行政院所屬各機關因公出國人員出國報告書
(出國類別：會議)

參加國際檢察官協會二00二年第七屆年會報告

	服務機關	職　務	姓　名
	臺灣高等法院檢察署	檢察官	林占青
	嘉義行政執行處	處　長	周穎宏
出國人	法務部檢察司	調部辦事檢察官	楊榮宗
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出國地點：英國倫敦
出國日期：九十一年九月八日至九月十二日
報告日期：九十二年六月

目　　錄

第七屆國際檢察官協會年會會議議程報告　　楊榮宗

壹、前言

第七屆國際檢察官協會（International Association of Prosecutors, 簡稱 IAP）年會在二００二年九月八日，於英國倫敦伊莎白女王二世會議中心召開為期五天之年會，共有來自七十五國之五七０位代表與會。本屆年會並擇定販賣人口（Humans Trafficking）、洗錢（Money Laundering）及販賣毒品（Trafficking in Drugs ）等三項重要之跨國性犯罪議題加以討論。

貳、議程報告

二００二年九月八日（星期日）

開幕典禮於當日下午五時在具有歷史意義且令人印象深刻之林倫敦大禮堂。主會主席 Sir Davd Calvert-Smith QC, the Rt. Hon. Harmiet QC, U.K. Solicitor General 以及國際檢察官協會主席 Nicholas Cowdery QC 等三人共同主持。

會中國際檢察官協會主席 Nicholas Cowdery QC 在致詞中表示：國際檢察官協會的功能來自多方面成果，不僅展現在每年有更多的與會人員加入，而且在於工作會議、論文報告等品質提升，更重要的是與會者的討論和提出之問題。國際檢察官協會不僅使得與會者對不同國家、地區有更多、更嶄新的認識，符合國際社會的需要，而且提供絕佳的論壇，而能獲得深入討論和脈動，這些成果均直接影響全世界檢察官的工作，只要與會者聚集在一起，都可以看到討論在進行當中，例如：午餐、晚餐時間、喝咖啡時間、飲料等休息時間。惟一令人感到遺憾之處，係無法和每位與會者談話，如果能透過執行委員會及多次參加年會經驗者協助安排以彌

補這些美中不足之處，讓與會者感受到熱忱歡迎和獲得更多關於國際檢察官協會的訊息。我一直喜歡參與行政事務，也樂於提供「分組服務」，即按照與會者個別需要而將與會者分在同一組，能彼此有所幫助。畢竟這是國際檢察官協會的功能。從參與國際檢察官協會行政事務開起，我現在正投入能造福、幫助很多參與國際檢察官協會的太平洋小島國家的「太平洋檢察官論壇」；此外，還有其他檢察官論壇（或組織）還在規劃，特別是在非洲。

二００二年九月九日（星期一）

第一天之正式大會，在頒發行之有年之國際檢察官協會將項中揭幕，其後即由地主國之 Rt. Hon. Harmiet QC, U.K. Solicitor General 作開幕式之演講，講題是「全球性犯罪之威脅」，希望藉由討論販賣人口（Humans Trafficking）、洗錢（Money Laundering）及販賣毒品（Trafficking in Drugs ）等三項重要之跨國性犯罪議題，而有審慎而正面之結論。

二００二年九月十日（星期二）

第二天之分組會議由 Chris Newell 主持，會議中並提出有關販賣人口（Humans Trafficking）報告。Boowham Han 接著接手主持和介紹有關販賣毒品（Trafficking in Drugs ）議題，並進一步闡述、發展。

當天晚上，與會者在 Law Society's Hall 參加國際檢察官協會副主席及 Chief Executive of the Law Society of England and Wales 所共同主持之歡迎酒會。

二００二年九月十一日（星期三）

星期三之議程正好遇上美國九一一事件周年紀念日，因此在

所有與會者為九一一事件中罹難者默哀中儀式中展開，由 Sir Alasdair Fraser, QC 主持。議程最主要集中在恐怖主義對全世界之影響，以及恐怖主義和跨國性犯罪的結合。主席請與會者為紀念九一一事件默哀一分鐘。接著分別由美國籍之 Michael Chartoff 等三人分別就美國、區域和國際觀點對於九一一事件提出看法。其他時間則由 Rai Joshikf 主講關於此次會議之議，此外與會者也分成四組討論此次會議之議題。

下午則召開國際檢察官協會第七屆年會之全體會議，會中通過由 Nicholas Cowdery QC 連任第二個三年任期之國際檢察官協會主席。Nicholas Cowdery QC 隨即表示，感謝全體會者對其信任，雖深感光榮，也深刻體會到責任重大，希望伴隨著大家的支持，而能夠斷續在國際檢察官協會繳出亮麗成績。

二００二年九月十一日（星期四）

Carlox Donoso Catex 主持會議和介紹 Rosalind Wrigt（U.K.），Rosalind Wrigt 在會議中提出洗錢問題的重要性和解決之道。

其後由主席主持閉幕式，除特別對於主辦國之熱忱款待表示感謝外，並歡迎所有與會人員，於二００三年八月前往美國華盛頓參加國際檢察官協會第八屆年會。

販賣人口（Humans Trafficking）[1]　林占青

壹、前言

國際檢察官協會（International Association of Prosecutors, 簡稱IAP）自二００二年九月八日起，於英國倫敦召開為期五天之第七屆年會，並擇定三項重要之跨國性犯罪議題加以討論，其中之一即為"販賣人口"（Humans Trafficking）。雖販賣人口之犯罪手法與態樣日趨國際化，犯罪情節亦愈見嚴重（據官方估計，僅婦女與兒童，全球每年約有一至兩百萬之被害人，而僅紅燈區之色情交易金額，每年即高達兩百億美元左右），造成全球性之威脅（global threat）。然因我國向來較乏此種國際性之犯罪案例，故不若其他兩項議題（毒品與洗錢）般在國內引起較多之關注與討論。惟所謂"地球村"時代既已來臨，國際間之互動日益頻繁，彼此相互影響，尤其有關司法實務方面，共同合作，打擊犯罪，更形重要。是無論基於國內治安之"防微杜漸"，抑或融入國際社會，善盡地球村一員之責任計，針對此項犯罪類型，吾人實有予以關切之必要。筆者有幸參與盛會，並負責撰寫此部分之考察報告，如有未盡或謬誤之處，尚祈先進不吝賜正與指教。

貳、販賣人口之定義與特質

一、販賣人口之定義

[1] 本文參閱 Trafficking in Human （Hans-Jörg Albrecht）-Theory, Phenomenon and Criminal Law Based Reponses- ;Thailand's Experience in Dealing with Human Trafficking(Sirisak Tiyapan); Cooperation over Trafficking of women and children in the Baltic sea region

(一)根據美國"販賣人口被害人及暴力防治法"(The Victims of Trafficking and Violence Prevention Act) 及國際組織,如歐洲安全暨合作組織(The Organization for Security and Co-operation in Europe, 簡稱OSCE) 之明文定義，所謂販賣人口係指：為達性剝削（sexual exploitation)、強制服勞務(forced labor、service or slavery) 或類似奴役（practices similar to slavery)、強迫行乞(forced begging)、逼婚(forced marriage)、摘取器官（removal of organs)、境外收養(international adoption)之目的， 以強暴、脅迫、誘拐（包括利誘)、欺詐等不法手段，將被害人置於實力支配下之招募(recruit)運送(transport)、轉運(transfer)、藏匿（harbor)、收受（receipt) 等與買賣人口相關之連串行為。而國際犯罪公約（Transnational Crime Convention) 亦為相似之定義。由此可知，販賣人口之被害人並不侷限於婦女與兒童，亦不僅限於使被害人從事剝削性之性交易。惟就國際間對控制販賣人口及目前進行之立法趨勢觀之，國際政治關切之重心仍在於以性剝削為目的之販賣婦女與兒童問題上。在此須注意者乃"被害人同意"之問題。蓋在被害人受強暴、脅迫或欺詐之情形，固不發生被害人同意與否之問題；即被害人原先同意前往他國賣淫，俟入境後，卻改變心意，不願為之，苟行為人對之有任何上開強暴、脅迫或欺詐等等之舉，使之成為性奴隸者，仍不影響原有之刑責。就此波蘭新刑法第二百五十三條第一項有較特殊之規定，即縱獲

有被害人之同意，仍應課以刑責。足見波蘭對販賣人口賦予較為寬廣之定義。

(二)非法移民之走私問題

此類犯罪之目的多不在於性剝削，然在國際間亦引起相當程度之關注，其中尤以二００一年一月，在英國多佛（DOVER）所發生，五十八名來自中國大陸之非法入境者活活悶死在貨櫃車廂之慘劇最廣為人知。每年約有四百萬之非法移民，經由犯罪組織（organized crime）之安排，前往歐洲或橫越歐洲各國邊界。而美國與墨西哥南部邊界地帶，每年亦有高達四百五十萬人次之墨西哥非法移民入境美國南方各州。此等非法移民與上開被害人最大之不同點厥於均係出於己意而為，且抵達目的國後之工作，亦有較大之自由選擇空間。在此牽涉邊境管制之爭議，究應開放抑或嚴加控管？開放則可能減少組織犯罪之機會（單就走私移民而言），然嚴予控管之結果，卻可能因增加移民之障礙而使組織犯罪集團之走私人口更形猖獗。對此端視各國不同之國情而有不同之移民政策。

二、販賣人口之犯罪特質

(一) 國際化之組織性犯罪

如上所述，此類犯罪多係連串之相關行為所構成，故自起源國(countries of origin)開始，其間包括運送國（countries of transportation)、轉運國(countries of transfer)、目地國(countries of destination)等，不一而足，跨國性色彩濃厚。且因屬國際性之犯罪，與一

般之個人犯罪有別，故通常多係具組織性之犯罪集團方得完成。

（二）與相關犯罪領域之免責衝突

犯罪集團通常以偽造之護照或不實之出生證明文件，讓被害人非法入境而違反出入國境之規章。在偵查、追訴及審判之過程中，因亟需被害人之合作與指證，如另課以非法入境之刑責，並予遣返或驅逐出境，勢將造成被害人之疑懼而不願出面提供資料或到庭作證，故無論基於人道或偵辦案件之考量，對此免予究責，毋寧為必要之手段。

參、法律制度面與實務運作面之現況

一、法律制度面

（一）國際間致力消滅（打擊）人口販賣之歷史須回溯至十九世紀末、廿世紀初。制定實施國際協約與公約肇始於一九0四年，為抑制「白奴交易」(white slave trade)而於巴黎簽署之國際協定。一九一0年，該公約獲多數國家之同意，此等國家係基於道德目的而終止販賣婦女與未成年少女之行為。爾後，陸續有數個國際公約出現，如：一九二一年防制販賣婦女與兒童之日內瓦國際公約(the 1912 Geneva International Convention for the Suppression of the Traffick in Women and Children)、一九三三年防制販賣成年婦女日內瓦國際公約（the 1933 Geneva Convention for the Suppression of the Traffick in Women of Full Age）以及一九四九年防制販賣人口及剝削他人賣淫公約（the 1949 Convention

for the Suppression of the Traffick in persons and of the Exploitation of Prostitution of Others）等等。聯合國於一九七九年消除各種形式歧視婦女公約中（the 1979 Convention on the Eradication of All Forms of Discrimination Against Women)，同意各公約國採取必要之措施，以確保販賣婦女、逼良為娼之剝削行為得以澈底消滅。

（二）有關國際收養問題之情況則完全不同，儘管與此有關之公約在「白奴交易公約」制定當時亦已存在，且有管制國際及國內收養之相關措施，然迄至廿世紀前半段期間，該等措施並未成功。而五０及六０年代，亟待被收養之第三世界國家兒童為數甚多，較特殊者乃第三世界國家之慈善團體為無法在自己本國被收養之兒童，尋找國外收養家庭。惟此種情形於六０及七０年代開始轉變，斯時，供需架構翻轉，工業化國家之家庭需要大量收養小孩，慈善團體隨著小孩需求量之逐漸增加而轉換為收養市場上供應小孩之角色，特別係供應歐洲與北美洲等工業先進國家。然慈善機構所能供應者畢竟有限，孩童不敷國際收養活動者之需求，遂導致慈善事業為商業行為所取代。

首部有關收養之國際公約係一九六七年之歐洲收養公約（the European Convention on Adoption of 1967)，此公約對會員國之責任與義務訂定提綱挈領之規範。該公約第十條明定各會員國必須制定藉由國際或跨邊境收養而牟取非法利益之法律。而國際社會對於國際收養究

應開放為自由市場，抑或應予嚴加管制，意見不一。一九八九年聯合國兒童法案（the United Nations Child's Bill of 1989）為兒童權利為明確之定義。該法案明定非法收養之所得應予防止，然何種所得係屬非法之疑義，仍無一致之看法，迄一九九三年方增訂國際收養規則。

國際及國家推動制定有關人口販賣之法律或規則之活動，於六０、七０及八０年代趨於平靜，至九０年代後，致力於懲罰各種販賣人口之立法及政治活動始散佈開來。在歐洲層次上，一九九七年歐盟（European Union）採取聯合行動，處理販賣婦女、兒童、逼良為娼之問題，並獨列非法移民及販賣非法移民為重要之政治議題。

（三）由國際組織犯罪公約將販賣人口列為明確議題，即可窺知國際趨勢。此公約要求國家須制定懲罰販賣人口組織及組織犯罪集團分子之刑事法律。此外；二０００年全球組織犯罪公約（the ２０００ Transnational Organized Crime Convention）亦涵蓋偷渡公約。數十年來，控制販賣人口之措施，無論在國家或國際層次上，均曾為多方之嘗試與努力。

二、 實務運作面

如上所述，販賣人口係國際性之組織犯罪，相關之國家須通力合作，方得克竟其功。且有時又牽涉某些特定之區域（如販賣相對落後之東歐婦女至中、西歐等工業先進國家賣淫），為因應實務運作之需要，遂發展出一種基於國家地理位置而為國際結盟之模式。在此特別提出報告者，乃

波羅的海地區（the Baltic Sea Region）就販賣婦女與兒童之國際犯罪，相關國家如何合作之情形，俾供借鏡。以下擬就地理性(geographical overview)、歷史性(historical overview)及其獲致之成就(achievements within the network) 三部分為概略之介紹與說明。

（一）地理性觀點

以純粹地理位置而言，波羅的海固然並未延伸至挪威或冰島，然傳統上所謂波羅的海國家通常係指包括芬蘭、丹麥、挪威、瑞典、冰島、立陶宛、愛沙尼亞、拉脫維亞、俄國、德國及波蘭等國，包涵起源國(countries of origin)與目的國(countries of destination)。將此等國家連結為一體，以整體視野觀之，自是有助於問題之解決。

（二）歷史性觀點

早在一九九五年，波羅的海國家之檢察總長即開始建立合作關係。每年開會一次。迄一九九九年於柏林舉行第四次會議時，決定由各國挑選本國對販賣及性侵害婦女、兒童議題學有專精之人士成立“專業小組”（the Expert Group)，主要目的在於討論工作方法與未來之國際合作事宜。繼而於二０００年，在丹麥哥本哈根召開之年會中，將此小組轉化為一個非正式工作網絡（informal network)，成員均由檢察總長指定之專精上開刑事犯罪領域者擔任，並與層次相當之警方人員密切合作。

（三）獲致之成就

1、有效打擊犯罪

因涵蓋相關國家之專業人士，而得以全盤性之觀點與有效之工作策略，共同打擊犯罪。

2、交換立法與執法經驗。

工欲善其事，必先利其器，此為放諸四海皆不變之準則。故欲有效打擊國際犯罪，完備之立法乃不可或缺之要件。惟因各國法制有異，就此領域之犯罪儘量尋求一致之立法，確有其必要性。從而透過此種工作小組，交換立法心得，並藉以累積實務經驗，實為最佳之國際互助合作模式。

3、與非政府組織(NGO)合作、建立共識

獲取被害人之信任與合作乃偵辦販賣人口罪最重要之步驟，然被害人可能多因耽心被驅逐出境(deportation)或遭到報復而不願與政府機關合作，如：提供情資及出庭作證等等。此時即有賴某些具公信力之非官方組織協助，幫忙溝通、協調，建立合作之共識。

肆、偵查技巧

一、取得被害人之合作與掌握其證詞

偵辦販賣人口案件，最直接而重要者厥為被害人所提供之線索與證詞。由此循線追查，多能撥雲見霧，釐清案情。故設法獲取彼等之信任與合作，使願意提供證詞，乃發動偵查之第一步。在此有一問題值得提出，即為免被害人因嗣後遭脅迫或利誘而不願出庭，應儘速完成筆錄之制作，並輔以各種錄音、視訊等科技設備，避免被害人一再複述受害情節及直接面對被告之不快與恐懼。泰

國即採此立法模式（Early Depositon），殊堪借鏡。再者；“證人之保護”（the witness protection program）乃係另一頗須強調之問題。蓋除防止再度被害之外（如：二度賣入淫窟，強迫為性交易），販賣人口之犯罪組織為免被害人與辦案單位合作而做出不利彼等之證詞，或以暴力相脅，甚至殺人滅口，危害被害人之生命安全，故偵辦此類犯罪，應特別注意給予妥善之保護。

二、其他補強證據(supportive evidence)之取得

（一）通訊監察(telephone interception)

通訊監察不僅係一般犯罪之偵辦利器，就販賣人口此種犯罪類型而言，更因辦案人員所面對者乃係有組織之跨國犯罪集團而益顯其重要性。

（二）秘密攝影(secret camera surveillance)

利用現代科技設備，遠距攝影，甚或於夜間為之，亦為有效之蒐證方式。

（三）追蹤金錢帳目(establishment of the audit trail)

以國際性之觀點而言，追蹤、掌握由被害人至犯罪嫌疑人之帳目亦為有效之偵方式。且循此追查，通常更得以發掘相關之洗錢犯行。

伍、善後之相關配套措施

由於被害人之身心受創甚劇，加以客處異地，除於偵查、審判過程中，應以被害人之角色相待而非視為違反出入境規定之犯人，並給予必要之保護外，事後更應輔以其他處遇，俾助其重新面對人生。諸如：必要之醫療、心理之輔導、協助就業、就學等等。

陸、臺灣目前面臨之相關問題

相較過往，臺灣女子渡海赴日賣春，卻遭黑社會控制，淪為被剝削之性奴隸而言，目下似有愈來愈多之大陸女子以假結婚，真賣淫之方式，來台賣淫。彼等行動受限，賣淫所得亦遭相當程度之剝削。而因貧富、經濟力之差距，亦趨使大陸人民透過所謂之人蛇集團，非法入境，從事粗重之勞務性工作，其中亦有不少婦女受騙，被賣入淫窟而慘遭非人之待遇。是我國除大陸之外，雖較少與其他國家就此議題發生關聯，然以臺灣海岸線之長，邊防不易之情況下，加強海上查緝與入境後之追蹤、調查，應屬當務之急。

柒、結語

販賣人口非僅戕害婦女與兒童之身心至鉅，抑且嚴重侵害人類之基本尊嚴與人權。欲打擊、消弭此項犯罪，完善之相關法制與國際間有效、密切之互助合作乃不可或缺之必備要件。我國雖較乏類似之國際經驗，然他山之石，可以攻錯，身為地球村之一分子，或有善盡國際責任與義務之時，至盼臺灣得與各國攜手合作，共同打擊犯罪。

波羅的海地區國家對於婦女及兒童人口買賣之合作

楊榮宗

一、 地理上之回顧

波羅的海地區之合作國家，包括芬蘭、愛沙塔尼亞、拉脫維亞、立陶宛、俄羅斯、波蘭、德國、丹麥、挪威、冰島、瑞典。這些國家間之合作，對於區域內之人口販賣防制合作，極其重要。

二、 歷史上之回顧

一九九五年波羅的海地區國家及挪威、冰島檢察長建立起合作關係，檢察長合作組織成員每年見面一次，在不同國家開會，一九九年在柏林舉行之第四次會議，決定結合各國家人口販賣及對於婦女與兒童性虐待之專家， 成立一專家團隊，主要討論未來國際合作之工作方法及之必要條件， 並決定下一屆檢察長會議在哥本哈根舉行，並把此一專家團隊轉換成名為人口販賣及對於婦女與兒童性虐待正式網路 (an informal Network)。年會舉行之目的在增強波羅的海國家間之刑事司法合作，特別是為打擊國際組織犯罪之目的。此一正式網路由各該國檢察長選派有關人口販賣及對於婦女與兒童性虐待犯罪專家組成，並決定有關未來此方面之重要議題的集會討論。更進一步，確保與為人所知之專家工作團隊(OPC)，由波羅的海國家及歐洲警察之相當網路之警察保持聯繫及更緊密之合作。專家工作團隊(OPC)是在二〇〇〇成立，但早在一九九六年，各該國政府領導人即已決定組成一行動團體，以強化該地區之打擊組織犯罪。一九八八年，於該行動團體下成立一調查委員會，負責該團體調查行動之調查及發展。再由該調查委員會像該團隊提出報告。專家工作團隊處理人口販賣事宜。

