C. The Breakup of the Entire Hierarchy

1. RICO of the USA

Several countries have attempted to initiate a new legal weapon to break up the entire drug organization itself. Commonly called RICO of the USA is one of such kind. The Racketeer Influenced and Corrupt Organization statute (RICO) was enacted as Title IX of the Organized Crime Control Act of 1970. The statute provides powerful criminal and civil penalties against persons who engage in "a pattern of racketeering activities" or "collection of an unlawful debt" that has a specified relation to an "enterprise" that affects the interstate commerce. The purpose of RICO was to eliminate the infiltration of organized crime into legitimate business organizations, unions and the government. However, because of constitutionality issues, the Congress could not draft the definition of organized crime which would then have made a membership therein a crime. Instead, the Congress defined an enterprise and enumerated types of criminal conduct called "racketeering activity" which, if committed in order to obtain control of, or operate that enterprise, would constitute a violation of RICO.

One of the major innovations of RICO is the concept of "criminal enterprise." The purpose of RICO was to broaden the prosecutors' discretion by providing for a single prosecution of an entire multi-defendant organized crime group for all of its many and diverse criminal activities. Rather than pursuing the leader or a small number of subordinates for a single crime, the government is able to indict the entire hierarchy of an organized crime family for the diverse criminal activities which fit the definition of "enterprise." The authorities can focus their attacks on powerful criminal organizations rather than incarcerating individual offenders. The "enterprise strategy" of RICO has replaced the earlier "attrition strategy."

There are four different criminal violations prescribed by RICO:

a) It is a crime to invest the proceeds from racketeering activities or the collection of an unlawful debt in an enterprise affecting interstate commerce. For example, a cocaine trafficker violates this provision if he purchases a legitimate business with the proceeds from cocaine transactions.
b) It is a crime to acquire or maintain an interest in an enterprise affecting interstate commerce through a pattern of racketeering activities or a collection of

an unlawful debt. For example, if a heroin ring leader takes over a legitimate business through acts of extortion, he violates this provision.

c) It is a crime to conduct the affairs of an enterprise affecting interstate commerce through a pattern of racketeering activities or collection of an unlawful debt. For example, a car dealer violates this provision if he uses his shop to operate drug transactions.

d) It is expressly made a crime to conspire to commit any of the above three substantive RICO offenses.

A pattern of racketeering activities is established by showing the commission of two or more of the enumerated acts within a ten-year period. And RICO enumerates twenty-four types of federal crimes and eight types of state felonies under the umbrella concept of racketeering activities. Those are characteristics of organized crime, for example murder, gambling, arson, robbery, extortion and dealing in narcotics or other dangerous drugs.

2. The Offense of Organizing Criminal Entities of Korea

The Korean Criminal Law (Article 114) provides that anyone who organizes an entity with the purpose of committing a crime or participates in the entity shall be punished with the same punishment as that of the purposed criminal act. This provision had been seldom utilized until the war on crime was declared in 1989. Understanding the harmful activities of organized crime, the court upheld the constitutionality of the provision and sentenced heavy punishment to the members of the criminal rings by basing the decision on this provision.

D. A New Investigative Approach

An investigation for arresting key figures and attacking the entire organization requires a new strategy, different from traditional methods. Above all, it is necessary for the challenging investigators to collect broader information, direct and circumstantial evidence surrounding the criminal group, the list of members, and their activities, and then to collect and analyze the data.

A computerized Data Bank System is working well for this purpose. The Korean Prosecution developed this system which has contributed a great deal to the success in attacking the drug rings and their key figures. Some countries are trying to develop such innovative computer program for analyzing the nexus between the major figures and the organized drug rings.

IV. The Attack on the Financial Foundation

A. The Financial Stability of Organized Drug Crime

Even when the major members of organized drug crime are imprisoned, they can still continue to run the business due to their financial stability. This is the fourth factor for organized drug crime to survive the attack of law enforcement. Law enforcement officials are often hampered in their investigations because drug traffickers exploit the banks confidentiality and the growing sophistication of financial transactions and communication to conceal their assets and funds, quite often even during an investigation.

Since the main purpose of organized drug crime is a pursuit of economic profit, the most effective attack on organized drug crime is to deprive it of its economic gains and assets. Such profits may otherwise be reinvested, thus contributing to an increase in the volume of drug trade. If a direct attack to deprive the criminal profits could eliminate the incentives to pursue further profit, then organized drug crime would be destroyed down to the ground because the cycle of reinvestment would be broken.

Each country has made sincere efforts to

increase the efficiency of their seizure system to attack the very financial foundation of organized drug crime.

B. The New Asset Forfeiture Formula

1. The Drug Trafficking Offenses Act of 1986 of the UK

In Britain, the Drug Trafficking Offenses Act of 1986 created powers to trace, freeze and confiscate the assets of drug traffickers.

The courts can order a disclosure of information, including records held by banks and other financial institutions, if the judges are satisfied that the information sought would be of value to the drug trafficking investigation. The power can be used to assist in a drug trafficking investigation abroad as well as within the United Kingdom. The information can be used to identify the traffickers' associates, the businesses or companies in which they conceal their drug trafficking operations, and other parties who supply or receive the drugs they handle.

Anyone accused of drug trafficking can have his assets restrained even before proceedings are instituted against him. This is effective against a trafficker from concealing his assets or transferring them abroad. The prosecution can apply for a restraint order freezing the funds even if they are held by others on his behalf. In the past, suspects had ample opportunity to conceal their funds before proceedings were brought against them.

In every case where a person is convicted of a drug trafficking offence, the court must make a confiscation order depriving him of his proceeds from trafficking and from rewards received in connection with drug trafficking by others. The amount of the confiscation order must equal what the court assesses to be the full value of the proceeds from the offender's drug trafficking activities. Assets held in other countries can be also included in the assessment.

For such purpose, the court assumes that the sum of the offender's assets at the time of the conviction, together with any property which has passed through his hands during the previous six years, represents the proceeds from drug trafficking. To prevent all his assets from being confiscated, the convicted offender has to prove which of them were legitimately acquired. This "reversal of the burden of proof" is a strong weapon for the prosecution.

The Act thus ensures that the full value of the convicted traffickers' proceeds rather than that directly attributable to the crime itself is subject to confiscation. Criminals invest in drug trafficking with an expectation of making vast profit. The legislation is aimed at removing such incentives.

2. RICO of the USA

The criminal forfeiture and the civil injunctive relief under RICO have been described as new weapons of unprecedented value for an assault upon organized crime and its economic roots. RICO provides a broad description of properties vulnerable to criminal forfeiture, in addition to the traditional penalties, fines and imprisonment. It confers power on the court to issue restraining orders or injunctions to preserve the availability of forfeitable properties until the conclusion of the prosecution. The Crime Control Act of 1984 amended the criminal forfeiture provisions of RICO to facilitate the government's access to the proceeds from racketeering activities by offering the power to issue pre-indictment restraining orders and attachments of funds paid to third parties.

However, the British practice of reversal of the burden of proof is not introduced in the USA. The reversal of the burden of proof would not be compatible with the traditional principles of criminal procedure, because of constitutional issues.

The Attorney General or any person injured in his business or property as a result

of a violation of the RICO legislation (section 1962) may bring a civil RICO action in federal court. Available remedies include an order of divestiture, restrictions on future activities, and dissolution or reorganization of the enterprise. Unlike criminal forfeiture orders which penalize the racketeer by stripping him of his illegal profits, RICO's civil remedies focus directly upon the racketeer to eliminate his sources of influence and control. Congress provided an extremely powerful tool for permanently dissolving criminal enterprises and preventing organized crime figures from infiltrating and corrupting legitimate businesses.

V. The Expansion of the Regulations on Activities

A. The Extension of Punishable Activities

Nulla poena sine lege gaps must be filled with new regulations. Newly invented designer drugs should be included in the list of prohibited drugs.

Previously unregulated activities of organized drug crime are being continuously added to the list of criminal activities. Mere attempts or preparative acts, new types of complicity and negligent acts are being enumerated as punishable acts. Conspiracy legislation is a popular method to expand the list of punishable activities of organized drug crime. The RICO legislation in the USA is another type of effort to increase punishability to cover the activities which may appear legitimate.

The new Japanese Act against Wrongdoings of Members of Violent Organization enumerates punishable violent wrongdoings of any members of the designated violent organizations which meet the required conditions. The Act lessens the difficulty of the burden of proof of the law enforcement on the one hand and expands the punishalbe activities of organized crime on the other hand. The designated violent organizations may lose their major financial sources. The Act also regulates the use of offices of the designated violent organizations, and prohibits the use of force in recruiting members and any other activities.

B. The Regulation of Money Laundering

Organized crime has devised a scheme to launder its dirty money to avoid prosecution for evasion of taxes on the illegally earned income and to avoid the pursuit by law enforcement.

Money laundering is usually a three-step operation:

a) smuggling dirty money to countries considered as a haven for laundering, such as Swiss or Caribbean Banks.
b) altering its nature and origin. Organized drug crime groups commonly set up a "paper company" to open a bank account or to buy stocks in the name of the paper company.
c) returning the laundered money to the original nation. This step is often "the loan-back."

The organized drug crime often sets up legitimate businesses which do a great deal of cash business—bars, restaurants, motels and vending machines. By overreporting the income and paying the required taxes, organized drug crime is free to spend the laundered money.

Previously, there was no legislation available to prevent money laundering. The Drug Trafficking Offenses Act of 1986 in Britain has a provision concerning money laundering: anyone who knowingly holds, controls or invests another's profits from drug trafficking will have committed an offence, wherever in the world the trafficking occurred. Thus it is an offence to make drug assets appear to come from a legitimate source.

Once proceeds from criminal activities have entered the banking system money laundering is effected by distributing the sums through different accounts in several financial centres and banks. The laundered

money may also be invested in legitimate businesses or paid to "shell companies," used as a front to cover illegal activities. To prevent these proceeds from being laundered into the banking system, banks are required not to handle deposits known to come from drug trafficking.

Within the National Drugs Intelligence Unit (NDIU) of the UK, there is a Financial Advisory Team manned by Customs and police officers. It receives on a national basis financial intelligence, mainly from banks and other financial institutions, about funds which are suspected of coming from drug trafficking. The information is researched and disseminated to operational officers of both the police and the Customs for further investigation.

C. The Regulation on Chemical Precursors

In order to curtail the production of drugs, each nation and the UN have tried various programs such as crop substitution, and a war against clandestine laboratories. Drug consuming countries, most of which are developed countries, came to realize that those previous programs would fail without sincere cooperation of the producing countries, most of which are underdeveloped or developing countries. Developed countries have started a new campaign for regulation of chemicals which are used as precursors in the process of manufacturing drugs. Since most of the chemical precursors are produced in their own territories, they have an upper hand over drug producing countries in regulating chemicals.

However, those chemicals are also used in the pharmaceutical and the industrial business. These companies have voiced strong oppositions on the grounds that it would cause serious harm to the legitimate industries and that there would be unpredictable confusion. This is the same argument used before the government imposed regulations on pollutant chemicals. The development of substitutive substances may be a mutually acceptable compromise.

VI. The Control on the Drug Market

A. The Drug Market and Organized Drug Crime

Attacks against organized drug crime will not be successful as long as drug markets exist. The demand for drugs invites the supply of drugs, and the supply of drugs produces more demand for drugs. When and where the demand exists, the supply usually follows. The drug market is the ultimate goal and the playground of organized drug crime.

The paradox that a more severe control on the drug supply results in higher profits to organized drug crime is clearly illustrated in the seizure strategies. The rarity of drugs in the long run increases the price to an extremely high level. This high price not only covers the risk premium for the risk-defiant suppliers, but also allows tremendous profit. As a result, the drug market develops as the main and the most profitable field of organized crime.

The high price situation on the drug market creates enormous financial problems for drug addicts. Some of them are forced to be involved in property crime, prostitution, and not rarely, in illicit drug trafficking at the lowest level of drug rings. As a matter of fact, many drug users try to cover their financial needs by dealing small quantities of drugs. This shows that a distinction between users and dealers is sometimes meaningless. This is another side of the link between the drug market and organized drug crime.

If we find out a way to get rid of the drub markets, it would be one of the most fundamental measures to solve the drug problems concerning organized drug crime.

There are three possible ways to undermine the drug markets.

a) The first is by way of cutting off the supplying route of drugs to the drug markets. Such method contributed a great deal to the success of the drug con-

trol by the Korean government a few years ago. However, this policy may invigorate organized drug rings looking for increased margins of profit.

b) The second is by way of legalizing drugs to undercut the black market.
c) The third is by way of reducing demands for drugs.

B. The Decriminalization of Drugs

Some argue that a legalization of drugs could be the measure to make black markets vanish soon. Decriminalization, as a theory, might lead to an increased availability of drugs which in turn ends in the lower price of the drugs with less profit. Organized drug crime might leave such unprofitable markets to look for more lucrative fields.

The hypothesis that free access to drugs would give rise to a fall of the prices and then to a weakening of organized drug crime seems to be a naive thought. If legalization is not introduced uniformly across the borders, the liberal countries would become a Mecca for drug addicts from other countries. The Netherlands which have a de facto decriminalization policy for possession and so-called housedealing, attract drug tourists from all over the world.

A sudden decriminalization of drug use could be misunderstood as an approval for drugs' harmlessness. Such a drug policy seems to be a retreat from reality, if not even a capitulation to organized drug crime.

Most law enforcement officials conclude that they must continue searching for better strategies of drug control, since the release of drugs would bring more disastrous consequences than the relative ineffectiveness of the current drug policy. Legalization of drugs cannot be a practical alternative. It is just a philosopher's stone.

The so-called "Prescription Model" and the "Methadone Program" are in a sense a partial implementation of a legalization policy. Their supporters argue that these revolutionary programs can improve not only the physical and the social conditions of the addicts, but also lessen drug-related crimes by keeping the addicts from the black markets, which in turn damages the wholesale drug trade. The experiences, however, do not justify the optimism of the supporters.

Such programs increased the number of false prescriptions encouraging drug consumptions and forming more black markets in Britain Experience shows that multiple drug addiction is a major obstacle for methadone treatment. Even in light of recent AIDS prevention efforts, oral consumption of methadone does not prevent one group of the addicts from using common syringes and needles.

C. The Reduction of the Demand for Drugs

Drug markets exist as long as there is the demand for drugs. To reduce the demand for drugs, there have been various programs which have been initiated. A theoretical classification shows three demand-oriented measures towards users and addicts to help suppress the demand for drugs.

a) To educate non-drug users not to start using drugs.
b) To persuade drug users and addicts to stop using drugs.
c) To seclude drug users and addicts from drugs by way of treatment and punishment.

And there are conflicting attitudes towards drug consumers.

Are they offenders or victims?
Are they criminals or patients?
Should they be punished or treated?

The punishment-treatment debate still remains in most countries. This debate is derived from different underlying policies. The punishment opinion is based upon the theory that drug-using behavior is an ethical issue. In contrast, the treatment opin-

ion is depending on the theory that drug-using behavior is a disease, which in turn is a health issue.

Some countries take the "treatment, otherwise punishment" policy in which the public prosecutor can order a provisional withdrawal of the indictment on the condition that the accused attend a support program.

The prescription model is a medicalization of drug control. Methadone treatment does not control addiction as an illness, but as a psycho-social phenomenon. The needle exchange program in Scotland cannot be accepted in an ethics-oriented society.

Since the social approach is a more fundamental remedy than the legal approach to the epidemic of drugs, we should not hesitate to take such direction, although it is expensive, and difficult to implement. We should take appropriate measures to get rid of the so-called drug-accepting culture, the underlying cause of the persistant permeation of drugs into our societies.

Luckily, there are two positive social deterrences against the spread of drugs in Korea. The first is a strong ethical consensus among the public against drugs. Drug addicts traditionally have been considered as outcasts of the society. This deep-rooted sentiment may be inherited from Korea's long-standing Confucianism. Even gangsters and their organizations are reluctant to be involved in drugs in Korea. That is why there have been no colossal domestic drug rings in Korea.

The second is the tight family-bond which still yields strong influence on the youths to keep them off drugs, even though such control is much weaker than it had been in the past.

VII. The Strengthening of Law Enforcement

A. The Improvement in Function

Worldwide notorious drug rings are gigantic, tight-knitted and well-funded. They are armed with heavy military equipment and recently invented scientific outfits. Their private armies are at times superior in number and morale to their public counterparts. The law enforcement of most countries seems minuscule in comparison to international giants in the drug business.

Some nations have established independent organizations exclusively in charge of drug law enforcement to face the new challenges. Others have increased the personnel and the budget for anti-drug organizations. Others have adopted new budget-support programs in which forfeited assets as a reward can be used as a financial incentive for law enforcement.

New reward systems with enormous funds have been introduced in some nations to enhance the morale of the investigators. A computarized data bank system is essential in collecting and analyzing the huge, complicated information concerning organized drug crime and its members.

B. The Expansion of Power

A special detention system to detain drug criminals without any court warrant has been introduced in some countries. The duration of the detention in a police station may be up to 76 hours, instead of the ordinary 48 hours, with regard to drug cases in France.

Authorization of electronic surveillance—Wire-taps and bugs—as an investigative technique, may be a breakthrough to penetrate the "curtain of silence" among drug families. Allowance of the use of undercover agents in drug cases may be another bullet for law enforcement. The introduction of the "crown-witness" provision is another example of the expansion of law enforcement's power.

C. Increasing the Punishment

Heavier criminal sanctions are considered as a critical deterrence against participating in organized drug crime. The death

penalty has been introduced in spite of the humanitarian opposition. Drug trafficking is regarded as dissemination of deadly poisons which lead to slow but steady destruction of the human being.

Criminalization of more activities involving organized drug crime is another legal net for law enforcement. Imposing criminal punishment on money laundering and conspiracy is a good example. New Japanese legislation against wrongdoings of any members of organized crime is another experimental method.

VIII. Establishment of National and International Coordination

A. National Coordination

In order to effectively fight against organized drug crime, law enforcement must also be organized and coordinated. A law enforcement system has to be organized in such a way to provide the integrated coordination and the advantages of specialization as well.

In the Republic of Korea, since the prosecutors have the statutory authority to supervise and direct police and customs officials, there has been no serious discussion about the coordination among law enforcement agencies. The successful achievement of drug control in the early 1990's was partially due to the aggressive leadership of the public prosecutors in charge of drug investigations and prosecutions.

Fragmentation is one of the hallmarks of American law enforcement. The federal and the state governments maintain separate and independent law enforcement agencies. This system has been proved inadequate in dealing with organized crime. Even since the Drug Enforcement Administration was established, conflicts and confusion are still abounding.

In an attempt to achieve the maximum coordination among federal agencies dealing with organized crime, the Strike Force system was created by the Department of Justice, to work together with the Organized Crime and Racketeering Section in the Department.

Each Strike Force consists of highly trained prosecutors and investigators from federal, state and local investigative agencies, who work together as a unit on the same premises. The members of the Strike Force work with each other on a daily basis and out of the same office. Through this system, much-needed cooperation and central control are partially achieved in the law enforcement against organized crime in the USA.

Moreover, comprehensive anti-drug strategies for both demand reduction and supply suppression cannot be achieved without conscientious cooperation among the authorities concerned. The United Nations International Drug Control Programme (UNDCP) recommends each country to found a domestic coordinating body in order to enhance cooperation and to lessen conflicts among drug agencies.

The Korean government has organized a Working-level Anti-drug Coordinating Committee. It is composed of six full-member agencies—the Supreme Public Prosecutors' Office, the National Police Headquarters, the Customs Administration, the Ministry of Health and Social Affairs, the Ministry of Sports and Youth, and the Ministry of Foreign Affairs. NGOs and related agencies sometimes join them on a case by case basis.

The Committee has been holding monthly meetings in addition to overseeing exchange of information, and daily basis contacts. The Committee has mapped out the domestic Comprehensive Programme of Actions for the UN Decade against Drug Abuse (1991–2000). And it has successfully planned and implemented the Anti-drug Package Programme for the International Day against Drug Abuse and Illicit Trafficking (June 26). The wholehearted cooperation of the Committee members has contributed a great deal to the success in

anti-drug campaigns and the law enforcement in Korea.

B. International Cooperation

1. The Global Response

Drug rings respect no boundaries. Drugs can cross any border without official visas from the producing countries to the consuming countries through transit countries. No single country can solve the illicit traffic in drugs. Furthermore, the international society realized that the classification of the countries into consuming, producing and transit ones was meaningless. The producing and the transit countries noticed that they have their own drug addicts among their population. And the consuming countries often have clandestine laboratories in their own territories. Drug problems have become an issue of global concern which requires a global response.

Transnationalization is one of the most prominent characteristics of organized drug trafficking rings. Particularly, when organized drug crime activities constitute offenses in more than two countries, bilateral or multilateral cooperation becomes more than necessary. The war on drugs must be waged everywhere by every nation.

2. The Role of the United Nations

The UN has been playing a pivotal role in organizing international mechanisms of cooperation. It has organized and sponsored various international drug-related meetings. The UN Commission on Narcotic Drugs (CND) works as a policy making body while regional meetings of Heads of National Drug Law Enforcement Agencies (HONLEA) serve as forums for exchange of expertise, experience and information among the working level officials from each country.

The UN has adopted several drug-related conventions such as the Single Convention on Narcotic Drugs of 1961, the 1972 Protocol Amending the 1961 Single Convention and the Convention on Psychotropic Substances of 1971.

The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 will serve as a powerful legal weapon against international drug traffickers.

The Convention provides for mutual legal assistance, extradition, controlled delivery, and precursor monitoring among other things. It came into effect in November 1990, and was acceded to or ratified by 67 countries as of October 1992. If the Convention is universally adopted, it is sure to harmonize the domestic legislations with the spirit and the scope of the Convention. And it will iron out the inconsistencies among the divergent strategies currently in use. Subsequently, there should be no haven left for the international drug crime.

The UN proclaimed the period from 1991 to 2000 as the UN Decade against Drug Abuse to encourage the committment of each country to fight against drugs, with the purpose of the realization of the drug-free world within this decade. And the UN Decade Coordinator was appointed to be in charge of the fulfillment of the goal of the UN Decade.

The UN International Drug Control Programme (UNDCP) was established in March 1991 to integrate the former UN drug bodies and to strengthen the functions of the UN in this area. All staffs of the UNDCP have been very active in devising new global drug strategies.

At the suggestion of the Korean government, the UNDCP has adopted the Anti-drug Goodwill Ambassador Program, and the Chung Trio, world-renowned Korean family of musicians, was appointed as its first Ambassadors. The Chung Trio is expected to travel around the world to meet the heads of states, perform in fund-raising concerts and inform the public of the necessity of drug eradication.

3. New Attempts

(a) Anti-drug liaison officials' meeting for international cooperation (ADLOMICO)

In 1989, the Korean Government organized a quarterly meeting of the drug-related officials of several embassies in Seoul. The gathering was given the name of ADLOMICO, which stands for Anti-drug Liaison Officials' Meeting for International Cooperation.

At the first meeting in April 1989, there were only 5 officials from 4 countries. The number has grown to 14 attendees from 11 countries at the 16th meeting in December 1992.

The ADLOMICO has been utilized as a contacting point of sub-regional cooperation. There have been meaningful achievement such as exchange of information, training assistance and investigation cooperation through this channel. It is often suggested that informal contact groups like ADLOMICO be set up in other countries.

(b) The directory of contacting point

When detecting the drug crimes committed by international trafficking rings, the law enforcement official has often suffered from a lack of suitable contacting points of the countries concerned.

In order to cope with such a problem, the UNDCP decided to circulate the directory of contacting points periodically in each country.

It is recommended for neighboring countries to exchange their own directories with each other for timely cooperation.

(c) Asset sharing program

The current US law allows a sharing of forfeited assets with foreign governments where a bilateral agreement for such sharing exists, if the governments work together on the investigation of international drug trafficking.

This program is considered an excellent means to encourage mutual cooperation. It also helps with funding the war against drugs.

(d) Joint training program or seminar

In order to win the fight against formidable drug cartels, anti-drug warriors should be more clever and strongly united.

In this sense, I recommend strongly the joint training program or a gathering like this International Seminar, because it can contribute greatly not only to the enhancement of international cooperation by providing opportunities of contact for the law enforcement officers from each country, but also to the development of human resources by training the officers.

(e) Joint mobile team

At the UN drug-related meetings, there has often been a mention of the necessity of establishing a Joint Mobile Team.

The team may be comprised of the staff of the UNDCP and renowned drug policy makers. After being dispatched to each country, the members of the team may advise the government on existing drug policies or join in to create better policies.

This program will provide a roadmap to drug policy makers and help harmonize the divergent strategies, especially for the governments during the early stages of a drug problem.

(f) Joint investigation team

A joint investigation team consisting of agents from different countries is also recommended in order to conduct joint investigations of international drug cases more effectively.

(g) Controlled delivery

Controlled delivery has turned out to be a powerful investigative technique to face the transnational drug trafficking.

IX. Epilogue

It is the ultimate duty of our generation

to realize a drug-free world before the arrival of the next century and to pass on such world to our future generation. In order to fulfill this goal within the last decade of this century, our generation, particularly law enforcement, have to wage a fierce war on organized drug crime behind the scenes. And we must win.

High morale and strong committment by law enforcement should be the catalyst to dissipate the ignorance and the apathy of the public and to stir up the dormant feeling of justice in the hearts of all human beings.

We have to use our wisdom and experience to formulate and implement more effective drug strategies.

Without hesitation, we have to use more of the resources available to meet this international crisis.

And we have to cooperate with one another to claim a victory over drug abuse and drug rings.

Then, and only then, will organized drug crime and its members realize that the pillars of law and justice still stand in their way.

Appendix

The Successful Experience of Korea in Drug Control

The number of drug offenders in Korea sharply increased in the 1980's. To cope with this problem, the Korean government designated drug offense as one of the five major social evils and started strengthening its drug control structure and policy in 1988.

The Korean Supreme Public Prosecutors' Office established the Narcotics Division as a policy making body in February 1989. The Division organized Special Drug Squads in each District Prosecutors' Office and enforced a crackdown on supply routes, especially on the production and the distribution of crystal-type Methamphetamine, the so-called Ice or Philopon, which has been the most prevalent drug in Korea.

As a result, major clandestine laboratories of Ice were discovered during a series of seizures in 1989 and 1990, and most of the drug supplying rings in Korea were then eradicated. The amount of Ice and its precursor seized during the three year period from 1989 to 1991 was double that of a decade before.

Accordingly, Ice has become a rarity, and consequently its black market price has increased more than ten times over the period of past four years, resulting in a sharp decrease in the number of domestic Ice users. The total amount of seized Ice in 1992 was only about 3 kgs, compared to 132 kgs in 1989. The price per one shot is now about $150, compared to the low price of $7 in 1988. The number of Ice offenders in 1992 was 965 which was less than one third of that in 1988.

Such domestic situation created a big impact on the international Ice market. Ice smuggling out of Korea has almost disappeared mainly because of the high price in Korea, 2–3 times higher than that in Japan or the USA. According to the statistics published by the Japanese government, there has been no significant case of Ice smuggling from Korea since 1990.

On the contrary, the Korean government maintains a strict surveillance on the foreign-produced drugs smuggled into Korea by international drug rings, because the inflow of drugs from overseas has been increasing, while the outflow of Ice from Korea has almost disappeared. Cheaper foreign-made Ice has been smuggled into Korea along with raw opium, cocaine and heroin. Since 1991, 18 cases of Ice smuggling from abroad have been reported.

The ratio of drug offenders in Korea in 1992 was only 7 persons per one hundred thousand people, compared to the ratios of several hundreds in the United States, and several dozens

in most European countries.

Korea was praised by the international society for its great success in the war against drug rings.

Particularly, the successful achievement of Korea appeared in the report of the 16th meeting of HONLEA, Asia and the Pacific in 1991. The report states, "The Korean Government strengthened controls over dangerous drugs in 1989 ... The success has been spectacular, and the Ice problem in Korea has been largely eradicated ... The Korean example is noted as positive evidence of what can be done, ..."

Now Korea has a strong will to keep the reputation as a drug-safety zone and to contribute to the realization of a drug-free Earth within the end of the UN Decade.

The major reasons for Korea's success in drug control are as follows:

a) To have organized and implemented comprehensive, prognostic and flexible strategies consisting of fundamental measures. The Domestic Program of Action for the UN Decade and the Anti-drug Package Program for the International Day are some examples of such kind.
b) To have enjoyed domestic and international cooperation through the Domestic Anti-drug Coordinating Committee and the Anti-drug Liaison Officials' Meeting for International Cooperation (ADLOMICO).
c) To have maintained the resolute law enforcement with strong leadership of the public prosecutors in charge of drug squads.
d) To have kept two social deterrents to the spread of drug problems. They are the strong consensus of the public against drugs, and the tight family bond still influential enough to keep the youths off of drugs.

Table 1: Apprehension Breakdown by the Drug-related Laws (1986–1992)

	Year						
Law	1986	1987	1988	1989	1990	1991	1992
The Narcotics Law	375	239	268	857	1,215	838	949
The Cannabis Control Law	392	318	351	1,025	1,450	1,138	1,054
The Psychotropic Substances (Ice) Control Law	862	1,459	3,320	1,994	1,557	1,157	965
Total	1,629	2,016	3,939	3,876	4,222	3,133	2,968

Table 2: Seizure of Drugs (1986–1992)

	Year						
Drug	1986	1987	1988	1989	1990	1991	1992
Ice (g)	34,157	120,761	73,538	131,619	31,932	3,750	3,109
Ephedrine HCL (kg)	0	0.5	0	690	294	235	267
Raw Opium (g)	9,721	4,184	0.5	97	9,910	6,594	2,322
Heroin (g)	0	35,672	0	0.72	0	3,253	22,003
Cocaine (g)	0	0	10	0	1,126	140	13,306
L.S.D. (dose)	0	0	0	0	0	420	0

Table 3: Comparison of the Price of Ice in Each Country (1991)

	U.S.	Japan	Korea
per dose	US$50–70	US$40–60	US$130–190
per gram	US$200	US$200–800	US$900–1,300

Table 4: Breakdown of Seizure of Ice Smuggled into Japan by the Source Country

Year		Total	Source Country				
			Taiwan	Korea	Hong Kong	Philippines	Others
1982	Seizure	76.9 kg	0	67.9 kg	4.3 kg	0	4.7 kg
	Percent	100 %	0	88.3 %	5.6 %	0	6.1 %
1983	Seizure	67.4	16.1	47.3	0	0	4.0
	Percent	100	23.9	70.2	0	0	5.9
1984	Seizure	165.3	144.4	8.6	3.3	0	9.0
	Percent	100	87.4	5.2	2.0	0	5.4
1985	Seizure	265.2	168.1	55.1	8.0	24.3	9.7
	Percent	100	63.4	20.8	3.0	9.2	3.6
1986	Seizure	317.7	176.4	110.7	0	0	30.6
	Percent	100	55.5	34.8	0	0	9.6
1987	Seizure	592.4	463.4	62.8	0	9.2	57.0
	Percent	100	78.2	10.6	0	1.6	9.6
1988	Seizure	185.4	112.0	69.5	1.8	0	2.1
	Percent	100	60.4	37.5	1.0	0	1.1
1989	Seizure	199.6	168.3	24.3	2.0	0	5.0
	Percent	100	84.3	12.2	1.0	0	2.5
1990	Seizure	249.0	227.6	0	0	0	21.4
	Percent	100	91.4	0	0	0	8.6
1991	Seizure	104.2	38.6	0	42.0	0	23.6
	Percent	100	37.0	0	40.3	0	22.7
1992	Seizure	139.4	122.0	0	0	0	17.4
	Percent	100	87.5	0	0	0	12.5

(Note) Statistics made by Japanese Police.

Table 5: Breakdown of Ice Smuggled into Korea from Abroad (1990–1992)

Year		Source (Transit) Country				
		Taiwan	Philippines	Japan	U.S.	Brazil
1990	Seizure (g)	0	0	0	0	0
	Number of Case	0	0	0	0	0
1991	Seizure (g)	1,392	476	0.4	324	0
	Number of Case	2	2	1	2	0
1992	Seizure (g)	620	0	133	0	58
	Number of Case	3	0	7	0	1

Table 6: The Ratio of the Number of Drug Offenders per 100,000 People in Each Country

Country	Total Number of Drug Offenders	Number of Drug Offenders per 100,000 Persons	Year
U.S.A.	869,155	346	1990
Canada	13,884	53	1989
Italy	24,647	43	1990
U.K.	44,922	77	1990
Belgium	9,119	91	1990
Japan	16,969	14	1992
Korea	2,968	7	1992

Present Issues for Organised Crime Control in Malaysia

*by Hj. Azahar Bin Hj. Abd. Kadir**

Introduction

The term "organised crime" is frequently used and is frequently defined. However, it means different things to different people—even among criminologists and those closely associated with law enforcement. I was tempted to provide a definition for you but upon reflection concluded that we should not, at the onset, define the term, but note its uses. From this we might be able to identify the concept which on the whole might be more useful. At this juncture, please allow me to quote the six uses of the term as expounded by John Dellow the Assistant Commissioner, Metropolitan Police London.

1) Organised crime can involve any group of individuals organised to profit from the community by illegal means on a continuing basis.
2) Society that seeks to operate outside the control of the people and their government. It involves a large number of criminals, complex structures that behave not in an impulsive fashion but by means of intricate conspiracies over many years with the aim of gaining contrl of whole areas of activity in order to amass huge profits.
3) A self-perpetuating continuing criminal conspiracy for profit and power using fear and corruption and seeking immunity from law.
4) A group of persons structured for the purpose of engaging in a continuing course of criminal activity wherein the desired goal is a change in the political and/or socio-economic structure of society for the purpose of destroying, modifying or weakening the structure itself. (Social political organised crime, New Jersey State Police (1976)).
5) Any formally structured group with the primary objective of obtaining money through violence, threats, graft, bribery, extortion, corruption and having a significantly adverse effect on the people in its locale, region or country.
6) A highly sophisticated diversified and widespread activity that normally drains vast sums of money from the economy by unlawful conduct.

There are a number of concepts that can be identified within these six usages. First, there must be an element of organisation for the expression to have any meaning at all. Secondly, it must be criminal. Third, it must be rational in the sense of acting for reasons, planned, executed criminal behavior involving what is being described as "intricate networks of individuals." These networks might be the sinews and Facilitation of crime. Fourth, some versions might involve a "normal structure," but a structure of some kind is necessary. Fifth, there must be some continuity in what is going on. Sixth, there must be some shared purpose because this is fundamental to any group activity and certainly one that involves conspiracy to commit crime. Seventh, the utilisation of fear and violence in pursuit of goals. Eighth, there is also the suggestion that the American usage implies linkages between several groups possibly of different

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ethnic or geographic structure. Any crime resulting from such an institutionalised activity can be termed "organised crime." The Federal Bureau of Investigation (FBI) on the other hand defines Organised Crime (OC) as a continuing and self perpetuating conspiracy fed by fear and corruption and motived by greed. For a number of years one major group epitomized this definition, the La Cosa Nostra (LCN). Organised crime is the carrying on of a business or enterprise that is clearly illegal. According to Sellin it is "synonymous" with economic enterprise organised for the purpose of conducting illegal activities and which, when they operate legitimate ventures, do so by illegal means. Organised crime seeks to carry out its illegal operations, to perpetuate its illegal enterprises, and to make them operate efficiently. The goal, of course, is to gain through illegal channels.

In short, various definitions of organised crime exist. Canada, for example, has utilised the term that organised crime means two or more persons concerting together on a continuing basis to participate in illegal activities, either directly or indirectly, for gain.

However the principal objectives of organised criminals regardless of where they operate always remain the same i.e. the gaining of wealth or power by the use, either wholly or in part, of criminal means. And the success of organised criminals is always measured in terms of their "profit."

2. Factors Influencing Crime in Malaysia

Crime trends and patterns in Malaysia had been identified to have been influenced by many socio-economic factors. However no one factor can be conclusively singled out as being the main cause. The current socio-economic conditions that are created as a result of rapid development may give rise to greater opportunities for the commission of crime. The difference in wage earnings, social mobility such as the rural-urban drift, the erosion of family ties, and lopsided intersectoral development have influenced crime in Malaysia.

We have also observed in Malaysia, population in itself does not satisfactorily explain crime trends although it has been established that there is some degree of association/correlation between population and crime. It has been noticed that other demographic variables such as racial composition/distribution and population structure have a profound influence in the incidence of crime.

Other contributory factors to crime in Malaysia have been identified as:

a) The rural and urban migration phenomenon;
b) The drug problem;
c) The burgeoning unemployment during the recession period of 1983–1988;
d) Triads or secret society activities/thug groups who are involved in protection rackets, loan sharking, drug trafficking, gaming and prostitution;
e) Recidivists; and last but not least
f) Illegal Immigrants.

3. Organized Crime in Malaysia

In Malaysia, organised crime used to be synonymous with the Chinese triad societies that fit into the organised crime category of international criminal groups. From its very beginning, Chinese secret societies with their rigid rites, mythology and rank structure have operated from behind the facade of guilds and clan associations in order to avoid detection. They controlled much of the Chinese workforce in the country in the early 1900's and became a force to reckon with within the Chinese community. Such was their influence and power wielded that they became involved in most of the illegal activities in Malaysia at that time.

However, over the years, through legal

sanctions and preventive laws, secret societies in Malaysia have ben checked and contained to a considerable extent. Present day secret societies in Malaysia have virtually abandoned their lofty ideals of secrecy and brotherhood and most of them remain as mere thug groups. Their sole aim is to obtain money by any means, whatsoever, but mostly through fear, force and corruption. Many leading triad figures through the years of participation in crime, have secured a firm financial base and converted those profits into channels of influence and legitimate enterprises and ventures.

There exists other groups in Malaysia today who operate as crime syndicates or as serious crime groups with no secret society affiliation. They might employ triads as enforcers but probably for one purpose i.e. to provide the muscle for organised crime.

Secret societies, thug groups and crime syndicates are still involved in the activities that they have traditionally been associated with, such as gambling, prostitution, extortion, illegal money lending and protection rackets which are the ultimate proceeds of organised crime. With communication and travel made easier, secret society members have ventured into new fields of criminal activities such as drug trafficking and organised economic crimes which will be mentioned later under it's text. Despite their presence, these groups cannot be considered to be in the same category as that associated with the "Mafia" or the "Yakuza" either in organisation or in scope of operation but are merely opportunist motivated purely by greed and self gain.

4. Categories of Organised Crime

The categorisation of Organised Crime in itself is fraught with problems. For the purpose of this paper, in Malaysia, organised crime may be categorised as follows:

(1) Non-Economic or Traditional syndicated crimes normally connected with violence;

(2) Economic or white collar crimes.

Non-Economic Crimes

The following are the most common types of non-economic crimes in Malaysia:

a) Illegal Gaming;
b) Illegal Bookmaking;
c) Illegal Moneylending;
d) Firearms Smuggling;
e) Kidnapping for Ransom;
f) Robberies with Firearms;
g) Housebreaking and Theft;
h) Theft of Motor Vehicle;
i) Prostitution;
j) Drug Trafficking.

Illegal Gaming

Illegal gaming is an activity which can generate fast income to a syndicate. This activity has been popular amongst the crime syndicates as it is the easiest means of making profits. The profits made are usually used to finance the syndicate members when faced with legal proceedings instituted by the authorities i.e. engaging of legal counsels, payments of fines imposed and financial support to the families of the accused. Organised gaming includes gaming in Common Gaming House and gaming in public.

Besides the above, the most common form of gaming in Malaysia is the illegal 4 digits character lotteries of which the winnings are based on the following:

a) Magnum 4 D

The draws are held every Monday, Thursday and Saturday of each week conducted by Magnum Corporation Limited in Kuala Lumpur under the strict supervision of the representatives of the Ministry of Finance Malaysia.

b) Pan Malaysian pool (1 + 3D)

The draws for this lottery are held on Wednesdays, Saturdays and Sundays of each week conducted by the Totalisator

Board of Malaysia.

Despite this form of betting being legalised, there are still people (general public) who prefer to place their bets with the illegal operators for the following reasons:

a) Punters are given a 10% discount for each bet but with the full payment (if win) as that paid out by the legal operators;
b) Convenience in placing bets with illegal operators because of the mobile service rendered;
c) Facilities for credit betting is provided to known and regular punters by the illegal operators;
d) Betting through telephone can be made to the illegal operators;
e) There are limited legal outlets in a given area.

The promoters of illegal gaming of 4-digit or their bet collectors (runners) are not necessarily members of secret societies but down the line of their business, they have dealings with secret society members so as to avoid harassments or extortions.

Illegal Bookmaking

Horse racing is a legal enterprise in Malaysia and is conducted at four centres namely Kuala Lumpur, Ipoh, Penang, and includes Singapore. The official rate for a ticket is RM 5 for a win and RM 5 for a place. Despite bookmaking being a legal business yet there are punters who prefer to place their bets with illegal operators for the following reasons:

a) There is a 12% discount for every ticket purchased which amounts to a reduction of 0.60 sen;
b) The illegal operators operate within and without turf club;
c) Bets can be placed through telephone;
d) Credit betting is available subject to credibility of known punters.

Without doubt, problems are being encountered to bring these illegal operators to book due to the following reasons:

a) The illegal operators with the assistance of the runners use the "commit to memory" method on bets punted through them;
b) Records if kept are in codes. The codes used vary from one operator to another to avoid uniformity;
c) The betting centres outside the turf clubs are located at secured places;
d) Communication through telephone is in code;
e) Use of illegal telecommunication set up by themselves.

Illegal Moneylending (Loan Sharking)

There are many desperate businessmen who need fast and easy cash loans or who are not eligible to obtain loans from financial institutions. They then resort to taking loans from illegal money lenders who charge them exhorbitant interest rates of up to 10% per month.

The mode of repayment of the said leans to these illegal money lenders are normally conducted on a day to day basis. Interest will be accumulated on any breach of these daily repayments. If there are long overdue instalments by the borrowers, these illegal moneylenders will not hesitate to employ secret society members to recover their loans. These secret society members in turn adopt strong arm tactic approach in order to collect the said loans or installments. Since the borrowers are under obligations and for fear of reprisals they would not report the matter to the police thus preventing court action being instituted against these illegal money lenders. The same situation prevails for action under the preventive laws against them. Despite these problems constant efforts are being initiated to curb this menace.

Firearms Smuggling

Illegal firearms have found their way into Malaysia and into the hands of criminals. Many of the serious offences such as armed robberies, murders and kidnapping for ransom have been committed by criminals armed with firearms. Though the Royal Malaysia Police have yet to confirm the existence of any organised group indulging in the systematic smuggling of firearms, it has nevertheless established that individual criminals purchased firearms from neighbouring countries to perpetuate their nefarious activities.

Kidnapping for Ransom

We have always taken a serious view towards this particular crime by virtue of the fact that the nature of the crime has more often then not affected only a certain group of our society, notably the rich or those with reputed wealth. In view of the seriousness of this type of crime it is inherent that concerted police efforts are made to curb/suppress it in the interest of the public and country.

The gangs involved in this particular crime are very obstinate and very persistent in their dealings. They are very confident of their demands and executions as they are in possession of firearms. With full cooperation from the victims and through police deployment, we have been successful in rescuing the victims and eliminating the kidnappers during the final stage of our investigation.

Robberies with Firearms

With the number of firearms being smuggled into Malaysia, we have had gangs committing robberies while in possession of firearms. Their targets include financial institutions and goldsmith shops. They reckoned that these are soft targets where they are able to harvest large amounts of monies and jewelleries. With careful study and planning we have managed to smash and cripple quite a number of these gangs.

Housebreaking and Theft

This offence is said to have been committed by a person who commits illegal trespass into any dwelling and causes wrongful loss to it's rightful owner without the owner's consent. This crime is committed by individuals or small groups of criminals. We do have such crimes committed by organised groups but through concerted police efforts we have been quite successful in smashing the said syndicates.

Theft of Motor Vehicles

Theft of motor vehicles have been widely perpetrated by individuals and organised groups for financial gains. This activity however had been carried out in a well organised and planned manner by established syndicates. The syndicates ability to strive is due to the "willing co-operation" of certain corrupt government institutions, motor workshops and used car agencies. Stolen vehicles are given a completely new identity before they are disposed of to unsuspecting buyers. Some vehicles are cannibalised and their parts sold as spares. The cannibalisation of vehicles have made police detection and investigation more difficult. However the Royal Malaysian Police have mounted several operations to round up the syndicates but have yet to firmly establish the international link of these syndicates, though Malaysian registered motor vehicles are known to have been smuggled into a neighbouring country. A number of these syndicates had been smashed with the recovery of many stolen vehicles.

Prostitution

The world's oldest profession. Prostitution is till today one of the financial keystones of organised crime. It is undeniable that this "flesh-trade" exists in cities and towns in Malaysia. The syndicates involved in these activities are very shrewd. Though

brothels are not a common sight in this country, may of them operate behind the facade of private messes or licensed massage parlours or health centres. Some of these prostitutes are kept in private houses and sent to the hotels/messes on arrangements made. Foreign prostitutes brought in by syndicates has given prostitution in Malaysia an international flavour. These girls are brought in with or without legal travel documents. These illegal organised activities have given rise to other ancillary crimes that have a tendency to cluster around such activities like protection rackets and extortion. Efforts are currently underway to identify and combat these groups and their international connections.

Drug Trafficking

Malaysia's drug trafficking and abuse problem is generally under control but nonetheless still is regarded as a threat to national security. Law enforcement efforts to date have succeeded only in preventing the problem from spreading. An influx of narcotic drug from the Golden Triangle continues by way of Southern Thailand. A sizeable narcotics addict population creates a steady market for illicit drugs, and the nation's geographical location makes it a strategic staging point for international drug syndicates to other countries.

Raw opium, morphine, heroin base, heroin numbers three and four and cannabis continue to flow unabated from Thailand into Malaysia through both legal and illegal entry points. Drug smugglers favour the use of special concealed compartments in vehicles crossing the border, household appliances and kitchen wares in transit, luggage with false bottoms and sides, and drug couriers carrying narcotics concealed on their persons. The main storage and staging points for narcotics destined for Malaysia are the Southern Thailand districts of Sadao, Satun, Betong and Golok.

Reliance on sea-routes to smuggle controlled substances from Thailand into Malaysia appears to be on the increase. Drug consignments from Satun in Southern Thailand are ferried in fishing boats and other coastal vessels to transfer points on Pulau Langkawi and other uninhabited islands in the state of Kedah. Malaysian drug traffickers then retrieve the drugs and off-load them at landing points on Penang Island and mainland coastal areas as far south as Pantai Remis in the state of Perak. Intelligence shows that drugs are also brought by sea to Johor Bahru at the tip of the Malaysian Peninsula and to Singapore.

International drug syndicates persist in using Malaysia as a transit point particularly it's two International airports i.e. Subang International Airport in Kuala Lumpur and Bayan Lepas in Penang. Drugs frequently are concealed in false-bottomed/sided luggage, packed in fabric, sewn belt-like, strapped around the body and hidden in coat linings. Recently, however, it has become evident that, instead of using Malaysia's international airports, smugglers are taking consignments of drugs by road or sea to Singapore. This appears to reflect Malaysia's stringent drug law enforcement. Continuing enforcement efforts has decreased the number of newly-detected addicts which reflects a tangible manifestation of success in the country's efforts to reduce the traffic in controlled substances by reducing the demand for them.

Economic Crime

As a developing nation, Malaysia is in the main stream of global economic activities. The Pacific Region, with the abundance of natural resources coupled with a stable political climate, have made Malaysia an attractive place for foreign investments and enhances local trade and commercial activities for fraudsters out to exploit the lucrative situation for their illegitimate needs. Such fraudsters learn from each other the modus operandi and technique of crime from information networks

which are widely attained from local and international sources.

It is interesting to note that commercial crime or white collar crime or economic crime as it is popularly called is not defined in the criminal codes. The definition has to undergo metamorphosis every time a business or economic activity found expression in, hitherto, an unexplored area. One could however attempt a more, all encompassing interpretation, to say that economic crime is an illegal act, or more commonly, a series of illegal acts committed by the use of guile, deception or concealment to obtain or transfer money or property, to avoid the payment of or the loss of money/property or to obtain business or personal advantage under the cloak of legal transaction or ostensibly per corporate deal.

Even then, knowing the strict rule of evidence, the interpretation serves to explain economic crime but cannot be used to charge a criminal in a court of law. Hence, for Malaysia, we have to rely on statute, not so much as to interpret economic crime, but to categorise property crime and facilitate the gathering of evidence to a particular description of crime. The following would be what, to Malaysian Police, Economic crime is:

a) Criminal Breach of Trust;
b) Cheating;
c) Forgery of Document;
d) Forgery and Counterfail of Currency Notes.

These four types of offences represent the crux of what economic crime is. However, found in other statutes are technical and criminal offences which for the purpose of the Malaysian Police are construed as economic crime:

a) Offence under the Commodities Trading Act (1987);
b) Offence under the Companies Act (1965);
c) Offence under Banking and Financial Institution Act (1989);
d) Offence under the Societies Act (1968);
e) Offence under the Printing Press and Publication Act;
f) Offence under the Kootu Chit Fund Prohibition Act.

The above are but a few of the significant laws relating to economic crime and the list should not be restricted to economic crime. The laws are a conclusive indicator that police responsibilities to prevent, investigate and in some cases prosecute economic crime offenders are varied, wide and heavy. We have often heard that economic crime is described and divided into categories of economic activity as follows:

a) Corporate fraud;
b) Securities fraud-share market manipulation;
c) Insurance fraud;
d) Exchange control violation;
e) Maritime fraud;
f) Futures market fraud;
g) Counterfeiting currency;
h) Credit card fraud;
i) Criminal banking.

These are mere catergorisations which, if equated to the Malaysian statutes, incorporate the responsibilities of the Police in tackling Economic Crime.

The statistics of white collar crime show an increasing trend in terms of losses although in the number of cases the increase is not so prominent. The main bulk of white collar crime is the offence of cheating and criminal breach of trust (CBT). Cheating and CBT comprise about 95% of total white collar crime cases reported. That has been the trend throughout the years.

Each one of us is in a position of trust, one way or another. The higher we are, in the hierarchy of bureaucracy, the greater would be our position of trust. In like man-

ner, each one of us is in a position of responsibility and the higher we are the greater will be our responsibilities to the organisation or even to society. Now if one violates that position of trust one could be answerable to a charge of CBT. If one violates that position of responsibility, causing personal gain or wrongful loss to others, one could be answerable to a charge of cheating. That in short is the reason why criminal breach of trust and cheating are among the offences committed anywhere.

New Types of Economic Crimes

Since 1991, we see the emergence of new types of economic crimes. Criminals have turned to attack individuals and businesses alike. The said crimes are as follows:

The get-rich-quick scheme

This scandal investigated by the Commercial Crime Investigation Branch (CCIB) revealed that more than 50,000 Bumiputras became victims in this scam with a total investment of about RM 300 million. The operators of this scheme exploited the needs and greeds of individuals with the promise of high and fast returns on investments. Every individual who deposited RM 350 was supposed to receive RM 350 every fortnight to a maximum of ten times, where within five months the investor would receive a total of RM 3,500.

Employment fraud

This time the criminals exploited those who wanted lucrative jobs especially in Japan and Taiwan. They promised hundreds of Malaysians—especially the Chinese to obtain lucrative jobs for a sum of fee. They collected between RM 2,000 to RM 3,000 from every male and female who wanted a job in Japan or Taiwan. At the end of the day, these young males and females were found to have been disillusioned. Many more were arrested for having no valid travel documents by the authorities.

Advance fee fraud

Lately, there has been a trend where foreign criminals are fond of cheating Malaysians. For all they think is that Malaysians are wealthy. We have records of foreign criminals attempting to cheat and having Malaysians cheated. About 40 Nigerians have written letters to Malaysian businessmen to assist them to bring out about US 35 to US 50 million from Nigeria into Malaysia. They requested for a few company letterheads, bank and account number and about RM 10 to RM 20 thousand as processing fee once everything has been completed. The Malaysian businessmen were promised that they would receive about 30% profit of the laundered money. A few of our businessmen have fallen victims. They have lost their savings and never received their 30% shares either.

Commodities index and financial futures fraud

Lately there has been a trend where the financial and securities market, commodities trading and futures trading have become vulnerable to scandals. There have been cases involving forged share certificates, criminal breach of trust involving remisiers and fraudulent stock market manipulations.

Hang seng index

Subsequent to the numerous raids conducted against firms dealing in fraudulent forex business, these firms later changed their names, registered a new brokerage with the Registrar of Companies and went on to deal in Hang Seng Index Futures Contract. Prospective clients were misrepresented and misinformed that the firms in Kuala Lumpur were investing in Hong Kong which could give guaranteed yields as high as 20% per month. In actual fact, the firms did not trade with Hong Kong but with offices in Kepong a few kilometres away from Kuala Lumpur. The clients lost

millions of ringgit and subsequently a nationwide raid was conducted by the CCIB where 13 brokerages were closed permanently.

Insurance fraud

Motor insurance cover note fraud has been the main trouble area in the motor insurance industry. In 1991 several raids have been conducted by the CCIB. Many illegal insurance companies have been closed, hundreds of cover notes have been recovered and perpetrators have been charged in the court of law.

Credit card fraud

There are over 900,000 card users in the country and the figure is fast increasing. Credit and charge card companies in their scramble for profit, fall victim to syndicates specialising in producing and using counterfeit credit cards. The syndicates are clearly international in their approach and have amassed a combination of talents and expertise coupled with a distribution system to defraud card companies.

In 1991, a total of 77 cases involving credit cards were reported. The losses were estimated around RM 348,347.12. With the arrest of nine persons, 31 cases were solved.

Currency counterfeiting

This is a perennial area for syndicates who print and distribute counterfeit currencies using the so-called system of cut-outs and compartmentalisation of responsibilities, believing that they have devised a foolproof system of crime which is low-risk high gain in nature.