三、 合作網路之成果

此一網路之任務如上所述，討論此一領域之議題，及確保與專家工作團隊(OPC)保持聯繫及更緊密之合作。在會議中討論一些案例，國際合作調查之方法。人口販賣是歐洲主要且受人矚目之議題。雖然更進一步，確保與為人所知之專家工作團隊(OPC)。波羅的海國家在此方面之認識無法與歐洲做比較，但我們仍可分享一些相同的經驗。跨國工作及精進我們所能使用之工具應該是重要的。此一網路已經訂定指導原則及調查策略，希冀能更成功。不同國家提出不同問題，由於被害人通常在不同國家被移來移去，所以很難確定其目的地國家。被害人通常為同國籍之被告所控制，他們雖然知道將會被送去從事性工作，但並不知道其惡劣之工作環境，暴力經常被使用，有些情形甚至到了需要補充營養之地步。德國作為目的地國家，成功地打擊人口販子。能與德國合作是甚有助益，如我所說，如能結合來源地及目的地國家間之合作是甚有助益的。

此一網路關注下列重要議題並有一些指導原則：

一般來說，首先需要一部有關人口販賣之統一立法，目前僅有瑞典籍德國有特別立法。丹麥、挪威極及愛沙塔尼亞亦準備補充立法。藉由不同國家之立法，得作為過之借鏡，有些國家到目前為止並無特別人口販賣之法律規範。

人口販賣， 應該被認為是一個世界性犯罪， 國家及國際間之合作是急需要的，因為此類犯罪之調查困難且費時，且其定罪常需要被害人之個人證據，因此被害人之保護、安置及如何取證，是關係訴訟案件之進行。由被告之恐嚇， 被告害怕警察及被驅逐出境，造成又再度受被告控制，因此各國執法部門間之合作及瞭解此一犯罪特色，自是非常重要。就此，媒體及非政府組織（NGO）即扮演者重要角色。

結論

人口販賣是一賺錢行業，通常是組織犯罪且跨國，所以有賴國際合作，波羅的海地區國家之合作，對於打擊人口販賣犯罪，已建立無國界合作之良好模式。

中國毒品犯罪現況報告　　楊榮宗

壹、前言

毒品犯罪之定義，係行為違反有關法規對於毒品之禁制規定，依刑事法律應予以處罰之犯罪行為。在中國古老時代，毒品帶給中國人民巨大災難，自從中華人民共和國於一九四九年建立後，中國政府盡了最大努力去處理毒品犯罪，尤其近三年來，對於百年來毒害中國甚鉅之鴉片，更是盡了最大努力，執行成果舉世皆知。

自七０年代以來，國際毒品潮流再度侵襲，使得毒品犯罪在中國有復甦之趨勢，毒品犯罪所引發之暴力犯罪，對於中國人民之身體健康及社會安定其損害，益形嚴重。

貳、中國毒品犯罪現況

一、毒品犯罪率有年年升高趨勢

公安單位及其他緝毒機關在二０００年共計查獲九六、００件毒品案件，較一九九九增加了六一・四％，而至二００一年毒品案件遽增至一一０、０００件，較二０００年增加了一四・六七％。由以統計數字以觀，顯見毒品案件未能有效控制。以雲南省為例，由於雲南省之邊界鄰近毒品生產地「金三角」，雲南省法院在一九九九年受理毒品案件超過三、五００件、五、五００人；二００一年案件數則增加為四、０００件、六、一００人；二００二年一至五月間受理之毒品案件則為一、八八人、二、六二一件，比較去年同期分別增加了一八・六二％及一五・七九％。

二、毒品種類不斷推陳出新

中國大陸近年來所查獲之毒品除傳統之海洛因、大麻及

鴉片外，舞會狂歡丸（dancing outreach）、（icenarcotics）、鹽酸美沙酮（methadon）等新興毒品之氾濫亦深值重視，二００一年公安部門及其他緝毒機關查獲一三・二頓海洛因、二０七萬顆舞會狂歡丸及二０八・０二頓其他化學合成麻醉藥品。與二０００年相比較，海洛因及舞會狂歡丸分別增加了二・０九倍及八・六倍。

三、 除毒品案件遽增外，販毒案件之毒品數量亦日趨增大

近年來中國地區毒品犯罪，除了案件數量暴增外，每一案件所查獲之毒品數量也與日俱增，以雲南省例，法院受理之毒品案件，扣案毒品超過五十公克者，於二０００年係一、五二０件、二００一年係一九九０件、二００二年一至五月則已達六０六件，案件總數成長幾達五六・四二%；再以武漢市公安部門於二０００年七月所查獲，由香港人民所投資之毒品工廠，業已生產三十頓液體安非他命銷售至國外。

四、 毒品犯罪日趨策略化

中國毒品犯罪活動在犯罪方法上有三個特點：

（一） 集團化

毒品犯罪之集團化，是最主要犯罪型態，毒品犯罪集團對其員予以一定組織化、自行訓練、分工，並且與其訕毒品犯罪集團互相勾串。

（二） 職業化

毒品犯罪集團成員以毒品犯罪為其謀生工具，並以牟利為其目標，且以毒品犯罪為其職業，這些成員係毒品犯罪集團之主要成員。

（三） 現代化

犯罪集團成員除擁用高科技化學技術，並且先進設備為其聯絡及交通工具，並憑藉科技設備藏匿以避免查緝，毒品犯罪集團並且擁有先進而強大火力。近年來，在中國大陸所查緝之毒品案件，時而發現毒品與科技武器併存。

五、 國際毒品犯罪與日俱增

從一九八０年代開始，國際毒品犯罪集團所運輸之毒品便由毒品生產地之「金三角」地域，經由香港、澳門等地，再轉運至國際市場，猶如以「中國運河」轉運毒品。自從十八世紀起，中國成為毒品轉運地以來，到了十九世紀更是從中國東南沿海地區擴散至全國，更由於跨國毒品犯罪猖獗，中國境內近二、五００縣均產生毒品問題。直至中國採行強力反毒措施後，跨國境毒品犯罪開始轉移至暗中轉移至鄉鎮及郊區。

六、 藉由走私方式輸出毒品製造技術益形增加

由於國際間對於毒品走私之查緝日嚴，毒品犯罪集團為了逃避查緝，並且符合國際市場需要，毒品來源已由傳統之鴉片轉成其他化學毒品，由於傳統毒品逐漸轉變為新興毒品，毒品製造技術亦有所改變。近年來，兩個生產毒品大本營「金三角」及「金半月」(指中亞地區)，亦大量運用如醋氧化物、三氯甲烷、醚等工業化學技術，以縮短海洛因等毒品之產銷流程，以致毒品價格飛漲。在一九八八年十一月，麻黃素之價格原係四十二萬圓，在走私到緬甸北部後，由設於緬甸之工廠製造後，其價格即暴漲至一百一十萬圓。另外毒品亦伴隨著其他犯罪問題，例如：謀殺、竊盜、詐欺、賣淫等。與公共安全有關之犯罪，像偷竊、強盜、搶奪等犯罪案件，近

百分之三十與毒品犯罪有關，在某些地區甚達百分之六十。ＡＩＤＳ亦因施用毒品犯罪案件之增加，而有增加趨勢，其中百分之六七・八之ＡＩＤＳ患者，甚至係以靜脈注射方式施用毒品而傳染。

參、毒品犯罪成透析

一、歷史原因

鴉片荼毒中國人近二百年，雖然現在中國已完全禁止使，但鴉片對於中國人之影響並沒有消失。由於歷史傳統，在中國很多地方，人們並不完全清楚鴉片之毒害，甚至在心理上係容許毒品存在，尤其是一些偏遠及落後之邊界地區，種植與施用毒品更是長久以來習慣，毒品從古至今，均無法予以根除。

二、經濟原因

不可諱言，暴力是毒品犯罪猖厥之要因；依據最新料顯示，在中國雲南省每一千公克，海洛因售價是十萬元人民幣、香港、美國則分別是五十萬及一百萬元人民幣。毒品犯罪者冒著將被科處死刑及監禁的危險，從事販賣、運輸及走私毒品之犯罪活動，有些地方甚且流傳著「運輸毒品係致富之道」。施用毒品者眾，走私、販運毒品者亦眾，依中國公安部門統計，在一九九一年施用毒品者，有一四八、０００人，一九九五年係五二０、０００人，在一九九九年則有六八一、０００人，到二００一年十月則暴增至九０一、０００人。

三、國際原因

中國之東南界與世界主要毒品生產地「金三角」相連，尤其是與緬甸接壤之邊界，其間復無何天然屏障，邊界貿易甚為活躍。很多販毒者，更是藉著中國改革與開放

之際，利用各通商口岸從事販運毒品之犯行，

四、 社會結構原因

一七九七年以前，中國刑法並沒有就毒品規定得判處死刑，對於於毒品犯罪數量之標準規定亦不完備；微量非法毒品之去私、運送則被告認為危害甚小，而不構成犯罪。但中華人民共和國刑法在一七九七年第八屆人大會修正後，已有所變革。由於緝毒工作依然落後，公安部門決定在二十四省及自治區，設立直屬中央政府之分遣隊於二０四個地方（含城市、自治區）及七三五縣（含城市、區域），專責查緝毒品犯罪案件。但由於專業緝毒機關過少、人員素質不高、設備老舊及預算不足，仍然是重要問題。然毒品消耗量幾達百兆人民幣，由於毒品犯罪之經濟損失更高達百兆，惟緝毒機關之預算則僅為每年十億人民幣。由於查緝資源之匱乏，緝毒機關對於毒品之查緝策略也僅能「發見一件、解決一件；見一個、抓一個」。

肆、毒品犯罪主要查緝作為

中國所面之毒品犯罪現況有其複雜及嚴竣之情況，為能有效解決毒品犯罪問題，中國政府所使用之手段必須深入且長期規劃。因此，反毒工作對於中國而言，說是「一條漫長而艱辛的路」。

一、 持續構建完整反毒法制

中國反毒法制包含三部分，刑事立法、行政法規及國際公約。刑事立法指的係一九九七年第五屆全國人民代表大會通過之「中華人民共和國刑法」；行政法規部分則係指「公安處理與處罰規章」；國際公約所指的則係中國政府參與國際間反毒工作所簽立之條約。

二、毒品查緝策略之強化

對於毒品的犯罪狀況，一定要採取高壓手段，才能遏止毒品之氾濫現況。

近年來，中國政府對於毒品犯罪之查緝、追訴，可說是效果顯著，以雲南省為例，自一九八二年起迄二０００年止，超過七千件販毒案件被查獲，查獲毒品海洛因高達八十噸。針對多元化之犯罪趨勢，中國政府未來將持強化緝毒機關之人力、物力及預算資源；並且統合公安、海關、鐵路、通訊、民航、林業、郵政及電訊部門，致力於打擊毒品犯罪。

三、強化專業、分級之緝毒機關

首先，依據中國反毒現況，緝毒機關需採下列模式：其一、統合及對等機關。緝毒機關需能依據明確政策、指導原則，除統合所有機關外，其相互間更需有對等合作。其二、緝毒機關必須能有效查緝、調查及解決毒品案件。其三、緝毒機關必須能夠依法行事。其四、緝毒機關必須能積極從事資訊研究。

其次，加強緝毒工作之投資。由於緝毒工作之人力、物力匱乏，是目前緝毒工作最大之困境，緝毒之機關及人力均屬嚴重不足，造成很多地方均是「有多少錢做多少事」，這均是緝毒工作一大問題。

四、加強國際反毒合作

未來中國加強國際間之反毒合作，除將擴展與國際間毒品問題合作之領域，此亦將是中國毒品犯罪問題之澈底解決之道。中國未來將更積極參與國際毒品犯罪問題之合作，除一方面參與聯合國之各項反毒議題外，另一方面更將與其他國家進行反毒之雙邊合作。

五、 堅定地拒絕施用毒品

施用毒品、生產毒品與販賣毒品，其間是互相依存，要根絕毒品之犯罪，減少施用毒品人口及消費市場是一個重要的方式。目前世界各國均戮力於減少施用毒品人口，在中國除了一方面以處罰手段迫使施用毒品人口減少外，另一方面更以教育方式，使人民能夠遠離毒品之危害。

六、 提高所有人民對於反毒之認識

反毒工作首要提高人民不受毒品之困惑；惟有透過宣傳及教育才能有效使提高人民對於毒品之認識，並免於受毒品之危害，在此原則下，宣傳、文化、廣播及電視等部門應緊密結合一起，共同負起喚醒人民免於受毒品危害之責任。

赴英參加國際檢察官協會年會心得報告

周穎宏

此次赴英參加國際檢察官協會年會，在該年會中深深感覺到身為檢察官在於研習各國最新發展之刑事司法制度，以拓展國際視野實有其迫切必要，因外國法制之研究，確可提供我國對於類似問題之解決方法及途徑，但若非將外國與台灣本土之法律文化及傳統詳做比較，充分瞭解各國刑事司法政策，深思台灣人民之所欲，再進一步考量台灣本土司法資源分配問題後，實不足以對台灣現今面對的司法議題做建言，今就參加該年會之心得提出報告，尚請　指正。

參與國際事務既是我國現今努力之方向。是則國際檢察官協會當亦是我們進入國際村參與國際事務目標之一。在於比較亞洲各國選派代表之層級多在檢察長及司、處長以上，我國往後自當實施策略規劃選拔具有代表性之人員，除具備相當之法律學識及檢察實務經驗外，在外既代表國家以突破外交困境，亦須具備相當之職等及涉外交涉之能力，信必可在現今外交困境中得到司法互助之突破。參加該年會最大的收獲除了在學習參與國際會議之經驗外，對於國際間檢察事務之差異亦有極深的感觸。其中就打擊犯罪而言，檢察官是否實際參與偵查一項，就大陸法系（Continental Law, Civil Law ）與英美法系（Anglo-American Law, Common Law）中檢察官所扮演角色之差異，勢必影響到國際間司法合作之功

效。就以同屬大陸法系之法國系（包括荷、比、盧、義、西、葡及西非諸多國家）與德國系（包括瑞士、奧地利、希臘、日本等國）之檢察官及預審法官等不同角色功能等，在談論司法互助或國際檢察官合作時往往不能形成最後共識。除此之外，大陸法系法律人之思考方法是由抽象到具體，即以法規為大前提，事實為小前提之涵攝過程，重在法律的解釋、類推及文字論理的分析等法學方法。確與英美法系法律人之由具體至抽象，以先例（即事實之同一）為問題之核心，以歸納事實之思考模式有著極大的差異。故此會議中最為深刻的印象，即在世界各國之檢察官間存在著本質上角色功能之差異。

因為此次會議在英國舉行，明年度又將在美國召開，故英國及美國的檢察官參加人數最多，也最有機會與其等作業務上經驗之交流，且國內現今以美式刑事司法制度為藍本之司法改革方向，將對我國未來刑事司法制度影響深遠，故對於英、美式刑事司法實務瞭解有其迫切性，在到達會議時即以之為此行目的之一。在會議中與英、美檢察官對於其英美法系檢察制度及實務上多作討論外，對於其檢察官生態、辦案心態、檢警及審檢間之互動及如何妥善利用行政資源以處理毒品案件等均有機會多加瞭解。然而每一國家各具獨特之法律傳統與文化，實務運作與法律規定往往有間。如英國原

本無檢察官制度，美國之檢察官制度又係建國之初習自法國，除在法庭擔任公訴官外，亦積極投入偵查犯罪，而今英國有檢察官制度卻僅在於法庭擔任公訴官角色，仍未實際參與偵查等業務，故此之差異造成討論共同打擊毒品犯罪時，美國之檢察部門要找英國之警察部門聯繫可能較為妥當。且若美國之經濟犯罪偵查單位是在其財政部下，非屬該國司法部聯邦調查局等等，均有檢察部門配置及角色之差異存在。是若僅粗通某國之刑事訴訟法律，而未能對該國之檢察制度及實務運深入瞭解，實不能謂已全盤瞭解該國之刑事司法制度，在談司法互助時亦會有對象選擇之差異。

就以此次會議重要議題之一，乃係毒品泛濫問題已然成為全世界的重大問題。而刑事司法之互助既是會議之重點，與會各國代表普遍認為我國當前最大之困境仍在於國際孤兒之角色地位。因為欠缺國際間之國家相互承認，往後如何以各別管轄權之地位以解決司法互助之問題應是可努力之艱鉅任務。

毒品之流通固有來源國、轉運國及目的國，台灣所居之地理位置極為容易成為轉運國，而來源國及目的國往往卻都是缺乏外交途徑之國家，最為困難處仍在於國與國之間如何取得司法互助之協議以共同解決此世界共通問題。次者，談論司法互助時往往需要語文之溝通能力、國際社交之能力及

相互國家間有關之刑事實体及程序法律有所瞭解始克進行之事務。我國在此方面如何選拔具有與外國實務人士充分溝通能力之人才，並積極培養其辦理涉外事務之能力，以期同時促進與外國司法實務之交流，是為當務之急。

此行深刻體認到國家資源之有限性，深以為在經濟不景氣，國家在預算拮据之情形下，如何引進企業化精神，就有限檢察資源發揮最大戰鬥力量，將是未來進入地球村時代亦須面臨之另一課題。就此刑事司法政策與政府資源分配運用之議題，或為我國亦應一併深思之問題。

一、前言

二〇〇二年九月間，有幸能得本署檢察長許可，自費公假參加在倫敦舉辦之國際檢察官會議，謹將與會心得，以及會議中有關洗錢防制法相關論述報告如下：

二、與會心得

在有關人口販賣（trafficking in human）的座談中，當主席詢問到有關東亞地區在人口販賣上有何相關問題時，我發言提出在台灣面臨另一種的人口非法移動—即是台灣地區與大陸地區之間的「假結婚，真賣淫」問題，因為人口販子（trafficker）欺瞞，或告知以不實資訊，使得大陸地區的女子錯誤的以為前往台灣地區將獲得更好的生活，或者相信以賣淫或非法打工等違法方法是得以改善其以及家庭的生活唯一方法，因而同意與前開人口販子處於共犯(act as a joint-offence）的關係，而以假結婚或者同意偷渡方式進入台灣地區，此種人口的非法移動，卻發生被害人實際上與犯罪者居於共同犯罪的關係，雖然與傳統的人口販賣形式上似有差異，然而被害人是因為囿於其本身資訊的取得，以及錯誤的訊息資料而為上開犯罪行為，應否將基於錯誤資訊而自願參與人口的非法移動視為另一種型態的人口販賣，即有討論的必要。

而在此一議題的討論上，即獲得英國檢察官的迴響。他們論及在英國存在巴基斯坦裔的英國人在巴基斯坦報紙上刊載不實廣告，欺騙巴基斯坦女子與之結婚並前往英國。另外愛爾蘭檢察官亦提出在追訴人口販子時，建議目的國（destination country）能夠給予被害人庇護，因此被害

人能夠在法庭上指訴人口販子犯行，避免法院在追訴審理此類案件時，發現被害人早已遣返回國，以致法院無法得到被告犯罪之堅強心證，而必須為被告無罪之判決，然而，由於愛爾蘭並非一般所謂的目的國，此一論述卻被在場人口販賣目的國檢察官之一致反對，認為此一作法無異使得非法的人口移動更行猖獗，並使得非法移民得以藉由此種規定達成合法居留之目的，此點亦凸顯了在法律思考上，各國常因為其自身處境之不同，而對於相同或類似的案例而予以不同處遇。

另外在區域論壇（Regional Fora）中，在談論到亞洲司法互助的問題上，我亦發言表示台灣與大陸間雖並無國與國間的協定，然而在現存的案件中，台南地檢署曾經以在大陸地區取得之證據，起訴在大陸地區殺人的三名被告，但經台南地院判處無罪，此點凸顯海峽兩岸間因為政治的對立，影響到刑事案件中證據的取捨及追訴。另外與會的台北地檢署檢察官李傳侯亦表示了由於國際間政治環境的考量，使得我國檢察官參與國際檢察官協會必須以個人會員（individual numbers）名義與會，國際檢察官協會並非政治性組織，並以促進各國從事檢察實務成員有共同交流園地，實在不適當基於政治性考量而將中華民國排除在外。此一看法馬上獲得區域論壇主席韓國籍檢察官的認同，並得以在大會各個區域論壇結論報告時提出。

三、洗錢防制法之報告

各國對洗錢防制法的關切，反映在相關的與會報告上。洗錢（money laundering），由於國際間金融工具以及科技的發展，例如電子商務的發展，雖使得洗錢成為一個國際間普遍的現象，而不限於某一國家或地區，但各國在報告中，

對於其本身所面臨的問題討論，卻顯現出其獨特性。以下謹就韓國、南非會中報告簡述如次，並就我國新修正之洗錢防制法析述如次。

四、韓國有關洗錢現狀及其防制之作為（Money Laundering in Korea- the Situation & Countermeasures）：

韓國政府有鑑於目前全球化以及金融及商品市場的快速流動，以及有效防制急速發生的洗錢犯罪行為，於二○○一年制訂二套相關法令用以防制洗錢及相關的非法犯罪行為。

然而，討論洗錢防制的問題，其根本的問題卻在於：是何種的犯罪行為導致需有洗錢之非法金錢流動？一般而論，瀆職及收受賄賂（bribery）、販賣毒品及犯罪之非法所得(distribution or sale of drugs)，以及金融之非法行為(illegal acts in finance)，之非法所得，多需要洗錢作為合法其犯罪所得之工具。

相較於西方社會，韓國的洗錢犯罪行為有一個主要的特徵：在西方社會中，洗錢多作為販毒或是非法武器買賣所得漂白的工具。然而在韓國，洗錢卻是多發生於政府官員收賄，或者大規模的經濟上不法行為(large-scale financial malfeasance），除此之外，洗錢的方法，亦與該地所慣習使用之金融工具有密切的關係，例如在韓國，由於大部分人普遍偏向喜歡使用現金，而非信用卡或者支票等，此點即與西方國家有極大的不同，因此即造成了在洗錢防制工作上，非法所得金錢的來源及流向即較不易查知。

至於在韓國的非法資金流動一年有多少？根據韓國犯罪學協會（Korea Institute of Criminology）的調查，在一九九九年約有四百七十六億至一千五百億美元，佔全國 GDP（Gross Domestic Product）的百分之十一至三十五，而外

國專家的初步估計為二百十二億美元，非法的資金流動數量排名全球第十三位。然而，實際的金額由於統計方法及對於洗錢及非法資金的定義之不同而異其數字，而難以得出一個正確的金額。

洗錢犯行在一九九三年八月十二日之前，由於銀行並未就開戶及使用銀行之人真實身份進行審核，因而極易使用假名開戶並使用金融工具，因此使得犯罪者有可趁之機，而目前得力於制訂生效之需以真實姓名開戶交易之銀行規定（real-name banking system），使得非法金錢流動得以遏止。

韓國洗錢的方法及其防制，若從金融機構工具何時、或是其介入洗錢犯罪者的程度，可以區分下列三項：一、何時犯罪者使用金融機構（when the perpetrator uses a financial institution）；二、何時犯罪者與金融機構從業人員或是金融機構共謀（when the perpetrator conspires with an employee or a financial institution）；三、藉由非金融機構的洗錢（money laundering through non-financial institutions）。

上開分類中，由於使用之工具，以及在韓國所佔比例之不同，又可再析分如下：

一、 使用金融機構（Money laundering using financial institution）

洗錢的類型	洗錢的方法

使用金融機構（Money laundering using financial institution）	使用假名或是人頭帳戶（transaction using financial accounts that in false name or other person's name）：此一類型所佔比例最高，約有百分之二十五，主要理由在於此種方法是最容易且無須複雜的技術。
	網路轉帳（wire transfer）
	資金之拆散及重組（structuring：其意係指將大筆的現金分為小筆金額進出，以避免執法機關之注意）
	重複在帳戶間之移轉（repeated circulation of cashier's checks:例如政府官員收受賄款一百萬元，他可能將之轉換成小筆金額，或者不記載受款人之支票，或者行賄之人先將該賄款以貨款名義簽發支票予他人，再背書交付收賄者，藉此增加追蹤非法資金來源之困難）

二、犯罪者與金融機構從業人員或是金融機構共謀(when the perpetrator conspires with an employee)

洗錢類型	洗錢方法
犯罪者與金融機構從業人員	由金融機構或其從業人員虛

或是金融機構共謀(when the perpetrator conspires with an employee)	偽設立並管理該企業帳戶(managing secret corporate funds by financial institutions)：
	使用多次反覆存放款以及運用多個金融機構（making repeated deposits and payouts using several financial institutions）
	交換支票（swapping checks)：其意係指金融機構之從業人員，利用

五、南非有關洗錢之問題及對策

前言

南非政府於洗錢防制上，亦體認洗錢之犯罪問題已經是一個跨國的現象，而洗錢之犯罪行為在南非，先前由於種族隔離政策所導致的國際地位之孤立，因而並無太多的相關犯罪。然而自一九九四年後，自從南非廢除種族隔離政策，重新進入國際社會後，由於相較於其他非洲國家，由於南非擁有良好的基礎建設，以致於引起了組織性犯罪團體，例如：奈及利亞、中國三合會、俄羅斯及保加利亞之犯罪組織之進入，使得南非之執法機關面臨了新的課題。

南非目前洗錢犯罪之現狀

由於洗錢犯罪及其防制在南非是一個新的課題，因此南非政府目前並無一個有關非法犯罪所得經由洗錢漂白之具體數字，之前國際組織並認為南非並非國際間前二十名最嚴

重的國家之一，然而目前的調查卻已經顯示該課題在南非已經日趨嚴重。導致南非成為洗錢犯行之目的國（a destination for money laundering）則有下述的地區性因素：

一、 日趨嚴重的組織性犯罪：根據官方的正式統計，一九九四年，已知的犯罪組織有二七八個，然而到一九九五年，已經增加到四八一個，但是到一九九九年，卻急遽擴張成為五百個犯罪集團。這些犯罪組織所涉及者多為毒品販賣及運輸，然而南非獨有的天然資源，例如黃金、鑽石、象牙、鮑魚以及犀牛角等的非法走私及輸出，亦成為犯罪集團覬覦的對象。

二、 良好的金融機構及市場機制：南非雖然被視為是開發中國家，然而其現代化的銀行系統以及證券交易制度，使得資金得以容易從國際金融市場進出南非，當然使得所謂犯罪不法所得（dirty money）得以在其中循環，進而漂白。

三、 地下經濟（Parallel economics）：南非有相當大規模的非正式商業交易系統。在此一「地下經濟」中，現金並非唯一的交易單位，例如黃金，在從事洗錢之不法之徒眼中，黃金提供了一個匿名（anonymity），並得以與全球市場交易的管道。

四、 容易滲透的邊境（Porous border）：南非寬廣的海岸線以及無天然屏障之邊境，提供了走私者的絕佳環境。例如，曾經發生的竊車或竊盜集團將所得走私到鄰近國家，而不嚴密的邊境控制也是原因之一。

未來趨勢

由於洗錢之犯罪行為直到一九九二年方立法加以規範，因

之南非政府對於洗錢模式（money laundering patterns）僅為有限的瞭解，因此根據近日學者 L De Koker 之研究，南非洗錢犯罪行為興起了下列的趨勢：

一、 購買商品及財物：據了解，南非的犯罪者偏好於將犯罪所得花費在購置奢侈品上，尚難瞭解此類購物行為是作為洗錢的方式，抑是僅為其生活誇耀所需。此問題之發生在於這類交易多為支付現金，且多係向中古貨商家取得，且商品的所有權又常常登記在為犯罪者所控制之空頭公司（front companies）名下，甚至亦發現律師的帳戶也被拿來作為洗錢之使用。

二、 商業活動、公司機構及信託管理之濫用：研究發現，犯罪者運用商業活動及機構從事洗錢犯行。例如由犯罪者所經營之空頭公司常與合法企業進行往來交易以掩飾其非法犯行。另外，家族的信託帳戶（family trusts）亦常用以隱匿不法所得的來源。

三、 商業系統的濫用：雖然嚴謹的證券管制系統使得國際間大規模、鉅量的洗錢不易發生在南非，但南非本身的犯罪者亦曾利用不記名債券或公司債（bearer bonds）、可轉讓定期存單（negotiable certificates of deposits）及銀行票據（prime bank instruments），以及信用卡，購買證券或保險。另外，南非尚有一個相當大的二手保單市場（second hand insurance policies），而該市場尚未為立法規範，此一市場由於提供了匿蹤且確實不會留下資金流向的紀錄，以致提供了犯罪者理想的機會，並為其所樂於利用，成為近年來南非洗錢防制的漏洞。

四、 使用現金及貨幣：證據顯示，大量的現金經由南非國境

進出。例如，在在班機的乘客身上取出大量的南非或是外國貨幣，或者經由合法或非法的賭場進行洗錢。

六、英國重大詐欺防制辦公室（Serious Fraud Office）有關洗錢防制之作為

七、我國洗錢防制法之修正及未來可能的趨向

目前人頭帳戶氾濫，任何非法之徒以新台幣二萬至三萬元之代價，即可購得一個人頭帳戶供其使用，更用甚者，甚至形成了一個食物鏈：有特定的團體收購人頭帳戶，再伺機出售予需要使用的犯罪集團，司法機關即令循線查獲該人頭，已經很難查詢收購之人，更難查獲使用人頭帳戶之非法犯罪集團。在所謂「刮刮樂詐欺」、「簡訊詐欺」等以中獎為幌子，行詐騙之實的案例中，目前法院實務雖有以詐欺罪共犯，或是詐欺罪之幫助犯加以論罪科刑，但不可否認的，此種提供帳戶之人頭是否與犯罪集團間有犯意之聯絡，實有問題

倫敦刑事法庭參訪紀要

一、The Old Bailey[1]

頂著寒風，我一早就匆匆坐上 Central line（地鐵），要趕在九點鐘以前到達刑事法庭附近的 Saint Paul Cathedral Tube Station（聖保羅教堂站），然後與倫敦經濟文化代表處的代表 Michael Lin、高檢署林占青主任檢察官，還有部裡代表楊榮宗檢察官會合。

倫敦的初秋已經有攝氏十度左右的威力，加上那終年不斷有名的 wind chill，氣候實在不能說是宜人；不過對忍受著入冬後動輒結冰、結霜的倫敦人來說，這種刮臉鑽脖的冷風，簡直就是上天恩賜的天然涼風扇，紓解倫敦人在 Monday Blue 的早上擠地鐵、闖紅燈的焦慮。不過對於我這個從熱帶地區來訪的嬌客來說，真還得毛大衣、圍巾、手套的全副武裝，才覺得稍有防禦能力。

刑事法院(The Central Criminal Court)位在倫敦著名的法院街(俗稱 Old Bailey）上，刑事法院旁邊是，隔一條街的斜對面，就是皇家檢察署（The Crown Prosecution Service, 又簡稱 CPS）；因著地理位置的方便，倫敦幾家有名的專賣法律書籍的書店有就在附近，而著名的律師事務所更是想盡辦法在這個彈丸之地找一個辦公據點。所以在這

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[1] Old Bailey 是倫敦市區的一條街名，也是倫敦刑事法院（Central Criminal Court）的所在地，所以法院現今又俗稱 Old Bailey。法院目前的所在地是位在前新門監獄（Newgate Prison）址，最早的院址是一七七三年建造的，後來在一九零七年被蒙特弗大樓（E. W. Mountford's building）所取代，在一九七零年又擴建一次，成為現狀。

附近穿梭的法律人（包括律師、檢察官、法官），可以說是全國密度最高。

倫敦過去因為受恐怖份子與種族極端分子的威脅，地鐵、車站等重要地點爆炸頻仍，所以容易被當成轟炸標的的的法院，進出管制也做的滴水不漏。首先入口處設計成旋轉門，這樣一方面任何人沒辦法貿然衝過去，一方面警衛與監視器可以利用時間將來客好好看清楚；等到進入第一關檢查哨，必須向管制人員交代來意並換證件，這時攜帶警械的警衛個個虎視眈眈地盯著你，讓你不敢造次。換好證件，還要再經過一道感應門，以檢測你身上有沒有帶危險物品，這一道關卡也有好幾個警衛負責。光是進個大門，至少花上五分鐘，一早提起的好精神起碼耗掉一半，真不簡單！看來我們的法院也可以學習這種累死人的安檢，把當事人暴躁的脾氣磨一磨，可能開庭時會溫和一些。

二、開庭前的法庭導覽

感謝倫敦代表處的事先安排，法院負責接待的職員（Clerk）Mrs. Mandy Mederson 已經等在門口接待我們了，從她手中我們拿到今天所有法庭開庭的庭期表[2]。刑事法庭總共有十八個法庭，但今天開庭的只有十個法庭，經過 Mrs. Mederson 的建議，我們決定挑第四法庭參觀。

[2] 刑事法院當日所有各法庭庭期表都會公佈在法院外公佈欄，所有人都可以很快查詢。很方便。

第四法庭並不是專供外人參觀的法庭[3]，所以場地比較小，從附表一可以看到詳細的法庭內部佈置圖。法庭內部佈置基本上跟世界上各國法庭佈置相似，法官坐在中間高高的台上，與法官坐同樣高度但在法官右手邊桌子的是一名法庭紀錄員，坐在法官正下方的是一位法官助理，法官助理下方還有一個大桌子，坐著兩位庭務員，一位負責簽到，另一位負責喊口令並協助證人宣誓。法官正前方高高的台子，周圍圍上柵欄，是被告與法警的位置。庭務員右邊是二排座位的陪審團席，左邊是律師與檢察官席；至於被告台旁兩邊都是旁聽席，而記者採訪席則安排在法庭二樓的座位，與一樓並不相通。比較特別的是，法庭法官座位背後牆壁正中間懸掛英國現任女王照片[4]，又為了對皇室表示尊敬，所以法官的座位不能位在女王照片的正下方，而要稍微偏右一點，很有趣吧！

法庭內包括法官、法官助理、檢察官、律師等人都穿著黑色法袍，頭戴英國法庭最著名的假髮（wig）[5]。而且因為每一頂假髮都需要由專業的師傅量身訂做，過程費工費時費料，最少需要三個月才能完

[3] 據說第一法庭才是專供外界參觀的法庭，所以場地大、設備好，所有重要、矚目的案件都會選在第一法庭開庭，也會開放媒體採訪審判過程。可惜我們參觀的時候，第一法庭並沒有案件審理，而臨時找不可以帶我們進去參觀的人，所以只好向隅。只能留待下次囉！

[4] 那個位置都懸掛現任皇室領導人照片，所以很久以前也曾經懸掛「只愛美人不愛江山」愛德華八世。

[5] 假髮和法袍是英國法庭中必要的法庭裝備，只有在涉及兒童相關的案件，或傳訊兒童到庭作證的案件，因為怕法庭的誇張服飾會嚇到兒童，所以特別允許法庭內所有人員除下假髮與法袍。可以說是因國法庭在一片肅穆嚴謹作風下相當人性貼心的做法。

成，所以相當昂貴[6]，也不易取得；而每人所願意花費的成本不同，當然頂上的假髮品質也相差甚遠[7]。當天我最喜歡法官助理戴的那一頂假髮，因為它非常的 fit（合頭形），又十分優雅，把那位女助理襯托得特別美麗。本來還想順便帶一頂回來，可惜太貴且工時太久只好作罷。

三、嚴肅但鬆散的訴訟程序

今天的案件都是由一個法官擔任審判長，有點像我們這裡的獨任庭[8]。庭期表上清楚註明：「第四法庭十點開庭（Court 4 sitting at 100:00am）」，法官是波爾（His Honour Judge Boal QC[9]）。庭期表上還有案件進行程序名稱（例如審前會議或聲請交保程序）、案件編號、被告姓名、律師姓名以及皇家檢察院的案件編號。

一開庭，瘦瘦的、看起來很嚴肅的波爾法官穿著法袍帶著假髮，從法庭旁的小們走進來，美麗的女法官助理起身念了一堆東西表示開

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[6] 據我當天向檢察官同仁打聽的結果，一頂好看的假髮至少要上萬元，如果要求精品，十幾二十萬跑不掉呢！看來在英國當檢察官或律師的基本投資也不少。

[7] 根據與當天法庭內檢察官交換關於法袍與假髮的心得，多數檢察官都覺得這種法庭服飾設計華而不當（他們的實際用語是"pretty stupid"），既浪費又很不方便，沒人喜歡。這倒是出乎意料之外的當事人現身說法。他們可不知道別的國家的法律人還相當嚮往呢！

[8] 如果是審議治安法庭上訴到刑事法庭的案件（輕罪案件），則會由三個法官組成的合議庭審理，其中只有一位是刑事庭法官，另外兩位則是治安法庭法官。這種制度很像我們國家的簡上字案件的審理方式，只是組成合議庭的法官成員並不相同。

[9] QC 是 Queen's Counsel 的縮寫，中文可以翻譯成「皇家辯護士」，全稱是「女皇的資深律師（one of Her Majesty's counsel learned in the law）」。這種頭銜在英國只有少數厲害的資深律師才有機會得到。通常必須要由上議院議長（Lord Chancellor）提名，女皇同意後任命。因為皇家辯護士在法庭裡被准許穿著絲質長袍，所以又被暱稱為「絲（silks）」。如果皇家在位的元首是國王，則稱為 King's Counsel，簡稱 KC。參照 Dictionary of Law, Oxford University Press, Market House Books Ltd 1997, Merriam-Webster's Dictionary of Law, Merriam-Webster, Incorporated, 1996.

庭，最後還加一句：「God save the Queen.」[10]。

第一件是審前會議（preliminary hearing），被告 Case Martin 被法警帶到高高的被告臺上站著，庭務員之一起身確認被告身分後將本案資料交給法官，檢察官首先表示因為剛接本案[11]，需要時間準備案件，所以請求法院在審前給予六個禮拜時間準備；接著被告辯護人也站起來表達同樣意思。接著法官准許雙方聲請，並且要求檢察官要在指定的日期時間前提出案件犯罪事實簡介（Case Summary），同時指定下次開庭的時間。最後法官問雙方在本次期日有無提出任何聲請（application）[12]，雙方都沒有進一步表示，第一件案件結束[13]。

接下來第二件、第三件案件，因為也是審前程序，所以和第一件一樣也行禮如儀，匆匆結束。直到第四件案件，當檢察官也如法炮製提出六個禮拜準備時間的要求時，被告辯護人反對，認為檢察官即為本件偵查階段主導者，早已充分接觸卷證，不需要這麼多時間的準備期。法官這時諭知：「根據法律授與我的權限，關於案件準備期間雖

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[10] 我心裡想，如果翻成中文就變成：「上帝保佑總統」，聽起來有一點爆笑。而且我們這裡又沒有國教，到時候還得加上釋迦牟尼、阿拉、媽祖等等，萬佛出動，法庭哪裡還有理性的氣氛，顯然不適合。

[11] 英國的偵查主體在警察，檢察官一般只負責特殊重大或全國矚目經指定偵查的案件，所以檢察官的工作主要在審查警察提出的案件是否可以提起公訴，還有提起公訴之後的所有公訴業務。和我國分為偵查、公訴、執行檢察官的制度大不相同。

[12] 例如被告在押的時候，是否要聲請沿押或交保等等事項。

[13] 這種形式上的審前會議，似乎應該叫做「審前會議的準備程序」，因為並未就實體案件或證據資料表示意見，只是一個雙方當事人以及法官初次見面的時點，同時往後決定案件進行的初步時間表。這可能也跟在這裡並不採用卷證併送制度的原因有關，法官既然事前看不到卷證資料，審前會議時自然無法使雙方進行實質的意見交換。我國採用卷證併送制度，法官在審前會議前已經預覽所有卷證，所以審前會議時通常即為實質的 Pre-trial，下一次庭期直接進入調查程序。兩種制度的優劣先暫不表，但卷證不併送的制度需要花費較多的審判時間卻是現可預期。

然最長可以到六個禮拜，但也應該視個案而定。既然被告辯護人提出充分的理由反對檢察官提出的準備期間，我就裁定準備期間為四個禮拜。但檢察官要注意，如果你提出的時間要求是基於你自己的疏失，而本院日後發現的話，將會有適當的處分。」檢察官見計未售，又在審判程序之初即被法官施了個下馬威，很不是滋味，垂頭喪氣的摸摸鼻子走了。

一口氣審理了幾件審前會議的案件，波爾法官似乎有些疲倦，所以宣佈休庭（recess）十分鐘[14]。

四、重頭戲上場－虐童案[15]

還沒開庭，一堆人就扛著大箱小箱的資料陸續進入法庭，把檢察官席的位置佔得滿滿的，我趨前一問，乖乖不得了，這一行八個人都是檢察官辦公室來的，包括兩個主任檢察官、四個檢察官，還有兩個檢察官助理。我心想這麼大的陣仗，到底是什麼了不得的大案，結果還在繼續整理資料的檢察官助理好心給我看 Case summary，我才知道其實只是一個疑似虐待兒童致死的案件。頓時心裡不禁羨慕起來，倫敦的檢察官辦公室人力真是充沛，這麼一個小小的虐童案就出動了八名將士應戰，我在想，如果碰上我們國家像是景文案、台鳳案等大