Nevertheless, with the advent of improved paper and advanced computer technology, the printing of counterfeit currencies have shifted to our local soil. This is evident from our various recoveries involving the Ringgit and US Dollar. Although other currencies such as Singapore Dollar, Brunei Dollar, Thai Baht, Phillipine Pesos and Indonesian Rupiah have surfaced over the years, the Malaysian Ringgit and US Dollar are by far the most frequently recovered due to the fact that the former is a local currency whilst the latter is internationally accepted.

In 1991, there were 1,140 cases of criminal breach of trust, 2,034 cases of cheating, 266 cases of forgery, 554 cases of counterfeit currency and 77 cases involving credit cards. All in all there were 4,350 cases reported with the total loss of RM 120 million.

5. Control of Organised Crime—Malaysian Perspective

The Royal Malaysia Police Approach

A combined pro-active-situational approach has been adopted by the Royal Malaysia Police to prevent and control crime in Malaysia. Circumstances which go towards constituting a crime risk are constantly evaluated and measures are taken to remove or at least reduce that risk. Police action covers every avenue that can be legally and fairly taken, to prevent or reduce the number of occasions in which a crime can be committed. Enforcement measures taken by the Royal Malaysia Police are broadly as follows:

1) Target-Hardening Related Activities, such as advising banks, financial institutions, goldsmiths and other commercial sectors, to upgrade their security systems and securing their premises from being potential targets to criminal attacks. Members of the public are also advised via the mass-media to take steps to minimise opportunities for the commission of crime;
2) There is also the promotion of other Police/Public Relations Programmes whereby the Police are looked upon as a friend and defender of the Public. In short, Police maintain a close liaison with all relevant agencies in the public and private sectors;

3) In the area of crime reporting and criminal intelligence collection, a responsive system of beats/patrols is relied upon and police detective and investigators are made more accountable for the efficient discharge of their duties and responsibilities;
4) The placing of police personnel in strategic areas and their easy relocation to other areas in keeping with the crime trends;
5) School Information Programmes whereby Police Officers are assigned to school not only to investigate any crimes ivolving students but also to talk to them. These officers are from time to time called upon by the respective schools to deliver talks on the various subjects of the criminal justice system and on specific criminal matters.

Community Involvement in Crime

Community involvement is a necessary crime prevention ingredient. It has been acknowledged as the most influential component of the Criminal Justice system in Malaysia. It has been recognised that because of its pervasiveness people can make a significant difference in the prevention and detection of crime and in the treatment and rehabilitation of offenders. There are voluntary organisations, societies, clubs and associations that have responded positively to prevention initiatives and other activities incidental thereto. Specific programs in this area are:

1) The formation of Vigilante Corps: One of the objectives of this corp is to assist in the maintainance of peace and security in outlying rural areas;
2) The Neighbourhood Watch Group: This program aims at;
   a) fostering closer relationships among the multi-racial communities and instilling a sense of responsibility amongst them to maintain the peace that is prevailing in the community;
   b) strengthening the relationship between the government and the people based on mutual respect, trust and confidence;
   c) promoting good citizenship and unity among the multiracial communities within a neighbourhood through good neighbourliness.

Economic Crime—National/International Approach

Integrated investigative method and multi-disciplined task force methods were introduced to handle not only complicated cases but also to achieve speedy results in solving sophisticated cases. We have task forces at internal and external levels. First, the internal level consists of officers with an array of professional and academic qualifications. Those task forces consisting of barristers, accountants, computer experts and corporate phsychologists are called the multidisciplined task force and are convened at anytime of the day, as and when necessary.

The second group consists of police officers and those from external agencies such as Bank Negara (the Central Bank), the Registrar of Companies, the Kuala Lumpur Stock Exchange, The Commodities Trading Exchange, the banks and financial institutions, the credit card industries, the Employees Providant Fund (EPF), Insurance Companies, the Post Malaysia, etc.

This highly successful method brought about various successes in solving numerous cases. Some of these cases are as follows:

(1) EPF Fraud

The Employees Provident Fund case involving fraudulent withdrawals amounting to RM 700,000 where 95 perpetrators were arrested and charged within a few weeks, to the surprise of many. This was made possible by the multi-disciplined police task force including the EPF.

(2) The MIDFCCS Fraud (Malaysian Industrial Development Fund Corporated and Consultative Service)

The MIDFCCS share refund cheque fraud case involving 243 victims, 65 bank branches and RM 2.7 million was solved within a couple of weeks by arresting a 21 member syndicate and recovering ill-gotten gains amounting to RM 1.3 million. The perpetrators were charged and imprisoned for a term ranging from 30 months to 8 years. This was made possible by the same task force including banks, the National Registration Department, the MIDF and Post Malaysia.

(3) Motor Insurance Fraud

The motor insurance fraud involving forged cover notes, and registration cards for non-existing vehicles were brought to a halt when several raids were conducted by the said task force throughout the country and numerous syndicate members arrested and seven insurance companies were closed. This success was due to the integrated investigation involving the said task force comprising the police, the Central Bank, the Road Transport Department and the Insurance Industry.

(4) Hang Seng Index Fraud

A major fraud involving fraudulent Hang Seng Index trading involving millions of ringgit was smashed during a nationwide raid by the CCIB's special investigators which culminated in the permanent closure of 13 illegal brokerages. This success is due to the police multi-disciplined task force including the Kuala Lumpur Commodities Exchange and the Registrar of Companies.

(5) Counterfeit Currency

Another case of interest involving counterfeit currencies is when our officers, who are specialists in this aspect, arrested a syndicate while they were printing American currencies. We recovered hundreds of thousands of counterfeit currencies and confiscated numerous sophisticated paraphernalia used for counterfeiting. The Central Bank and the Treasury Department of the US Secret Service worked closely with the police task force in this case.

(6) Forged Credit Cards

Our more recent success is the case involving forged credit cards where our officers acting on intelligence, conducted a "nationwide raid," arrested a nine-member syndicate and recovered 2,092 forged credit cards. This quick and swift action by the police has not only "saved" RM 35 million for the cards issuing companies but has also helped to solve 70% of credit card fraud involving syndicates and collusive merchants in this region. The success of this case was made possible by the multi-disciplined task force which included the credit card industry.

These are the few examples of the many cases we have handled.

The latest development in the CCIB is that, we have formed a multi-disciplined task force to probe organised white-collar crime overseas. We have assigned desk officers to 17 selected countries i.e. U.S.A., United Kingdom, Canada, India, Pakistan, Australia, Hong Kong, Phillipines, Brunei, Thailand, Singapore and Indonesia. These desk officers will also act as liaison officers for both local and foreign investors seeking information on individuals and companies for joint ventures. This move is aimed at ensuring greater collaboration between Malaysian police forces and their international counterparts to combat economic crime both regionally and globally.

Control Laws

Through traditional law enforcement strategies, the effective use of legal sanctions and sustained communication and liaison with foreign law enforcement agencies, the Royal Malaysia Police maintains it's relentless crackdown on organised

crime. The scope of law enforcement against organised criminal activities in Malaysia is provided for in the Penal and prevalent Preventive Laws as follows:

The Penal Laws

(1) Common gaming house act 1953

An Act relating to the suppression of gaming in common gaming house, public gaming and public lotteries. The Common Gaming House Act 1953 was revised in 1983 to provide for stiffer penalties i.e. on conviction under this law, a fine of between RM 5,000 to RM 50,000 or imprisonment for a term not exceeding 3 years or both is imposed. This is viewed as an effective countermeasure to deter such criminal activities involving money since the prospect of facing hefty fines would hopefully make it less lucrative for them to take the risks involved in such ventures.

(2) Betting ordinance 1953

An Act relating to the suppression of betting. This Act carries a penalty of imprisonment not exceeding 2 years or a fine not exceeding RM 20,000 or both on conviction. This penalty is sufficient in suppressing illegal betting in Malaysia.

(3) Arms act 1960

The Act was enacted to deal with various aspects relating to arms and ammunition i.e. the granting of arms licences and permits, dealer's and repairer's licences, licences to purchase, obtain or transfer arms and ammunition, licences to manufacture arms and ammunition. As such, any person who deals with firearms without a valid licence can be dealt with under this Act. This form of control over arms will eventually lead to the control of violent organised crimes.

(4) The firearms (increased penalties) act 1971

This Act provides for increased penalties for the use of firearms in the commission of certain scheduled offences. This Act was amended in 1974 to provide for stiffer legal sanctions for offences under it. Under this Act, every proson proven to be in unlawful possession of more than two firearms shall be presumed to be trafficking in firearms and the penalty is either death or imprisonment for life with whipping of not less than 6 strokes. The penalty for discharging a firearm in the commission of a scheduled offence is death and the penalty for having or exhibiting a firearm in the commission of a scheduled offence is imprisonment for life and with whipping of not less than 6 strokes. Unlike the sentences of life imprisonment in other laws which means twenty years, "imprisonment for life" under this Act is imprisonment for the duration of the natural life of the person sentenced. The scheduled offences are as follows:

a) Extortion;
b) Robbery;
c) Kidnapping;
d) Housebreaking.

This law further re-emphasised the seriousness of efforts to control illegal firearms in Malaysia.

(5) The internal security act 1960

This is an Act to provide for the internal security of Malaysia, preventive detention, the prevention of subversion, the suppression of organised violence against persons and property in specified areas of Malaysia and for other matters incidental thereto. The penalty under this Act for unlawful possession of firearms, ammunition and explosives is death.

(6) Women and girls protection act 1973

This Act defines "prostitution" as an act of a female offering her body for promiscuous sexual intercourse for hire whether in money or in kind.

Section 16 of this Act contains 13 offences relating to prostitution, some of which are: selling, hiring or buying any female person for the purpose of prostitution, procuring any female person for the purpose of prostitution by threats, detaining any female person in a brothel against her will and so on.

Apart from these offences, the Act also made it an offence to traffic in female persons, to live on the earnings of prostitution, to solicit for purpose of prostitution and to keep or manage a brothel.

This Act as can be seen is very extensive in its application with respect to prostitution and its related activities.

(7) Dangerous drugs act 1952

This is the main legislation in use regulating dangerous drugs in Malaysia. The Act regulates the import, export, manufacture, sale and use of certain dangerous drugs and delineates the jurisdiction of the courts over offences under the statute. Drug related activities like possession, trafficking, importation, exportation, manufacturing and cultivation of cannabis, opium and coca plants are also penalised.

The law also provides for authorised police and custom officers to intercept postal articles and telephonic or telegraphic communications subject to certain safeguards. It has also established a presumption based on possession of 15 or more grammes in weight of heroin or morphine (or in combination) or 1,000 or more grammes in weight of prepared opium, that the person in possession is trafficking in the dangerous drugs until the contrary is proven. Death is the mandatory penalty for the offence of trafficking. For persons convicted of possession of a small amount of drugs, the penalty of whipping is made mandatory. If convicted for possession of 5 grammes or more of heroin/morphine a minimum of 10 strokes of the whip is imposed and if convicted for possession of 2.5 grammes, up to 9 strokes of the whip.

(8) Dangerous drugs (forfeiture of property) act 1988

This Act makes all persons traceable to the dealing or using of property to promote drug trafficking as well as those involved in money laundering liable to be prosecuted and their illegal profits forfeited. It provides that the procedure for such forfeiture proceedings is by way of ex-parte application made by the public prosecutor and brought before the High Court. The Public Prosecutor is given the power to commence such an application against any person if he has reason to believe that the person is a liable person. The application will be for an order of forfeiture of all the properties of which such a person is a holder and which the Public Prosecutor has reason to believe are illegal properties or proceeds. At the end of the proceedings, if the court is satisfied that the person is a liable person and all the properties specified in the Public Prosecutor's application are illegal properties, it is empowered to forfeit all such properties unless the person proceeded proves to the contrary.

This Act could be used to a certain extent to get at the kingpins, organisers and financiers of drug activities and money launderers of their illegal profits.

The International assistance provided by this particular Act will be discussed later.

The Preventive Laws

The Federal Constitution of Malaysia guarantees the basic fundamental liberty of an individual and no person can be lawfully detained for longer than 24 hours unless on a court order as enshrined under Article 5 para 4 of the constitution. However a need has arisen to introduce certain preventive measures to suppress organised and syndicated crimes, secret society elements and drug traffickers against whom the normal judicial actions were not efficacious. This was so because potential

witnesses were often intimidated and therefore were unwilling to testify for fear of reprisals. Hence, the following preventive laws were introduced which came in useful and practical, as a witness can testify confidentially to police without ever going to court. Evidence is collected and collated against individuals in the form of a case file. However, these preventive laws provide avenues for individuals to appeal through the following processes:

a) Application for an enquiry;
b) Appeal through the Advisory Board;
c) Filing a writ of Habeas Corpus in court;
d) Originating a summons in court to declare an order null and void.

1) Restricted residence act 1933

This law provides for the making and enforcement of orders regarding residence in and exclusion from certain areas. It allows the imposing of restricted residence on those who promote activities of prostitution, gaming, smuggling activities and syndicated crimes far away from their areas of operation so as to discontinue their illegal activities. The spirit of the law is that it is used against organised or syndicated crimes that are non-violent in nature.

2) Prevention of crime act 1959

An Act to provide for the more effectual prevention of crime in Malaysia and for the control of criminals, members of secret societies and other undesirable persons. It also includes action against hard core criminals. (recidivist)

3) Emergency (public order and prevention of crime) ordinance 1969

This law provides for the securing of public order, the suppression of violence and the prevention of crime involving violence. It provides for the preventive detention/restriction of those with a history of using violence in furtherance of their criminal activities. Under its provisions the Minister of Home Affairs can order a person be detained for a maximum period of two years. The Minister can also impose restrictions and conditions on an individual's movements, activities and place of residence. Actions under this law have to a certain extent deterred criminals/organised group from indulging in crimes of violence.

4) Dangerous drugs (special preventive measures) act 1985

This Act is directed at syndicate traffickers who, before its enactment, had benefited from loopholes in earlier statutes. Those dealt with under the statute are usually the leaders or financial backers of drug-trafficking operations. In line with the government's announced repressive policies towards drug trafficking, this law authorises the arrest and preventive detention on the basis of an administrative order issued by the Minister of Home Affairs, of persons associated with any activity relating to or involving illicit trafficking in dangerous drugs. The initial period of detention is two years, but two year extensions can be obtained without limit.

Bilateral International Co-Operation

The Royal Malaysia Police has always lent support to close co-operation between and amongst Police Forces in the ASEAN Region in the fight against crime. By virtue of the close promiximity of countries in the ASEAN Region and with the realisation that criminal activities are transnational in nature necessitates the need for mutual assistance in the detection and deterrence of international crime and criminals. Regional co-operation has always been viewed as the practical means by which local enforcement authorities can pursue a criminal matter outside its jurisdiction. In this respect Royal Malaysia Police have bilateral meetings/forums in the ASEAN Region as follows:

The Association of National Police Forces of the ASEAN Region (ASEANAPOL)

This association was proposed in 1980. In 1981, the ASEAN Chiefs of Police held its first conference in Manila, formalising and charting the Association's aim that is consistent with crime-related matters. This conference is held annually and the countries take turn to play host.

The ASEANAPOL has also initiated a Database System through its Technical Committee which held its meeting in Kuala Lumpur on the 23rd of June 1992. The main objectives of the system are:

a) To enable ASEANAPOL National Crime Bureau's (NCB) to exchange criminal information in a rapid, reliable and secure manner using computer facilities at regional bases.
b) To provide uniformity in the types of data to be kept by the NCB members and to foster better co-operation and exchanges of information by computer facilities.
c) To provide further means of accessing the Computerised system at the General Secretarial office by computer terminals.

The Malaysia/Singapore Liaison Meeting

This meeting is held every three months. The Royal Malaysia Police also has a special relationship with the Central Narcotics Bureau (CNB) Singapore. Mutual Exchange of intelligence at these meetings has resulted in much success in detecting/apprehending criminals between the two countries.

Malaysia/Indonesia Rapat Conference

This conference is held annually between the Royal Malaysia Police/Police Republic Indonesia at alternate venues and the topic touches on crime/crime related matters.

Malaysia/Thailand

The Royal Malaysia Police has special relationship with the office of the Narcotics Central Board (ONCB) of Thailand which has always extended their fullest co-operation to the former. Bilateral meetings are held once a year between the Royal Malaysia Police and O.N.C.B. Thailand. In line with this conference matters relating to crime are also discussed

Special Bilateral Co-Operation

Malaysia has on various occasions held special bilateral meetings with Hong Kong, Taiwan, Japan and Korea. The CCIB initiated the first meeting with the International Commission Against Corruption (ICAC) and the Hong Kong Police to discuss the exchanging of information on credit card fraud. Subsequent to this meeting, credit card syndicates with international network were smashed and their fraudulent activities crippled. Similarly, we have worked closely with Taiwan, Japan and Korea.

International Legal Assistance

(1) The dangerous drugs (forfeiture of property) act 1988

Malaysia has in its efforts to co-operate to stamp out the organised crime of drug trafficking, provided, through its domestic legislation, the greatest possible legal assistance to other countries. The Dangerous Drugs (Forfeiture of Property) Act 1988 renders aid on drug related matters to any foreign country pertaining to aspects of investigation, inquiry, trial or other proceedings in any foreign country under any laws relating directly or indirectly to dangerous drugs or to any property used for or derived from any activity relating to dangerous drugs. Part VII of the said Act renders assistance that includes the following:

a) Supplying of information in relation to any person, body, business, enterprise or place which may include copies of documents or official reports of any department of the Government, any statutory

body or any agency of the Government;
b) The service of processes and documents issued in the foreign country on any person or body in Malaysia;
c) Transmission of copies of reports, statements, results of investigation or other records of any investigation in Malaysia into any offence or any proceedings for the forfeiture of property under the Act;
d) Examination of witnesses in respect of the drug related matter;
e) Search of any person, premises or places and transmission to the foreign country of items seized;
f) Seizure of property and for such property to be dealt with in accordance with the order of the foreign country;
g) Interception of communication;
h) Obtaining information from banks and public offices; and
i) Enforcement of a foreign forfeiture order.

An important feature of this Act is, it does not call for reciprocity before its operation through the requirement of bilateral arrangements of treaties between the foreign countries concerned. Negotiation of such treaties and arrangements takes time and effort and this would defeat the very purpose of such legislation. Bilateral arrangements or treaties should supplement such legislation and not be a prerequisite for their operation.

2) Extradition act 1992

It is of undeniable importance that international co-operation in investigation and prosecution should develop hand in hand with the process of extradition. International co-operation in the detection and arrest of criminals must keep pace with the development and improvement in the fields of communication and transportation which have made it easier for the criminals to escape the grip of law.

Extradition in Malaysia is governed by the Extradition Act 1992. The important developments in extradition have been incorporated as follows:

a) The recognition of Interpol "Red Individual Notices" for purposes of provisional warrants of arrest to ensure that the criminal will not get a chance to flee the country as a result of wastage of time caused by onerous procedural requirement before a warrant can be issued.
b) The adoption of the "length of sentence" criterion to determine extraditability since it is more simple, certain and all embracing and as such would cover any new offences so long as the minimum level of criminality has been satisfied.
c) Extradition by consent whereby a fugitive criminal is allowed to waive committal proceedings and consent to be returned to the country requesting for his return; and
d) Waiver of the requirement for a "prima facie case" if it is agreed to between the two countries in a binding arrangement which serves to reduce the complications caused by the need of production of evidence in extradition hearings.

Thus, it is felt that the same development in the extradition laws of any other countries be undertaken if co-operation in prosecution of organised crimes is to be enhanced.

6. Problems Arising in Legislation, Investigation and Prosecution of Organised Crime Activities

Legislation

As a result of the use of sophisticated techniques and equipment by organised crime criminals, provisions in statutes i.e. the Evidence Act and the Penal Code have been studied to assess if any redefinition or inclusion of new provisions is necessary to ensure that the law keep pace with such

development. One such development is the increasing use by organised criminals of computers and the latest telecommunications equipment to carry out their activities. That being so, efforts are being undertaken to seriously look for the various admissibility provisions in the Evidence Act to see if those new equipment or their print-outs if required in evidence by the prosecution are within the contemplation of the Act. Likewise it must be considered too whether the existing classifications of offences in the Penal statutes are sufficient to deal with the sophistry of the criminal world when new or emerging acts arise from their criminal activities.

Presently, the prosecutions of organised crimes like gambling, illegal betting, prostitution, car thefts and illicit arms are directed at individuals who commit such crimes. The legislation concerned do not have provisions which could be directed against the illegal profits from such crimes. Such organised crimes will continue to flourish with even more vengeance because law enforcement authorities cannot get at their profits. Criminals who indulge in this form of organised crime would, if prosecuted and convicted, still be able to enjoy the fruits of their illegal activities because the arms of the law have not been extended to their illegal gains or profits.

Apart from the lack of admissible evidence in court against important members of the organisation, the prosecution also faces the problem of not being able to prosecute them for being such members even if it is known and it could be proved that they are the organisers or financiers because there is no legislation which makes such positions in the organisation an offence. There exists only preventive detention laws aimed at disrupting their criminal activities for a specific period of time.

Investigation

The specific problems faced by investigating agencies may vary from place to place. Traditionally, investigating agencies tend to orientate their efforts in combatting crime by solving specific or individual cases. In order to achieve a certain measure of success and effectiveness, the investigation of Organised Crime must be geared towards disrupting the series of processes involved in the crime; crippling of the numerous organisations connected and arrest and imprisonment of the bosses. The problems that surface during such investigations are as follows:

1) Whilst the Organised Crime Syndicates are free to choose the area and the mode in which to operate, investigating agencies are limited and hindered by legal encumbrances. Indeed the investigating agencies must operate within the law already provided. Some crimes or product of crimes can be outside the provisions or scope of the law in certain countries. In this regard, it is very difficult for the investigating agencies to act, as they are powerless.
2) Procedural and evidential requirements are often very stringent in favour of the criminals. Asset tracing for instance, may be quoted as an example. The procedures involved in the tracing of assets of criminals can be very tedious and cumbersome. There are numerous laws governing secrecy and individual rights. This problems will be more complicated if the assets involved are stashed in foreign countries and banks.
3) There is the problem of "onus of proof." If the law provides that it is up to the investigating agencies to prove that the assets are ill-gotten gains, than the problem is further enhanced.
4) The webs of interest of the Organised Crime Syndicates. Apart from their connection with and the access to higher authorities, the syndicates may indeed be involved in important and legitimate enterprises. Captains of industries may

well be the front-men if not controlling figures in money-laundering operations. In such instances, the efforts of investigating agencies can be easily blunted by economic or other considerations. Where national economies depend on the legitimate activities of the said organised crime syndicates, the investigating agencies of such countries would probably act as window dressings and can only take action when there is sufficient public or international pressure to do so when the criminal activities have become too open and blatant.

Some national postures, policies and interests may have international repercussions in the context of the investigation of organised crime. Liberal attitudes and policies towards the consumption of illicit drugs for instance make the trade in illicit drugs very profitable. Liberal or inadequate laws against the trade, emboldened the drug syndicates. National postures and policies concerning bank secrecy laws, the production and sales of arms, production and sales of fakes cannot but serve and further the interest of organised crime syndicates. Lax attitudes towards sex, gambling, even cult and religious activities, provide fertile grounds for organised crime. The problem in countries, rightly or wrongly, is to view national interests and priorities mainly in the context of their own needs, relegating the impact on the international arena of secondary or little consequence. This in turn is readily exploited by criminal syndicates.

Prosecution

Money sustains the structure of the organisation so that its activities may be little effected even by the loss of some members to law enforcement action. Money facilitates the corruption of authority and gives access to expertise and equipment. Prosecution of criminals in organised crime is thus difficult because of such money and the support of the syndicated mechanisms behind them. Their crime trails could be blurred or "erased" without trace. This is true for example in crimes like syndicated gambling and betting whereby the offenders have been known to install hidden cameras or advance warning systems and where record of stakes can sometimes be erased with the push of a button, thus making it difficult for the collection of evidence and proof of the commission of such offences in court.

In cases where some of the members of such organisations have been identified or brought to court, the process of justice is frustrated due to missing witnesses, loss of important exhibits either in the course of investigation, storage or after their production in court. Money, posing no problem to such offenders, is used to thwart the course of justice by bribing witnesses to absent themselves or officials to spirit away material evidence. The courts themselves have experienced break-ins and loss of exhibits. These problems would not arise and even if they do, to a much lesser extent, if it is the prosecution of individual offenders with no money or connection to any criminal organisations.

What is perhaps more worrying is the danger of some persons in authority offering "protection" to these criminal organisations or syndicates in exchange for rewards, whether monetary or in kind. This is again possible because such persons know that such organisations do have large amounts of money not only to buy silence from witnesses but also to pay bribes if requested, especially if it is in exchange for "protection" either against detection, investigation or prosecution. In this situation, detection, investigation or prosecution of the offenders will be difficult and fraught with obstacles of a bureaucratic kind. Needless to say such "favoured" criminals go about boldly perpetrating their criminal activities secured by the thought that their "godfathers" will be watching their backs.

7. Proposals for a More Effective Crime Control

The problems caused by organised crime and organised criminal groups are no longer confined to the countries where they originate from and are already well established. It is now widely recognised that networks of criminal gangs extend beyond national boundaries, exploiting ethnic, cultural and historic ties throughout the world. In the process they have become increasingly sophisticated and have resorted to bribery and corruption to insulate and protect their hierarchy from discovery and protection, using the profits derived from criminal activities for this purpose. Despite the many types of control measures that are being taken in Malaysia i.e. through Penal/Preventive Laws, community involvement and bilateral international approaches, there is a need for further improvement in these fields in line with the rapid expansion of the socio-economic factor in Malaysia. The following factors are suggestions to upgrade the countermeasures with the present control measures already available:

Domestic Approach

a) Crime Prevention Education be introduced in schools and the crime prevention concept should be incorporated into the school curriculum with students being educated on all aspects of crime prevention.

b) Crime Watch Television programmes be introduced with the aim of televising crime watch episodes featuring solved cases as well as unsolved ones which require public assistance and co-operation.

c) Crime Prevention campaigns and exhibitions be intensified to enhance public awareness of crime prevention as well as to reinforce crime prevention efforts.

d) A National Crime Prevention Body be established, either in the form of a Council or Foundation, to mobilize the support of groups and individuals from the community to work closely with the Police to fight and prevent crime. Such a body should have the following objectives:

1) To promote public awareness of and concern about crime and to enlist public participation in the suppression and prevention of crime;
2) To study, develop and improve crime prevention measures suitable for adoption by the public;
3) To recommend, encourage and promote the adoption by the public of such measures; and
4) To coordinate the efforts of organisations interested in crime prevention activities.

International Approach

a) Extend and refine the conventional means available for exchanging information, so that such exchanges take place not only when information is requested but also spontaneously in a way which is adapted to the particular aspects of the criminal phenomena concerned with special attention paid to organised crime.

b) Extend co-operation beyond the traditional limits of international co-operation in criminal matters in the strict sense of the term.

c) Set up an integrated information system which overcomes obstacles resulting either from the particular features of the moveable assets sector or from fictitious title deeds making use of complex relations between financial institutions and from the creation of national or foreign "front" companies. Whilst there is no problem in identifying owners on the national level, difficulties are encountered when dealing with assets held abroad, especially if the aim is to identify the actual holders of company shares or stocks to which the assets themselves refer.

d) Implement simultaneous tax verification programmes covering multinational financial groups or activities relating to "tax havens."

e) Create an inter-state information sys-

tem on banking operations, in a specific "database" which could be consulted to identify the movements of capital and financial investment transactions carried out by suspected persons.

f) Organise inter-state "Task Forces" linked to Police departments specializing in the suppression of organised crime activities.

g) Improve international legislation for effective results on prosecution. Indirectly, law enforcement should be enhanced looking into aspects of prosecution.

h) For both statutes and their enforcement, there is a need for more exchanges of knowledge and experience among legal experts and enforcement agencies of the various countries.

i) Punishment under these statutes should be deterrent whereby it is capable of instilling sufficient fear to counter the three main motivations for crime i.e. anger, self-preservation, and desire against the organised crime criminals.

8. Conclusion

In order that organised criminal activities do not develop or expand to such a degree so as to have adverse effects on the social, economic and political stability of a country, stringent measures must be taken to suppress and curb such activities with the hope that prolonged suppression would result in the total elimination of such undesirable activities. It is undeniable that this is an uphill task because of the strong motivating forces of money and power underlying all such organised criminal activities. Concerted efforts are therefore required and sustained not only at the national level but at the international level to successfully disrupt or stamp out criminal organisations.

It is hoped that all countries, apart from having domestic legislation to deal with criminal organisations, will also enact legislation on mutual assistance and update their legislation on extradition to ensure that the world will not be a safe playground for criminal organisations.

SECTION 2: PARTICIPANTS' PAPERS

Policy Perspective for Organized Crime Suppression

*by Wang Lixian**

A. The Definition and Connotation of Organized Crime

The concept of "organized crime" so far has not appeared in China's present Criminal Code. It is not touched upon as a special item in law materials and books, criminal law theory, criminal justice and research on criminology, either. It can be said that the concept of "organized crime" entered the vision of Chinese experts only in recent years as a new phrase of criminal justice and criminology.

However, "The Criminal Law of China" which came into effect in Jan. 1980 put forward the concept of "criminal group." Section 3 (Joint Crime) of Chapter II in the general provision of "The Criminal Law of China" stipulates: "A principal offender is one who organizes and leads a criminal group in conducting criminal activities or plays a principal role in a joint crime. A principal offender shall be given a heavier punishment unless otherwise stipulated in the Special Provisions of this Law." Apart from this, Special Provisions of "Criminal Law of China" stipulates the principles of convicting and sentencing members of counterrevolutionary group (Article 98), smuggling and speculation group (Article 118). The various decisions against serious criminal crimes made by the Standing Committee of National People's Congress in China respectively regulates that severe punishments should be given to criminal groups such as drug trafficking groups and groups of abducting and trafficking in people, etc.

Concerning the concept of "criminal group," the textbook "Criminology" published in 1982 by the Publishing House of Law defines it as the following: "Organized joint crime, namely, criminal group consists of relatively many people and is established for the purpose of conducting certain crime repeatedly. Its characteristics include rigid structure, strict discipline and certain firmness; it has plans to repeatedly conduct criminal activities and even make an occupation of crimes; its criminal means are comparatively complicated and surreptitious; it is quite capable of avoiding investigation; and it usually conducts criminal activities for a considerably long time. This is the most dangerous joint crime which poses a great danger to the society.

The United Nations began at an earlier time to attach importance to the research on organized crime and organized special discussions and research on dealing with the growth of organized crimes, especially the rampancy of those with transnational aspects, as well as adopting correspondent resolutions. The First Seminar on Organized Crime with the assistance of the United Nations, held in Suzdal 21–25 Oct. 1991, put forward the definition for organized crime: " ... being a relatively large group of continuous and controlled criminal entities that carry out crimes for profit and seek to create a system of protection against social control by illegal means such as violence, intimidation, corruption and large-scale

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theft." "A more general description would be any group of individuals organized for the purpose of profiting by illegal means on a continuing basis." (Document adopted in the First Session of Justice of the Commission on Crime Prevention and Criminal Justice E/CN. 15/1992/4/ADD. 2).

At the same Seminar, it was pointed out that the basic modalities of organized crime include involvement in illegal activities (such as property offenses, money laundering, drug trafficking, currency violations, intimidation, prostitution, gambling and trafficking in arms and antiquities) and participation in the legal economic sphere (directly or through parasitic means such as extortion). (E/CN. 15/1992/4/Add. 2).

What is mentioned above demonstrates that our concept of criminal group is identical with or has many similarities to that of organized crime put forward by the international community. Based on this point and according to the goal of the Seminar, I'd like to expound the phenomena of organized crime in China.

B. The Current Situation and Tendency of Organized Crime in China

Before the founding of the People's Republic of China in 1949, due to autocracy and corruption in politics, impoverishment and backwardness in economy, the social order was in chaos, serious crimes were flourishing, various criminal groups dominated particular territories and committed countless heinous crimes. Many criminal groups were interrelated in numberless ways with important people in the fields of politics, justice, industry and commerce. Criminal activities covered with legal coats were rampant. Some large criminal groups even had their sphere of influence in Asia, especially in southeastern part of Asia. They even conducted drug trafficking, forgery, racketeering, murder and large-scale theft in Europe and America.

After the founding of the People's Republic of China, in order to uphold social stability, safeguard economic development, protect citizens' personal and property security, the judicial organs, according to related laws and regulations, struck heavy blows at various kinds of criminal groups and influences, severely punished a number of principals of heinous criminal groups, and thus effectively controlled the growth of organized crime in China.

Since 1980, China has carried out the policy of concentrating on economic construction on the basis of reform and opening to the outside world. Our social politics, economic and cultural life are extremely active, and rapid, extensive changes have taken place. At the same time, crime shows its new aspects. Criminal offenses, especially those in large and intermediate cities are going up rapidly. The crime rate went from 5.2 per 10,000 in 1985 to about 10 per 10,000 in recent years. Robbery, rape, large-scale theft, producing and trafficking in drugs and people, serious economic crimes and violent crimes are responsible for a large proportion of the crime rate. Of the 509,221 convicts in China in 1991 who received court judgments that already have become legally effective, 184,334 were sentenced to fixed-term imprisonment more than 5 years, life imprisonment and death penalty. Juvenile delinquent cases are increasing rapidly, and crimes tend to be committed by offenders at a younger age.

The other important aspect of the growth of crime is that some co-offenders are becoming members of criminal groups, which has become the main source of serious crimes, and some new tribes have emerged and developed. Organized criminal groups in China are unlike those well-organized large-scale ones in some other countries and regions which have extensive and complicated social relations, large amounts of illegal capital and arms, and which can extract large amounts of profit from their criminal activities, but they are becoming

an evil influence greatly endangering social stability, hindering economic development, and threatening the lives and property security of the citizens.

Organized crime in China is especially serious in the following respects:

(a) Drug Trafficking

Since 1980, with the infiltration and stimulation of international drug trafficking becoming more and more rampant, the drug trafficking activities in China, mainly in the form of transit, reemerged. Some lawless persons and criminal groups under the temptation of huge profits and in collaboration with drug producing and trafficking groups outside China, conducted drug trafficking activities recklessly. As a result, drug cases in China are increasing continuously. According to 1991 statistics, our public security organs and customs cracked 8,395 drug-related cases, 1.2 times more than that of 1990, seized 1,959 kg heroin, and 2,026 kg opium. Transit drug trafficking brought about drug consumption in China. At the end of 1991, there were 148,000 registered addicts who either inhaled opium or injected heroin. The problem of drug-related crimes is getting more and more prominent.

Being organized and transnational are two of the main characteristics of drug-related crimes in China. For example, in Nov. 1989, our public security organs cracked a huge criminal group whose main business was transnational drug trafficking and who had a drug trafficking network in China, apprehended 51 drug traffickers from both in and out of China, among whom, three were from Burma, six from Hong Kong, one from Macao, and seized 221 kg heroin a large amount of drug capital, modern equipment of transportation and communication as well as arms. Statistics tell us that among the 8,080 drug traffickers arrested in 1991, 829 were foreigners or of foreign nationalities who belonged to foreign drug trafficking groups. They either came from China's neighboring countries or regions, or from West Europe and North America.

(b) Robbing and Other Serious Criminal Activities

With the social development and change of the situation of public security, serious criminal offenses such as robbery, theft, hooligan activities and rape are being committed mostly by co-offenders or criminal groups instead of individual offenders. Such development is especially outstanding in juvenile delinquency. Take the action against serious crimes in May–July 1990 for example, more than 37,300 robbery, larceny, hooligan and other criminal groups were discovered and seized. Their organization and operational scope were expanded constantly, their social contacts were getting more and more complicated, criminal means more and more violent and surreptitious. In Dec. 1991, a criminal group in Hefeishi, capital of Anhui Province was cracked down, and over 20 criminal offenders were caught. This group had a fixed stronghold, modern equipment of transportation and communication as well as 12 long and short barreled guns. They not only participated in large-scale armed fighting but also often carried arms to take hostages for ransom. They even claimed to be as powerful as the police. They were growing into a Mafia-style group. Similar criminal groups in China, especially in some large and intermediate cities are not few. They seriously disrupt and threaten our public security.

(c) Illegal Activities of Prostitution

After the founding of the People's Republic of China in 1949, such ugly social phenomenon had ceased to exist under the determined attacks by our government. But with our social change in recent years, it reemerged and started to spread from the coastal areas like Guangdong and Fujian Provinces to inland cities and is usually committed by co-offenders or organized

groups instead of unknown individuals. Take Guangdong Province for example, during the 2 months of April and May of 1991, more than 300 prostitution groups were discovered and seized, over 350 secret brothels were cracked down, more than 3,000 hotels, barbershops, cultural and recreational places involved in pornographic activities were straightened out and reorganized. Problems of group smuggling, producing, selling and spreading pornographic books or pictures, abducting and trafficking in women and children are getting more and more aggravated. In 1991, criminal cases of luring or forcing women into prostitution or sheltering them in prostitution, producing, selling or spreading pornographic books and pictures, abducting and trafficking in women and children closed at first instance, amounted to 11,596, and 18,185 offenders were convicted.

Apart from the above, organized crime has infiltrated into the fields of economy, industry, commerce, finance and antiquities at a relatively quick speed.

At present, organized crime in China has the following tendencies:

(a) Firstly, organized crime tends to become professional and specialized. Professional crimes committed by criminal groups are increasing, specialized criminal groups are also taking shape: criminal groups of drug trafficking, prostitution, robbery and hooliganism as well as criminal groups which rob and steal only on railways and highways.
(b) Secondly, criminal approaches are becoming intelligent and modernized. They usually have detailed criminal plans and designations of work. Many robbery and theft groups have their own network of disposition of stolen goods. Many criminal groups have modern means of techniques and equipment of transportation and communication. Several computer-related crimes have also been cracked.
(c) Thirdly, some of the criminal groups are transforming into tribes. They have possessed some basic characteristics of tribes. For example, they make an occupation of crimes, they live on the gains of their crimes, they have strict organizational designation of work and management, they have basic backbones and sphere of influence, they usually commit crimes through violence and terror, and some of them are under the cover of lawful profession or have close ties with public officers.

The emergence and growth of organized crime in China, in my opinion, is due to the influence of remaining feudalist forces and culture, stimulative drug trafficking with exorbitant profits, the rapid increase of population and wealth flow, the confrontation of views in pursuant of value in dramatic social changes.

The influence of foreign corrosive culture and international crime, especially the infiltration of foreign criminal groups and Mafia influence, is also responsible for the growth of organized crime in China. At present, the infiltration mainly comes from Hong Kong and Macao. The criminal modalities include coming to China to manufacture and traffic in drugs, smuggling and selling of smuggled goods, abducting and selling people in China, expanding their organization and cultivating and establishing social foundation outside of China. What's more, some Mafia society members who are wanted by police in Hong Kong and Macao slip into China to escape from being caught. The infiltration of foreign criminal groups and the influence of Mafia society not only stimulated the growth of organized crime in China, but also made some of the organized crime in China transnational.

Entering 1990, China is facing double challenges of both national and transnational organized crime.

C. Measures against Organized Crime in China

Considering the growth of organized crime and its serious threat to our public security and social development, China's attitude towards it is clear-cut, firmly combat and control its growth. For this purpose, the Chinese Government and its legislative body have taken the following measures:

Perfect the Criminal Legislation

"Decision Regarding the Severe Punishment of Criminal Elements Who Seriously Endanger Public Security" adopted by the Standing Committee of National People's Congress of China in 1983 stipulates that the most severe punishment should be given to the principals of hooligan groups. Considering the growth of China's criminal situation, the Standing Committee of National People's Congress of China respectively discussed and adopted "Decision to Prohibit Narcotic Drugs," "Decision Regarding Attacking Smuggling, Manufacturing, Selling and Spreading Pornographic Books or Pictures," "Decision Regarding Severe Punishment of Criminal Offenders Who Abduct and Sell Women and Children," "Decision to Prohibit Prostitution," etc. These decisions stipulate severe punishment on organized crimes.

Concentrate on Suppressing Aggravated Criminal Activities

In recent years, China successively carried out activities to forbid narcotics and prostitution to, attack abducting and trafficking in women and children, smuggling and selling of smuggled goods, large-scale theft, etc. and have discovered and seized a number of criminal groups. All these played an important part in effectively suppressing organized crime. In regards of the growth of organized crime, China will center its efforts on ferreting out criminal groups and suppressing the influence of tribes in 1993.

Incorporate crime prevention and suppression with the general programme of national development and implement comprehensive management of public security.

In March 1991, the Standing Committee of National People's Congress in China adopted "Decision Regarding Strengthening the Comprehensive Management of Public Security." This decision calls to mobilize and organize all kinds of social forces to prevent and reduce law-breaking activities and crimes through political, legal, administrative, economic, cultural, and educational means under the coordination of the governments at all levels. According to the statistics from 25 provinces, metropolitan and autonomous regions in March 1992, there are 10,370,000 professional and non-professional workers involved in attacking and preventing crime. Social preventive mechanism is strengthened. The network of investigating, preventing and attacking serious crime, especially organized crime has been established.

Actively carry out international cooperation, undertake international obligations, prevent the infiltration of foreign criminal groups and the influence of Mafia society.

In the respect of drug prohibition, China, as a member state of "The Single Convention on Narcotic Drugs (1961)," "The Convention of Psychotropic Substances (1971)" and a signatory state to "The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)," strictly implements the above mentioned conventions, actively takes part in international cooperation, undertakes international obligations in the field of drug control, firmly attacks transit drug trafficking activities, and is very careful and responsible for investigating international drug-related cases and criminal traces. Besides, from 1987 to 1991, China signed treaties on judicial assistance in the field of criminal justice with nine countries including Poland. At the same time, China takes

strict measures in immigration and security checking so as to prevent the infiltration of foreign criminal groups.

To a certain degree, the above measures suppressed organized crime from growing in China. In the context of development, China should make greater efforts in research on crime suppression, in formulating and perfecting substantial and procedural laws as well as regulations against organized crime and strengthening international cooperation against transnational organized crime.

D. Recommendations on Effective Prevention and Suppression of Crime Especially Organized Crime

The information provided by the United Nations and related countries demonstrates that organized crime has become a serious criminal form which is rampant worldwide and has posed a great threat to the development of politics, economy, culture and public security of all the countries. The adaptability of this kind of crime and its infiltration into social, political and economic life makes the efforts taken by judicial organs far from effective.

The information provided by the United Nations and related countries also demonstrates that with the rapid development of scientific technology, the strengthening of the world's political and economic ties, with the worldwide flow of population and wealth worldwide, organized crime, especially the one with exorbitant profits is getting more and more transnational. This poses a great threat to the international community as a whole.

Considering the above situation, some recommendations on taking effective measures to prevent and suppress organized crime at the national and international level are thought to be necessary.

We must do further research on the current situation and tendency of organized crime, disseminate the great danger imposed by organized crime, promote strong political will and public involvement against organized crime at the national and international level. Political will and public involvement are the basis of prevention and suppression of organized crime. In this respect, besides making use of all kinds of mechanism at the national level, we should also take advantage of all kinds of international forms such as international seminars and field studies.

We must perfect related regulations as well as mechanisms of crime prevention and suppression. As the growth and rapid rampancy of organized crime is a new problem facing many countries in recent years, there is no strict definition for some of the crimes, therefore, new substantial and procedural laws should be made, otherwise, it is difficult to distinguish organized crimes from other common criminal offenses. The related mechanism is not sound yet when applied to investigation, prosecution, evidence system and more strict punishment. This phenomenon brought about very bad effect on coping with organized crime. Therefore, legislation should be perfected at the national level in accordance with the scale, character and tendency of organized crime. Meanwhile the responsive mechanism and ability of the special organs against organized crime should be strengthened and improved through personnel training and facility improvement.

Considering the international aspects of some aggravated organized crime, no country could effectively counteract on their own. So, it is quite essential to have international cooperation in this field and I think it could be carried out in several steps:

(a) Firstly, information and experience exchange between nations, discussion on effective ways of handling organized crime with transnational aspects should be strengthened so as to reach a common recognition. Such kind of exchange could be established on a relatively sta-

ble basis and gradually form a network.

(b) Secondly, encourage cooperation and joint action in investigation, evidence collection, assistance in cracking criminal cases and management of prisoners and promote the signing of bilateral treaties of judicial assistance according to necessity so as to establish international cooperation on the basis of permanent stability and with legal guarantee.

(c) Thirdly, attach importance to the role played by the United Nations and make full use of the framework provided by the United Nations. With the dramatic change of international political situation and structure and the increasing seriousness of international crime, the role played by the United Nations will be more and more important. With the joint efforts of the international community, the United Nations has formed a relatively stable framework in the field of prevention and suppression of organized crime, which should be made full use of.

Besides, proper attention should be paid to the status and current situation of the developing countries in their efforts against organized crime. Their ability against organized crime should be constantly promoted through technical assistance such as personnel training, cooperative research, model items and facility provision.

In carrying out international cooperation, priority should be given to the cooperation at the regional level, for countries in the same region have many similarities in history, culture, tradition, political system and level of economic development, they have close contacts and organized crime with international aspects have more direct contacts and influence upon countries in the same region in regard to offenders, the venue and the result of criminal action.

In carrying out regional cooperation, it should be encouraged to take advantage of the current mechanism in our region, e.g. ESCAP, UNAFEI in the United Nations system, ACPF (Asia Crime Prevention Foundation), AMCOC (Asian Multi-national Conference on Organized Crime), APCCA (Asian and Pacific Conference of Correctional Administrators in the non-United Nations system). It is suggested that through appropriate ways, the actions and directions of the above organizations and institutions be coordinated.

Important Aspects of Organized Crime in India

*by Satish Sahney**

Total cognizable crime in India during the last two years has been to the tune of five million offences per year. In the category of organised crime, however, will fall offences under the following heads:

(1) Drug Abuse and Drug Trafficking.
(2) Economic Offences.
(3) Terrorism.

Current situation under each head is as follows.

(I) Drug Abuse and Drug Trafficking

It is perhaps the most serious organised crime affecting the country. Moreover, from the early eighties India has become a transit area for drug trafficking.

Illicit trafficking activities in India centre round five major substances, Heroin, Hashish, Opium, Herbal Cannabis and Methaqualone, with also small quantities of Morphine coming regularly into notice. Seizures of Cocaine, Amphetamine, Phenobarbital and L.S.D. have not bee unknown but insignificant and rare. The Table 1 shows drug seizures made since 1988.

With a view to combating the menace of drugs, adequate legislative measures have been taken. The Narcotics Drugs and Psychotropic Substances Act, 1985 came to be enacted and brought into force w.e.f. 14-11-1985. The Act prescribes deterrent punishments for contraventions of the provisions of the Act, drastic executive powers for investigators, strict procedures for bail and arrangements for expeditious trial of offenders. Thus, for most of the offences the minimum mandatory punishment is 10 years rigorous imprisonment and fine of Rs.100,000/-, and these can be extended up to 20 years of rigorous imprisonment and fine of Rs.200,000/-. For a second offence of certain serious nature, death penalty has been prescribed and for less serious ones, the punishment is 30 years of rigorous imprisonment and fine of Rs.300,000/-.

With a view to immobilising the drug traffickers/smugglers a new deterrent law titled "The Prevention of Illicit Traffic and Narcotic Drugs and Psychotropic Substances Act 1988 has been enacted providing for preventive detention of drug traffickers.

Action taken against persons involved in Drug Trafficking is indicated in the Table 2.

(II) Economic Offences

These relate to the following: (1) Smuggling; (2) Invoice Manipulation; (3) Bogus Imports; (4) Hawala.

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	Over300 Crores in the first six months

*Special Inspector General of Police, Criminal Investigation Department, Maharashtra State, India

Table 1

	1988	1989	1990	1991	1992
Opium	3,304 (512)	4,855 (1,658)	2,114 (506)	2,145 (566)	1,045 (570)
Morphine	23 (24)	92 (14)	6 (27)	6 (21)	20 (119)
Heroin	3,029 (489)	2,714 (1,248)	2,193 (764)	622 (1,158)	996 (1,819)
Ganja	45,994 (592)	54,463 (3,612)	39,090 (1,782)	52,633 (3,140)	38,425 (3,355)
Hashish	17,523 (419)	1,879 (687)	6,388 (753)	4,413 (335)	2,827 (1,191)
Cocaine	13 (3)	3 (23)	1 (2)	0.008 (1)	0.350 (4)
Methaqualone	1,649 (4)	887 (75)	2,141 (6)	4,415 (78)	6,381 (152)
Amphetamine	9 (1)	1 (2)	–	–	–
Phenobarbital	–	720 (3)	–	–	–
L.S.D.	–	–	–	–	41 Sq. papers

Quantity of various drugs seized with No. of cases in brackets.

Table 2

	1988	1989	1990	1991	1992
(1) No. of Persons Prosecuted	3,704	3,694	4,299	5,546	3,264
(2) No. of Persons Convicted	339	255	511	855	339
(3) No. of Persons Acquitted	481	251	1,160	1,940	1,080
Action Taken under Cofeposa/Pitndps (NDPS) Act, 1988					
No. of Detention Orders Issued under PIT NDPS Act, 1988 with No. of persons detained in bracket.	476* (444)*	303 (228)	211 (190)	109 (80)	64 (48)

*Denotes total number of detention orders issued/No. of persons detained under PIT NDPS Act including COFEPOSA.

Gold along with silver still remains a prime item of smuggling into India. The following Table 3 shows the seizures of both gold and silver since 1984.

The clandestine flow of gold and silver into India is ruining the country's economy because the smuggled gold and silver has to be paid in acceptable foreign currency. Estimates show that annually Rs. 50 billion (around U.S.$3 billion) is consumed in terms of foreign currency for gold smuggling.

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. Both violate national laws, as fabrication and falsification of records with a view to cheating customs and tax authorities, are universal crimes.

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

Table 3

Year	Gold		Silver	
	Q'ty. in Kgs. (Rs. in lakhs)	Value (Rs. in lakhs)	Q'ty. in M.T.	Value
1984	524	1,024	0.754	26
1985	2,525	5,189	0.134	5
1986	2,174	4,666	10.949	457
1987	2,255	6,578	16.994	906
1988	6,094	20,053	16.992	1,056
1989	8,215	25,960	99.322	6,757
1990	5,721	19,296	216.447	14,956
1991 (prov)	4,926	18,781	197.925	13,808
1992 (till 31-8-92) (prov)	1,922	8,609	91.516	7,144

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.

It is thus clear that the practice of invoice manipulation, which has international ramification, adversely affects the economy of the victim country. It is, however, unfortunate that in the investigations of invoice manipulations a number of difficulties are experienced, particularly in retrieving the information. Even documents like "Bills of Entry," "Shipping Bills," "Bills of Lading," "Invoices," "Letter of Credit," departure schedules of sailing vessels, etc. are not made available in spite of these being public documents.

International cooperation is therefore needed to curb this menace.

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 authorised 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 invoice, bill of lading, 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.

Hawala

It is the underground banking system. 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 phone or by wire and sends some coded message for payment of money to the Indian recepient. As in bank there is no physical transfer of money from one country to another, the accounts are settled by a reverse process when an Indian would like to send to someone in the U.S.A. $1,000. The

Indian operator would contact his counterpart in U.S.A. and money will be paid in U.S.A. without any physical transfer of money.

Thus, these operators work in a very organised manner and have a wellknit network. They undertake their business under cover of absolute secrecy and no paper trail for audit is kept.

Basically, 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.

The "Hawala" is widespread in India from metropolitan cities to smaller towns. Families who have members earning a living abroad are clients of the system.

The dangerous aspect of the "Hawala" system is the nexus between Hawala and illicit arms smuggling, drug trafficking and terrorist related crimes. Hence there is the need for international cooperation.

In India Hawala investigations are conducted under the Foreign Exchange Regulation Act (FERA). Hawala has not been defined in FERA. But the essence of the Act is that any person who retains foreign exchange abroad or who sends out foreign exchange abroad without the Reserve Bank's permission is violating FERA provisions. Whoever indulges in the act of conversion of currencies without the authority of RBI is also committing a FERA offence. However, the evidence to prosecute a FERA offender is hard to come by.

(III) Terrorism

Terrorism is yet another form of organised crime which affects not only India but the international community.

As is well known, India is presently facing an acute problem of terrorism in its States of Punjab, Jammu & Kashmir, Tamil Nadu and Assam.

Sikh terrorism, which has taken deep roots in Punjab, also made its presence felt not only in the adjacent States of Haryana and Uttar Pradesh, but also in such far-off States as West Bengal, Bihar, Maharashtra, Gujrat, etc.

The major Sikh terrorist groups are Khalistan Commando Force (KCF), Bhindranwale Tigers Force for Khalistan (BTFK), Khalistan Liberation Force (KLF) and Babbar Khalsa. A total of about 2,000 terrorists are at present operating in Punjab and indulging in organised acts of violence including killings (selective as well as indiscriminate), robberies, dacoities, bomb explosions, sabotage, kidnappings and other acts of intimidation. The extent of violence in Punjab is indicated in the statistics given below.

Year	Total Incidents	Total Killed
1987	2,336	942
1988	2,097	2,079
1989	1,827	1,396
1990	3,507	2,849
1991	3,662	3,161
1992	1,699	1,816
	15,128	12,243

Terrorism in Jammu & Kashmir emerged on the scene with the kidnapping of the daughter of the Home Minister of India by the J.K.L.F. (Jammu & Kashmir Liberation Front) at Srinagar on 8-12-89 for getting five of their associates released from custody. As is known, they were successful in their mission. Subsequently, there were a series of terrorist crimes committed by the J.K.L.F. and the Hizbul Mujahdin group. The following table will indicate the extent of violence caused by the terrorists in the State of Jammu & Kashmir.