[14] 沒想到這十分鐘的休息變成一個多小時，波爾法官真會摸魚，法庭內等得不耐煩的檢察官和律師忍不住聊起天來，還爭相揣測波爾法官是否正在享用濃純香的熱咖啡呢！看來我們國家動輒開庭超過十六小時的鐵人法官，與此相比，真是鞠躬盡瘁啊！

[15] 這個案子就是法院職員建議我們旁聽參觀的案件，聽說不多見而且很精采，真的很期待！

案，這裡的檢察官恐怕起碼要出動五十名人手，才對得起案件的規模吧！

這件案件的被告是 Yusuf Sara，是從巴基斯坦逃來英國並尋求政治庇護的一對夫妻之一人。因為英國對於政治庇護的案件非常謹慎，往往利用大量的資源進行國內以及國際的調查，所以程序曠日費時。而為了使聲請政治庇護的外國人在接受調查期間不致受到不人道的待遇，通常會安排聲請人住在政府補助的公寓，並給予救濟金，以待調查程序終了。於是很多外國人利用這個程序的人道設計，紛紛偷渡來英，並且利用在英期間拼命生孩子，以爭取更多的補助以及未來留在英國的機會。本案兩位被告也打一樣的如意算盤，所以抵達英國的三年多時間裡生了三個小孩。政府補助的公寓空間不大，救濟金也不多，所以年輕的夫妻生活不順時常常打小孩出氣；鄰居都常常聽到小孩號哭的聲音，也看過小孩身上的傷痕，但同是艱苦環境中求生存的鄰居，其實沒有多大力氣管別人家的閒事。有一天早上被告突然下樓請鄰居幫忙打電話叫救護車，說孩子從樓上摔下受傷，但救護車到達時小孩已經死亡，而且身上傷痕累累。醫院醫生起疑，通報虐童專案，才開始調查。住在樓下的鄰居說，早上有聽到小孩在哭，而且有聽到媽媽有打他。警察實地調查小孩摔落一樓的樓梯，發現樓梯至少有兩個轉折，就算小孩摔下，也不至於一直摔到一樓地面。加上法醫解剖

屍體認為小孩的死因並非顱內出血或身體骨折等所致，而係窒息而死。檢方經過近一步調查，將被告起訴[16]。

再度開庭，波爾法官看起來心情很好，想必剛剛休庭期間的咖啡和點心很讓他滿意。法警將被告帶上被告席，真是一個看起來很年輕的媽媽；更出人意料之外的是，她竟然是聽障人士，所以法官還特別請了兩個人員協助，一個是外文翻譯，一個是手語翻譯。在庭務員的協助下，兩位翻譯人員在開始工作前都經過適當的程序宣誓。法官接著問檢察官需要多少時間準備，主任檢察官之一站起來表示，因為本案複雜重大，所以需要八個禮拜時間準備。波爾法官皺了皺眉，問被告辯護人有沒有反對，被告辯護人竟也沒有意見，看來大家的共識就是能拖就拖。法官進一步要求檢察官說明本案有沒有適用例外准許六週以上準備時間的情形，主任檢察官又起來強調人命關天，同時案件複雜等等。法官想想就直接裁定准許檢察官準備八週。這時法官又問被告辯護人有沒有提出將被告交保的聲請（Bail application），被告辯護人表示手邊資料不夠，需要看過檢察官的 Case summary 之後才能決定；法官做的球辯護人沒接，法官於是迅速宣佈下次開庭時間，解散！

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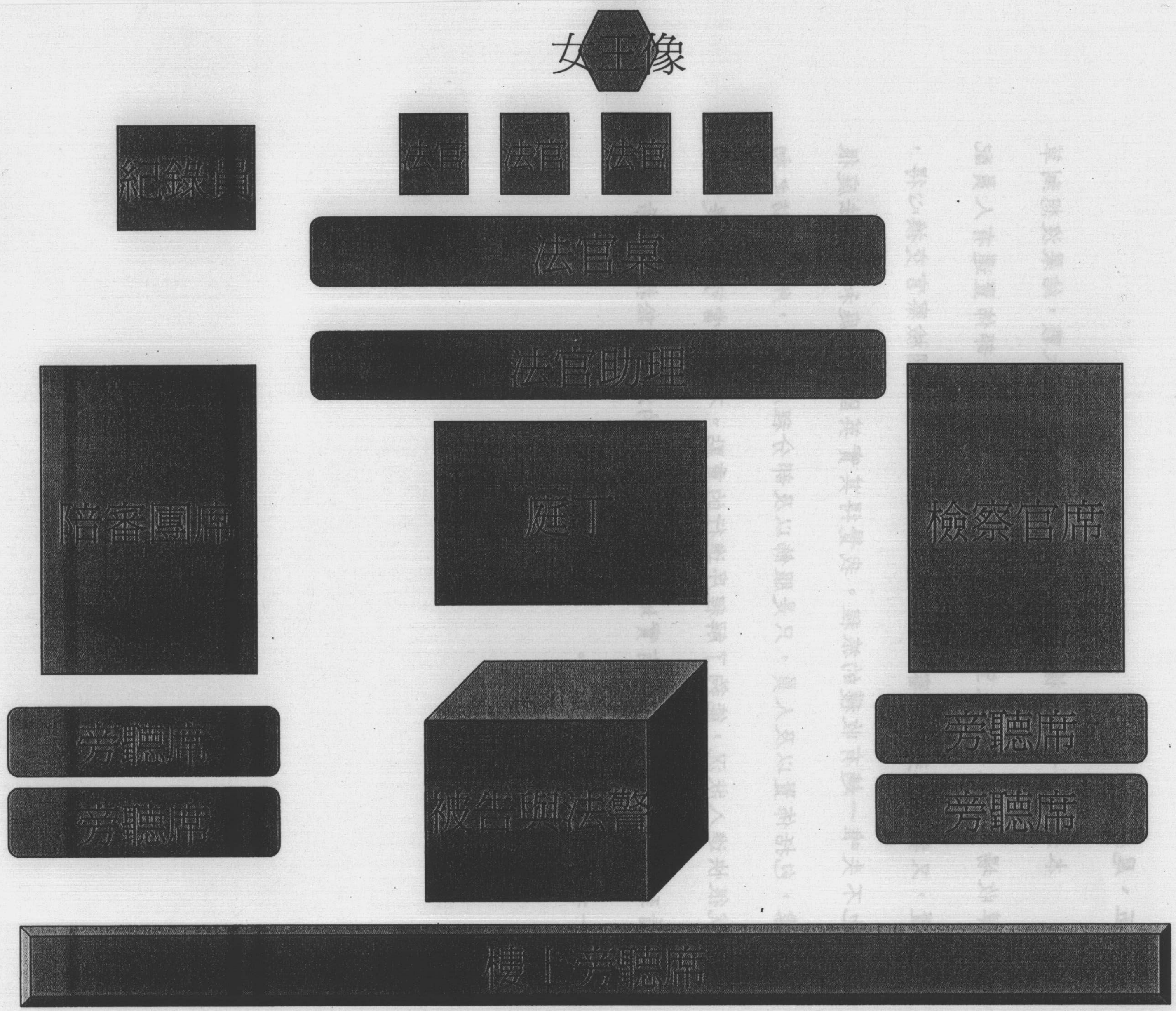
[16] 開庭前我跟皇家檢察官院的主任檢察官 Patrick Fields 聊起這個案件，他提到本件起訴時的心證，剛好我之前也有承辦一件疑似虐童致死案件，就順便請教一下辦案的技巧。Patrick 說我的案件因為小孩死亡時現場不只一個人，所以最大的困難應該在確定死亡時間後特定兇手的問題。還提到還好案發時被告的丈夫並不在家，否則也會有一樣的困難。

接著法庭一陣鳥獸散，我和其他參訪檢察官還楞在一邊不知所措，不會吧，這樣就結束啦，真是有夠「精采」的！

五、尾聲

本來期待一場唇槍舌戰、煙硝瀰漫的的檢辯大戰，結果沒想到草草收場，實在有些失望。不過實際參觀了法庭內部佈置還有人員配置，又參與了多件的審前程序，以及有機會和英國檢察官交換心得，也不失唯一趟有收穫的旅程。我覺得其實英國的法庭和我國法庭很像，包括佈置以及人員，只是服飾以及部分程序不同，所以參訪之初就很快進入狀況，能夠了解程序進行的重點。不過相當可惜的是沒有看到陪審團案件，也沒有實地體驗英國法官的法庭訴訟指揮，希望下一次參訪時能一償宿願。


女王像
紀錄員
法官
法官
法官
法官桌
法官助理
陪審團席
庭丁
檢察官席
旁聽席
旁聽席
被告與法警
旁聽席
旁聽席
樓上旁聽席

英國皇家檢察官院參訪實錄

一、前言：歷史背景

刑事訴訟制度已經在英格蘭（England）和威爾斯（Wales）存在了好幾世紀，但在西元一八八 0 年以前，並沒有官方檢察官存在。一般刑事案件是由一般平民自己聘任律師向法院提起訴訟，然而幾個發生在十九世紀的事實漸漸地突顯建立官方檢察官制度的必要：第一、人口逐漸增加，第二、警力要求更新與效率，第三、個人財產支配狀態複雜化，第四、政府權力集中化後對決策一致性的要求，以及第五、政治和思想自由化的發展使保護個人權益的呼聲漸起，其中包括被告以及被害人的人權在內。因為對現制缺乏負責有力的官方檢察官感到失望，第一位官方檢察長，約翰.毛爾爵士（Sir John Maul），在一八八 0 年被正式任命，這就是公共檢察長辦公室（The office of Director of the Public Prosecutions，簡稱 DPP）的設立。這是一個扮演全國性功能的角色，但儘管這個辦公室的頭銜看起來包山包海，其實 DPP 的功能在整個偵查或起訴的程序中，仍屬有限。[1]整個二十世紀，只有最複雜嚴重的犯罪才會被提到公共檢察長辦公室，由公共檢察長負責到法院公訴。而其他大部分的案件，均由警察聘請私人律師代表警察提起公訴。

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[1] 參照 John Sprack, Criminal Procedure 57（9th ed. 2002）

為了因應大部分案件公訴的需求，警察局設立了自己的法律部門，負責起訴後案件的公訴。皇家檢察官院是在防止刑事案件由警察一手包辦中可能引起的司法正義無法實現的背景下成立。例如當時的治安法院（Magistrate Court）就被曾指為警察法院（Police Court）。

在一九七八年，內政部長（the Minister of State for the Home Office）設立了刑事訴訟程序皇家委員會（Royal Commission on Criminal Procedure），主要是要審查警察起訴的案件以及做出具體建議。其中飛利浦委員（The Phillips Commission）提出了三項主要的審查標準：（一）對偵查此案的警察來說，起訴的決定是否妥適，偵查的過程是否無程序上瑕疵？（二）在全國各區警察試用不同的起訴指導原則的情況下，是否有起訴寬嚴不一的情況？（三）是否有警察（或警局）（有時）在違反律師的建議下起訴太多太弱的案件以致使法院做出太多無罪的判決（acquittal）？

後來皇家委員會（The Royal Commission）建議英國政府必須要設立一個新的、獨立的檢察官主管機關，同時透過議會法（The Act of Parliament）提出來完成。而一九八五年的刑事訴追法（The Prosecution of Offenses Act）則為這個新的制度提供了法定架構的依據。因此，在一九八六年十月一日，皇家檢察官院（The Crown Prosecution Service）正式成立運作。

二、 皇家檢察官院之組織

英國皇家檢察官院是位在英格蘭和威爾斯的一個全國性的公共事業單位，共有四十二個地理行政區和一個不分區特區單位組成。（蘇格蘭和北愛爾蘭則有不同的制度）皇家檢察院的所有辦公室加總現共有六千名員工左右，其中三分之一是律師，各區辦公人員多寡視案件量決定。每一區的皇家檢察官院都必須對區內警察局所負責的案件提起公訴，而案件類型則從輕罪如交通違規到重罪如謀殺案都有。不分區辦公室（Casework Directorate, the national area）位在倫敦（London）和約克郡（York），只負責重罪的起訴，例如涉及恐怖主義的犯行、重大詐欺案件和販毒等等。其中有一個特別部門（special branch）負責案件涉及國際合作、引渡、結盟等對外行為。

除了皇家檢察官院之外，英國（The United Kingdom）還有其他與刑事訴追有關的機關也同時運作。例如：（1）重大詐欺案件是由重大詐欺辦公室（The Serious Fraud Office）起訴；（2）違反公司法的案件由貿易暨工業局（The Department of Trade and Industry）起訴；（3）違反與工作環境相關衛生及安全法規的案件由衛生安全局（The Health and Safety Executive）起訴；（4）其他類型案件則由特殊任務機構起訴，例如皇家鳥類保育會（The Royal Society for the Protection of Birds）。但皇家檢察官院仍然是全英國規模最大的公訴機關，每年

向治安法庭[2]（Magistrates' Courts）起訴案件超過一百六十萬件，而向皇家法院（Crown Courts）起訴的案件也超過十四萬件。

三、 皇家檢察官院之檢察長與檢察總長

公共檢察官辦公室的檢察長（DPP）就是皇家檢察官院（The Crown Prosecution Service）的檢察長，在一九八五年刑事訴追法通過後，廣泛擴大其職權，將所有原由警察人員進行的刑事訴追行為都納入其管轄之下。其中主要包括（一）管理所有由警察人員開啟的刑事訴追程序[3]（二）當案件特別重要或具有特殊困難者，可自行開啟刑事訴追程序（三）管理涉及一九五九年猥褻刊物出版法中有關仿冒品以及猥褻物品的刑事訴追程序（四）為警察人員所進行之刑事訴追行為給予建議（五）若經法院指示，對皇家法院（the Crown Court）上訴到上訴法院（the Court of Appeal）、上訴法院或高等法院（the High Court）上訴到上議院（House of Lords）的案件參予蒞庭（六）負責所有經過檢查總長指示辦理的任何事項（七）其他相關法規架構下指定由檢察長管理警察以外人員進行刑事訴追行為之情形[4]。

目前絕大多數的刑事案件是在檢察長的監督下起訴；其中百分之

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[2] 治安法庭，Magistrates' Court，治安法庭的工作有下列幾種：(1) 對合法傳喚不到的被告發逮捕令(arrest warrant)，(2)在預審程序(committal proceeding)中擔任預審法官(examining justice)，(3) 在簡易法庭審理簡易案件，(4) 被指定擔任少年法庭 (Youth Court) 法官，(5) 對簡易案件上訴刑事法院者，在刑事法庭擔任陪席法官。*supra note* 1, page p76-81。

[3] 不過檢查總長可以指定某些特殊領域得刑事訴追行為不需要由公共檢察長辦公室接管，例如有一些輕微的交通違規案件即是。參照 John Sprack, Criminal Procedure 57 (9th ed. 2002)

[4] *supra note* 1, page 57-58。

二十的案件是由皇家檢察官院以外的機構起訴的，而警察局也負責起訴部分案件如純粹的交通違規案件。

檢察長並不受政治勢力的干擾，其是經由皇家檢察官院的檢察總長（The Attorney General）由十年以上經驗的資深律師中遴選任命，是第一職等的公務員（Grade 1 Civil Servant），他只負責處理由警察移送給皇家檢察官的案件中極端嚴重且涉及敏感的部分，並監管國會通過給皇家檢察院的預算。其對檢察總長負責，而檢察總長則對國會負責。檢察總長是政府資深的法律官員，也是監督皇家檢察官院的閣員（The superintending Minister），通常會提供政府法律觀點的獨立意見。檢察長雖可以和檢察總長或副檢察總長（The Deputy of the Attorney General）討論案件，但仍握有案件最後的決定權。皇家檢察官院現任的檢察長（Director）是由皇家辯護士[5]大衛•卡維特史密斯爵士（Sir David Calvert-Smith QC）擔任，他在一九九八年上任，是皇家檢察官院的第十二位檢察長。

四、皇家檢察官制度的運作

（一）人員

在檢察長（DPP）之下設有主任皇家檢察官（Chief Crown

[5] 皇家辯護士，Queen's Counsel，簡稱 QC，全稱是「女皇的資深律師(one of Her Majesty's counsel learned in the law)」。這種頭銜在英國只有少數厲害的資深律師才有機會得到。通常必須要由上議院議長（Lord Chancellor）提名，女皇同意後任命。因為皇家辯護士在法庭裡被准許穿著絲質長袍，所以又被暱稱為「絲（silks）」。如果皇家在位的元首是國王，則稱為 King's Counsel，簡稱 KC。參照 Dictionary of Law, Oxford University Press, Market House Books Ltd 1997, Merriam-Webster's Dictionary of Law, Merriam-Webster, Incorporated, 1996.

Prosecutors, or Casework Directorate），每一位負責在一個地理區內一個或多個治安法庭管轄的刑事案件。一個主任皇家檢察官辦公室內有皇家檢察官、行政人員與其他辦案支援人員，所有的皇家檢察官都必須具有大律師（Barristers）[6]或律師（Solicitors）[7]資格，而且必須經過檢察長任命。

（二）**職權**

皇家檢察官是依據皇家檢察官法（The Code for Crown Prosecutions）行使職權[8]，該法是在刑事起訴法第十章的授權下訂定，為正式的法規；此法規設立了可供皇家檢察官在各個案件下決定時可遵循的基本原則，也提供了皇家檢察官行使職權的基本架構。皇家檢察官法是依據下列原則訂定的法規：（一）在起訴的階段中採取重要的決定，（二）選擇適當的罪名起訴，（三）在法庭中宣示起訴法條以及起訴依據，（四）決定前經皇家檢察官院終止的刑事程序是否應該重新進行。皇家檢察官法是現行法規（Living

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[6] 大律師，Barristers，被律師公會承認可以執業的律師，通常需要先讀三年的法學院大學部，再讀一年的律師學校，然後取得倫敦四大法院協會（Inns of Courts）的會員資格。大律師可以出庭進行訴訟程序，也可以寫訴訟相關文書。大律師可以進入任何法院旁聽（rights of audience），不受限制。

[7] 律師，Solicitors，是經過一九七四年律師法的規定得執業的法律人。通常必須先讀三年法學院大學部，一年律師學校，然後在律師事務所實習二年，才能取得律師資格。如果大學讀得並非法律，則需要讀二年律師學校。律師通常可以執行一般民事業務與進入一般刑事法庭旁聽（right of audience），但對於高等法院（High Court）或最高法院（The Supreme Court）的案件，則需要特別許可。

[8] 皇家檢察官宣言：「我們發誓遵循皇家檢察官法，並採取公正一致的態度，因應著社會公益，而非被害人個人利益而行動（雖然他們的意見會被適度的考慮），同時在起訴的重要階段將根據自由心證決定方向。」

Document），而且不時地修訂以應需求，最近依次修訂是在二千年十月。本法規也曾被翻議成二十五種不同語言發行[9]。法規中規定在起訴前應有兩階段審查標準，第一階段為證據審查（evidential test）：皇家檢察官在審查案件時，必須認為有足夠的證據來支持一個對被告提起一個現實可起訴（a realistic prospect of conviction）的犯罪，這個現實可起訴的觀點是一個客觀標準，也就是說，法院陪審團或治安法庭法官依據法律，較有可能對本案被告下一個有罪判決的決定。當皇家檢察官要決定案件是否有足夠的證據時，必須考量到證據的可信度與證據力；同時必須考慮到辯方將提出如何之主張，而該主張會如何影響到本案定罪的過程。不論一個案件對公共利益有多重要，也只能在有充分證據可支持的情況下被起訴。但通過證據審查的案件並不表示可以享有直接起訴的權利。因為第二個審查標準即為公共利益標準（public interest test）。當案件通過證據標準審查後，就必須進而考慮是否符合公共利益。如果在一案件中不起訴所能得到的公共利益大於起訴者，皇家檢察官會考慮不起訴處理。皇家檢察官只對那些通過兩個審查標準的案件進行起訴程序。皇家檢察官的行為必須符合公共利益，而不僅是任何單一個人的利益；但被害者的利益卻是皇家檢察官在決定公共利益的範圍何

[9] 詳細皇家檢察官法全文請參照附錄一。

在時會予以審慎考慮的。

五、參訪紀要

皇家檢察官院就在刑事法庭附近，戒備一樣森嚴，來訪者都必須通報，而且每層樓的辦公室都有獨立的磁卡，只有在該樓層工作的檢察官或檢察官助理才有該樓層的磁卡可以進出，非常令人印象深刻。接待我們的是兩位主任檢察官，Mr. Robert Drybrough-Smith 還有 Mr. S.L.V. Wheeldon。