Year	Total Incidents	Total Killed
1988	390	31
1989	2,154	92
1990	3,905	1,177
1991	3,122	1,393
1992	4,971	1,909
	14,542	4,602

The United Liberation Front (ULFA) came into being in 1983. It seeks the "liberation" of Assam. During the last six years the ULFA has emerged as a major terrorist group. Its influence and activities cover about 17 districts of the Brahmaputra Valley. Its hard-core strength is estimated to be about 2,800 and it is estimated to possess 500 sophisticated weapons. Violence and other unlawful activities of the ULFA have shown an upward trend since 1986 and reached their peak in 1992 with 305 incidents having been reported leading to 149 deaths.

South India in general, and Tamil Nadu and Andhra Pradesh in particular, are affected by terrorist acts carried out by Liberation Tigers of Tamil Ealam (LTTE) and left wing extremists belonging to C.P.M.L. (People's War Group). LTTE sent "hit squads" to kill leaders of rival militant organisations as was demonstrated in the brutal killing of Padmanabha, the EPRLF leader, along with a number of other top leaders in June 1990 at Madras. The most daring act of this group has been the assassination of Shri Rajiv Gandhi, the former Prime Minister, at Sriperumbudur in Tamil Nadu on May 21, 1991 through a suicide killer.

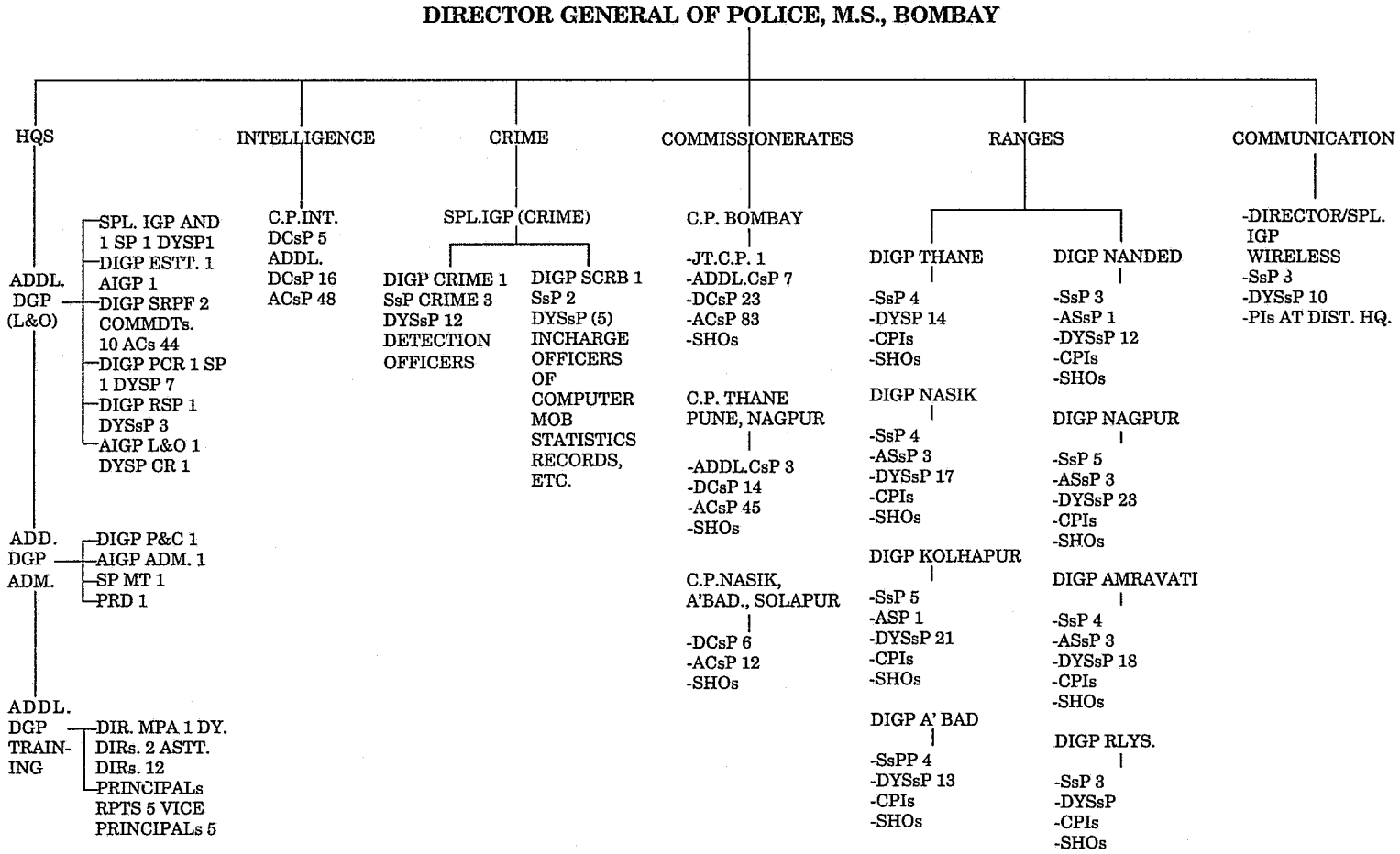
It is worth mentioning that during the recent years there have been 16 incidents in India attributable to international terrorist groups. These include two incidents of hijacking of passenger aircraft, seven incidents of acts of violence against foreign diplomats based in India, an attack on an embassy and causing explosions in the offices of foreign airlines.

It is noteworthy that in the initial phases of Punjab terrorism, the firearms used were revolvers and pistols. However, in the latter part of 1986 and 1987, AK-47 rifles came in a big way and have become the mainstay of Sikh terrorism in Punjab and other States. Other varieties of AK-47 like AK-56, AK-74 and AK-94 also gradually became available with the terrorists. The other firearms of foreign origin which came into the hands of the terrorists are:

(1) Rocket Launchers and Rockets.
(2) Chinese LMGs.
(3) 7.62 mm G-3 Heckler and Koch Rifles.
(4) M-16 A, Assault rifles—American 5.56 mm.
(5) Sub-machine guns of various types—
  (a) Francis Sub-Machine Guns 9 mm.
  (b) 7.62 mm type 50 Sub-Machine Guns.
  (c) 9 mm S OC I M I Type 821-Sub-Machine Gun.
(6) 30 bore carbines.
(7) Hossam Anti Tank grenades.

The Punjab terrorists have also been using explosives of various types. In the initial phases, crude hand bombs and H.E. 36 hand—grenades were used but later, timed devices, remote control devices, magnetic bombs, transister—type bombs and plastic bombs have come to be used.

The brief scenario of terrorism in India as projected above brings out the enormity and gravity of the problem. While the Indian agencies are taking all possible measures, including legislative measures, to meet the challenge of terrorism, the need of the hour is proper coordination between the police agencies all over the world. In view of the dimensions of illegal trafficking of firearms in India, as would be apparent from what has been stated above, it is necessary that this problem is dealt with in all earnestness by all concerned. It would be pertinent to mention here that there is a close link between drug trafficking and arms running. If remedial measures are not taken now Narco-Terrorism will overwhelm mankind.


DIRECTOR GENERAL OF POLICE, M.S., BOMBAY
HQS
ADDL. DGP (L&O)
SPL. IGP AND 1 SP 1 DYSP1
DIGP ESTT. 1 AIGP 1
DIGP SRPF 2 COMMDTs. 10 ACs 44
DIGP PCR 1 SP 1 DYSP 7
DIGP RSP 1 DYSsP 3
AIGP L&O 1 DYSP CR 1
ADD. DGP ADM.
DIGP P&C 1
AIGP ADM. 1
SP MT 1
PRD 1
ADDL. DGP TRAIN-ING
DIR. MPA 1 DY. DIRs. 2 ASTT. DIRs. 12 PRINCIPALs RPTS 5 VICE PRINCIPALs 5
INTELLIGENCE
C.P.INT. DCsP 5 ADDL. DCsP 16 ACsP 48
CRIME
SPL.IGP (CRIME)
DIGP CRIME 1 SsP CRIME 3 DYSsP 12 DETECTION OFFICERS
DIGP SCRB 1 SsP 2 DYSsP (5) INCHARGE OFFICERS OF COMPUTER MOB STATISTICS RECORDS, ETC.
COMMISSIONERATES
C.P. BOMBAY
-JT.C.P. 1
-ADDL.CsP 7
-DCsP 23
-ACsP 83
-SHOs
C.P. THANE PUNE, NAGPUR
-ADDL.CsP 3
-DCsP 14
-ACsP 45
-SHOs
C.P.NASIK, A'BAD., SOLAPUR
-DCsP 6
-ACsP 12
-SHOs
RANGES
DIGP THANE
-SsP 4
-DYSP 14
-CPIs
-SHOs
DIGP NASIK
-SsP 4
-ASsP 3
-DYSsP 17
-CPIs
-SHOs
DIGP KOLHAPUR
-SsP 5
-ASP 1
-DYSsP 21
-CPIs
-SHOs
DIGP A' BAD
-SsPP 4
-DYSsP 13
-CPIs
-SHOs
DIGP NANDED
-SsP 3
-ASsP 1
-DYSsP 12
-CPIs
-SHOs
DIGP NAGPUR
-SsP 5
-ASsP 3
-DYSsP 23
-CPIs
-SHOs
DIGP AMRAVATI
-SsP 4
-ASsP 3
-DYSsP 18
-CPIs
-SHOs
DIGP RLYS.
-SsP 3
-DYSsP
-CPIs
-SHOs
COMMUNICATION
-DIRECTOR/SPL. IGP WIRELESS
-SsP 3
-DYSsP 10
-PIs AT DIST. HQ.

Organized Crime in Pakistan and Measures Taken to Control It

*by Khalil Ur Rahman Ramday**

I come form Pakistan.

My country which is a part of what was once called the Indo-Pakistan Sub-Continent, was under the British Rule till the year 1947. It was at the time of the independence of this Sub-Continent that the Muslims living here demanded a separate homeland which finally culminated in the creation of Pakistan.

Pakistan is a Federation consisting of the four Provinces of Punjab, Sind, Baluchistan and North West Frontier Province and the Federally Administered Tribal Areas. To its North are the ranges of HIMALAYAS, KARAKORAM and HINDU KUSH which is one of the highest mountain ranges in the world and which forms our border with China. To our East is India with which we have a common border extending over 2,200 km. In our West is the barren and rugged mountain area which is inhabited by the traditional local tribes and is called the Federally Administered Tribal Area and beyond this area lies Afghanistan. The length of our border with Afghanistan is about 1,800 km. Towards the West we have a joint boundary with Iran and to our South lies the Arabian Sea.

Each one of our four Provinces has its own elected Assembly and government while the Federally Administered Tribal Area is administered by the Federal Government primarily through the Tribal Chiefs and the Political Agents appointed by the Federal Government.

Administration of Justice, the policing and the maintenance of law and order in the Provinces, is essentially, a Provincial subject. For the administration of justice, each Province is divided into Sessions Divisions, each of which is headed by a Sessions Judge. The Province is also sub-divided into districts and in every district, there is a District Magistrate, who, inter alia, is the head of the Magistracy. The lowest rung in the criminal Courts is the Magistrates. Then there is the Sessions Court which is the court of original jurisdiction to hold trials in respect of offences punishable with death as also for offences relating to dacoities, robberies and intoxicants. The Sessions Court also acts as the first Appellate Court against the judgment and orders passed by the Magistrates. The highest Court on the criminal side in each Province is the High Court, which acts both, as a Court of Original Jurisdiction being possessed of powers to hold trials in respect of any case in which a trial by the High Court is considered necessary or expedient, and also as the Appellate and the Supervisory Court. The Courts of Sessions and the Magistrates are Sub-ordinate to the High Court. According to our Constitution, any order, decision or sentence passed by a High Court is appealable to the Supreme Court of the Country, if Special Leave to file such an appeal is granted by the Supreme Court. It may be mentioned here that the basic law creating the criminal Courts and which provides the machinery for investigation and trial, etc. of criminal offences, is a law called the "Code of Criminal Procedure" which was enacted in the year 1898.

For the purpose of policing, each Province is equipped with a police force established under the Police Act of 1861. The

*Judge, Lahore High Court for the Province of Punjab, Pakistan

Chief of the police force in the Province is called the Inspector General of Police. Each Province is divided into ranges led by Deputy Inspector Generals of Police; Police Districts headed by Superintendents of Police; Police Sub-Divisions with Assistant Superintendents of Police and Police Stations headed by Station House Officers.

The ultimate authority to administer criminal justice is a designated Court of law from amongst the above-mentioned Courts. Each such Court can take cognizance of any offence either on a report submitted by the Station House Officer (the incharge of a police station) as a result of the investigation conducted by him or on a complaint filed directly, by any person, before such Court or even on the personal information, knowledge or suspicion of the commission of any offence which reaches the Presiding Officer of such a Court through whatever means. An approach to the local police is thus, not a condition precedent for the holding of a trial of an offence, by a Court of law.

Till recently our country was a land of peace and tranquility. The people, the vast majority of whom are involved in agriculture, were generally docile and strict observers of law. Even a lone woman could safely expect to reach her home while travelling anywhere in the country at whatever time of the day or night.

The criminal offences committed were murders which were essentially motivated either by family feuds or by disputes over land and property. These were isolated cases of murder which, however, did not really affect the general peace and tranquility in the area and were confined only to the concerned parties. Thefts committed were generally restricted to stealing of cattle. Robbery and dacoities were a rare phenomenon and Highway robberies were almost unknown.

The Federally Administered Tribal Area, as has been mentioned above, is a land of barren and rugged mountains which was not easily accessible by people from outside this area. Unlike the Provinces, there was no police in this area and whatever policing is to be done in this area, is done through the civil armed forces. This area is generally administered by the Tribal Chiefs under the overall control and direction of the Federal Government. The only offences which were generally committed in this area were murders emanating from the tribal rivalries. The people of this area, however, at times, indulged in abducting people for ransom from the adjoining settled areas.

The first major development which took place in the history of crimes in our country was the advent of the "HEROIN ERA" which commenced with the unfortunate Soviet invasion of Afghanistan.

As has been mentioned above, we have an 1,800 km long border with Afghanistan. The tribes inhabiting the border belt on our side have part of their tribes living on the Afghan Side of this belt also. The interaction of people on the two sides of the border was thus inevitable. And then the whole length of this border is mountainous and difficult not only to man but even to reach. The land of this area being rocky and barren, could not provide sufficient means of living to its inhabitants and these people survived primarily on the grants given to them by the Government.

As a result of the Soviet invasion, there was a mass migration of Afghanis into our country and most of the refugees parked themselves in this Tribal Border Belt and the adjoining areas. These Afghan refugees managed to arm themselves with sophisticated weapons and started operating from this area for the liberation of their country. This tribal belt thus became a battle front, resulting in loosening of our effective control over the same.

These conditions offered a fertile nursery to the unscrupulous, who exploited the same for production and manufacture of intoxicants like *HEROIN*, etc. The de-

mand for these drugs in foreign lands at exorbitant prices offered the kind of temptation, to become billionaires overnight, which became difficult to resist. This lethal trade thus became the most lucrative trade around the globe which turned human beings into vultures who started eating into the flesh of their own brethren only to be able to make a quick buck.

The alarming situation thus created which witnessed the introduction of organized crime, for the first time, in our country was noticed by me in one of my judgments reported in our Law Journal, as P.L.D. 1991 Lahore 433 in the case of *THE STATE* vs. *MUHAMMAD NAZIR AND OTHERS*. The relevant portions of this judgment are reproduced hereunder:

"101. The case in hand is one where the persons accused are alleged to be indulging in sale and trafficking, etc. of narcotics, on a large scale.

102. Needless to say that persons who are accused of being responsible for spreading this deadly poison in the streets of not only this country but even abroad, are the enemies and the destroyers of our entire race. They are the ones who have put not only our lives but even the lives of our children and the generations to come, at stake. It is only people who have no conscience, no values and no scruples who can indulge in such like acts.

103. And then the margin of profit and the generation of wealth in this dastardly *'BUSINESS'* is so great that the operators of this game, lavishly and generously, throw away big chunks of bait and crumbs to tempt and to anaesthetize the watch dogs in order to ensure a smooth and uninterrupted running for their *'BUSINESS.'*

104. The results thus is, that the entire moral fabric of the society gets vulnerably exposed to erosion of the worst kind, not only through intoxication by the narcotics but also through corruption, both moral and financial, which tends to turn human beings into vultures.

105. These drugs are the killers of individuals, the destroyers of families and the annihilators of societies and the persons involved in their manufacture, sale and transportation, etc. cannot evoke sympathies of any normal being.

106. If the nature of the offence committed shocks a conscience, then any person against whom there appear reasonable grounds for his involvement with such a crime, becomes disentitled to any discretionary relief.

107. Consequently, to say that a person accused of trafficking, etc. of narcotics deserves to be admitted to bail only because the offence in question does not fall within the prohibitory clause of Section 497 (1), Cr.P.C., is a proposition which cannot be sustained."

Drug trafficking thus became a trendsetter in our country for commission of crimes in order to make quick, easy and big money. This unfortunate era of our history which started in the late 70's then also witnessed abductions, for ransom, and dacoities in the Province of Sind, especially in the large and populous city of Karachi which is considered as the fiscal and industrial capital of our country.

The disturbed conditions in the Province of Sind have now been, almost completely, set right with the assistance of the Armed Forces of the Country which were called in last year in aid of the Civil power.

The cultivation, production, manufacture, sale and trafficking of *HEROIN* and other dangerous drugs, however, continues to pose a serious threat and a problem for us.

The first of the noticeable laws still in force is the *OPIUM ACT of 1878*. It primarily dealt with the cultivation, processing and possession of poppy flowers and its derivatives. The maximum punishment envisaged was imprisonment up to a term of one year and a fine extending to one thou-

sand rupees.

Next in line was the *EXCISE ACT of 1914*. It only talked of the *PAKISTAN HEMP PLANT* (CANNABIS SATIVA L.), its derivatives, *THE CHARAS* and liquor. The cultivation, manufacture and sale, etc. of the said plant and these intoxicants was punishable with imprisonment up to one year or fine up to two thousand rupees.

Then came the *DANGEROUS DRUGS ACT of 1930*. The scope of this enactment was widened to include certain further drugs also, like, *COCA PLANT, ERYTHROXYLON COCA (LAMK), ERYTHROXYLON NOVOGRANATENSE (HIERN), COCAINE, ECGONINE, MORPHINE* besides opium, hemp plant and poppy, etc. Originally, the penalty prescribed for violation of the prohibition created by this law was imprisonment up to two years. But through various amendments made in the years, 1975, 1983 and 1987, cultivation, manufacture, production, import, export, sale and possession, trafficking and its financing, etc. have been made punishable up to imprisonment for life. The amount of fine which can be levied on the convict has been made unlimited and a provision has also been made authorizing the concerned Courts to confiscate the property of the offenders. This law further provides that in case of discovery of any of the dangerous drugs from the possession of any person, proof of the commission of the relevant offence shall be presumed, until rebutted by the accused.

And in the year 1979, the Prohibition (Enforcement of Hadd) Order was promulgated for the same purpose. The maximum term of imprisonment remains the same i.e. imprisonment for life but this enactment has, however, made provision for imposition of the punishment of whipping of the convict. Steps are afoot to provide for death penalty for drug-related offences.

All these offences are non-cognizable, meaning thereby that the police has the power to arrest any person even suspected of being involved in the commission thereof, without first seeking a warrant from a Magistrate. Law further provides that the persons accused of these offences shall not be released on bail except under a specific order of a Court which order shall be made only if the Court finds that there were no reasonable grounds to believe that the accused is guilty of the relevant offence. The police also has the authority to enter any place suspected of being used for the commission of any of these offences and to do so even without a warrant.

To deal with requisition of offenders from foreign countries, the *EXTRADITION ACT of 1972* exists. It provides for apprehension and surrender of fugitive offenders to the requesting States.

In the year 1991, through the 12th amendment made in our Constitution, Special Courts have been set up under the Special Courts for Speedy Trials Ordinance of 1991. These Courts have exclusive jurisdiction to try cases which are, *interalia*, heinous or sensational in character or shocking to public morality, are presided over by Judges who are either sitting or retired Judges of the High Courts and they are obliged to conclude the trial within thirty days. Appeal is provided before an Appellate Court consisting of a sitting Judge of the Supreme Court of the country and two Judges of any High Court. The maximum time permissible for the disposal of the appeal is also thirty days.

The object behind the establishment of these Courts is to ensure a fair trial and also to deal with the trials expeditiously to make the results effective.

Originally, it was the police only who were dealing with the drug-related crimes. The increase in the incidence of these offences led to the creation and involvement of various other agencies to cope with the volume and the magnitude of this crime.

An independent ministry has been created at the Federal level to step up and co-ordinate the efforts, preventive and pu-

nitive, to suppress this menace of narcotics.

Pakistan Narcotics Control Board and the Anti-Narcotics Task Force have been specially created to deal with the problem. The Customs Department and the Pakistan Rangers, the Frontier Constabulary and the Frontier Corps, which are the Civil Armed Forces, the Airport Security Force and the Railway Police have also been obliged and empowered to take various steps in the detection and control of narcotics and for the arrest of the offenders and seizure of the intoxicants.

I feel that we are legally quite well-equipped to deal with narcotics. But we have to keep in mind that the people involved in this deadly trade have tons of money and any State or Organisation, besides taking other measures, also has to cater to the purchasing power of these drug barons.

The efforts of countries like mine lack financial resources. The United States of America, the United Nations and certain other countries and organisations do offer us financial assistance in this field but this assistance has now been decreased.

The United Nations has been and still is mobilizing its resources to rescue the suffering, the ailing, the starving and the warring sections of humanity. But similar efforts, it appears, are not being made to eliminate the monster of narcotics which is capable of engulfing the entire civilization.

Conferment of more effective powers on United Nations and Interpol and the creation of an International Task Force not only through bi-lateral and international treaties but even through international conventions is the need of the hour.

Proposals:

The drug trade involves cultivation of poppy and hemp plant; its harvesting; establishment and operation of factories to convert this raw material into HEROIN and other narcotics and psychotropic substances; their transportation to local sale points and airports and other national ports; their spread and sale in the country of production and finally their export to foreign markets. While it is true that some part of this trade is accomplished through sheer ingenuity and by out-playing the concerned agencies and public officials, the bulk of this operation is carried out through the co-operation of these governmental agencies and officials. This is maneuvered through corruption. At times the local population could pose a threat or some odd uncompromising and non-cooperative agency or official could create an unfavorable situation. Such obstacles are removed through possession of sophisticated weapons including rocket-launchers and maintenance of private armies. The money generated through this trade has to be kept in safe custody the purpose of which is achieved by operating and opening bank accounts in false names and, at times, even through establishment of spurious banks. And finally, to put up a clean facade for criminal operations and in order to give the looks of innocent and harmless lambs and genuine businessmen, these deadly wolves invest the proceeds of their crime in legitimate trades and businesses.

Thus, to my mind, the mother of almost all organised crime today i.e. large-scale corruption of public officials; gun-running; establishment of terrorist squads; opening and operation of fake bank accounts and even fraud banking institutions; money laundering and other economic crimes is the illicit, immoral and dastardly trade of drugs and narcotics.

Therefore my emphasis really is on control of this "MOTHER MENACE."

The nurseries from where this drug menace emanates and sprouts are economically backward countries. Needless to say that the people of such-like countries, of course with exceptions, are ordinarily more vulnerable to the temptations of money. By exploiting their monetary power, the operators of this trade have captured the

Press; they have reached the corridors of political power by either winning, themselves, the seats in the legislature or by planting their agents in the Parliaments; they have managed to dupe the members, who matter, of the bureaucracy and law-enforcing agencies and now even the members of judiciary are not safe from this onslaught.

The result is that however harsh and severe laws one may enact, whatever number of agencies and domestic forces one may create, it is almost impossible to bring these culprits to book through their national governments and forums. And then the international dimensions that the organized crime has acquired, the very nature of this crime, its transnational consequences and implications and finally the degree of managerial and material sophistication and entrepreneurial ingenuity attained, seem to effectively preclude a purely domestic solution.

In the circumstances, in my humble opinion, there is an imminent need for an International Convention on Crime Prevention and the only cure for this deadly disease of organised internationalised criminal activities is enactment of international criminal law; constitution of an international law enforcing agency and the establishment of an international criminal court under the United Nations as proposed by the Milan Plan of Action of 1985 and as recommended by the Havana Congress of 1990. But in the meantime the States should enact laws envisaging extradition, international assistance in investigation and judicial assistance to foreign courts on the pattern of the model drafts proposed by the United Nations and the like of which Japan has promulgated through Law No. 68 of 1953, Law No.69 of 1980 and Law No. 63 of 1905 as amended. Needless to add that till such time that the above international institutions are established, the States must enter into the necessary bi-lateral, multi-lateral, sub-regional, regional, multi-regional and even international treaties to control transnational criminality and to deny the perpetrators the possibility of escaping into safe haven.

The situation is alarming. It is not only critical but has become cruel. Our tomorrow and the future of our children is damned and doomed. The individuals and the nations need to sacrifice their personal and even some of their national interests in order to secure the existence and continuance of our race. Now is the time to act because it is now or never.

Pattern of Drug Abuse in Pakistan

Year	Total Drug Abusers	Heroin Addicts
1980	1,240,000	5,000
1985	1,600,000	365,000
1988	2,244,000	1,079,635

Cultivation & Production of Opium

1978–79	80,500 acres	800 tonnes
1991–92	24,691 acres	181 tonnes

Seizure of Various Drugs

	Heroin	Opium	Marijuana (tonnes)
1991	5.67	5.89	236.87
1992	1.8	2.95	141.61

Factories of Heroin Destroyed

1992	21

Policy Perspective for Organized Crime: The Polish Experience

*by Miroslaw Andrzej Rozyneski**

I. Introduction

A shift towards the market economy is clearly visible in Poland. One only has to wander the streets to see how the commercial spirit of the former socialist society manifests its triumph at almost every corner.

But a flood of commodities, mostly imported and distributed by an army of street dealers, have much more in common with a black rather than a free market economy. This bazaar-type trade is not subject to taxation and remains beyond the control of the fiscal apparatus of the state. Such a situation, hardly possible in the developed market economy systems, is one of the hallmarks of the present stage of development of such a system in Poland.

The laissez-faire attitude of the state as a part of an on-going process of political and economic transformation is also imposed by these very developments. The rise of the liberal ideology of the state and the eruption of individual enterprise as its corollary, have been and continue to be so fast, that the legal system has not been able to respond adequately to the challenges of this new reality. The legislative chaos and deficient systems of customs control, financial inspection and law enforcement are the most vulnerable spots in this confrontation.

The "case-studies" presented below provide some arguments to support this point. They outline five of the biggest scams that have occurred and have been disclosed in Poland just recently. Three of them, described at the beginning, are connected with the importation of mass consumption goods like alcohol, cigarettes and fuel. The subsequent case provides a good example for the recent debates on transnational crime which is related to money laundering. Last, but not least, the focus of this paper is also upon a banking scam. After a short description of each case, reaction of the authorities and counter-measures taken on a legal basis against these scams are briefly examined.