（一）人力配置

皇家檢察官辦公室在全英國四十二個區域都有辦公室，共有二千二百名檢察官。有些區域為工作便利，結合為一個聯盟辦公室（family group）；在倫敦、約克、伯明罕地區的檢察官辦公室，則因案件複雜度高，另有資深檢察官專辦重大刑事案件（serious crimes），倫敦地區的資深檢察官甚至可以僅專辦某一種特殊案件（cases in special field）[10]。資歷淺的檢察官剛進來時為 C1 階級，工作一年後升為 C2 階級，以此類推，最高可以升到 E 級[11]。我們當天參觀的辦公室是倫敦皇家檢察官院的第二組（Division 2），該組又分為三個小組（branch），主要都在負責與外國人或外國犯罪有關的工

[10] 例如兒童福利案件、貪污案件、性侵害案件等等

[11] 這種制度和我們家的公務員考核制度很像，看來各國英雄所見略同。

作，例如引渡、國際犯罪等[12]。辦公室的佈置很簡單，各個檢察官都有自己的辦公室，檢察官助理則全在一個大的辦公室工作，用優美家具隔成隔間。每一層樓有二至四間會議室，供開會及接待訪客用。

（二）檢察長（Director of Public Prosecutor）與檢察總長（Attorney General）

各地區辦公室的檢察長負責統理該辦公室所有案件，只有極少數的案件，如貪污、叛國等罪，需要經過檢察總長的同意。檢察長可以將特定案件指定給某檢察官辦理，也可以在受理案件後將案件移轉給不同檢察官辦理。而因為工作上的部分重疊，檢察長與檢察總長間存在一種互相制衡的緊張關係（tension），不過在實務上極少發生兩人嚴重意見不合的時候，這也是為何檢察總長在挑檢察長的時候，總有一些理念上協同的考量的原因。通常資深的主任檢察官可以申請出任檢察長，但要經過檢察總長的提名，而且經過一個任命委員會[13]的同意後任命。檢察長的任期為五年，但可以連任。檢

[12] 還有包括接待外國檢察官這種工作。另外關於與他國檢察官機關進行檢察官交換計劃（exchange program），也是由這個組負責。目前在該組交換的檢察官有來自中國大陸二十幾省的檢察官代表，理論上是跟著英國檢察官工作，但聽二位主任檢察官說，這些中國大陸來的檢察官同僚，往往在受訓之初就少見人影，他們的猜測是去遊山玩水了，不過我猜也有可能去非法打工囉！無論如何，這個交換計劃在內部的評價不高，要不是為了政治考量（即與中共交好），恐怕早就夭折了。

[13] 任命委員會組成成員有法官、檢察總長、以及資深公務員等。

察總長則與檢察長不同，他是由首相任命，沒有固定任期，直接對國會負責，隨時可被替換[14]。檢察總長通常也肩負對政府其他部門提供法律意見的責任，同時有對公法人（public bodies）不合法行為（unlawful conduct）向法院提出聲請法律上的禁制令（injunction）的權力，以及向法院提出停止審判（halt trial）的要求[15]。[16]

（三）主任檢察官（Chief Crown Prosecutor, or Casework Directorate）職權

每個小組（branch）裡都有幾位主任檢察官，負責監督旗下檢察官的工作。有些主任檢察官已經資深到可以選擇特定的案件類型，專辦案件，有些雖沒有專辦的案件類型，但主要也只負責重大刑事案件。

（四）檢察官（prosecutor）職權

如前所述，英國檢察官並沒有一般案件的偵查權，僅有部分案件可以指揮警察辦案，主要只負責審查警察移送的案件、決定案件起訴與法庭訴訟。但根據兩位主任檢察官的說明，近年來這種限制漸漸有鬆動的趨勢，也就是檢察官越來越積

[14] 所以檢察總長的性質聽起來比較像所謂的政務官，依政策成敗去留。檢察長則不受政策影響，有固定任期。
[15] 停止審判的情形不多見，例如被告在審判中重病等。檢察總長對這種情形可以依照自由心證判斷而提出聲請。
[16] *Supra note* 1, page63.

極介入偵查初期的指揮工作，同時也鼓勵警察在偵查初期就引進檢察官的協助。既然檢察官負責所有法庭訴訟，理論上可以出庭所有法院的案件，但實際上仍有分工；例如有些檢察官專門負責簡易法庭的案件，有些檢察官專門負責地方法院訴訟案件，還有些檢察官負責其他法院（如高等法院）案件[17]。另外，有些特殊的政府機關也有檢察官駐守，例如關稅總局（The Custom Office）[18]。其他政府機關則不強制但歡迎檢察官加入他們的法律部門，通常在這些機關工作的檢察官有一定期間的限制。目前全國共有約五百名檢察官在各級政府機關法律部門工作。

（五）特別約聘律師（special caseworker）

除了檢察官之外，皇家檢察官院也聘用資淺律師從事簡易案件的訴訟程序。這些資淺律師在能夠代表皇家檢察官院出庭前，必須在特殊的訓練機關（Institute for Legal Practice Training）經過一段時間的訓練，在通過主任檢察官的考試後，提報給法務部長（Lord Chancellor），法務部長同意後就可以開始擔任法庭訴訟工作。但因其資格以及經驗限制，只能就簡易案件或被告已坦認犯罪的案件出庭簡易法庭。通常

[17] 據說因為地方法院案件繁雜，通常負責地方法院訴訟程序案件的檢察官都很厲害！

[18] 以關稅總局為例，它的法律部門有調查員、有一般律師，也有檢察官，檢察官負責指揮案件調查，同時決定是否起訴。

會有檢察官監督他們的工作，而他們並不需要每天出庭，給薪的標準則是以每天工作的案件量計算，並沒有工作保障[19]，也就是有案件才有工作，像是打零工的方式。這種約聘律師的制度設計，節省了檢察官人力的消耗，使得檢察官有精力與時間能投注在其他重要案件上。目前運作尚稱成功。

六、結論

這次參訪皇家檢察官院是一個非常寶貴的經驗，主要能與檢察官同仁交換意見，同時學習他山之石，收穫很多。英國皇家檢察官院的資源豐富，人力物力充沛，團隊合作制度縝密，令人羨慕。但參訪末尾，兩位主任檢察官卻不約而同透露心聲，並表示其實檢察官工作並非大多數檢察官的終極生涯規劃，僅僅是跳板而已；許多人利用在檢察官院工作的機會與經驗，跳槽到有發展性的政府機關或民間機構，或者自己出來開業，才是夢想成真。我想這種過客心態才是皇家檢察官院未來要檢討改進的方向之一，畢竟花費國家資源培養的人才卻留不住，實在是國家的損失。或許這一點也是我國檢察官機關以及同仁要深思的。

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[19] 兩位主任檢察官說這種制度的設計是為了節省費用，因為檢察官的薪水很高（以主任檢察官而言，每小時時薪八十到一百磅，也就是每個月約二萬四千磅，折合台幣為一百三十二萬元），而一般簡易案件很多，如果讓檢察官親自處理所有簡易案件的法庭訴訟將會浪費國家公帑，所以想出這種省錢的辦法。也就是僱用一般小律師，一天可能只須一百磅，但可以處理大部分的簡易案件，節省許多檢察官的時間與國家資源。

皇家檢察官法

皇家檢察院是英格蘭和威爾士的公共事業單位，由檢察長主管，通過首席檢察官對議會負責。

皇家檢察院是包括 42 個區在內的全國性機構。每個區由一位首席皇家檢察員主管，對應一個警區，其中一個區負責倫敦事務。本院成立於 1986 年，負責對警方提交的案件提起公訴。警方負責對犯罪行爲進行調查。雖然皇家檢察院與警方緊密合作，但卻不從屬於警方。

根據《1985 年犯罪公訴條例》第 10 款，檢察長負責爲皇家檢察員頒佈法規，指導他們在決定起訴時應遵循的基本原則。此爲該法規第四版，取代以前所有版本發揮效力。本法規中的“皇家檢察員”包括皇家檢察院中由檢察長根據《條例》第 7A 款任命的、並根據該款行使職權的工作人員。

1 簡介

1.1 決定對某個人提出起訴是非常嚴重的舉措。對於法律與秩序的維持，公正有效的起訴是非常重要的。即使是一樁小案，起訴對於涉及到的人來說都有非常嚴重的影響——包括受害者、證人及被告。皇家檢察院依照“皇家檢察官法”對是否提出公訴做出儘量公正一致的決定。

1.2 該法規使皇家檢察院能夠在確認正義是否得到伸張中起到自己的作用。其中的內容對警察及其他在犯罪調查系統中工作的人和公衆來說是非常重要的。警察在決定是否以某項罪名控告某人時應考慮該法規。

1.3 該法規同時也旨在確保每個人都了解皇家檢察院執行公務時遵循的原則。通過遵循同樣的原則，本系統中的每個人都有利於做到公正地對待受害者，並公正而不失有效地提出起訴。

2 基本原則

2.1 每件案件都是與衆不同的，都必須考慮到其自身的事實與特徵。然而，有一些基本原則是皇家檢察員在處理每件案件時都必須遵循的。

2.2 皇家檢察員必須公正、獨立、客觀。不得任由其對於嫌疑人、受害者或證人的民族或國籍、性別、宗教信仰、政治觀點或性取向等的個人觀點影響其決定。不得受任何不當壓力的影響。

2.3 皇家檢察員有責任確保對起訴對象的指控是正確的。這樣做時，皇家檢察員的所有行爲必須有助于伸張正義，而不僅僅是爲了給某人定罪。

2.4 皇家檢察員的職責在於復審案件、對案件提出建議及公訴，確保適當應用法律，確保所有相關證據都已提交法庭，確保揭露眞相的義務都按照本法規規定的原則予以遵守。

2.5 皇家檢察院是根據《1998年人權法案》建立的公共權威機構。皇家檢察員必須按照該法案遵守“歐洲人權會議”的原則。

3 復審

3.1 訴訟通常是由警方開始的。有時警方在開始起訴前會咨詢皇家檢察院。皇家檢察院從警方接受的每一件案件都將經過復審，以確保其符合本法規規定的證據標準及公衆利益標準。皇家檢察員可決定是否繼續原來的指控，或改變指控，有時也可撤銷此案。

3.2 復審是一項持續的過程，皇家檢察員必須考慮到情況的變化。如想改變指控或撤銷案件，只要有可能就必須事先與警方協商。這樣警方纔有機會提供其他有可能影響決定的信息。爲了做出正確的決定，皇家檢察院與警方必須緊密合作，但作決定的最終權力屬於皇家檢察院。

4 法規規定的標準

4.1 決定起訴須符合兩項標準。首先是證據標準。如案件不符合證據標準則不得繼續，不管可能有多重要或嚴重。如案件符合證據標準，皇家檢察員必須決定提出起訴是否符合公衆利益。

4.2 其次是公衆利益標準。只有當案件同時符合這兩項標準，皇家檢察院才會提出或繼續起訴。證據標準在第 5 款有解釋，公衆利益標準在第 6 款。

5 證據標準

5.1 皇家檢察員必須獲得足夠的證據以獲得每位被告的每項指控都被定罪的“現實可能性”。必須考慮被告會怎樣辯護，及其將對訴訟造成什麽影響。

5.2 定罪的現實可能性是一項客觀的標準，意指陪審團或治安法官在法律的正確引導下極有可能宣佈對被告的指控成立。這是與刑事法庭自己應用的標準不同的另一種標準。陪審團或治安法官法庭只有在有充份證據證明被告有罪的情況下宣判有罪。

5.3 在決定是否有足夠證據提出起訴時，皇家檢察員必須考慮該證據是否合法、可靠。許多案件的證據不會引起非議，但也有許多案件的證據不如其表面上看起來那麽有說服力。皇家檢察員必須滿足下列問題：

該證據是否能在法庭上使用?

a 法庭是否可能拒絕接納該證據? 某些法律條款規定某些表面上有關的證據不能在審訊中使用。例如，是否可能因爲獲得該證據的方法不合法，或因爲不符合禁止使用傳聞作爲證據的法規而被拒絕接納? 如果是這樣，是否由其他證據足夠獲得定罪的現實可能性?

證據是否可靠?

b 證據會否支持或降低供詞的可靠性? 證據的可靠性是否因被告的年齡、智力或理解水平等因素而受影響?

c 被告提出了什麼解釋? 法庭是否可能根據該證據而認爲其總體上是可信的? 該證據是否支持無罪的辯詞?

d 如果有可能對被告的身份提出疑問，這方面的證據是否有足夠的說服力?

e 證人的背景是否可能削弱起訴方的證據? 例如，證人是否有任何影響他/她對該案件態度的動機? 或以前是否因相關罪行被定罪?

f 對於證據的精確性或可信性是否有爭議? 這些爭議有否根據，還是僅僅基於無法證明的傳言? 是否還有其他證據可能支持或削弱證人證詞的，應該要求警方找出的?

5.4 皇家檢察員不應該因爲不確定某證據是否合法或可靠而忽略它。相反，在判斷是否有定罪的現實可能性時，應該對其進行仔細的調查。

6 公衆利益標準

6.1 1951年，當時的首席檢察官，肖克拉斯爵士（Lord Shawcross），就公衆利益作了一個經典的論述，並一直受到後來的每位首席檢察官的支持："本國從來沒有這樣的法規——我希望永遠也不會有——即所有犯罪嫌疑人自動成爲起訴的對象。"（《下議院辯論錄》，第483卷，第681欄，1951年1月29日。）

6.2 對於有足夠證據使定罪有現實可能性的案件，必須考慮公衆利益。如果反對起訴的公衆利益因素多于支持的因素，不能提起公訴。在個別案例中，儘管可能有反對起訴的公衆利益因素，仍然提出起訴，但這些因素應該在宣判前提交法庭以備考慮。

6.3 皇家公訴人必須仔細公正地權衡反對和支持起訴的因素。可能影響起訴決定的公衆利益因素通常取決于罪行的嚴重性和嫌疑人的情況。某些因素可能增加起訴的必要性，而另外的可能表明採取其他的行動更好。

以下所列只是部份常見的支持和反對起訴的公衆利益因素。適用的因素取決于各個案例的實際情況。

支持起訴的部份常見公衆利益因素。

6.4 罪行越嚴重，公衆利益要求起訴的可能性越大。如下列情況發生，可能需要起訴：

a 有罪判決可能導致重罪；

b 犯罪時使用了武器或威脅使用暴力；

c 罪行受害人從事公共服務（例如，警察、獄警或護士）；

d 被告供職于權威機構或托拉斯；

e 證據表明被告是犯罪頭目或組織者；

f 證據證明是預謀犯罪；

g 有證據證明是集團犯罪；

h 犯罪受害人無力保護自己，或受到大量恐嚇，或曾遭受人身攻擊、人身事故或騷擾。

l 犯罪動機在於對受害人的民族或國籍、性別、宗教信仰、政治觀點或性取向的歧視，或者嫌疑人曾表現對受害人以上特徵的敵意。

j 被告和受害人的生理或心理年齡之間存在明顯差別，或涉及到任何不道德的因素。

k 被告以前曾受到與此次犯罪相關的判決或警告。

l 被告據稱在受到法庭裁決之後犯罪。

m 有理由相信該罪行可能繼續或重複，例如，被告有重複行為史；或

n 儘管罪行本身不嚴重，但在案發地影響廣泛。

反對起訴的部份常見公衆利益因素

6.5 如果下列情況發生，可能不需起訴：

a 法庭可能僅僅宣佈一個名義上的懲罰；

b 被告已經受到判刑，再次被判有罪不太可能導致另外的判刑或裁定，除非個別罪行本身要求起訴。

c 罪行的確是因為一次失誤或誤會引起的（這些因素必須與罪行的嚴重性相互權衡）；

d 損失或傷害很小，而且是一場事故的結果，特別是如果是因為錯誤的判斷引起的。

e 犯罪時與審訊日期相隔久遠，除非：

- 罪行嚴重；
- 耽誤的部份原因是由被告造成的；
- 犯罪事實直到最近才真相大白；或
- 罪行的複雜性表明需要長時間的調查；

f 起訴可能對受害人的生理或心理健康造成不良影響，但一定要牢記罪行的嚴重性；

g 被告年紀較大，或在審訊時（或案件發生時），患有嚴重的心理或生理疾病的情況下，除非罪行嚴重，或的確有可能再次發生。必要時皇家檢察院應遵循內政部關於怎樣處理有精神病的罪犯的指導方針。皇家檢察員必須權衡釋放患有嚴重的心理或生理疾病的被告和保護大眾之間的利弊。

h 被告已經對造成的損失或傷害進行補償（但被告不能僅僅因爲賠了錢就逃避起訴）；或

I 詳細內容曝光可能會對消息來源、國際關係或國家安全造成傷害。

6.6 按照公眾利益做出決定並非簡單地把兩方面的因素加起來。皇家檢察員必須判斷在每一案例的具體情況下每一因素的重要性，然後再做出總的評估。

受害人與公眾利益的關係

6.7 皇家檢察院代表整個社會而非個別人的利益對案件提出公訴。然而，在考慮公眾利益標準時，皇家檢察員應該總是考慮到是否起訴的決定對受害人的影響，和受害人及其家屬提出的意見。

6.8 受害人有權知道會對他 / 她所捲入的案件造成重要不同的決定。皇家檢察員應該確保採取的過程已經得到一致同意。

青少年

6.9 皇家檢察員在決定起訴是否符合公眾利益的同時必須考慮到青少年的利益。但是皇家檢察員不能僅僅因爲被告的年齡太小而放棄起訴。罪行的嚴重性及該少年過去的行爲非常重要。

6.10 涉及到青少年的案件通常只在該少年已經受到申斥和最後警告，而其罪行極爲嚴重，以上兩項處罰皆不適當的情況下才遞交皇家檢察院。申斥和最後警告的目的是防止重複犯罪，而如果重複犯罪已經發生，則表明避免該少年受到法庭系統審判的努力無效。在這種情況下，公眾利益通常要求進行起訴，除非有明確的輿論因素反對起訴。

警告

6.11 僅針對成人。警方依照內政部的指導方針做出對罪犯進行警告的決定。

6.12 判斷是否向法院起訴某件案件時，皇家檢察員應該考慮起訴之外的其他選擇。包括警告。同樣應該依照內政部指導方針。如果警告適當，皇家檢察員必須通知警方，以便警方對嫌疑人進行警告。如果因嫌疑人拒絕接受，或因警方反對而無法執行警告，皇家檢察員可重新審查該案。

7 指控

7.1 皇家公訴人應選擇以下指控：

a 反映罪行嚴重性的指控；

b 使法庭量刑有足夠選擇的指控；和

c 能夠清晰簡捷地遞交案件的指控。

這表明在有別的選擇時皇家檢察員不必總是選擇最嚴重的指控。另外，皇家檢察員不應提出超過必要的指控。

7.2 皇家檢察員不應爲了迫使被告其中少數指控表示服罪而提出超過必要的指控。同樣，也不應爲了迫使被告對較輕的指控表示服罪而提出較重的指控。

7.3 皇家檢察員不應僅僅因爲法庭或被告做出的關於聽審地點的決定而更改指控。

8 審訊方式

8.1 決定是否應在刑事法庭進行審訊時，如果有其他選擇，而且被告表示不願服罪，皇家檢察院將使用治安法官的現行指導方針。（見最高法院首席法官頒佈的“國家審訊方式指導方針”。）如果方針要求，皇家檢察員應該建議在刑事法庭進行審訊。

8.2 速度決不能成爲要求在裁判司署進行審訊的唯一原因。但皇家檢察員應該考慮如果將案件遞交刑事法院可能產生的延誤會造成的影響，及如果案件受到延誤受害人及證人可能會受到的壓力。

9 接受服罪

9.1 被告可能希望對某些、但非所有指控服罪。作爲選擇，被告可能承認一項不同的、較輕的指控，因爲這樣只是承認了部份罪行。皇家檢察員只有在認爲法庭能夠通過符合該罪行的嚴重性的判決時才應接受，尤其是當有加重的趨勢時。皇家公訴人決不能因爲方便而接受服罪。

9.2 必須特別地仔細考慮可能使被告逃避強制性最低刑期的認罪。被告表示認罪時，皇家檢察員必須牢記某些罪行可有附屬裁決而其他的不行。

9.3 某些案件中，被告承認指控，但卻是基於與起訴案不同的情況，而這有可能嚴重影響審判，應請法庭聽取證據來判斷眞實情況，並以此爲根據進行審判。

10. 重新提出起訴

10.1 對人民來說皇家檢察院做出的決定應該可以信賴。通常，如果皇家檢察員通知嫌疑人或被告不會提出起訴，或起訴已被停止，那麼此事到此爲止，案件也不會再被提出。但偶爾因特殊原因皇家檢察院將重新提出起訴，特別是當案件非常嚴重的時候。

10.2 原因包括：

a 個別的案例中，重新審視發現原來的決定明顯錯誤，不應繼續堅持。

b 某些暫時停止，以便可以在不久後收集準備更多證據的案件。這種情況下，皇家檢察員將告知被告重新提出起訴的可能性；此外

c 因缺乏證據而停止但後來發現了更加重要的證據的案件。

本法規是公共文件。可在皇家檢察院網站上找到：www.cps.gov.uk
需要本法規拷貝可聯繫：

Crown Prosecution Service（皇家檢察院）
Communications Branch（通訊部）
50 Ludgate Hill
London EC4M 7EX
電話：020 7796 8442
傳真：020 7796 8351
電子郵件：commsdept@cps.gov.uk

提供其他語言版本和聲音或布萊葉盲文版本。詳細情況請與皇家檢察院通訊部（如上）聯繫。

Thailand's Experiences in Dealing with Human Trafficking

Sirisak TIYAPAN [**]

Trafficking in humans has become more and more dangerous criminal activity in these recent years due to the worldwide expanding of transnational criminal networks in this kind of criminality. This, of course, renders a high magnitude of threatening towards human being, in particular women and children who are the fundamental element of society. Every year millions of women and children are trafficked into commercial sex trade. They are made to be bondage or slavery-like prostitution, beaten or subject to other violence or even killed by the brothel owners if they refuse to sleep with the customers. Young boys and girls who should have opportunity to study and enjoy the happiness of childhood are cruelty deprived of their rights and pushed under sexual or hard labour exploitation. In many parts of the world, small babies are kidnapped and used as the tool for begging by the begging gangs-most of them are maimed for the purpose of calling sympathy. All the victims of human trafficking are currently suffering and painful from the gross violation of their basic human rights and our society is destroying by this transnational organized crime.