II. Case-Studies

1. The Booze Import Scam: "Schnappsgate"

The production and trade of alcohol in Poland had traditionally been placed under strict control of the state. Its monopoly of the manufacture of spirits and their distribution, though still protected by law, was one of the first victims of the Polish drift from a centrally-planned economy to a market one.

Taking advantage of liberal import, tax and customs regulations and committing fraud on the way, private individuals, companies and state businesses imported, between January 1989 and the second half of 1990, mostly from West Germany, various types of alcohol into Poland—the equivalent of nearly 30 million litres in pure spirits. This figure represents almost one-sixth of Poland's official alcohol production in 1989. The extent of the loss caused thereby to the State Treasury was estimated at 1.7 trillion zlotys (about 170 million dollars).

It was a decree of the then Minister for Foreign Economic Relations, in December

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1989, that first opened the floodgates to this river of vodka by breaking the state monopoly on the alcohol trade. According to this decree, a licence for importing spirits was no longer required.

Another incentive was provided by a ridiculously low customs duty on alcohol for non commercial turnover. In fact, the customs law did not impose any restrictions on individuals importing alcohol "for their own use."

Private individuals and limited liability companies which imported alcohol for their own use, or for subsequent sale, were also exempted from the 70 percent turnover tax. This enabled the company U. to accept alcohol worth nearly 700 million zlotys for sale on commission from two private individuals. None of the parties paid any tax.

The record for importation was broken by an individual who within two months imported into Poland some 797,000 litres of pure alcohol without declaring this to customs officials. This cost the treasury 16 billion zlotys.

There were also instances of regular fraud. For example, a certain Mr. Spiridis, a stateless Greek, imported 27,000 litres of alcohol on behalf of the Greek-Pol company, paying no tax. The revenue service, which was demanding payment, cannot establish the Greek's whereabouts. The alleged company simply did not exist.

From the fall of 1989, Polish authorities began to limit the importation of alcohol, but to little effect. For example, foreign individuals were exempted from the increased rates of duty which came into effect at the beginning of 1990. This allowed Poles carrying foreign passports to profit from these changes.

As the level of customs duty was linked to the transaction prices, several limited liability companies dealing in alcohol imports forged invoices. Thus the company H. purchased 50,000 litres of Minorka vodka in Germany at 10 pfennigs per litre, according to the invoice in question.

Linking the level of customs duty to the transaction price has caused, quite simply, an avalanche of falsified invoices for the purchase of alcohol. The central Board of Customs has estimated that around 75 percent of the invoices relating to imports since January 1, 1990 were falsified. Each of these amounted to an average of 30,000 litres of alcohol. A special report of the State Supreme Chamber of Control (NIK) released to the public in November 1990 has noted a dozen or so similar cases and 146 limited-liability companies involved in the booze scam. Many of them were set up simply in order to make money quickly from alcohol and then disappear.

Among the "record-holders" mentioned in this report is the limited company W. Its fortune was made from importing alcohol and selling it for hard currency to another firm. Both firms operated in the same room, and such operations were, at that time, exempt from taxes.

In April 1990, the government imposed a ban on alcohol imports, which proved to be ineffective. Since the ban was not total and did not cover all types of spirits, some sorts, especially gin, continued to be delivered to Poland.

Only in the second half of 1990, when further restrictions on the volume of alcohol imports were imposed did the "gold rush" collapse. Its last upsurge was noted between June 12–30, 1990, i.e. between the announcement of the new limitations and their coming into effect. During the *vacatio legis* period about two million litres of pure alcohol were express-delivered to Poland.

In mid-August 1990, the Attorney General opened investigations into several of the 149 alcohol-importing firms on charges of falsifying invoices for the purchase of alcohol. At the same time, the West German attorneys initiated investigations into several German firms which had worked with Polish partners in falsifying invoices.

Up to the end of 1990, the Public Pros-

ecutor's offices throughout the country launched 124 preparatory proceedings in cases where there had been a flagrant violation of the law. Most of the suspects have been charged with alcohol smuggling, its unlawful sale and tax evasion, these offences being punishable by fines, two years' imprisonment or both.

The most recent reports from the Attorney General's Office state that about 9 major investigations and 365 preparatory proceedings are under way. There are 210 suspects; 36 of them have been detained. The value of alcohol seized amounts to 25 billion zloty's (about 2.5 million dollars). In addition, 9.5 billion zlotys' worth of defendants' property is being held as security against likely fines.

In July 1990, the Sejm, the lower house of the Polish Parliament, appointed a special parliamentary commission to examine the political aspects of the alcohol scam and the accusations leveled against the Ministers of both the previous Communist, and current government. After three months of operation, the members of the commission were rather skeptical about the progress achieved in their work. "The whole alcohol case is being watered down in court trials of small-scale smugglers while those responsible for creating such legal conditions are still missing," the deputies have argued. The progress report of this commission has not been made publicly known, since its work is still under way.

2. The Cigarette Import Scam

For several months now, Polish street bazaars have been spilling over with a variety of Western-brand cigarettes. On the other hand, newspaper adds are dominated by companies offering "the cheapest Marlboro," "the biggest choice of the best cigarettes" or "buying and selling any amount ..."

The cigarettes in question were supposed to only pass through Poland, on their way from Germany to the Soviet Union. Polish customs officers at the Soviet border duly stamped the transit documents, but the cargo remained in Poland. Over 2 million packs of cigarettes were imported from Germany this way, valued at 1,344,000 Deutsche marks. The cigarettes were sold on the Polish market without prior customs or tax payments having been made, depriving the State Treasury of 16 billion zlotys.

An investigation into the illegal cigarettes transaction has been launched by the police and Prosecutor's Office in Bialystok. Six people have been detained, four of them customs employees. The other two acted as intermediaries and possessed 20,000 dollars at the moment of arrest, graft money for the customs officers. They were caught in the act while settling mutual payments. Each customs officer received over 5,000 dollars for the illegal clearance.

Nobody knows the identity of the main importer of the cigarettes'. But it is clear that the bonded warehouse which received the cargo is located in Warsaw. Its owner disappeared along with a few partners and is now on the police "most-wanted" list.

Trafficking of imported cigarettes is highly profitable, even if carried out lawfully. A reasonable price paid by wholesalers for a pack of Pall Mall is 5,000 zl. Out on the street the price is usually 5,000 higher that the supplier's price. A pack of Marlboro in Germany costs 70 pfennigs. At such a profit—one German mark equals about 6,500 zlotys—import expenses such as transport, customs and tax payments, are ridiculously low for most importers.

The Polish Customs Office requires every importer to pay customs duty amounting to 50 percent of the cigarettes' value. Only private individuals have to pay an additional 100 percent turnover tax. The remaining importers pay this tax as part of their "business activity" at local revenue offices. State importers, like Pewex or Baltona, hand over half their sales price to the taxman. But private dealers, namely companies and persons included in the rel-

evant state register, pay only a symbolic turnover tax or take advantage of a tax moratorium thanks to the fact that they have only recently launched operations.

In November 1990, a temporary restriction was imposed on beer, wine and cigarette imports, which required all importers to receive a special permit from the Ministry of Foreign Economic Relations. The permit is available to anyone who registers a business activity. The Ministry has no records of these permits, and no restrictions on the volume of imports.

Since July 1990, the Main Statistical office has been receiving copies of all import invoices, including cigarette imports. This data shows that during the second half of 1990, several billion cigarettes made their way into Poland. But these are just estimates.

The Main Customs office has no comprehensive statistical data regarding cargo cleared at the border. Therefore, it is impossible to make an accurate estimate as to the volume of cigarettes imported. The Customs Control Department is at a loss to give the exact number of bonded warehouses. There are about 2,000 of them in and around Warsaw alone. The majority of them accept every kind of product.

Polish customs officers are notorious for the unorganized way in which they operate. They are understaffed and uncomputerized. Meanwhile, the number of foreign transactions is steadily growing. "Please, show me other country in Europe, where so small in fact turnovers are being made by more than 100,000 economic subjects" urged a recently dismissed head of the Main Customs Office.

The customs officers cannot keep up with the pace and are unable to verify the authenticity of all the documents they receive. It is equally difficult for them to monitor their own conduct.

Clearly, it is difficult to cross over from a centralized economy to a market one without any upheavals. The government's efforts to facilitate this process and, at the same time, to improve protection of the fiscal interests of the State are sometimes mutually exclusive and may lead, as the Polish experience shows, to counter-productive effects. Private entrepreneurs play a hard game with authorities, mercilessly exploiting all the loopholes in the regulations arising from inefficiency and indolence on the part of the government administration.

3. (Un) Controlled Leakage: Import Fuel Scam

At the beginning of 1991, a turnover tax for liquid fuel imported into Poland was increased. The rate of increase for private importers was twice as high as that for the State. In this way, a certain inconsistency in the taxation of private and state importers will have to be removed, making fuel transactions of the former less profitable than before.

A result of this amendment was rather unexpected. In February, the price of petrol went down by 300 zlotys per litre in the Gdansk region, and early in March throughout the whole country. This alleged "first sound reflex of the market economy" and similar press comments would appear, however, to have been overenthusiastic.

Stock levels of petrol, imported by Polish "sheiks" from Germany, reached its critical point during the winter. The lowering of prices in view of this overstock was thus in keeping with the principles of commerce. But there is also the other side of the coin.

Over the five weeks (from January 24 to March 2) huge amounts of petrol were imported to Poland without payment of turnover tax at all. Convoys composed of more than 20-tank trucks, able to carry 1,500,000 litres of fuel at once, crossed over the border and turned back regularly like trains. One such course could bring an estimated, one billion zlotys of pure profit to the private importers.

Formally, they did not break tax regula-

tions. They were actually encouraged to engage in this tax avoidance by the incoherent legal provisions and their official interpretation, which has stressed the exceptional position of non-commercial partnerships as compared with other legal subjects importing goods to Poland. The non-commercial partnership, the most suitable form with which to start up one's own business for those with little money but good ideas, was officially recognized as exempt from tax. This interpretation, however, has opened a tempting opportunity for those heavily involved in the fuel business for some time, who simply took advantage of it to augment their assets.

On March 2 an amended tax-regulation came into force and the leakage was corked. But allegations of conspiracy between the officials and Polish "sheiks" flourish.

4. Laundering of Money: Casinos Scam

The era of clandestine gambling in Poland is over. At present, there are twenty casinos in operation throughout the country three of them located in Warsaw alone. It is not accidental that all of them were founded as joint venture companies. As such, they take advantage of a tax loophole: a three year's tax moratorium, granted by the Joint Venture Act of 1989 to newly established companies in Poland with foreign capital participation. The profits of casinos are not disregarded by the authorities elsewhere; Poland is yet unique.

In 1990, six casinos run by the company C. made a turnover of 105 billion zlotys (about 11 million US$), and their profits amounted to 48 billion zlotys (about 5 million dollars). The company in question (of which the Polish Airlines, LOT, are the shareholder), did not pay, due to the total exemption any income tax, being subjected merely to a rather symbolic (2.5 percent) turnover taxation. The advent of new, much stiffer tax regulations for casino owners has already been announced by the press. Even so, over 50 applications for a licence (fee about 500,000 dollars) to open a gambling house in Poland were waiting for a decision in 1991.

According to the law presently in force, the opening of a casino in Poland requires four permits. First, the Foreign Investment Agency must issue a permit on the founding of a joint venture, then the Ministry of Finance must document its consent. The next requirement is a bank permit to deal in foreign currencies (all casinos in Poland only allow convertible currencies), and last but not least, the Polish Lottery Monopoly has to authorize all game rules. Moreover, the Ministry of Finance cannot grant its permission to companies which do not possess a partner who is a Polish entrepreneur.

The Kings Casino, a one-person company owned by Mr. F., a West German citizen, did not obtain this permission. Nevertheless, it not only commenced its activities, but also extended them by expanding in area, all in a relatively short period of time. He opened, in quick succession, a casino in the Hevelius Hotel in Gdansk, one in the Polonez Hotel in Poznan, and another in the Forum Hotel in Warsaw. The casino in the Forum Hotel, after a few months of operation, was dissolved and replaced by the Queen's casino, set up in the renovated Kongresowa restaurant in the Warsaw Palace of Culture and Science.

In the meantime, Mr. F. has brought a Polish partner into the company. The non-profit charity fund, SOS, became holder of a 51 percent share of the Queen's Casino. This fund not being a legal person, is under the provisional administration of the Fund for Compensation of Victims of Crime. As a main shareholder of the Queen's Casino, the Fund does not participate, however, in the company profits. Instead of this, it obtains from the Casino a yearly lump sum of one million dollars.

But according to the Viennese newspaper "Die Presse," it is only the tip of the iceberg of the emerging casinos scam. Sev-

eral months later, its sensational cover-story on the German mafia investments in Poland disclosed more details on the subject.

The key person in this story is Manfred H., one of the uncrowned kings of gambling games in West Germany. Reports say that he set up in Poland about 20 slotmachine halls as a front for clandestine casinos. Their monthly gains, counted in millions of dollars, are transferred to secret Swiss bank accounts.

Subsequently, the dirty money makes its way back to Poland and is reinvested, thanks to the assistance of the above-mentioned Mr. F., into a legal business which is at the moment called the Queen's Casino.

According to the "Die Presse" journalists, the Casino itself is a laundering institution which provides some Western European citizens with false receipts for alleged winnings. It is still difficult to tell whether all these sensational reports are true or not. The investigation into this sophisticated scam has begun and it is too early to predict its outcome.

5. Unsafe Savings: Case of Mr. G.

On October 16, 1989 Mr. G. became chairman of company D. whose equity was only 500,000 zlotys (about 50 US$). The firm specialized in photographic services, photo-chemical production, and underwater services. In addition, it included a foreign trade office, a Property Protection Agency and a network of currency exchange offices throughout the country.

Towards the end of December 1989 Mr. G. expanded the firm's business and established his Safe Savings Office.

His large-scale promotion campaign in the Polish press was accompanied by repeated National Polish Bank warnings that the Safe Savings Office had no right to conduct banking services.

"I do not run a bank," he explained to his opponents. "We accept investment loans from private and natural persons. And such activity is not prohibited."

As hyperinflation took its toll, Mr. G. suggested a multiplication of the capital entrusted to him. For each one-million zlotys deposited (the lowest possible sum) and left for one year at his Safe Savings Office, G. guaranteed 180 percent interest. On a six-month deposit he promised 130 percent interest. All a "vista" accounts were eligible for a 30 percent dividend.

Some people deposited amounts of only two or three million zlotys. Others paid sums ranging from 100 to 150 million zlotys to the private "bank." Apart from individual account holders, representatives of state firms also paid in money, counting on a swift doubling of their capital.

In June 1990, when the Safe Savings Office's business was in full swing, Mr. G. disappeared. Rumours that he escaped abroad and will never return to Poland began to circulate after he and his friend were seen leaving by car early that month. Once in West Germany Mr. G. called Warsaw saying that finalization of an electronic deal required that he extend his visit. The last news of him promised a July 6 return. Meanwhile, at the beginning of July, the Safe Savings Office halted operations. The official explanation was the Office had yet to set new principles on the paying of deposit interests. Panic erupted at the Safe Savings Office, as employees reported their boss's absence to the television and press.

On June 30, 1990, the provincial Public Prosecutor in Warsaw calculated, on the basis of a computer list of 10,000 creditors of the Safe Savings Office, that G. owed people 30 billion zlotys, with interest—an amount of some 50.5 billion zlotys. Meanwhile, the Civil Department of the Regional Court in Warsaw was deluged with lawsuits against G. for his failure to make good on the terms of his loan scheme. In fact, the decision to shut down the Safe Savings Office meant that then citizens were unable to withdraw their deposits even with a 2 percent loss envisaged by

appropriate legal provisions. So far, Mr. G.'s only crime is breaking the terms of his agreement.

In the way of taxes, Mr. G.'s activity raised no reservations on the part of Warsaw Internal Revenue Service Officials. There has been no infraction; his books were in perfect order. It is rather Mr. G.'s clients who have been exposed as culprits through their own ignorance. Relevant information was fed to the Internal Revenue Service by the company owner himself. Few knew that upon collecting interest from their Safe Savings Office deposits they would automatically be faced with a 40 percent tax.

But individual claims were also filed with the Provincial Public Prosecutor's Office in Warsaw. On August 3, 1990, the head of the investigation department in this Office announced that evidence gathered has enabled G. to be charged under article 300, paragraph 1, of the Business Code of July 5, 1934 which reads: "Those who, in participating in setting up a company, or being a member of the authorities of a company, or its receiver, act in such a way as to damage it, are liable to a term of imprisonment of up five years plus a fine."

As a result of the charge brought against G. by the Public Prosecutor, all property has been secured to cover the penalty hanging over him and the claims of depositors. The assets, however, only cover 40 percent of the debts: the Safe Savings office operated within the framework of a limited liability company. No wonder Mr. G. was regarded by the press as a master in evading the intricacies of the Polish banking system.

The affair of Mr. G. had an immediate impact on the draft of a new banking law, then under preparation. Initially, article 10 of this draft specified that only licensed institutions could use the name "bank" or "cash desk." However, it did not envisage any sanction for its infringement. Now it has been supplemented by a penal sanction of a fine or the deprivation of liberty for up to six months for the unauthorized use of these names.

The potential of penal law protection of creditors against the fraudulent acts of the various unlicensed savings institutions are rather limited in scope. Despite a costly experience with Mr. G., there are people still eager to take a risk. The most recent reports on limited company R. in Warsaw are very similar to the original story of Mr. G. What seems to be different is the foreign currency which company R. has accepted loans from its creditors.

Conclusion

The present law regulations meet the basic needs of protecting the economy by means of criminal law during the transition period in which there will be private, state and share-capital companies with state participation. The problem is that it only meets basic needs. The new concept of criminal law will have to:

- adapt the law regulations to fulfill the need of society for protection against new forms of crimes that will come into being in the market economy, bearing in mind that it will also have to be compatible with EEC legislation to cover the possibility of eventual unification;
- from the point of view of legal certainty, it will be necessary to classify in detail those offences infringing fair rules of economic competition and recognized rules of economic relations, while prosecuting all tricks which make it difficult to identify profits acquired through crime and methods of laundering them;
- draft a regulation that would unambiguously punish the breach of rules of free competition, especially "insider trading" and abuse of monopolistic position in production, trade or information;
- formulate a detailed regulation prosecuting any damage to state interests in the

field of public revenue, protection of state property and especially in connection with development programmes and the granting of subsidies;

— punish severely the abuse of economic position to evade or breach the rules guaranteeing social peace, such as those relating to employment (prohibition on employing persons without labour permits, or engaging children, juveniles or women for certain tasks), subsistence wages, minimum working hours, etc.

When formulating this new concept it will be necessary to conceive criminal legislation as part of a wider plan and to stick to the principle of the subsidiary role of criminal punishment. To make criminal punishment more effective, it would be advisable to take advantage of our own experience and namely:

— preserve the specialized prosecutors and investigators. Their level of qualification will have to be raised with the cooperation of developed country expertise. This would appear to be a long-term task as our graduates have a limited knowledge of foreign languages as a result of the woeful inheritance of the past;

— establish State inspection and control mechanisms in the economic and financial spheres in such a manner that their activities can be coordinated and used in criminal proceedings and investigations in case of substantial economic offences.

Organised Crime—The Singapore Experience

*by Vincent Hoong**

I. Secret Societies

In the early years of Singapore's history, organised crime was carried out in the form of secret societies.

The origin of these secret societies can be traced to the "Tien Ti Hui" (which literally means Heaven and Earth Society) or the Hung League or the Triad Society in China. The original aim of this organisation was the overthrow of the Ching (Manchu) Dynasty and the restoration to the throne of the Ming Dynasty. In order to achieve this objective, a triad hierarchy and sets of rules and regulations were created in China. To avoid arrest, secret signs, passwords and triad verses were used to identify members and to communicate amongst themselves.

With the influx of Chinese immigrants from South China in the early 19th century, they brought along with them their religion, customs and practices. In this way, the practice of establishing triad society was also introduced. Initially, the triad society was useful in that it enabled an immigrant to settle into his adoptive land. However, subsequently as immigration grew, the triad society evolved into a powerful organisation to which all immigrants gravitated. At that time, the British adopted a system of indirect rule, under which the Chinese were governed by their "kapitans" who were in reality the main triad society leaders.

By the middle of the 19th century, the society had splintered into a number of triad groups which engaged themselves mainly in the operation of protection rackets. Their members, in return for "protection money" offered protection to gambling and vice-dens as well as smuggling syndicates.

Usually, the groups operated on the basis of territorial divisions. However, frequent disputes arose over these divisions and that led to fights, affray and even riots.

Eventually, the triad society broke up into different gangs. In 1877, a total of 10 Secret Societies were listed as dangerous with a membership of 12,371 members out of a total Chinese population of 50,000. The extent of their influence was therefore very clear.

In order to deal with these secret societies, the Dangerous Societies Suppression ordinance was introduced in 1881 and 1885. This legislation prohibited non-Chinese and local born Chinese from joining secret societies. However, it proved to be ineffective. This led to the Societies Ordinance of 1890. However, that law drove the Secret Societies underground. This was followed by the Banishment Ordinance and in 1948, the Emergency Ordinance was enacted. However, none of these legislations were totally effective in eliminating the problem of secret societies.

Eventually, in 1955, the government passed the Criminal Law (Temporary Provisions) Ordinance. This was the forerunner of the present law which is the Criminal Law (Temporary Provisions) Act.

The Ordinance empowered the Courts to award enhanced punishment for secret society members convicted of scheduled offences. However, the most effective feature of this legislation was the amendment in 1958 in which the police were authorised to detain an active secret society member

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for up to 16 days during which period the case would be submitted to the Ministries for Home Affairs for the issue of a Detention Order or a Police Supervision Order. However, as a further safeguard, no Detention or Police Supervision Order could be issued without the concurrence of the Attorney-General. This amendment was very effective as up to that time, the main weakness of the existing legislation was the lack of evidence against the secret society members. This was because witnesses were often not willing to testify or to give information to the police for fear of reprisals against them or their family members. Even when they were prepared to testify, they were not willing to do so in open court or in the presence of the accused. This rendered prosecutions futile.

Over the last 30 years, the number of incidents involving secret societies has dramatically fallen and today, secret societies' activities are well contained and no longer pose a serious threat.

Briefly, a Detention Order provides for the detention of a person for a period of one year: Section 30 of the Criminal Law (Temporary Provisions) Act ["The Act"].

As a safeguard, every order made by the Minister under Section 30 is automatically submitted together with a written statement of the grounds upon which the order is made by the Minister to an advisory committee within 28 days of the making of the Order. The committee will then sit and deliberate on the order. Subsequently, it submits to the President a written report on the making of the order and may make therein such recommendations as it thinks fit (Section 31 of the Act). At present, there are a number of advisory committees constituted under Section 39 of the Act. Most of the members of these committees are practising senior members of the Bar in Singapore.

Upon receipt of the committee's report, the President can either confirm or cancel the order.

In the case of a Police Supervisor Order, it is usually made after the expiry of a Detention Order. Such orders are made by the Minister and are for periods of up to 3 years. A supervisee may by the terms of the Order be directed:

(a) To reside within the limits of any police division specified in the Order;
(b) To obtain the written authority of a police officer not below the rank of inspector if he wishes to change his residence;
(c) To obtain the written authority of a police officer not below the rank of inspector if he wishes to leave Singapore;
(d) To keep the officer-in-charge of the police division in which he resides informed at all times of the house or place in which he resides;
(e) To be liable at such time or times as may be specified in the Order to present himself at the nearest police station;
(f) To remain within doors or within such area as may be defined in the Order, between such hours as may be specified in the Order, unless he obtains the special permission to the contrary from the officer-in-charge of the police division in which he resides; and
(g) To refrain from entering any area as may be specified in the Order.

Any breach of an Order or restrictions imposed thereunder renders the detainee or supervisee guilty of an offence under Section 33 (3) of the Act which is punishable with imprisonment of up to 3 years and not less than 1 year.

Although Secret Societies' activities are no longer a serious problem in Singapore, their existence has not been totally eliminated. Thus, the need exists for the continued operation of the Act. However, in recent years, organised crime has taken on a different character. This is the advent of the organised credit card fraud syndicates which emanate from both within and without Singapore.

II. Credit Card Frauds

With the introduction of credit/charge cards, a growing number of people in Singapore are using such cards instead of cash for their daily transactions. In the past 3 years, the credit card issuers have been aggressively marketing their cards through innovative advertising in which the advantages of using "plastic money" are widely disseminated through the mass media.

However, with the ready and wide acceptance of such plastic money, many criminal elements have seized the opportunity to abuse the facilities offered by credit cards. These abuses have now led to a proliferation of credit card frauds worldwide. Singapore is no exception.

According to the credit card issues, the Asia Pacific region has registered the greatest increase in credit card fraud activities and will remain the No. 1 target for counterfeit card operations.

Credit card frauds can either be transnational or national in nature or a combination of both. A typical type is what is called "Points of Compromise" ("POC"). POC are usually hotels where tourists use their credit card to check in their particulars. Syndicate members would usually approach the hotel staff to purchase such card information obtained from the hotel guests. The information derived by this means is then used to manufacture multiple counterfeit, white plastic re-embossed cards in order to make fraudulent purchases. Several counterfeit cards, each bearing the same account numbers are then used by different persons in different countries at the same time. This was so prevalent in Hong Kong that tourists were advised to stay away from the country until recently when very stringent enforcement and stiff penalties managed to bring the problem under control.

The most serious type of credit card fraud is counterfeit-card related fraud. Such cards are manufactured by organised card syndicates who have access to the financial means, to obtain sophisticated printing equipment, information of actual and valid cardholders' particulars and embossing and encoding machines. Police investigations have found that cards produced by such syndicates can bear over 90 per cent similarities to the originals. This makes detection extremely difficult and costly. Most of the syndicates have links with secret or triad societies.

Another form of fraud is the alteration of genuine credit cards with updated particulars of valid cardholders by syndicates. A heated household iron is one of the methods used to flatten expired cards. The particulars shown on the face of the cards thereby removed. It is then re-embossed with new and valid cardholders' particulars.

The particulars on the magnetic strips may also be altered to validate the cards for use by "drivers." If the re-embossed card is of good quality "drivers" would use it for shopping sprees. If it is not of good quality, syndicate members would approach shop merchants and seek to collude with them to accept the re-embossed cards and cheat the card issuers by submitting fictitious sale transactions.

Encoders are also used by these syndicates to de-code and en-code the particulars on the magnetic strips of genuine cards. Subsequently, the particulars of another valid cardholder are en-coded onto the same card and used. Such cases are extremely difficult to detect on the spot as the card presented for payment would appear genuine.

Sometimes a piece of plain white plastic or any form of plastic (for example, telephone cards or discount cards) which is of the same size as a credit card is embossed with legitimate card holders' particulars which are obtained by syndicates from colluding merchants or their staff.