Human trafficking is not a problem of any particular country, but in fact it is a common concern affecting peace and security of every nation, thus needed to be placed under attention of international community to suppress and control. In this regard, Thailand is also seriously affected by the problem of human trafficking. In Thailand human trafficking is treated as one of the most serious transnational organized crime and, therefore, some strategies must be launched out to cope with it.

Thailand is a country in South-East Asia surrounded by several neighbors, namely Myanmar, Cambodia, Laos, and Malaysia. Communication between Thailand and nearby countries such as China, India, and Vietnam is also convenient. Geographical location of Thailand which is located in the center of the region and connected to many countries like this has become one of the main element contributing to the facilitation of cross-border human trafficking and imposing hardship on Thai authorities to control the crime.

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During this decade, the report of criminal activities committed by foreigners travelling into Thailand has been remarkably high. Among various crimes of specific nature committed by transnational criminal organization, trafficking in humans, in particular women and children seems to be one of the most onerous criminal activities that causes a very high degree of damages and problem to Thai society.

Human trafficking in Thailand takes many forms. Apart from trafficking of women and children for commercial sex trade and forced labor, trafficking of aged people and small children of both genders for begging and other criminal activities such as to carry narcotic is also reported as increasingly emerged. However, trafficking of women and young girls for forced marriage and trafficking of children for child soldiers in armed conflicts, which occurred in some other regions, have not yet been reported as existed in Thailand.

With regard to the trafficking in women and children for sexual industry, formerly around 20 years ago sexual exploitation was conducted domestically from rural areas to urban centers whereby some of them were trafficked again into some more economic developed regions such as Japan, Europe, and U.S.A., but now the tendency of cross-border exploitation is becoming more significant. Women and children were recruited from outside Thailand under the arrangement of transnational criminal organizations. Most of them were trafficked from southern China, Myanmar, Laos, Vietnam, and Russia. The trend of this criminality has at present changed Thailand to become more destination or transit country than sending country.

Nowadays although the victims of human trafficking are mostly those who have been trafficked from neighboring countries into Thailand rather than from Thailand to other countries. However, it does not means that Thai women and children are saved from the traffickers who still wait for opportunity to conduct their evil. A few months ago, two university students were lured to take vacation job in Singapore under the deception of easy work and quick money. Actually, the job is a commercial sex trade under the criminal syndicate. These two students were lucky enough to escape and returned to report the incident to the police. The case is currently under serious investigation. Another case is about the abduction of a 6 years old primary school girl from the entrance of the school by a stranger lying to bring her to her mother who waiting nearby. This incident took place only a few minutes before the mother arrived at school to bring the girl home as usual. A few hours later, after an active cooperation between the police and mass media whereby the incident had been incessantly broadcast and frightening the trafficker, the girl was found left by the trafficker around 100 kilometers away. The victims of the trafficking in these two cases were lucky to

escape from the traffickers, but, of course, it is not always the case for many others victims who are less fortunate.

Sexual industry is not the only purpose for human trafficking. Although most of the children trafficked into Thailand are engaged in commercial sex trade, many others are sent to the forced labour domain. It is estimated that since 1996, Thailand has hosted more than 200,000 foreign child labors. About 70 per cent of these children are boys-mainly from Myanmar, Laos, and Cambodia. These child workers are treated like slaves and exposed to extremely hazardous working condition in construction sites, factories, small shops, or individual home for housework. Quite often, they work for nothing.

Begging gangs is another destination for children trafficking. Previously, begging gangs functioned only in and around Bangkok, but now they are found across the country. Some child beggars are recruited from rural Thai villages to work in urban areas during the dry season. However, the majority of them are foreign children trafficked primarily from Cambodia, Myanmar and Bangladesh. According to the statistics from the Department of Social Welfare, the total number of foreign child beggars in Thailand is on the rapid increase. In 1997, only 763 child beggars were identified, but only 2 years later in 1999, the figure was 1,062, which was nearly 40 per cent growing up, and now the number of them is even higher than ever before.

Given the situation as just mentioned, how to cope with the problem, what should be the strategy to control the crime of human trafficking, and since human trafficking is a common concern, how would the issue be addressed to call for real attention and cooperation between and among states so that the more effective prevention and suppression of human trafficking be achieved? All these questions are challengable, but not so easy to answer.

In dealing with the situation, Thailand has launched out several strategies through policy planning, as well as legal framework.

As for policy planning, the National Policy and Plan of Action was established in 1996 to systematize strategies in dealing with the problem of trafficking in women and children at the national level. Implementation of the plan has been carried out under cooperation between and among many governmental agencies and non-governmental organizations. Through the works done by various government agencies including the National Commission on Women's Affairs, the Royal Thai Police, the Office of Attorney General, Department of Public Welfare, and NGOs, the Memorandum of Understanding on the Procedures for Women and Children as Victims of Trafficking was launched out in 1999. This memorandum of understanding, which is still in use

until now, is very important because it has been served as a guideline for the law enforcement officers to make their performance goes in line with each other.

Within legal framework, it is certainly that laws and regulations alone cannot eliminate the problem-nor ensure the victims of the trafficking the fair legal treatment. In this connection although every nation has laws against human trafficking and will punish the trafficker, but the question is such a punishment is severe enough to deter the crime? Also, is it fair to treat the women and children who have been trafficked and forced to become prostitutes as the offender of prostitution offence and punish them like other criminals? Is it fair that while penalty is normally imposed upon the prostitute under anti-prostitution laws, there is no punishment or too slight punishment for the brothel owner and the customer? Is it fair to impose penalty upon those who have been trafficked across border by the transnational criminal organization for violation of immigration laws and repatriate them without any chance to address their grievances? Eventually, is it fair to place the victim of the trafficking for sexual exploitation, especially the child victim, under the investigation or judicial process that is likely to embarrass them or to reiterate their painful experience in the case against the trafficker? Of course, the answer to all these questions is "No". Then what should the state affected by human trafficking do? How should they deal with the situation, or just simply left it to be strongly criticized as happened in many countries?

In response to these questions and as part of the effort to deter human trafficking, Thailand has revised and enacted many laws and regulations. Penalty for trafficking in children and women for sexual purpose has been raised from small fines to up to 20 years in prison by virtue of the amendment of penal code and other legislation concerned. The Prostitution Prevention and Suppression Act was adopted in 1996 to decriminalize the prostitutes, especially child prostitutes and treat them as the victims of prostitution, not the offenders. On the contrary, a severe punishment is imposed upon those who engaged in the networks of organized prostitution including brothel owners, procurers, pimps, and even the parents who bring, encourage, or lure the child into commercial sex trade. This Act also penalizes for the first time in Thailand the customers of child prostitutes under 18 years of age, hopefully to cut down the number of customers and incentive for trafficking.

Another legislation is "The Act concerning Measures for Prevention and Suppression of the Trafficking in Women and Children" which was adopted in 1997 to incriminate the act of conspiracy even it is committed outside Thailand by the foreign conspirators. By this law Thailand can extend jurisdiction of law enforcement and competence of Thai authorities to counter the increasing cross-border nature of human trafficking and the expansion of transnational crime syndicates. So, the traffickers or conspirators who operate the trafficking of

women and children into Thailand or from Thailand to other countries will be punished even their operation is done outside Thailand.

As for the question of embarrassment or trauma of child victims or child witnesses in the proceeding of sexual crime cases including those related to trafficking in children for sexual exploitation, the Thai Criminal Procedure Code was revised in 1999 to provide the child victims and child witnesses the more appropriate environment when they have to undergo judicial process. Under the new system, investigation of the child victim or child witness by the police must be done in the presence of a psychologist or a social worker, a public prosecutor, and a person requested by the child. This is to relieve embarrassment or fear of the child and encourage the feeling of more comfortable and safety to give a statement against the offender. All the process of taking statement will be recorded by videotape and used as direct evidence in the court to prevent the child from having to tell the traumatic experience again and again. In the case where the child has to testify in the court, the revised provision obliges the court to place the child in a suitable place in a separate room to avoid frightening in confrontation with the offender or the trafficker. Examination of the child victim or child witness shall be made through a psychologist or a social worker, and the judicial proceeding shall again be arranged under videotape and video-link for the said purpose.

Another effort to increase more effectiveness in suppression of human trafficking in particular the trafficking in children is to apply the recently developed measures in Thai criminal justice-the so called "Early Deposition". Under this measures, when it is necessary the child victim or witness will be brought to the court to give immediate testimony. Cross-examination by the defending lawyer shall be made only through the psychologist or social worker under video-link, and all process will again recorded by videotape. Early deposition can be made even the trafficker has not yet been prosecuted. The child victim is not necessary to go to court again because the video record of testimony will be deposited with the court and used as evidence against the trafficker when he or she is prosecuted later on. Early deposition has been proved very useful and effective in particular in the case where the trafficker is likely to escape out of Thailand before the completion of case investigation, or to bribe or intimidate the child victim, or his or her parents, since the testimony has already been completed and kept under the possession of the court.

Apart from the direct legislation for the suppression of human trafficking as already mentioned, since human trafficking is often used as the means to earn income of the transnational criminal organizations and the amount is so huge and make such criminal groups even more powerful and influential to bribe the authorities as well as to engage in other serious crimes such as narcotic trafficking

or terrorism, it is necessary to take away from them such ill-gotten proceeds. By this reason Thailand has adopted the Prevention and Suppression of Money Laundering Act of 1999 to include human trafficking as one of the predicate offenses whereby the authorities have power to conduct assets-examination and forfeiture of ill proceeds of the traffickers.

It is undeniable that the problem of human trafficking of today has been growing up too big for a single nation to overcome. Human trafficking occurring in Thailand is not only the domestic problem of Thailand alone. In fact, it is an international matter. In this regard, it is also a very true fact that the competence of the authorities of one state alone, like that of Thailand, may not be adequate to cope with the power and influence of human trafficking syndicate.

To ensure the effective tackling of transnational human trafficking, it is necessary for Thailand to rely on international cooperation. Apart from actively and incessantly participates in technical exchange, regional strategic planning, specific programme launching and implementation with various countries, NGOs, and international organizations in respect of human trafficking, Thailand also emphasizes on judicial assistance, in particular through the mechanism of mutual legal assistance in criminal matters and extradition.

The laws of Thailand regarding mutual legal assistance and extradition provide a very wide range convenience for a foreign state in requesting assistance from Thai Authorities. Thailand can render assistance to any requesting state, upon a reciprocity basis, even without any treaty concluded between Thailand and such a requesting state, however, with the conclusion of treaty the process will be easier and faster. To cut down unnecessary formalities of diplomatic channel, the requesting state having treaty can submitted its request for assistance directly to the Attorney General who is the Central Authority of Thailand according to the 1992 Act on Mutual Assistance in Criminal Matters. Request for extradition of offender in any offence including human trafficking to foreign country will also be granted as much as possible under the Extradition Act of 1929. This act is currently in the process of revising to cope with the very rapid change of the situation regarding transnational organized crime including human trafficking.

With all mechanism and effort as mentioned, it is hoped that human trafficking in Thailand will eventually be eradicated. However, this will be achieved only upon the basis of true spirit of cooperation both at the national and international level.

Trafficking in Humans

- Theory, Phenomenon and Criminal Law based Responses - *

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1. Introduction: Trafficking in Humans as Part of Transnational Crime

It is evident that trafficking in humans has become an issue of concern in both national and international systems of crime control [1]. Therefore, it does not come as a surprise that the United Nations Convention on Transnational Crime signed in Palermo/Italy in December 2000 is focussed also on trafficking in humans with a draft protocol to prevent, suppress and punish trafficking in persons, especially in women and children. In fact, the Vienna branch of the United Nations has made trafficking in humans a central field of research and international crime policy making [2]. Within the framework of the European Union several Joint Actions have highlighted the salience of trafficking in humans for European policies [3]. Besides Actions dating of November 29, 1996, we find an action aiming at the extension of the Europol mandate to trafficking in humans (1996) as well as the joint action of 24. February 1997, adopted by the Council on the basis of art. K 3 of the treaty on the European Union which concerns action to combat trafficking in human beings and sexual exploitation of children [4]. While this joint action focusses on trafficking in women and children for the purpose of sexual exploitation or prostitution and obliges the member states to penalize behaviour that aims at sexually exploiting children or adults, the Schengen treaties that have become part of the European Union treaties in 1999 deal explicitly with trafficking in or smuggling of immigrants. Art. 27 of the convention implementing the Schengen accord of 1985 requires that the contracting parties impose appropriate penalties on any person who for

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[1] Arlacchi, P.: Ware Mensch. Der Skandal des modernen Sklavenhandels. München 2000; David, F.: Human Smuggling and Trafficking. An Overview of the Response at the Federal Level. Canberra 2000.

[2] See eg. Press Release SOC/CP/210 as of March 11, 1999 where the launch of three new global programmes to combat corruption, trafficking in human beings and organized criminal groups was announced.

[3] Alexander, S., Meuwese, S., Wolthuis, A.: Policies and Developments Relating to the Sexual Exploitation of Children: The Legacy of the Stockholm Conference. European Journal of Crime Policy and Research 8(2000), pp. 479-501, p. 489.

[4] The Treaty of Amsterdam covers trafficking in humans not explicitly but mentions only terrorism and drug trafficking as offence types that necessitate international and European police cooperation.However, the Amsterdam treaty is open insofar as it says that any type of serious international crime must be a serious candidate for police cooperation.

the purpose of gain assists or tries to assist an immigrant to enter or to take residence within one of the Schengen parties contrary to the laws of that contracting party. Then, the 1989 UN-Convention on the Rights of the Child in Article 34 expressly confirms the right of the child to be protected from sexual exploitation including of course trafficking in children. Moreover, the 1996 First World Congress Against Commercial Sexual Exploitation held in Stockholm has contributed to direct attention at the phenomenon of trafficking of humans. The Europol mechanisms finally are also dealing with trafficking in humans. Art. 2 of the Europol Convention refers to the prevention and combating of the trade in human beings. The attention paid to human trafficking is also shown in the Charta on Fundamental Rights as presented during the Summit of Nice in December 2000. Here, Article 5 sec 3 simply states that trafficking in human beings is prohibited. Sec. 1 and 2 of the said article prohibit slave trade and forced or slave labour.

The discourse on trafficking in humans certainly is located within a wider topic, i.e. organized and transnational crime [5]. Obviously, some organized crime groups have specialized in trafficking, in particular groups which are based in countries that are characterized by large scale emigration due to internal pressures and powerful push factors [6]. However, it is not only the perspective of organized crime and control of organized crime which has to be mentioned in respect to trafficking in humans. It is then migration and immigration issues that are evidently related to trafficking [7] as well as the issues of violence and coercion against women and children, control of prostitution and red light districts in metropolitain areas [8], finally economic approaches to the analysis and explanation of black markets and the growing shadow economies point to the significance of demand and supply mechanisms [9]. Smuggling and trafficking in goods, services and humans represent the "underside" of the (global) legitimate trade, these activities are driven by laws (defining the scope and content of trafficking and smuggling) as well as by demand (which emerges from conventional society and eg. the established sex markets) [10]. Trafficking thus concerns also a sensitive topic as it

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[5] Sieber, U., Bögel, M.: Logistik der organisierten Kriminalität. Wirtschaftswissenschaftlicher Forschungsansatz und Pilotstudie zur internationalen KFZ-Verschiebung, zur Ausbeutung von Prostitution, zum Menschenhandel und zum illegalen Glücksspiel. Wiesbaden 1993; Keidel, L.: Menschenhandel als Phänomen der Organisierten Kriminalität. Der kriminalist 30(1998), pp. 321-325; Yiu Kong Chu: The Triads as Business. London, New York 2000.

[6] Yiu Kong Chu: The Triads as Business. London, New York 2000; Dobinson, I.: Pinning a Tail on the Dragon: The Chinese and the International Heroin Trade. Crime&Delinquency 39 (1993), pp. 373-384.

[7] See eg. Ulrich, Ch. J.: Alien-Smuggling and Uncontrolled Migration in Northern Europe and the Baltic Region. HEUNI Papers, 7, 1995, pp.1-22.

[8] Flormann, W.: Rotlichtmilieu – Menschenhandel als Teilbereich der Organisierten Kriminalität. Der kriminalist 27(1995), pp. 178-185.

[9] Fijnaut, C.: Prostitutie, Vrouwenhandel en (vermeende) Politiecorruptie in Antwerpen. Leuven, Amersfoort 1994.

[10] Andreas, P.: Smuggling Wars: Law Enforcement and Law Evasion in a Changing World. In: Farer, T. (ed.): Transnational Crime in the Americas. Routledge: New York, London 1999, pp. 85-98, p. 86-87; Kelly, L., Regan, L.: Stopping Traffic: Exploring the extent of, and responses to, trafficking in women for sexual exploitation in the UK. Police Research Series, Paper 125, London 2000, p. 1.

raises ideological questions in terms of responsibility and explanation [11] and it is linked to human right issues. However, it would not be adequate to understand trafficking in humans from the divide between the industrialized world and the one still struggling with mass poverty. Countries may at the same time be countries of destination, sending and transit countries of trafficked humans, moreover the status of countries can change rapidely [12].

2. The History of Problematizing Trafficking in Humans

International and European attention as regards trafficking in humans certainly was and still is preoccupied with prostitution and child pornography as well as sexual exploitation of children and women in general [13]. However, it is clear that the concept of trafficking in humans must be drawn wider than that. Besides trafficking in women for the purpose of prostitution and sexual trafficking in children, there exist several other phenomena which deserve to be covered by the concept of trafficking in humans.

- Brokerage for marriage is sometimes linked rather closely to trafficking in women for the purpose of prostitution.
- Another phenomenon is related to international adoption and concerns brokerage of international adoption for profit as well as supply and demand for children for the purpose of adoption [14].
- The third phenomenon concerns trafficking of immigrants as well as brokerage of labour for profit or trafficking of humans for the purpose of forced labour or labour outside the statutory safeguards provided today by labour safety regulations, insurance, youth protection laws, minimum wages etc. [15]

One might consider finally brokerage and commerce in human body parts as trafficking in humans [16]. There exists a commercial area with respect to human body parts indeed, as as many as 10,000 Germans as well as 30,000 North Americans are waiting

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[11] Le Breton, M., Fiechter, U.: Frauenhandel im Kontext von Exklusions- und Differenzierungsprozessen. In: beiträge zur feministischen theorie und praxis 24(2001), pp. 114-126.

[12] See International Organization for Migration: Paths of Exploitation. Studies on trafficking of women and children between Cambodia, Thailand and Viet Nam. IOM, Center for Advanced Studies 1999.

[13] See eg. Kelly, L., Regan, L.: Stopping Traffic: Exploring the Extent of, and Responses to, Trafficking in Women for Sexual Exploitation in the UK. London 2000.

[14] Albrecht, H.-J.: Kinderhandel - Eine Untersuchung zum (gewerblichen) Handel mit Kindern. Bundesministerium der Justiz: Bonn 1994.

[15] Dreixler, M.: Der Mensch als Ware. Erscheinungsformen modernen Menschenhandels unter strafrechtlicher Sicht. Frankfurt a.M. 1998, pp. 115.

[16] See Dreixler, M.: opus cited 1998, pp. 75; Foster, T.W.: Trafficking in Human Organs: An Emerging Form of White-Collar Crime. International Journal of Offender Therapy and Comparative Criminology 41(1997), pp. 139-150; see also the Council of Europes` Decision (78) 29 as of May 11, 1978 where in Art. 9 it is declared that providing for a human organ for the purpose of transplantation may not serve financial profits.

each day for transplantation of some vital part, most of them waiting for transplantation of kidneys (which is priced at up to 50,000 US-$ per transplantation) [17]. However, seen from the history of international efforts to control trafficking and current approaches to find law based remedies it was always trafficking in women and female children (for purposes of sexual exploitation) that was at the center of political attention.

The history of international and national efforts to develop instruments to combat trafficking in humans dates back to the turn of the 19th/20th century. It was in particular two areas where in industrialized, modern societies a sort of moral panic pushed for international prohibition of the then so-called white slave trade. The process of creating and implementing international agreements and conventions started in 1904 when in Paris an International Agreement for the Suppression of the White Slave Trade was signed. In 1910, the Paris International Convention for the Suppression of the White Slave Trade was agreed upon by various countries pursuing the goal of putting an end to trafficking in women and underage girls for "immoral purposes". The 1910 convention was followed by several other international instruments, among them the 1921 Geneva International Convention for the Suppression of the Traffic in Women and Children, the 1933 Geneva Convention for the Suppression of the Traffic in Women of Full Age, finally the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of Prostitution of Others [18]. The United Nations then agreed December 18, 1979 on the Convention on the Eradication of All Forms of Discrimination Against Women with all parties to the convention being obliged through Art. 6 to implement all necessary measures to ensure abolition of trafficking in women and exploitation of prostitution.

A major force behind the emergence of the international and UN based system of control of human trafficking is found in strong beliefs prevailing in Europe and in North-America that white women were abducted or seduced into prostitution activities abroad as well as in extremist interest groups pursuing policies of strict abolitionism of prostitution [19]. However, the international instruments resulted mainly in symbolic legislation as there was obviously nowhere significant signs of serious implementation of the international conventions, neither in Europe nor in North America.

As regards international adoption, the situation is quite different. Although, there had been – parallel to the creation of the White Slave Conventions – also movements to control (commercial) national and international adoption [20] such attempts proved to be unsuccessfull during the first half of the 20th century [21]. Then, during the 50ies and

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[17] See Dreixler, M.: opus cited, 1998, pp. 75.

[18] See for a complete account Dreixler, M.: opus cited, 1998; Albrecht, H.-J.: opus cited, 1994.

[19] See eg. Beiträge zur feministischen theorie und praxis 24(2001), No. 58: Prostitution.

[20] See Albrecht, H.-J.: opus cited, 1994.

[21] Arendt, H.: Kinder des Vaterlandes. Neues vom Kinderhandel mit Jahresbericht über meine Recherchen und Fürsorgetätigkeit vom 1.9.1912 bis 31.8.1913. Stuttgart 1913.

60ies, a huge demand for families which would be ready to adopt children (from third world countries) emerged. In particular, charity organizations operating in Third World countries were desperately trying to find families in order to be able to place children who could not be adopted in their home countries. This situation started to change in the 60ies and 70ies when a reversal of demand and supply structures occurred with more and more demand for children in industrialized countries being voiced. Then, charity organizations obviously noticed that there was a growing demand for children and that their role had changed into providing children for an adoption market emerging in particular in Europe and North America. The response of charity organizations has been to cut down sharply international adoption activities. As a consequence, less and less "supply" of children for international adoption met an increasing demand. As a consequence charitable organizations then have been replaced by commercial business.

As regards international treaties on adoption, it was first the European Convention on Adoption of 1967 which outlines duties and obligations of member states. In art. 15, parties of the convention are obliged to introduce legislation which prevents "illegitimate profits" stemming from international or cross-border adoption. It is obvious that a distinction was made between legitimate and illegitimate profits. Also charity organizations evidently need to raise fees in order to cover costs of organization, staff etc. which are involved in international adoption. This is also part of a political economy where regulation or deregulation of markets occurs and therefore provides for the emergence of black markets. Finally, there was obviously no consensus reached among the international community as regards the question of whether international adoption should be left to a free market or whether international adoption should be placed under tight regulations.

The United Nations Child's Bill of 1989 defines then rights of the child. In particular, art. 21d should be mentioned where it is also said that in case of adoption illegitimate gains should be prevented. However, there was evidently no consensus reached on what gains should be regarded to be illegitimate. Finally, the Hague Convention of 1993 has added rules to the market of international adoptions. However, no consensus on whether private or commercial adoption should be tolerated could be reached within that framework either.

While the 60ies, 70ies and 80ies have been a rather quiet period as regards international and national activities in creating laws and regulations concerning trafficking in humans, the 90ies again saw a spread of legislative and political activities headed towards penalizing various phenomena linked to trafficking in humans. On the European level, the joint action of the European Union of 1997 has to be mentioned which deals with trafficking in women and children for sexual motives as well as the Schengen treaties (which had become part of the European treaties). There, too, illegal immigration and trafficking of illegal immigrants have been singled out as important political topics. Herewith, two main issues arise, the first of which concerns prostitution (in-

cluding child prostitution and child pornography), the second of which concerns illegal immigration and trafficking in illegal immigrants for whatever purpose.

International trends are visible in the Convention on Transnational Organized Crime where trafficking in humans has been made an explicit topic [22]. The Convention seeks to introduce duties to create national criminal offence statutes which criminalize trafficking in humans as well as membership in a criminal organization. The problem with the latter is the vagueness as well as enforcement problems likely to result from such vague statutes. Furthermore, vagueness of the statutes certainly does not comply with conventional standards of clarity and standards of rule of law. In addition to the trafficking protocol the 2000 Transnational Organized Crime Convention contains also a protocol which covers smuggling of migrants (annex III: protocol against the Smuggling of Migrants by land, sea and air, supplementing the United Nations Convention Against Transnational Organized Crime).

Over the last decades there have been various attempts on national, European and international levels to step up the control of trafficking in humans [23].

3. Defining Trafficking: International Treaties and National Offence Statutes

As regards (legal) definitions we see that the phenomenon is split up into trafficking and smuggling activities. With the concept of trafficking in humans, there are certainly two types of elements which have to be invoked in order to establish trafficking. First, it is the subjective dimension from which elements must be drawn that constitute trafficking. The second dimension refers to objective elements and thus is linked to the phenomenon itself in terms of the act, places where such acts are carried out etc.. As regards the subjective element, it is of course the motive which is important in defining trafficking. Trafficking refers to some purpose or goal of trafficking. Such goals of trafficking can be broken down into the personal motive of getting involved with trafficking which certainly is financial profit and into the specific purposes of trafficking that refer to various fields such as prostitution, clandestine labour markets, illegal immigration etc. Furthermore, the definition of trafficking includes particulars of the act that initiates or sets off the trafficking process in terms of either deception, the use of threat, the use of force, making the act in question an act of abduction or kidnapping. Finally, the definition of trafficking requires some cross-border activity either in terms of organizing cross-border transportation of humans or in terms of brokering a contract between supply and demand in different regions separated from each other in terms of international (sometimes also intranational (eg. China) borders). Trafficking is then related to the sexual or economic exploitation of human beings.

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[22] See Annex II Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

[23] See for a summary also Caroni, M.: Tänzerinnen und Heiratsmigrantinnen. Rechtliche Aspekte des Frauenhandels in der Schweiz. Luzern 1996, pp. 21.

According to the definition as outlined in the annex supplementing the Transnational Crime Convention „"Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs" [24].

A model definition of trafficking is also available with the U.S. Governments definition of trafficking in persons. This definition says that all acts involved in the transport, harboring, or sale of persons within national or across international borders through coercion, force, kidnaping, deception or fraud, for purposes of placing persons in situations of forced labor or services, such as forced prostitution, domestic servitude, debt bondage or other slavery-like practices establish "trafficking in humans" [25]. With this definition both, force on the one hand and cunning behaviour on the other hand are made objective elements of a trafficking offence statute. So, the US Victims of Trafficking and Violence Prevention Act of 2000 has created new forms of felony crimes related to sexual trafficking as well as victim assistance provisions that seek to support victims on the one hand and to facilitate prosecution of traffickers [26].

The Organization for Security and Co-Operation in Europe (OSCE) has published proceedings of a conference on trafficking in human beings which was held in 1999 and which was also devoted to discuss definitions of trafficking. The report concludes that "trafficking in human beings" involves movement of people for the purpose of placing them in forced labour or other forms of involuntary servitude. Thus, "trafficking in human beings" is defined to include trafficking for sexual as well as non-sexual purposes, and all actions along the trafficking chain, from the initial recruitment (or abduction) of the trafficked person to the end purpose or result - the exploitation of the victim's person or labour [27].

As regards international instruments outlined in the introductory remarks above there is certainly a consensus about leading characteristics of the trafficking definiton such as some contribution to the illegal entry or stay of a foreign national in a foreign country, the use of coercion, violence or deception (in case of adult victims) or abuse of authority and power as well as a financial motive [28]. Moreover, it is also quite clear that other elements are not evaluated unanimously in international criminal law reform.

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[24] Annex II Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

[25] http://secretary.state.gov/www/picw/trafficking.

[26] The Victims of Trafficking and Violence Protection Act of 2000, P.L. 106-386; Bensinger, G.J.: Trafficking of Women and Girls. Crime&Justice International 17(2001), pp. 11-13.

[27] Organization for Security and Co-operation in Europe: Trafficking in Human Beings. Implications for the OSCE. Review Conference, September 1999, ODIHR Background Paper 1999/3.

[28] Siron, N., van Baeveghem, P.: Trafficking in Migrants Through Poland. Antwerpen 1999, p. 14.

So, there exists eg. no consent in the question of how consent voiced by the victim should be dealt with [29]. On the other hand smuggling of human beings (in particular immigrants) is separated from trafficking as the term of "smuggling" rather is used to describe acts which support or facilitate illegal immigration (or crossing borders) and involve a migrant or immigrant who voluntarily seeks opportunities for immigration and due to immmigration restrictions relies on criminal groups specializing in cross border smuggling. Besides the criteria of voluntary migration, another element which sometimes is used to separate smuggling from trafficking activities is the duration of the period of exploitation the migrating individual is subjected to after entering the country of destination [30] and whether the immigrant after all is free to move and make choices in employment etc or whether he or she is placed in "debt-bondage" or other dependencies [31].

Criminal law covering trafficking activities in principle have two roots (at least in European societies). One of these roots is found in criminal legislation outlawing pimping and certain forms of prostitution, the other is found in the international white slave trade conventions. Modern criminal policy in continental Europe has reduced anti-pimping statutes from a wide and moralizing criminal law to a rather narrow criminal law approach which aims at protecting individuals from being influenced into prostitution, from being supervised and exploited while working as a prostitute or from being influenced to stay in prostitution. Anti-Trafficking offences are rather close to the aformentioned criminal offence statutes which to a certain extent explains problems experienced in drafting and implementing such law.

In order to analyze more closely statutory definitions of trafficking a selection of criminal code books shall be reviewed [32]. Trafficking in humans is eg. defined in the new Polish Criminal Code [33]. Art. 253 §1 says that anyone who traffics in persons, even with their consent .. is subject to criminal punishment. Insofar the Polish legislator has chosen a rather wide (and open) definition of trafficking which evidently embraces also acts that are consented with by the trafficked person. Moreover, the range of behavior covered by this definition is evidently not restricted to trafficking for the purpose of sexually exploiting women and children but covers also trafficking of persons with the motive of placing somebody in illegal employment or supporting illegal immigration alone. Art. 204 threatens criminal punishment

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[29] Siron, N., van Baeveghem, P.: opus cited 1999, p. 15.

[30] Bajrektarevic, A.: Trafficking in and Smuggling of Human Beings. Linkages to Organized Crime: International Legal Measures: Statement Digest. Vienna: International Centre for Migration Policy Development, 2000.

[31] Aronowitz, A.A.: Smuggling and Trafficking Human Beings: The Phenomenon, the Markets That Drive It And the Organizations That Promote It. European Journal on Criminal Policy and Research 9(2001), pp. 163-195, p. 167.

[32] For a review of legislation see also Niesner, E., Jones-Pauly, Ch.: Trafficking in Women in Europe. Bielefeld 2001, where Germany, Poland the Tcheque Republic, Austria, Italy and Belgium are studied.

[33] See also Lammich, S.: Der internationale Frauenhandel in der polnischen Strafrechtspraxis. Der kriminalist 32(2000), pp. 273-274.

for facilitating or initiating prostitution activities for personal profits and for profiting from prostitution activities. Furthermore, Art. 204 increases penalties provided in case young victims are involved and if victims are triggered into prostitution activities abroad. The Polish trafficking offence statute comes rather close to the statute found in the Swiss Penal Code Book. Here, Art. 196 evenly states that "trafficking in humans" carries a minimum penalty of six months. However, the purpose of trafficking is restricted to "facilitating sexual acts of others" (a definition which goes beyond prostitution). Trafficking is established solely through brokering activities. The latter must be carried out in pursuit of material profits. Besides the trafficking offence statute Swiss criminal law provides also for an anti-pimping statute (Art. 195) which criminalizes bringing another person into prostitution while exploiting the vulnerable situation or pursuing financial advantages (besides that supervising a prostitute or imposing conditions of sex work carry also criminal punishment). A similar situation can be found in Austria. Here, §217 of the Criminal Code threatens a penalty of imprisonment of between 6 months and 5 years if somebody brings another person into prostitution in a country where that person is a foreigner. Trafficking is established independent from whether that person who is brought to prostituton was involved in prostitution before. Punishment is increased to up to ten years imprisonment if the offender acts in a commercial way. If the offender traffics another person into prostitution by means of violence, threats or through deception, the penalty range lies between one and ten years imprisonment. Anti-pimping legislation in Austria (§216 Austrian Criminal Code) corresponds to that of Switzerland. In Italy trafficking and exploitation of prostitution of others are dealt with in the Law n.75 of 20 February 1958. This law decriminalizes prostitution (if practiced in the private), prohibits prostitution in brothels, but criminalizes those who exploit prostitutes or who lead women into prostitution. Under Art 3 of this law a criminal offence is established if somebody encourages a woman to engage in prostitution or transfers a woman to another place or to another State in order to place her in prostitution. In Belgium, the aliens law besides regulation of support of illegal immigration covers also trafficking in Humans. The definition is as wide as is the Polish definition as it covers not only trafficking in women for the purpose of placing them in prostitution activities but also any other motive if violence, threat of violence or deception etc. is used to traffic a foreign national across the border or to keep him or her within the territory of Belgium. The active exertion of pressure (in terms of violence or threat of violence) on the victim can be substituted by exploiting a vulnerable position of the victim [34]. In the Netherlands trafficking is restricted to sexual exploitation through bringing somebody to prostitution as Art. 250ter of the Dutch Criminal Code Book penalizes the use of force or intimidation or abuse of authority or a position of power or deception to place somebody else in prostitution. Although women-trafficking is often confused with alien smuggling, it is another crime. The German criminal code defines "Trafficking in Humans" (§180b) as exertion of influence on another person for personal profit and with knowledge of a coercive situation, in order to induce the person to take up prostitution activities or continue in prostitution [35]. Trafficking is also established if for personal profit influence is exerted on another person, with knowledge of the

[34] Siron, N., van Baeveghem, P.: opus cited 1999, p. 16.

[35] See Heine-Wiedenmann, D., Ackermann, L.: Umfeld und Ausmaß des Menschenhandels mit ausländischen Mädchen und Frauen. Stuttgart, Berlin, Köln 1992.

helplessness due to the person's stay in a foreign country, to get the person to engage in sexual acts. Trafficking is finally established if somebody exerts influence on another person who is either helpless due to staying in a foreign country or is under the age 21 with the goal of bringing the person to commence or continue in prostitution. The German trafficking statute thus covers not only acts that are related to forced prostitution but also selected acts that are related to the field of brokering marriages (which in many instances comes close to prostitution activities). The US Victims of Trafficking and Violence Protection Act of 2000 defines "severe forms of trafficking in persons" as (a) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (b) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

However, the essential question as regards separation of smuggling from trafficking concerns the specific protected interests and what interests should be protected by a criminal offence statute focussing on trafficking in humans as well as how this interests differs from that protected by smuggling offence statutes. With smuggling oiffence statutes there are certainly not interests of the smuggled persons involved as migrants demand for being smuggled into a country of destination they themselves have chosen on a voluntary basis. There exist certainly various forms of deception sometimes operative in initiating migration into Europe [36] with immigrants being provided with false information or distorted pictures of Europe. Thus, immigrants are smuggled into European countries who on the one hand do not fullfill those criteria which have been set in immigration countries for legal immigration and on the other hand are not aware fully of conditions they will face when finally having entered the country of destination. Such deception which triggers individuals into migration activities (and moreover into sometimes huge financial investments) occurs certainly with respect to employment opportunities and possible income as well as conditions of living and the prospects for a life in economic and social safety. However, such acts of deception do not create the type of coercive situation which evidently is aimed at by trafficking statutes but come rather close to behaviour that commonly establishes the offence of fraud.

The first problem which comes up with criminal legislation on trafficking in humans refers to the basic value or interest which always must be identified precisely for any criminal offence statute. As many cases involving smuggling (or trafficking) of women or other adults concern cases where there is consent, the question emerges of what should be at the core of a criminal offence statute in terms of protected interests. This is not a problem for those cases where violence or threat of violence or other severe consequences for the well-being of the victim (or others close to the victim) are used in forcing individuals into prostitution or labour nor is it a problem in case of children where informed consent cannot be established because of lack of capability to

[36] See Vocks, J., Nijboer, J.: The Promised Land: A Study of Trafficking in Women From Central and Eastern Europe to the Netherlands. European Journal of Crime Policy and Research 8 (2000), pp. 379-388.

consent. These cases, however, fall also into the reach of other well-established offence statutes.

However, if violence or threat are not present but just exploitation of poverty and other pressures which have not been caused by those individuals or groups who take advantage of such pressures, then the question arises what to do with cases where such pressures are exploited. Some statutes – as eg. the German criminal provision of trafficking – require exploitation of the helplessness of a person (which must be due to the stay in a foreign country) as well as exertion of influence on the person in order to bring the person to prostitution. Influencing somebody into prostitution in itself cannot be a crime (if there is no violence or other relevant threats involved) as prostitution – at least in most European continental countries – is seen to represent a perfectly legal (and professional) activity (a position which is now also reflected in German social security laws). With that, in fact exploitation of a vulnerable person is made the incriminated act which in turn means that the interest involved should be seen in protecting individuals against mere exploitation of their vulnerability (and herewith arising deficits in autonomous decision-making) due to being deprived of a supportive environment which (in the country of origin) they could in principle mobilize against being influenced into prostitution.

The way trafficking statutes are constructed thus point to a crucial relationship between criminal law protecting individual interests and criminal law protecting moral values. The more trafficking statutes depart from violence (or threat of violence) as the core of sources of influence on another person and the closer the statutory elements describe mere (general and not coercive) "influence" (in the context of prostitution) the more the statutes are – in terms of legitimation - dependent on either the alleged immorality of activities that are required from smuggled or trafficked persons or on the repressive environment into which victims are brought. As immorality alone cannot legitimize creation of criminal law it is then ultimately the repressive and autonomy-reducing environment within which a person finally will work which is decisive for legitimizing criminal repression of the "exertion of influence". What is created therefore in this area in terms of criminal law concerns endangering offences or risk offences as opposed to result offences where the interest lies in protecting the freedom of will of persons that is bent through uanacceptable means. However, the danger arising with getting too close to mere protection of morality does not only concern moral language used in analyses of human trafficking [37] but in particular the emergence of problems of implementation and law enforcement.

Summarizing sofar, it ist clear that with respect to acts criminalized through trafficking statutes a range of behaviour is offered in current legislation which ranges from active exertion of influence through violenec or threat of violenec and force up to exploita-

[37] See eg. Bundesministerium des Inneren, Bundesministerium der Justiz (eds.): Erster Periodischer Sicherheitsbericht. Berlin 2001, p. 104: „Menschenhandel ist eine besonders menschenverachtende Form der Kriminalität" (Trafficking in humans is a particularly inhumane form of crime".

tion of helpless and vulnerable positions of victims and deception. The statutes vary then along the purposes of trafficking which is sometimes closely restricted to sexual exploitation and then also rather wide with covering all possible ends of trafficking. The problem encountered after all in setting up trafficking legislation concerns the risk of deviating from a concept of criminal law which is based upon protecting individuals and society from behaviour that affects negatively concrete interests and not just from behaviour representing moral wrong. The cause of the problem is evident. Unequal distribution of wealth and social and economic opportunities, poverty, cross border prostitution markets and mobility create new vulnerabilities for those who are pushed or pulled towards the world regions which seem to be prosperous and to offer better lives. However, these vulnerabilities are not easily transformed into criminal offence statutes that precisely and convincingly define the core of criminally wrong behaviour.