Finally, common forms of transnational credit-card fraud are lost, stolen, non-

receipt or mail-intercepted cards. In Singapore, in the late 1970's and early 1980's, large groups of Filipinos used mail intercepted cards for shopping sprees in Singapore. This was done through Filipinos working in the postal department in the United States of America. They would intercept the mail and pass them to the syndicates in the Philippines. There have also been Nigerians arrested in Singapore for using such intercepted cards.

There are various types of national credit card frauds. One of them is "bust-out merchants" (or fly-by-night operations). A company is registered with false particulars of persons fronting for a syndicate. The company then signs up with card companies or issuers to accept credit cards. It would then collude with other syndicates to supply them with counterfeit, stolen, non-receipt, white plastic or re-embossed cards in order to submit fictitious sale transactions.

Another type is called Record of Charge Pumping or "ROC" pumping. Cards presented by unsuspecting cardholders are used by the merchants or their staff to make multiple sales drafts or record of charge. These are in turn sold to other colluding merchants to enable them to cheat the card companies.

In the USA and Canada, mail order/tele-marketing fraud is widespread. Fortunately, it is not yet common in Asia. Such frauds are carried out by people with access to cardholders' accounts. Goods are ordered through the mail or telephone using other cardholders' accounts. Sometimes, even "bust-out merchants" may be used in such frauds.

Most of the types of the credit card frauds described in the above are experienced by Singapore. Being a popular tourist destination and communications hub in the Asia-Pacific region, Singapore has attracted organised credit card fraud syndicates who have sent "drivers" in groups of 2 to 4 persons to Singapore, posing as tourists and going on shopping sprees. They use good quality counterfeit cards to buy expensive and high value goods like branded watches, jewellery and electronic goods. They are paid a small sum for their work with the bulk going to the syndicates.

The response of the police in Singapore has been stricter enforcement action, coupled with appropriate sentencing by the courts. In a great majority of such cases, the offenders have been sentenced to imprisonment for an offence of cheating under the Penal Code which carries a punishment of imprisonment of up to 7 years. In addition, the offender is also liable to a fine.

According to the Commercial Crime Division of the Criminal Investigations Department of the Singapore Police Force, credit card frauds are hard to detect for a number of reasons:

(a) The quality of counterfeit cards is improving all the time. It is, therefore, difficult for untrained sales staff to detect the counterfeit cards;
(b) Culprits usually use false identities to pass off as the actual cardholders when they use counterfeit or stolen or re-embossed cards;
(c) It may be difficult to verify transactions as the actual cardholders may be foreigners;
(d) Culprits often buy below the credit limit, thus no prior approval is required from the card issuer. The fraud therefore goes undetected;
(e) Delay by card issuers in responding to requests by merchants for verification of the authenticity of cards and authorisation of transactions as the actual cardholders are usually foreigners;
(f) Sales staff often do not or seldom request verification of the identity of the user in order not to annoy the user;
(g) Delays or difficulties in obtaining information from foreign law enforcement agencies; and
(h) Syndicate members conceal their true

identities. When "drivers" are arrested in Singapore, they either do not know the identities of their principals or are unco-operative. The syndicates are usually foreign-based and beyond the reach of enforcement action.

In addition to the above problems of detection, there is also the problem of extraditing the syndicate members to Singapore for trial as the syndicate members are based overseas.

III. Forgery of Singapore International Passports

Singapore International Passports ("SIP") are the target of many foreign-based syndicates specialising in the trafficking of illegal immigrants. In the main, the reasons are:

(a) Most countries like Canada and Germany do not require persons travelling on SIPs to possess a visa for entry. Even countries like USA and France where a visa is required, it is relatively easy to obtain a visa on a SIP;
(b) Singapore's geographical location together with her multi-racial population makes it a convenient stopover for illegal migrants and syndicate members. PRC Nationals, Indians and other South Asians are able to pass themselves off as "Singaporeans";
(c) Forgery of passports is a relatively simple task. All that is done is the substitution of a photograph. No specialised equipment or skill is required.

According to the police, syndicates have been known to charge up to US$2,000 for each forged SIP. A further sum of US$20,000 to US$25,000 is payable to the syndicate if the illegal immigrant makes a successful entry into his desired country.

This forgery of SIP is of course done in connection with the trafficking of illegal migrants. The syndicates engaged in this activity are usually well-organised with links on a worldwide basis. An example of this is a Singapore-based syndicate trafficking in PRC Nationals. It needs to have the following connections:

(a) Singapore Link

This link will require a regular supply of SIPs. This is done through theft, housebreaking, pickpocketing and purchases. A genuine SIP can fetch about S$600. The syndicate would also need to sponsor PRC nationals to travel to Singapore. Their accommodation, visa applications and travel arrangements must be attended to. They would also need to be escorted whilst in Singapore as well as en route to their final destination. They also have to be "trained" to behave like Singaporeans in order to avoid detection.

(b) China Link

The syndicate needs to source and recruit potential migrants with the necessary financial resources to participate in illegal migration.

(c) Bangkok Link

Sometimes the forgery of SIPs is done in Bangkok. Contacts in Bangkok are therefore necessary.

(d) Link in Final Destination

USA is a favourite destination for PRC illegal migrants. This link is required in order to collect the final payment from the illegal migrants who make a successful entry into the USA.

The effective enforcement of SIP forgery-related activities has been difficult. Some of the reasons are:

(a) Syndicates are well-organised with international links. There is considerable difficulty in identifying the "brains" behind these organisations.

(b) Such crimes involve willing parties who would not normally report or give information to the police.
(c) Many of the illegal activities occur outside Singapore, not within the reach of the Singapore police.
(d) Usually the forged SIP is detected overseas. That makes it difficult for the local police to obtain information/evidence to investigate or to prosecute.
(e) The illegal migrants are usually very unco-operative when they are arrested. They are afraid of harassment of their family members in their home countries by the syndicates. Even when they wish to co-operate there is very little useful information which can be derived from them as contacts between them and the syndicates is kept to a minimum.
(f) It is difficult for the police to prove that a SIP holder has sold his SIP and made a false police report.

Although the police have been vigilant in their enforcement of such activities and the courts have been imposing stiff sentences, for the reasons enumerated in the above, this form of organised crime remains a problem.

IV. The Drug Trafficking (Confiscation of Benefits) Act 1992 ("The Act")

I think it is appropriate that I refer to the above legislation which was recently passed by Parliament on 14 September 1992 and assented to by the President on 17 October 1992. As the title of the Act suggests, it is an Act to provide for the confiscation of benefits derived from drug trafficking and for purposes connected therewith. The Act also provides for powers to trace and freeze the benefits of drug trafficking.

The main feature of the Act is found in Section 4 of the Act which provides that the court shall before sentencing, on the application of the Public Prosecutor, and if satisfied that the accused has derived benefits from drug trafficking, impose a confiscation order in respect of the benefits derived from drug trafficking if he holds or has held any property disproportionate to his known sources of income, the holding of which he cannot explain to the satisfaction of the court.

Section 41 of the Act sets out the offence of money laundering and the defences available to a person charged with such an offence. It also provides that where a person discloses to an authorised officer a suspicion or belief that any funds or investments are being used in connection with drug trafficking, he shall not be charged for money laundering in certain circumstances. Further, any such disclosure shall not be treated as breach of contract or rules of professional conduct or breach of any restriction upon disclosure imposed by law.

This Act is extensive in coverage and goes further than many other legislation enacted in countries such as Hong Kong [The Drug Trafficking (Recovery of Proceeds) Ordinance 1989], Australia (Proceeds of Crime Act 1987) and the United Kingdom [Criminal Justice (International Co-operation) Act 1990].

However, at the time of writing, the Act has not been brought into operation. Nevertheless, it is expected to come into operation shortly.

Notes

CRIMINAL LAW (TEMPORARY PROVISIONS) ACT (CHAPTER 67)

Part V
Detention

Power of Minister to make orders.

30. Whenever the Minister is satisfied with respect to any person, whether the person is at large or in custody, that the person has been asscciated with activities of a criminal nature, the Minister may with the consent of the Public Prosecutor—

(a) if he is satisfied that it is necessary that the person be detained in the interests of public safety, peace and good order, by order under his hand direct that the person be detained for any period not exceeding one year from the date of the order; or

(b) if he is satisfied that it is necessary that the person be subject to the supervision of the police, by order direct that the person be subject to the supervision of the police for any period not exceeding 3 years from the date of the order.

Orders to be referred to an advisory committee and subject to confirmation by President.

31.—(1) Every order made by the Minister under section 30 shall, together with a written statement of the grounds upon which the Minister made the order, be referred by the Minister to an advisory committee constituted as provided in section 39, within 28 days of the making of the order. The committee shall submit to the President a written report on the making of the order and may make therein such recommendations as it shall think fit.

(2) The President shall consider the report and may cancel or confirm the order and in confirming the order may make thereto such variations as he thinks fit.

Constitution of advisory committees.

39. For the purposes of this Act, the Minister may from time to time appoint one or more advisory committees each consisting of not less than two persons.

THE DRUG TRAFFICKING (CONFISCATION OF BENEFITS) ACT 1992 (No. 29 of 1992)

Part II
Confiscation of Benefits of Drug Trafficking

Confiscation orders.

4.—(1) Subject to section 23, where a defendant is convicted of one or more drug trafficking offences, the court shall, on the application of the Public Prosecutor, make a confiscation order against the defendant in respect of benefits derived by him from drug trafficking if the court is satisfied that such benefits have been so derived.

(2) If the court is satisfied that benefits have been derived by the defendant from drug trafficking, the court shall, before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned, determine in accordance with section 7 the amount to be recovered in his case by virtue of this section.

(3) The court shall then, in respect of the offence or offences concerned—

(a) take into account the confiscation order before imposing any fine on him; and

(b) subject to paragraph (a), leave the confiscation order out of account in determining the appropriate sentence or other manner of dealing with the defendant.

(4) Subject to section 24, for the purposes of this Act, a person who holds or has at any time (whether before or after the commencement of this Act) held any property or any interest therein disproportionate to his known sources of income, the holding of which cannot be explained to the satisfaction of the court, shall, until the contrary is proved, be presumed to have derived benefits from drug trafficking:

Provided that any expenditure by such person (whether before or after the commencement of this Act) shall, until the contrary is proved, be presumed to have been met out of his benefits derived from drug trafficking.

Part VI
Offences

Assisting another to retain benefits of drug trafficking.

41.—(1) Subject to subsection (3), a person who enters into an arrangement knowing that by the arrangement—

(a) the retention or control by or on behalf of another (referred to in this section as that other person) of that other person's benefits of drug trafficking is facilitated (whether by concealment, removal from jurisdiction, transfer to nominees or otherwise); or

(b) that other person's benefits of drug trafficking—

(i) are used to secure that funds are placed at that other person's disposal; or

(ii) are used for that other person's benefit to acquire property by way of investment,

and knowing that that other person is a person who carries on or has carried on drug trafficking or has benefited from drug trafficking, shall be guilty of an offence.

(2) In this section, references to any person's benefits of drug trafficking include a reference to any property which in whole or in part, directly or indirectly, represented in his hands his benefits of drug trafficking.

(3) Where a person discloses to an authorised officer a suspicion or belief that any funds or investments are derived from or used in connection with drug trafficking or any matter on which such a suspicion or belief is based—

(a) if he does any act in contravention of subsection (1) and the disclosure relates to the arrangement concerned, he shall not be guilty of an offence under this section if the disclosure is made in accordance with this paragraph, that is—
  (i) it is made before he does the act concerned, being an act done with the consent of the authorised officer; or
  (ii) it is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it;
(b) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by law, contract or by rules of professional conduct; and
(c) he shall not be liable in damages for any loss arising out of—
  (i) the disclosure;
  (ii) any act done or omitted to be done in relation to the funds or investments in consequence of the disclosure.

(4) In any proceedings against a person for an offence under this section, it is a defence to prove—

(a) that he did not know that the arrangement related to any person's proceeds of drug trafficking;
(b) that he did not know that by the arrangement the retention or control by or on behalf of the relevant person of any property was facilitated or, as the case may be, that by the arrangement any property was used as mentioned in subsection (1); or
(c) that—
  (i) he intended to disclose to an authorised officer such suspicion, belief or matter as is mentioned in subsection (3) in relation to the arrangement; and
  (ii) there is reasonable excuse for his failure to make disclosure in accordance with subsection (3) (a).

(5) A person who commits an offence under this section shall be liable on conviction to a fine not exceeding $100,000 or to imprisonment for term not exceeding 7 years or to both.

SECTION 3: REPORT OF THE SEMINAR

Summary Reports of the Rapporteurs

General Discussion

Topic 1: Innovative Legislation and Methods for Organized Crime Suppression

Chairperson: *Mr. Ganesh Prasad Bhattarai (Nepal)*
Rapporteur: *Ms. Christine Mulindwa-Matovu (Uganda)*
Keynote Speakers: *Mr. Mohd. Nawawi Bin Ismail (Malaysia)*
Mr. Ceferino Ynsfran Figueredo (Paraguay)
Mr. Motoyoshi Nishimura (Japan)
Mr. Miroslaw Andrzej Rozyneski (Poland)
Mr. Dulindra Weerasuriya (Sri Lanka)
Ms. Christine Mulindwa-Matovu (Uganda)
Mr. Abdulaziz S. Al-Ahmad (Saudi Arabia)
Mr. Syuzou Yamamoto (Japan)

Sub-topic 1: Legislation Which Directly Suppresses the Formation of or Affiliation to an Organized Crime Group and Regulates Its Activities

The keynote speakers initiated discussion of the sub-topic by outlining the nature of organized crime, its common features and the problems encountered in fighting it. They highlighted areas which could be covered by legislation as a countermeasure to directly suppress the formation of, and affiliation to Organized Crime and to regulate the activities of organized crime. During the general discussion other participants shared the experiences of their own countries. They highlighted the problems encountered and made additional suggestions as to the possible legislation that could be made.

From the discussion, Organized Crime could be categorized in the following three categories: Economic Crimes which damage or negatively affect the economies of countries, Non-Economic Crimes which mainly affect society socially, and Political Crimes which are usually politically motivated. Within these categories the following crimes were identified:

Non-Economic Organized Crime
(a) Drug trafficking
(b) Robberies with firearms
(c) Kidnapping for ransom
(d) Extortion
(e) Prostitution
(f) Syndicated gaming and betting
(g) Firearms smuggling
(h) Theft of motor vehicles

Organized Economic Crime
(a) Cheating
(b) Criminal breach of trust
(c) Forgery of documents
(d) Forgery and counterfeiting of currencies
(e) Commodities offenses
(f) Corporate fraud
(g) Securities fraud and stock market manipulations

(h) Insurance fraud
(i) Maritime fraud
(j) Credit card fraud
(k) Loansharking

Politically Motivated Crime
(a) Arson
(b) Murder and assassination
(c) Terrorism

During the discussion it was emphasized that organized crime thrived on profits and wealth; the importance of cutting off this vital bloodline was therefore highlighted.

It was pointed out that in legislating for the suppression of organized crime, states should take into account the capability of their law enforcement agencies and endeavour to enhance this capability to suitable standards to enforce the legislation made.

During the discussion the following problems relating to legislation were identified as contributing factors to the flourish of Organized Crime: Difficulty of defining organized crime; lack of severe sentences; difficulty of proving guilt beyond reasonable doubt as required by most criminal procedure rules and Secrecy of Bank Laws; Lack of Witness and Judicial Protection Laws; procedural limits imposed by Constitutional rights of individuals; Limited co-operation and diversity of laws among different states; and lack of laws regarding forfeiture of proceeds of crime.

On the difficulty of defining Organized Crime in order to outlaw it, it was pointed out that though some countries like Italy which had clearly distinct Organized Crime organizations, had made laws prohibiting membership in such organizations. For example, the Italian Penal Code lu S. 416 bis prohibits membership in Mafia-type associations composed of three or more persons and imposes a term of 3–6 years for such crime. However, from the experiences of other countries like Germany which had enacted laws to combat organized crime, it was not necessary to define Organized Crime as such; what was important was the identification of the acts to be prohibited. Further, as long as the conditions were clearly spelt out, then the commission of these acts, conspiracy to commit them or affiliation with those who had committed them would be punishable.

In order to overcome the other problems identified above, it was pointed out that states should enact legislation to cover the following:

(a) *Prohibition of certain actions* like those mentioned earlier.
(b) *Imposition of severe sentences* for committing the prohibited offences. For example some countries impose the most severe sentences for crimes like drug trafficking and armed robbery. It was recommended that the imposition of heavier sentences for offences like kidnapping for ransom, firearm smuggling and for economic crimes in general should be adopted by all states. This could act as a deterrent to people to link up with those who commit those acts.
(c) *Changing the law of criminal proceedings to shift the burden of proof, to the accused by allowing for presumptions.*

For example in some countries with respect to the offence of drug trafficking, if a person is found in possession of 15 grammes or more of heroine or morphine he is presumed, until the contrary is proved, to be trafficking in drugs.

Another example is that of property, whereby a person involved or dealing in the prohibited drugs will be assumed to have acquired certain property from the proceeds of crime, unless he can prove otherwise.

(d) *Facilitation of investigation* of activities of organized crime by, for example allowing investigators access to bank records and to records of other financial institutions. This will facilitate the detection of cases of sudden enrichment as well as facilitating the detection of

money laundering.

(e) *Changing the laws of criminal procedure* to allow for possible inclusion of oral statements received from witnesses in camera, as evidence in proceedings. This would protect witnesses from exposure and lessen the fear of the public to give evidence against organized crime. Laws for the protection of judges were also said to be very crucial in this regard.

(f) *Deprivation of the proceeds* of organized crime through measures for forfeiture of the proceeds of crime, will curtail the growth of organized crime as the profits won't be available for reinvestment in other areas of crime.

(g) *Preventive laws* such as the Restricted Residence Law of Malaysia which curtails the expansion of the activities of persons who are involved in promoting prostitution, gambling, smuggling, etc. The Malaysian Dangerous Drugs (Special Preventive Measures) Act 1985, provides for the detention of persons associated with any activity relating to or involving drug trafficking.

(h) *Co-operation among countries* is essential to curtail the activities of organized crime. The need for mutual assistance agreements in criminal matters to cover the areas of exchange of information, service of documents, examination of witnesses, seizure and confiscation of property, freezing of accounts, extradition of fugitive, etc. cannot be overemphasized as by nature organized crime is transboundary.

While noting that the proposed legislation should give due consideration to the concept of individual rights it was pointed out that if taken too far the protection of individual rights would defeat the very purpose for which these rights were established.

Sub-topic 2:

Legislation against Money Laundering and Illicit Proceeds of Organized Crime

The keynote speakers initiated discussion of the topic by giving a basic definition of the act of money laundering and by identifying the necessary considerations in enacting legislation and by outlining the problems likely to be encountered. They highlighted what national action could be taken against organized crime in general and against money laundering in particular. They also mentioned areas of possible international co-operation.

Money laundering was defined as a means by which one conceals the existence, illegal source or illegal application of income and then disguises that income to make it appear legitimate. Drug-trafficking was identified as the major scourge from which high profits are made and as a key source of laundered funds.

During the general discussions valuable contributions were made by the participants and visiting experts by identifying further problems that could be encountered and considerations to be taken when enacting legislation against money laundering. It was pointed out that the ultimate concern about money laundering was the incentive the illicit profits created for more criminality and the likely reinvestment of the proceeds into other areas of crime. All these lead to further expansion of the crime empire through the acquired wealth and power and create fertile ground for the flourish of organized crime.

It was also noted that the nature of organized crime, the international dimensions it has acquired, the degree of managerial sophistication plus the enterpreneurial ingenuity it has attained, effectively preclude a purely domestic solution and require a coupling of domestic legislation with international action to effectively deal with it.

Possible action to counter money laun-

dering was identified to include criminalization of the act of money laundering, its identification, the trace of its proceeds, the forfeiture of these proceeds and, punishment of the offenders. In order to facilitate these actions it was essential for states to create the necessary legal framework by enacting legislation. The legislation should enable:

(a) Defining and criminalization of money laundering;
(b) Identification and investigation of money laundering;
(c) Seizure and forfeiture of the proceeds of crime;
(d) Punishment of the criminals with severe penalties.

Defining and Criminalization of Money Laundering

Reference was made to the provisions of the United Nations Vienna Convention on Illicit Traffic in Drugs and Psychotropic Substances, which in its Article 3 (1) provides for states to adopt measures as may be necessary to establish as criminal offences under their domestic laws the acts related to money laundering.

Reference was also made to the guidelines for the prevention and control of organized crime which were adopted by the 8th Congress on Crime Prevention and the Treatment of Offenders, which guidelines provide, *inter alia*, for the encouragement of legislation which defines offences with respect to money laundering and organized fraud, and for the offence of opening and operating accounts under a false name.

It was noted that in making legislation for the criminalization of money laundering and of acts related thereto, consideration had to be made as to parameters for criminality. For example whether actual knowledge of committing the act is essential and whether all persons who had facilitated the act should all be punished. The New Japanese Law for the Implementation of the Vienna Convention against Illicit Traffic in Drugs which was quoted as an example, extends to probable recognition that property or money was from illicit proceeds, without necessarily conspiring with the drug trafficker. Similarly under the U.S. law, actual knowledge is not necessary for the offence to be prosecuted.

Identification and Investigation

Further reference was made to the guidelines adopted by the 8th Congress on the Prevention and Control of Organized Crime. The guidelines had recommended that states should focus attention on new methods of criminal investigation and techniques developed in various countries for the "following of the money-trial." This would include orders requiring financial institutions to provide all information necessary to follow monetary transactions including details of accounts of particular persons and orders requesting them to report suspect or unusual cash transactions to the appropriate authorities.

States should therefore enact legislation making it possible for the waiving of bank secrecy regulations and requiring financial institutions to co-operate with the crime prevention agencies by reporting unusual transactions. Given the ingenuity of organized crime it was emphasized that provisions should also be made for the freezing of the accounts during investigations to eliminate the possibility of further laundering of the funds.

Seizure and Forfeiture of Proceeds

States should enact laws which allow for the forfeiture of the assets acquired by laundering illicit proceeds of crime. This seizure and confiscation should not be used as a punishment in itself but rather its primary goal should be the removal of the assets. In making the legislation, it was emphasized that confiscation should be extended to all assets and property whose origin cannot be traced. Consideration

should also be made as to how far back in time confiscation should be extended.

Another consideration should be the sharing of the forfeiture with the country from whence the proceeds came and with countries who collaborate with the given state during the investigation of the crime. The United States for example encourages the sharing of assets with countries which assist with investigations. This acts as an incentive for collaboration.

Punishment of the Cime of Money Laundering

In addition to criminalizing the act of money laundering states should make provision for severe penalties, including terms of imprisonment for those found guilty of the crime of money laundering.

In conclusion it was pointed out that since money laundering is often done by moving money across international borders it is highly desirable to develop as far as possible, internationally uniform rules on money laundering and forfeiture of assets. The adoption of mutual assistance treaties between states was highly recommended. The implementation of the provisions of the International and Regional Instruments relating to money laundering would also be an effective way to curb this crime. It was also noted that legislation on money laundering in most countries which have such legislation, is restricted to laundering related to drug trafficking. It was therefore recommended that legislation should be extended to other types of organized crime.

Sub-topic 3:
Method for Effective Information Collection Regarding Organized Crime

The keynote speakers initiated the discussion by elaborating on areas from which information could be gathered to suppress organized crime and the constitutional hurdles to overcome in the application of these methods of information collection.

From the keynote speakers and from the general discussion of the sub-topic, the following methods were identified as means of gathering information against organized crime:

(a) Wiretapping and other electronic surveillance;
(b) Utilisation of informants and criminal immunity;
(c) Decoy operations;
(d) Use of computers;
(e) Controlled delivery;
(f) Information collection regarding financial and monetary transactions.

The general discussion also facilitated the exchange of ideas on the effectiveness of the various methods employed to collect information, the problems encountered and proposals on how some of these problems could be overcome. Practical experiences of the countries already employing these methods were also shared.

Wiretapping and Other Electronic Surveillance

In dealing with organized crime it is essential for states to adopt legislation which permit the use of wiretapping and other electronic surveillance in order to obtain the information necessary for the prosecution of organized crime leaders. Having examined the very nature of the structure of organized crime and observed the codes of secrecy and loyalty employed, the difficulty in obtaining incriminating evidence against the leaders is quite clear, and for this reason this means of collecting information was essential.

It was pointed out that wiretapping had been effectively utilized in those countries where it is permitted by law. However legislation permitting wiretapping should also make provision for the safeguard of the constitutional rights of individuals. In this regard provision should be made for the

obtaining of legal sanction from courts before wiretapping or electronic surveillance can be employed. Provision should also be made to enable the telecommunication institutions to cut off the tap when the conversation is personal and totally unrelated to the crime in question. The allowed period should also be of limited duration. The aforementioned requirements will safeguard the right of individuals to privacy.

Informants and Criminal Immunity

The use of informants is also an effective means of collecting information against organized crime. However from the discussion it was apparent that it was only members of organized crime groups or close associates to such groups who usually possessed the most relevant information. It was therefore necessary for states to create the legislative structure which would allow for the use of informants both during the investigation and the prosecution of organized crime group members. For instance immunity from prosecution could be granted, or the reduction of sentence could be given. It was however pointed out that such information should not form the sole basis for conviction. In fact even in the countries currently using the information of informants, collaboration of this information was required before a conviction could be made.

It was further recommended that states should formulate policies which make provision for the protection of informants as witnesses.

Decoy Operations

These had been found to be quite effective in the countries that employed them. However a difficulty had been experienced in the use of undercover agents during investigations because, very often the organized crime groups require the new members of the group to commit a serious crime as a demonstration of their loyalty to the group. Many legal systems are very reluctant to sanction criminal activities by law enforcement officials during investigations.

Sting operations have successfully been used to collect information. However a problem is that they could be considered illegal, as officers instigate the commission of the crime by inducing intent of, probably, previously unwilling participants. Safeguards to overcome this problem could however be created by applying the following conditions to the admissability or otherwise of the evidence collected from the sting operation, these would include:

(a) the extent of previous suspicion;
(b) extent of preparation of the defendant to commit the crime;
(c) whether defendant was actually manipulated or whether he acted willingly;
(d) whether the defendant tried to refrain from committing the crime.

Use of Computers

The use of computers in collecting information is very effective. The management of criminal data is regularly employed by many countries to obtain information regarding criminals. It also assists investigators to obtain information on the modus operandi of Organized Criminal groups. For computers to be most effective however co-operation among various state bodies such as licensing control, immigration control, criminal investigation divisions and prosecuters' offices is essential.

The Japanese system of computer information collection and retrieval system was highly commended and noted to be one of the most effective systems in the world. Computer data collection and retrieval system was therefore recommended for adoption by all states.

Controlled Delivery

This method which allows for the movement of substances, assets, funds, etc. while allowing for the detection of connecting links within organized crime networks

was also noted to be very effective. But as with other methods which might permit the continuation of a criminal activity to facilitate the gathering of information, this method also requires the sanction of higher authorities.

Information Collection Regarding Financial and Monetary Transactions

This method was earlier mentioned under sub-topic 2. It would require the removal of legislative barriers to enable investigators to gain access to the records of banks and other financial institutions.

Conclusion

From the discussion it was quite evident that most methods of information gathering if not properly employed could encroach on the constitutional rights of individuals. There was a general view however, that the upholding of individual rights can be subject to some limitations where special circumstances exist, which warrant the temporary waiving of these rights to allow for investigations to be carried out. It was emphasised that judicial authority should always be obtained to employ the methods that encroach on individual rights.

Topic 2: Improvement of Efficiency of Law Enforcement in Combating Organized Crime

Chairperson: *Mr. Ramsey L. Ocampo (Philippines)*
Rapporteurs: *Mr. Satish Sahney (India)*
Mr. Justice Khalil Ur Rahman Ramday (Pakistan)
Keynote Speakers: *Ms. Stella Maria Mendes Gomes de Sa Leitao (Brazil)*
Mr. Asad Mahmood Alvi (Pakistan)
Mr. Pongsakon Chantarasapt (Thailand)
Mr. Satish Sahney (India)
Mr. Zulkarnain Yunus (Indonesia)
Mr. Alberto Manuel Sato Cajar (Panama)
Mr. Justice Khalil Ur Rahman Ramday (Pakistan)
Ms. Ana Marina Santa Cruz Villanueva (Peru)
Mr. Minoru Suzuki (Japan)

Sub-topic 1: Strengthening the Structure of Law Enforcement Agencies and Cooperation and Coordination between Different Agencies Related to Organized Crime Control

The keynote speakers initiated the subject by highlighting the weaknesses in the existing structure and then suggested remedial measures. After the keynote speakers had presented their case, general discussion followed and the participants made their comments, observations and valuable suggestions.

It was pointed out that there are watertight compartments in the existing structure which makes coordination difficult. Even when a particular department needs the assistance of another department of the same enforcement agency it does not share full information with the other department lest the latter may accomplish the task, for which the assistance is sought, and take the credit. Absence of a data base and failure to disseminate the available information is another major drawback. It was further pointed out that there is lack of perception of organized crime which results in erroneous assessment of the situation. Consequently inadequacies in the

structure of law enforcement agencies remain in all spheres, viz. professional training, intelligence machinery, equipment, legislation and coordination.

It was stressed that behind organized crime there is a well-knit organization with a well defined hierarchy. There is also a clear-cut objective and also a method (modus operandi) of achieving that objective.

With a view to fighting organized crime it is necessary that each law enforcement agency have a structure with the following capabilities:

Intelligence gathering: It is necessary to develop an efficient and reliable intelligence network because without it no enforcement agency can function. It would not be possible to combat organized crime without complete information about each organization and its activities. Intelligence collected by one enforcement agency must be shared by other enforcement agencies so that a multi-pronged attack can be launched. In this regard the example of Europe could be emulated. In Europe transborder movement of criminals is matched by excellent exchange of intelligence between the enforcement agencies of different countries of Europe.

Professional training: The need for it can hardly be overemphasised. Every law enforcement agency must have a modern infrastructure to impart professional training to its personnel. Training should prepare a person physically and mentally. It should also be designed to motivate the trainee.

Research & development: In every law enforcement agency there should be a built-in system of continuous examination of existing legislation and the legal procedure with a view to determining whether or not it is adequate for dealing with the prevailing crime. Whenever it is felt necessary that new legislation is required, suitable advice should be submitted to the department concerned.

Special investigative groups: Since the pattern of crime is becoming more and more sophisticated, it is necessary that enforcement agencies must have special investigative groups with specialised knowledge and the wherewithal for investigating a particular type of crime.

Equipment: Perpetrators of organized crime have in their possession some of the latest and most sophisticated gadgets. It is essential, therefore, that law enforcement agencies should also be supplied with all the equipment required for the discharge of their duties.

Databank: Every law enforcement agency must have a Central Data Bank where all information pertaining to crime and criminals must be stored and made available whenever required. The Data Bank should collect information not only from its own agency but other agencies also. With regard to those criminals who operate internationally, there should be exchange of data between different countries. With the help of computers and fax machines it would be possible to receive and transmit information to and from any country in no time.

Coordination: It is necessary to have proper coordination between various law enforcement agencies like the police, the customs, immigration authorities, revenue authorities, etc. The objective could be achieved by having a central coordinating authority at the national level.

Educating the public and seeking its support: It is absolutely necessary that every law enforcement agency must have within its structure a public relations agency which should keep the public informed about the work it is doing, the problems being faced, efforts being made to overcome those problems and how the public can render assistance in combating crime.

Sub-topic 2:

Improvement of the Ability of Law Enforcement Officers in the Fight against Organized Crime

The keynote speakers initiated the discussion by highlighting the fact that for effective law enforcement a highly motivated and professionally competent law enforcement agency was required and that there had to be a systematic plan for the development of such an agency.

It was stressed that recruitment of the right type of persons is an essential prerequisite. A thorough scrutiny of the background of the individual and his personality traits, if possible, with the help of psychologists, is of utmost importance. It was suggested that recruitment should be through a specialized agency. It was also suggested that bilinguals having sound education in computers and with some training in the use of electronic equipment should be preferred.

A great deal of importance was attached to the training aspect. It was stressed that the training should be comprehensive and should include every aspect of enforcement. It was pointed out that training should be an ongoing process. Training seminars, for the purpose of upgrading professional skills and for exchange of information on developments in crime control legislation, methods and techniques and scientific research across the different legal and police systems, should be organized frequently.

It was emphasized that law enforcement officers must be provided with the most modern equipment like wireless communication, cameras, binoculars, night vision devices, etc. A well equipped forensic science laboratory and a team of legal experts are also basic requirements of an efficient law enforcement agency.

Need for specialization was also stressed and it was suggested that each law enforcement officer should be trained and given experience to become an expert in a particular field of law enforcement.

It was pointed out that law enforcement officers must be paid well with a view to attracting and retaining quality personnel. There should also be special incentives to keep the morale and motivation high.

The need for a sound data base was highlighted.

It was pointed out that the law enforcement agency must have the support of the public it serves and that officers in the enforcement agency must be given special training in public relations.

Another significant suggestion was that the best amongst the existing force be selected for dealing with organized crime and before selection they must be made to realize the risk involved in handling organized crime.

In the end it was stated that no matter how efficient the law enforcement agency may be, it will not be a deterrent force unless all actions taken by it meet the logical end, i.e. punishment by the court. It is, therefore, necessary that the law enforcement agency must be given the support of a judicial system which ensures expeditious disposal of cases.

Sub-topic 3:

Prevention of Corruption Inside Criminal Justice Agencies Related to Organized Crime Control

The keynote speakers dwelt upon the various aspects of corruption viz: the origin, the causes, the extent of its spread and how it could be contained. And where there was no corruption, why it was so was also elucidated at length.

It was pointed out that though petty corruption had been in existence for a long time, it was only in the last quarter of the 20th Century that it assumed gigantic form and permeated the entire social fabric. Institutions and organizations which

had hitherto not only remained free from corruption but had enjoyed the reputation of being incorruptible crumpled and fell prey to the evil of corruption. Consequently the issue of corruption was discussed and debated in the highest forums the world over to determine the causes for this malaise. The judiciary blamed the prosecutors; the prosecutors accused the police; the police held the politicians responsible and the politicians said it was the public. The truth of the matter, however, remained the money, which attracted everyone. With the advent of drug trafficking in a big way, hard cash for corrupting the individuals and institutions became available in abundance and corruption became the order of the day. From individual corruption where just a few people were involved it became organizational corruption where the entire department would indulge in wrong and illegal acts for monetary consideration. The most demoralizing aspect of the phenomenon of corruption has been its acceptance by the general public.

In some countries, it was pointed out that there is a system of nomination of judges and prosecutors. However, political interference in the nomination and promotion of judges has caused corruption because the judges and prosecutors are not getting appointed on the basis of ability, integrity and experience but on the basis of political considerations.

There were, however, some exceptions to the phenomenon of corruption within the criminal justice agencies, viz. Japan and Singapore. It was pointed out that in Japan corruption amongst the judges or the prosecutors was virtually non-existent. The impeccable rectitude of the judges was illustrated through a real story of a judge who went through tremendous hardships following WW II when food was scarce and rationed. But the rationed food was not enough to sustain life and most of the Japanese people purchased food in the black market. The judge refused to purchase food items in the black market as that was illegal, and he died due to malnutrition. Even amongst the police officers corruption is almost unheard of. In the past five years there had been just one case of a policeman, out of a force of 250,000, having been prosecuted and convicted for accepting bribes.

Analyzing the reasons for the high standard of integrity of the criminal justice agencies in Japan, it was pointed out that the first and foremost reason is the method of selection of judges and prosecutors. The selection is through a very tough competitive examination in which the success rate is only 2%. Thus mere entry into the judiciary or the prosecution earns a great deal of public respect and esteem which in turn gives them a great sense of pride in the position they hold and the functions they discharge. Besides, the judges and prosecutors are very well paid so as to enable them to keep a decent standard of living. Thus there is no reason for them to make money through illegal means. The system of periodical transfers keeps them from developing vested interests.

Analyzing the causes of corruption it was stated that the values in the society have undergone a change. High values are no longer a matter of pride in the society. This has happened, particularly in the developing countries, due to the fall in the purchasing capacity of the common man. Consequently corruption has become acceptable to the society and, therefore, criminal justice agencies too have not remained immune to the virus of corruption. Another view was that the money generated by the organized crime is being used by the governments and hence there is absence of political will to curb corruption. Some, however, felt that in developing countries the systems of checks and balances and the public control over vital matters has not become very strong which is why there is no check on corruption.

With regard to the remedial measures,

it was stated that though it may not be possible to stamp out corruption root and branch, it could certainly be reduced by severe penal measures against those found guilty of corruption. It was suggested that undercover technique could be used to fight corruption. Further the public should be made aware of the impact of corruption on day to day life through adequate public information. There was also a suggestion that efforts should be made to reinculcate moral values in the society.

The consensus, however, was in favor of the Japanese example which shows that the best method of rooting out corruption from the criminal justice agencies is through enhancing their morale and pride. To achieve this it is necessary to recruit the right people through a very fair and strict system of selection which will not only give confidence and self respect to the selected ones but will also earn them public esteem. Once selected they should be put through elaborate training, be paid well and be allowed to discharge their duties in an unvitiated atmosphere.

Topic 3: Enhancement of Public Participation for Eradication of Organised Crime and Protection of Witnesses

Chairperson: *Mr. Peter Mwendwa Mbuvi (Kenya)*
Rapporteur: *Mr. Vincent Hoong Seng Lei (Singapore)*
Keynote Speakers: *Mr. Khondaker Showkat Hossain (Bangladesh)*
Mr. Wang Lixian (China)
Mr. Kim Je-il (Korea)
Mr. Hela Emanuel (Papua New Guinea)
Mr. Matsendzele Elias Vilakati (Swaziland)
Mr. Kyoichi Furusawa (Japan)
Ms. Masako Suzuki (Japan)
Mr. Hiroshi Torii (Japan)

I. Introduction

The 93rd International Seminar conducted by UNAFEI focuses on the theme of "Policy Perspectives for Organised Crime Suppression." One of the problems which has been identified by UNAFEI is the reluctance of victims and witnesses to give the necessary co-operation to investigative and other law enforcement agencies. This is because they are afraid of the consequences of giving such co-operation. Sometimes, they are threatened by the organised crime members.

Schemes for the protection of ordinary citizens and witnesses against such threats of intimidation or violence must be explored and devised. Unless and until this is done, support from the community in the prevention, detection and suppression of organised crime will not be forthcoming. Schemes for the protection of witnesses may include provisions for shielding their identities from the suspect or the accused person, physical arrangements such as accommodation and relocation of the witnesses as well as provisions of monetary assistance.

The experience of some countries has been that in recent years, organised crime appears to be turning their recruitment efforts towards young delinquents. If this is left unchecked, it will present a new dimension to the problem of organised crime.

Apart from deterring young delinquents from joining organised crime it is also imperative to focus our attention on the ways in which we can encourage and assist members of organised crime to secede from such organisations. At the same time, the rehabilitation of organised crime offenders must

also be considered in detail.

Methodology

In order to fully and comprehensively discuss the main topic, it was divided into three sub-topics:

a) Methods to obtain support from the community in preventing and controlling organised crime offenses;
b) The role of the community in deterring young delinquents from becoming members of organised crime, the enhancement of secession from organised crime and the rehabilitation of organised crime offenders;
c) The protection of witnesses from the threat of organised crime.

A general discussion session was then conducted on each of the above sub-topics. In all, 3 separate sessions were conducted, each lasting 1 1/2 hours.

II. Methods to Obtain Support from the Community in Preventing and Controlling Organised Crime Offenses

It was the general consensus of the participants that the support of the community is a vital and necessary tool in the fight to eliminate organised crime. The law enforcement agencies cannot perform their tasks without enlisting the support of the community.

However, at the same time, it was felt that, too often in the past, the community was not properly told of the benefits of their support. The community, it appeared, was under the illusion that their support and co-operation was for the sole purpose of making the police's job easier. They failed to understand that such co-operation and support was ultimately for their benefit. By informing the community that their support would lead to the suppression of organised crime and that they are the beneficiaries, the community would begin to realise the usefulness of their support. This "cause and effect" rationale must be effectively and extensively emphasized by the law enforcement agencies when they publicise their campaigns for community support.

In certain countries, the public are required under the law to furnish information to the police when an offence is committed in their presence. The investigation process can only commence upon receipt of information from a member of the public concerning the commission of an offence. In such cases, it is therefore necessary that the community be educated on their role in the administration of justice. Without their co-operation, the entire investigative and prosecution process will not be able to function.

The effectiveness, integrity and sincerity of the law enforcement agencies must also be addressed. It would count for nothing if the information given by a member of the public is not used effectively and promptly. In other words, the community must be able to see for themselves the results of their co-operation and support. If their information is reliable, they must be able to see the fruits of their labour. He or she must be informed that the information given has led to the arrest or conviction of the suspect or accused person.

Some of the countries from which the participants came were saddled with the problem of the public's lack of confidence in the police force. These participants fear that it would be difficult to expect the public or community to lend their support if they did not trust the police. This is the result of some policemen being corrupt to whom such information when given would be abused or mis-used for their own selfish reasons. It is therefore also necessary to ensure that the police force is corruption-free and that the integrity of its officers should never be in doubt.

In addition, the image of the police force

must also be examined. In Hong Kong, the police is not identified as being the protector of only the rich. The police force is well aware of the need to establish a friendly and helpful image. In order to achieve this objective, the police provide functions which are beyond their normal duties, such as making available forms required by various government departments. They even go to the extent of providing assistance in completing these forms when required by the public. In this way, the policeman is seen as someone to whom any member of the public goes for help.

There was a very interesting discussion on the issue of whether the police should reward or provide incentives to the community when information or co-operation is rendered. Most of the countries had some form of payment for members of the public who volunteer useful information. Such payments were either made in private or in public with widespread publicity. Such is the case in Hong Kong. The police would make the payment public with the consent of the recipient. This is done in order to encourage other members of the community to do likewise. However, some participants were of the view that payments should not be made. Payment for information given is just a token of appreciation and at the same time accords motivation to informers that law enforcement agencies acted upon such information. Personal particulars of the informer are kept secret and only known to the handling officer. The community should be educated on the benefits of their support and such support should be freely given without any inducement of reward. In the Federal Republic of Germany, the police visit residents individually to explain to them the need for their support.

However, apart from the issue of whether the community's support should be rewarded, there is a separate issue of whether adequate protection is afforded to those members of the community who offer their support. In Japan, monetary compensation or indemnity is provided for persons who are injured whilst giving assistance to law enforcement officers in the performance of their duties. The community must be given firm assurance that any support or assistance given by them would not expose them to unnecessary risks and if they are threatened or injured, assistance would be forthcoming from the police.

It was also the general consensus that when members of the community furnish information to the police leading to the arrest of the suspect, the judicial system must ensure that there is a speedy trial of the accused person. Witnesses must not be subjected to numerous and unnecessary court appearances. This is very disruptive to their lives and would have a potentially negative effect in that the witness will be deterred in future from giving information to the police as he would not wish to be inconvenienced in having to attend court as a witness. The general public should be made aware of their participation in the suppression and prevention of organised crime. Nevertheless, the law enforcement agencies should study, develop and improve crime prevention measures suitable for adoption by the public.

Finally, it was felt that any policy to illicit the community's support in suppressing organised crime must be well-thought and long-term in nature. The police should not be indulging in knee-jerk reactions and should plan ahead. The process must start with the younger members of the community. They are the future parents and they must be imbued with a sense of public spiritedness.

III. The Role of the Community in Deterring Young Delinquents from Becoming Members of Organised Crime, Enhancement of Secession from Organised Crime and the Rehabilitation of Organised Crime Offenders

It is generally and widely accepted that delinquency exists in every country in one form or another. It is not confined to the poor and undeveloped countries. It even exists in developing and developed countries like Malaysia, Singapore and Japan. Therefore, instead of focussing on the reasons for juvenile delinquency, the participants centred their attention on methods of deterring young delinquents from joining organised crime. During early age, these young children must have parental attention at home and teachers' supervision in school. Such attention/supervision will develop a positive attitude in them. They will indirectly disregard the negative situation happening around them because they know that there are people who care for them and observe what they do. Parents and teachers should play their roles respectively in order to deter young children from getting involved in crimes or criminal activities.

The experience of Japan is most instructive and worthy of study. In Japan, the wide use of volunteer workers and private organisations is the most unique feature of its system of administration of justice. Members of the Big Brothers and Sisters Association (BBS) befriend delinquent youngsters and help forestall delinquency. Furthermore, all delinquents who are committed to the Juvenile Training School receive counselling and education on the harmful effects of membership in Boryokudan. Their parents and guardians are also educated on how to prevent their children from joining the Boryokudan. The anti-Boryokudan law which was enacted in Japan in 1992 also has provisions which make it illegal for Boryokudan members to coerce youths from joining them.

However, one of the participants from Japan emphasised the need to show interest and care in the affairs and lives of young delinquents. Very often, the Boryokudan members who befriend these youths show immense interest and concern for their welfare. They build up close relationships with these youths, nurturing them from a tender age with the objective of recruiting them for their activities when they come of age. All this has the effect of making the young delinquent think that the only person who is concerned for his welfare is the Boryokudan member who befriends him. However, he does not appreciate the dangers of such an association. It is therefore vital that parents, teachers and others with whom the delinquent has regular contact must show an interest in the welfare of the young delinquent. If that is not done, the void would in no time be filled by the Boryokudan.

The most important problem which must be addressed is finding enough activities for young delinquents to indulge in so that they do not channel their energy and interest towards undesirable activities such as joining the Boryokudan. This problem is compounded during the long summer vacation when these young delinquents have much time on their hands. Therefore, it is imperative that activities be organised for these delinquents and other youths. In Singapore, the police have established in many neighbourhoods, Police Boys' Clubs. These clubs recruit youths as members and both indoor and outdoor activities are organised for the members. The idea behind such clubs is to keep the youths off the streets as well as to divert their excess energy and attention towards creative and constructive hobbies.

In Japan, each year in July a campaign of crime prevention and rehabilitation of offenders and juvenile delinquents is held under the auspices of the Ministry of Justice. It has the theme of "Promoting a Brighter Society." This campaign has been held annually since 1951, two years after large groups of angry youths started to roam the streets. This movement was initiated by a group of retailers in the Ginza Area in commemoration of the enactment of offenders Rehabilitation Law. This tradition has carried on since then. Local

citizens are engaged in diverse activities to achieve the objective of the campaign. Pamphlets, leaflets, and posters were distributed and media campaigns organised. Recently, 4 million people participated in these events. In order to encourage young delinquents to turn to someone for counselling without having to identify themselves, telephone counselling is also available in Japan.

On the issue of taking steps to enhance secession from organised crime, it is recognized that the entire community must play an active role in encouraging organised criminals to disengage themselves from the organisation.

In Japan, voluntary organisations aimed at assisting organised crime group members who are trying to secede their membership have been established in some prefectures. The primary objective is to ensure that the offenders support themselves financially by offering them suitable and stable jobs.

A gangsters' Return-to-Society Measures Council was established by the police and companies in Fukushima Prefecture in February 1992. The council's member companies number 60 and half of them are transport or construction firms. These companies employ ex-criminals. However, some of the participants felt that against a background of unemployment, it would be difficult to secure jobs for ex-criminals. It is furthermore difficult for an employer to justify employing an ex-criminal in preference to an applicant with a clean criminal record. Nevertheless, ultimately it is the community's attitude towards ex-organised crime offenders which would determine the effectiveness of any measures designed to encourage the latter to secede from organised crime.

As for the rehabilitation of organised crime offenders, the experience of Japan is the involvement, on an extensive scale, of volunteer workers and private organisations in supervising and assisting offenders under probation and parole. There are about 48,000 volunteer probation officers throughout the country and there are some 101 rehabilitation hostels run by private organisations. The ex-Boryokudan members are given jobs and the volunteer probation officers even visit the offenders' families in order to prepare them to assist the offender in re-joining society. However the most effective method is to move the ex-Boryokudan member's residence to another location.

One of the participants informed the seminar that there had been a case of an inmate who showed tremendous enterprise whilst serving sentence. He produced by himself a product which was marketed in the local retail shops. Upon his release, he was able to support himself and his family with the income which he earned from the small business which he set up. He also received assistance from a religious group. Although this was an isolated example, it nonetheless shows that with proper preparation and education, it is possible to successfully rehabilitate an ex-criminal and make him a useful citizen.

IV. Protection of Witnesses from the Threat of Organised Crime

One of the ways in which the members of the community can lend their support to law enforcement agencies in their fight against organised crime is to give information to these agencies and eventually to appear in court to testify. However, many members of the public are often reluctant to involve themselves in the legal process as they are afraid of the backlash that may result from their involvement. It is therefore the duty and responsibility of the State through its various law enforcement agencies to ensure that proper and adequate protection is given to those members of the community who come forward to assist in police investigations and testify in crimi-

nal proceedings against organised crime members.

There are various methods of witness protection. The Japanese system is particularly instructive. Under the Japanese Penal Code, intimidation of a witness is an offence and is punishable thereunder. This seeks to ensure that witnesses are not intimidated before trial or even during trial. In addition, under the Code of Criminal Procedure, the witness may be interrogated by the public prosecutor before the trial. If he should change his evidence during the trial, his former testimony given before trial may be used instead, if it is found to be more reliable. In the case of a witness who is required to give evidence against his superior(s) and in his or their presence, the court, is empowered, in the presence of defence counsel and after hearing the submissions of both parties, to order the accused person to leave the courtroom. However, the defence counsel can remain in the courtroom to cross-examine the witness. As a protection to the accused person, the testimony of the witness has to be told to him when he re-enters the courtroom.

In addition to the above measures, the Japanese government also provides compensation to a witness if he is physically injured as a result of his involvement in the trial process. Even his medical fees are reimbursed by the government. All these measures were introduced in 1958 when the Boryokudan was actively in the process of spreading its influence across the country. However, the incidence of witnesses being threatened or assaulted by organised crime is very low in Japan. Each year, about 30,000 to 40,000 arrests are made. Yet only about 19 cases of intimidation of witnesses occur each year. As for compensation, since the enactment of the law, only 5 cases have surfaced in the past 35 years. All this goes to show that this is not a serious problem in Japan. The main reason is that organised crime groups in Japan do not openly challenge the legal system.

In Korea, the most interesting method of protection given to a witness is the use of "mail-statement." This is a method by which face to face encounters between the witness and the prosecutors or defence counsel is avoided. The witness is asked to give his evidence in the form of a statement which is then mailed to the proper authority. Of course, the usual police protection is also given to such witnesses. Another feature of the Korean system is the denial of bail to organised crime offenders.

In Papua New Guinea, if there is a strong likelihood that a witness will be intimidated, the prosecution can apply to a judge for the witness in question to be given police protection on a round-the-clock basis. In some cases, the witness may even be temporarily relocated. There are presently some 200 persons in Papua New Guinea receiving such protection.

The most sophisticated system exists in the United States under their Witness Protection Program. Under this program, a witness or a co-accused who testifies against another accused person and is in need of protection is given a completely new identity. In the case of an accused person who testifies for the state, his sentence is served in a special jail, in a special cell designed for such witnesses. Thereafter, he is relocated and even given a job in order to assist him in his transition from his previous background of criminal activities to a new life. However, the experience of those involved in this program has been that the psychological process of change is the most difficult obstacle faced by these persons. They find it difficult to adapt to their new lifestyle, having led a significant period of their lives in a completely different way. Nevertheless, this program has been found to be very effective.

A similar program also exists in the Philippines. There, a committee screens and determines those persons in need of protection under their witness protection

program.

However, witness protection programs in which a witness is given a new identity and relocated are only feasible in a large country like the United States. However, in the case of a small country, it is not possible to relocate a witness or to give him a new identity. In such cases, the burden falls squarely upon the shoulders of the police and other law enforcement agencies to given him protection. Laws must be enacted to punish those who intimidate witnesses. In the case of Hong Kong, which is an example of a relatively small territory, the police maintain constant and regular contact through the telephone with the witness so that the witness can feel secure in the knowledge that the police are easily accessible and are only a telephone call away.

In the case of the Federal Republic of Germany, affected witnesses are not only given new identities, but in some cases are even relocated to a foreign country and given a new identity by surgical means.

The general consensus amongst all the participants was that witness protection programs are a necessary and vital feature of any system of administration of justice, especially in the fight against organised crime. The only caveat was that the cost of such programs may be financially prohibitive in the case of developing countries. Apart from financial constraints, it is important that wherever possible advantage be taken of technological advancements and high-tech features must be incorporated into the courtroom in order to protect the witness who is testifying. For example, a witness can give evidence in the comfort of a special room equipped with a television monitor and a video camera. The image and voice of the witness on the monitors of the defence counsel and accused person could by electronic means be distorted so that the true identity of the witness may be concealed. This would dispense with the need to rely upon hearsay evidence which has to be used when the witness is not able to be physically present in the courtroom to testify because of intimidation.

However, concealment of the true identity of the witness is not a totally effective solution in respect of organised crime offenders. This is because most underworld bosses are usually able to deduce the true identity of those informants or members of their organisations who have turned prosecution witnesses. One answer lies mainly in giving these persons completely new identities, preferably in a different location.

One of the points raised during the discussion was whether bail should be denied to members of organised crime when they are charged. In this way, their links to their colleagues or subordinates may be temporarily disrupted. However, the main obstacle to this method is that in most countries, bail is a constitutional right. Even when that is possible, it is only a temporary and transient solution. It is also doubtful whether the accused person's ability to communicate with his organised crime members is severed during his period of remand. Organised crime groups are extremely sophisticated operations and they may still be able to communicate effectively even when one of their members is put away in prison.

In conclusion, the consensus was that witness protection programs must, whenever possible, be designed and instituted so as to ensure the community that they can lend their support without any fear of threat of physical injury to themselves and their families.