4. Evidence on Trafficking in Humans

It is clear that from the 70ies on we observe worldwide the emergence of several phenomena related to what is defined as trafficking in humans.

First, globalization and internationalization of certain shadow economies have occurred with prostitution still representing the core of such black market activities and child prostitution and sexual exploitation of children in general becoming core issues of international debates [38].

Second, increasing migration and immigration have to be mentioned with the most important push-factors being poverty, civil wars, environmental disasters and increasing opportunities in terms of cheap, fast as well as global transportation and communication systems and bridging between cultures (possibly the most powerful facilitator of migration and immigration).

Third, decreasing legal opportunities to immigrate, in particular in North America and in Europe, certainly have contributed to produce an illegal market for immigration activities.

Fourth, post-modern societies and individualized life styles as well as demographic and cultural changes have led to the emergence of an entrepreneurial type migrant a process which was facilitated by a change of traditional family structures, weakening of social and family bonds and with that an increase in the potential of migration; what emerges in terms of labour and entrepreneurial migrants in the developing and transitional regions of the world develops in terms of mass tourism and short term migration in the developed world, leading eg. also to increases in the demand for international adoption.

[38] Kelly, L., Regan, L.: opus cited, pp. 9.

Fifth, there is a vast demand for cheap labour, in particular in countries with over-regulated labour markets and in countries with wide agricultural sectors [39]. The demand can lead to internal black or slave labour markets [40] and to what is more common in Europe and North-America, a labour market which is partially based upon cross border migration of labour force.

What is surely not a factor determining smuggling and trafficking in human beings concerns the opening of borders and organized crime. These are usally factors that are presented and stressed by "organized crime fighters" [41]. The opening of borders certainly would have had the contrary effect (in terms of lessening oportunities for organized crime) as it is essentially the closing of borders and creating obstacles for legal immigration which establishes a grey or black market for immigration. Organized crime and criminal networks on the other hand are evenly dependent on these kinds of markets: Therefore, organized crime groups evidently are not responsible for establishing the legal and political framework of black markets which after all produce the kind of problems that come along with smuggling and trafficking of human beings. In fact, after all it is not only the problem of organized crime groups laundering profits that are derived from such markets but it is essentially also the problem that the demand and the financial background of that demand are located in the conventional society. That is true as regards eg. prostitution but that applies also to the second labour markets and drug markets, finally also to gambling and all conventional vices. Insofar, criminological analysis of human trafficking first of all must focus on the markets that provide for those incentives that again cause traffickers to organize recruitement and placement strategies as regards women for the purpose of prostitution or abour migrants for the purpose of undocumented labour. However, it is here where research until now is almost non-existent.

As regards findings on the extent of trafficking in humans, estimates are available for the number of women who are trafficked for the purpose of prostitution. Estimates put the number of women at 200,000-500,000 women trafficked to Western Europe [42]. Worldwide estimates of trafficked women and children came up with 700.000 to 1.000.000 who are assumed to be trafficked each year across international borders [43]. Research on prostitution and trafficking in women in Italy has led to a proprotion of some 10% of prostitutes of foreign nationality who have been trafficked to Italy (out of a total of 2000 prostitutes of foreign descent). Italy displays a special pattern of trafficking with most women coming from Nigeria and Albania (and most traffickers

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[39] For an account of Republicans interests in cheap Mexican labour and according shifts in US immigration policies see „Out of the Shadows", Time July 30, 2001, pp. 26-29.

[40] See Aronowitz, A.A.: opus cited, 2001, p. 181 with information on West Africa and forced child labour practices.

[41] See eg. Aronowitz, A.A.: opus cited 2001, pp. 170-171.

[42] Flormann, W.: Die Lebensader des Rotlichtmilieus - der internationale Frauenhandel. der kriminalist 31(1999), S. 50-55.

[43] Bensinger, G.J.: Trafficking of Women and Girls. Crime&Justice International 17(2001), pp. 11-13, p. 11; U.S. Department of State: Trafficking in Persons Report -Report 2001, Washington 2002, p. .

coming from these areas, too) [44]. Insofar Italian research shows that trafficking of women for the purpose of prostitution follows general immigration patterns (as immigrants to Italy tend in the last 10 years also to come from these regions). German police statistics show significant changes as regards the sending countries. While before the opening of the borders between the West and the East of Europe most trafficked women came from South America, Thailand and other Asian countries in the nineties the most important sending countries concern the Baltic states and other central and eastern European countries. The belt of sending countries is moving eastwards with Poland, Hungary, the Tcheque Republic becoming themselves countries of destination of trafficking [45].

According to official estimates, between 1 and 2 million women and children are trafficked each year worldwide for forced labor, domestic servitude, or sexual exploitation [46]. In the context of trafficking in women the question of whether women recruited for the purpose of prostitution had either known before about what they were expected to do or even had been active prostitutes in the sending country certainly should receive careful attention [47]. Research shows for Holland that substantial numbers of women trafficked from Eastern and Central Europe did know about the nature of the job they would carry out in the West of Europe [48]. Data from German police statistics on the contrary demonstrate that almost half of the women had been deceived by promises of placing them in well paid ordinary jobs [49]. Differences in the rates of deception may find an explanation in the difference in data sources. Possibly, police data cover a selection of cases which are characterized through a higher extent of feelings of disappointment on the side of the victims and therefore by more incentives to report cases to police. Italian research points to a share of some 10% of immigrant prostitutes in Italy having been trafficked (which means that some kind of force or deception was involved in initiating migration) while evidently the majority belongs to the group of ordinary immigrants [50]. Substantial proportions of immigrant women who ultimately

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[44] International Organization for Migration: Trafficking in Women to Italy for Sexual Exploitation. Brussels 1996.

[45] Bundesministerium des Inneren, Bundesministerium der Justiz (eds.): Erster Periodischer Sicherheitsbericht. Berlin 2001, p. 105.

[46] Trafficking in Women and Girls: An International Human Rights Violation. Fact Sheet Released by the Senior Coordinator for International Women's Issues, Department of State, March 10, 1998.

[47] Müller-Schneider, T.: Zuwanderung in westlichen Gesellschaften. Analyse und Steuerungsoptionen. Leske+Budrich: Opladen 2000, p. 152.

[48] IOM (International Organization for Migration): The Growing Exploitation of Migrant Women From Central and eastern Europe. Migrant Information Programme. Budapest 1995.

[49] Bundesministerium des Inneren, Bundesministerium der Justiz (eds.): Erster Periodischer Sicherheitsbericht. Berlin 2001, p. 106, however, violence and abductive practices play obviously a minor role in recruitement: some 7% of the women inteviewed by police indicated that they had been subject to violence.

[50] International Organization for Migration: Trafficking in Women to Italy for Sexual Exploitation. Brussels 1996; see also Kelly, L., Regan, L.: opus cited, p. 20 where for the London area a 50% share of foreign women at the number of sex industry workers at large is reported out of whom 5% had allegedly be trafficked to the UK.

work as prostitutes in the countries of destination entered the country legally either on the basis of tourist visa or on the basis of entertainer visa (the latter obviously plays a major role at least in some countries) [51]. According to German police data most victims of trafficked entered the territory of the Federal Republic of Germany illegally (with false passports and visa) [52] while for wmoen trafficked to the UK it seems rare that entries are organized in an entirely illegal way [53].

Estimates put the number of children involved in commercial sexual exploitation of children at some 650.000 [54]. The gross turnovers in the red light milieus are calculated to range between 12-70 billion DM (6 to 35 billion US $); according to information generated by German criminal investigations on the average a sex worker has revenues between 84.000 and 360.000 DM (40.000 to 140.000 US$) per year [55]. Data available for local red light districts in Germany put the sum per woman brokered from Poland to Germany for the purpose of prostitution at 1000.- DM (ca. 450 US$) in the second half of the nineties [56].

Trafficking or smuggling immigrants across borders for other purposes than sexual exploitation have also attracted attention, in particular related to incidents like the death of 58 Chinese nationals who were found January 2001 suffocated in a container in Dover [57]. It is estimated that 60-90% of illegal immigrants today have been supported by organized groups in travelling to Europe and crossing European borders [58]. At large there exist estimates that put the number of immigrants illegally smuggled and trafficked at some 4 million per year [59]. Brokerage of illegal immigrants into various labour markets obviously is concentrating on the construction business, house services and cleaning, sweatshops and agriculture as well as various types of shadow economies and street markets. Conventional organized crime evidently is involved in trafficking and smuggling immigrants, too, in particular the Chinese triads [60]. In Germany, estimates put the number of illegal immigrants in the construction business at

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[51] See for Italy International Organization for Migration: Trafficking in Women to Italy for Sexual Exploitation. Brussels 1996; for Switzerland Caroni, M.: Tänzerinnen und Heiratsmigrantinnen. Rechtliche Aspekte des Frauenhandels in der Schweiz. Luzern 1996.

[52] Bundesministerium des Inneren, Bundesministerium der Justiz (eds.): Erster Periodischer Sicherheitsbericht. Berlin 2001, p. 105.

[53] Kelly, L., Regan, L.: opus cited, p. 25.

[54] Alexander, S., Meuwese, S., Wolthuis, A.: Policies and Developments Relating to the Sexual Exploitation of Children: The Legacy of the Stockholm Conference. European Journal of Crime Policy and Research 8(2000), pp. 479-501, p. 480.

[55] Flormann, W.: opus cited 1999.

[56] Kruse, R.: Organisierte Prostitution auf dem Lande. der kriminalist 30 (1998), pp. 351-354.

[57] Aronowitz, A.A.: Smuggling and Trafficking Human Beings: The Phenomenon, the Markets That Drive It And the Organizations That Promote It. European Journal on Criminal Policy and Research 9(2001), pp. 163-195.

[58] Aronowitz, A.A.: opus cited 2001, p. 169.

[59] Aronowitz, A.A.: opus cited 2001, p. 164.

[60] Yiu Kong Chu: The Triads as Business. Routledge: London, New York 2000, pp. 115-

approximately 500,000 illegals. In the US according to recent estimates some 4.5 million illegal Mexicans alone live and work, most of them in the agriculturally characterized areas of the southern states [61].

As regards the adoption field, figures provided concern first of all the number of persons who are found on the demand side. For North America it is estimated that approximately 2 million couples are ready to adopt a child while "supply" of children for adoption is estimated to oscillate around 50,000 [62]. In Germany and Italy, the numbers on the demand side are said to approximate 20,000 respectively 16,000 couples [63].

However, many of these estimates lack a sound basis of research. Estimates sometimes are used to attract attention and they serve therefore more as ideological or political instruments in an ongoing political discourse on making prostitution, trafficking, illegal immigration, international adoption, child abuse or other fields an important social problem. Rarely, we find reliable and valid measures of the problem in question. So, eg. the International Human Rights Institute de Paul University College of Law in a leaflet aiming at justification of research into trafficking of women presents data from various world regions on numbers of women and children trafficked for sexual purposes which are "drawn or projected" from a few case studies, based on NGO and media reports as well as law enforcement reports. The aim of publishing these data becomes clear when reading in the leaflet that the expected outcomes are the following: "Empirical data will make it impossible for governments and international organizations to continue their ignorance and denial of the phenomenon and the terrible toll it takes on the lives of the world´s most vulnerable people" [64]. It is then clear that data are needed to exert political pressure, data do not serve analytical or theoretical ends.

A second issue of research in the field of trafficking in humans concerns illegal profits. Trafficking in prostitutes obviously generates huge turnovers and profits. This is due to the still considerable turnover prostitution in European red light districts generates. The turnover at large in the prostitution business is reported to range around 20 billion US-$ per year. As regards international adoption, costs of adopting a child from abroad lie between 20,000 and 50,000 US-$ per child. Immigration – due to increased controls – also produces considerable profits with fees of transportation, e.g. from China to Germany, estimated to range around 20,000 US-$ or from the Kosovo to

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[61] „Out of the Shadows", Time, July 30, 2001, pp. 26-29.

[62] Campagna, D.S., Poffenberger, D.L.: The Sexual Trafficking of Children. An Investigation of the Child Sex Trade. Dover 1988, S.149.

[63] Albrecht, H.-J.: Kinderhandel - Eine Untersuchung zum (gewerblichen) Handel mit Kindern. Bundesministerium der Justiz: Bonn 1994; see also Eisenblätter, P.: History and Causes of Intercountry Adoptions in a "Receiving" Country. Contribution to the Expert Meeting: "Protecting Children's Rights in Intercountry Adoptions and Preventing Trafficking and Sale of Children". Manila, Philippines, April 6-12, 1992.

[64] Investigating International Trafficking in Women and Children for Commercial Sexual Exploitation. Phase I: The Americas. The International Human Rights Law Institute DePaul University, College of Law, Chicago 3/23/01.

Germany said to be around 1,000 US-$ [65]. However, as regards research on profits, we are faced with general problems of studying shadow economies. But what emerges from the literature is that the market model and concepts of political economy should be regarded to present the most promising theoretical approaches to analyze and explain phenomena of trafficking in humans.

5. Problems of Enforcement

Although, there has not been much research on law enforcement in the field of trafficking in humans, there is some information which can be summarized in the conclusion of serious law enforcement deficits [66]. As regards trafficking in women, police statistics throughout Europe show that there are not many cases initiated compared to the large estimates of women actually trafficked from Central and Eastern Europe to Western Europe alone [67]. However, even out of the small number of suspects only a tiny faction ultimately is convicted and sentenced. In Germany eg. the proportion of trafficking offenders adjudicated and sentenced amounts to approximately 10 to 17% of those suspected of being involved in trafficking in women. Law enforcement deficits may be explained through particular enforcement problems posed through victimless crime or crime where victims are not likely to complain because of negative consequences which may arise out of the victim and witness status for complainants. In this respect, legal consequences such as expulsion and deportation of immigrant women working as prostitutes have to be mentioned [68]. Serious conflicts between immigration authorities and law enforcement agencies on the toleration policies allowing witness victims to stay legally not only for the time it takes to successfully prosecute a case can be observed [69]. Furthermore, the problem of vulnerable victims and witnesses has to be considered. Reports regularly point to the threat of violent revenge and the need for witness protection programmes for those victims who are at risk of violence [70]. However, another explanation of implementation deficits refers to problems of the trafficking offence statute and application of other offence statutes instead of trafficking offences in order to evade problems of evidence and resource consuming investigation. The situation in Switzerland as well as that in Germany point to the switching in offence statutes. While in Switzerland police argue that it is easier to apply the offence statute of illegal prostitution than trafficking or exploitation statutes

[65] Walter, B.: Schlepper - Schleuser - Menschenhändler. Der grenzpolizeiliche Alltag an den deutschen Ostgrenzen. Kriminalistik 52 (1998), pp. 471-477.

[66] Dreixler, M.: opus cited, 1998, pp. 213.

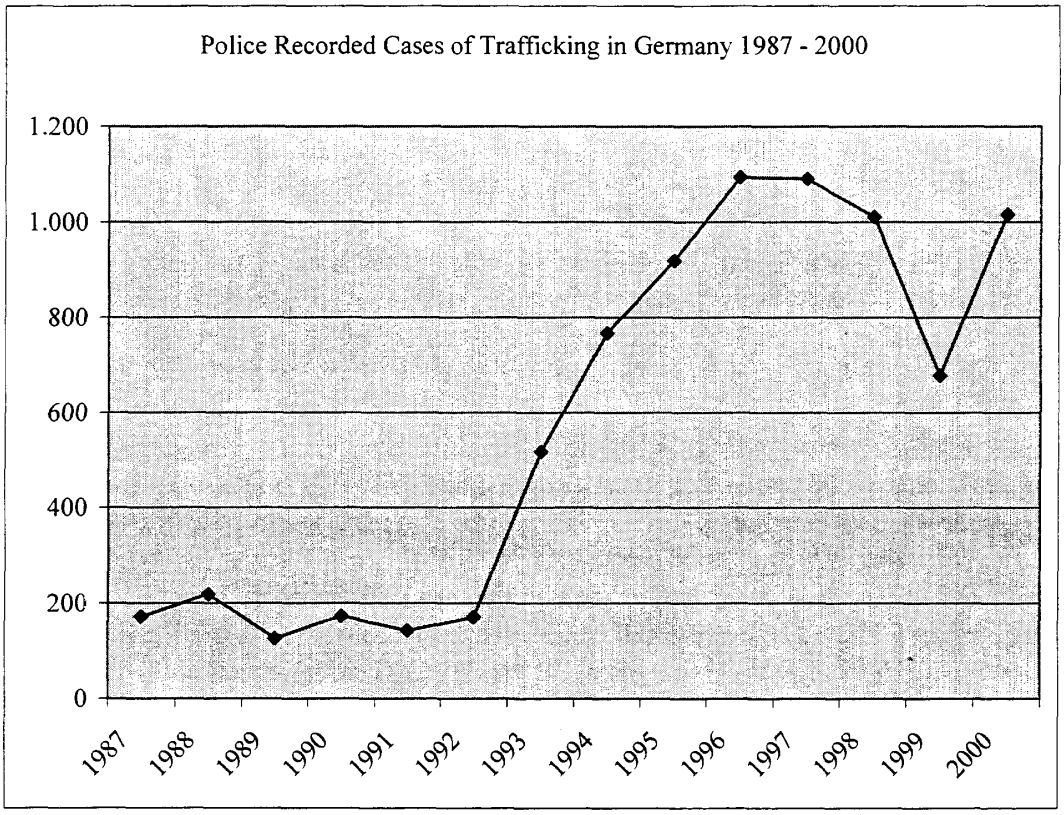
[67] Bundesamt für Polizeiwesen: Szene Schweiz. Drogen, Falschgeld, Organisierte Kriminalität, Menschenhandel. Lagebericht Nr. 2 1998. Bern 1999.

[68] See eg. Caroni, M.: Tänzerinnen und Heiratsmigrantinnen. Rechtliche Aspekte des Frauenhandels in der Schweiz. Caritas: Luzern 1996, p. 111-112.

[69] Dreixler, M.: opus cited, 1998, p. 234.

[70] Bundesamt für Polizeiwesen: Szene Schweiz. Drogen, Falschgeld, Organisierte Kriminalität, Menschenhandel. Lagebericht Nr. 2 1998. Bern 1999, p. 32 where it is criticized that witness protection is not foreseen in Swiss legislation and that this lack in witness protection explains that few immigrant prostitutes are cooperating with police in trafficking cases.

fence statute of illegal prostitution than trafficking or exploitation statutes (which ultimately leads to criminalization of the women involved) [71], in Germany it seems that smuggling statutes are easier to apply than trafficking statutes [72]. However, German accounts of implementing trafficking statutes argue also that the number of trafficking cases initiated by police may be influenced by specialization and resources available for organized crime task forces [73].



Source: Bundeskriminalamt: Polizeiliche Kriminalstatistik. Wiesbaden 1988-2001.

German police publish annually a task force report on trafficking in women [74]. From that report it is known that between 1992 and 1997 approximately 2000 criminal cases have been initiated where foreign women have been allegedly the victim of trafficking. Seen from the estimates on how many women are trafficked into Germany (and how widespread practices of trafficking women are assumed to be) this number in fact

[71] Bundesamt für Polizeiwesen: Szene Schweiz. Drogen, Falschgeld, Organisierte Kriminalität, Menschenhandel. Lagebericht Nr. 2 1998. Bern 1999, p. 33.

[72] Bundeskriminalamt: Lagebild Menschenhandel 2000. Wiesbaden 2001, p. 4.

[73] Bundeskriminalamt: Lagebild Menschenhandel 2000. Wiesbaden 2001, p. 3.

[74] See Bundeskriminalamt: Lagebild Menschenhandel. BKA: Wiesbaden 1998 as well as the latest issue Bundeskriminalamt: Lagebild Menschenhandel 2000. BKA: Wiesbaden 2001.

seems to be rather low. Some 80% of the women involved in these cases came from Central and Eastern Europe and some 40% did not work as prostitutes in their home country before entering German territory. The general pattern evidently did not change over the last years although there have been changes as regards sending countries in the East of Europe with the Baltic countries adopting a growing share of trafficked women in the year 2000 [75]. What seems to be also interesting from a law enforcement point of view is the fact that approximately 40% of these women have been deported in the process of implementing criminal proceedings and just 1,7% of them have been accepted for witness protection programmes [76].

In explaining the extent and the course of trafficking in humans, lack of proper legislation, lack of co-operation in law enforcement and deficits implementing anti-trafficking legislation are the usual suspects [77]. As regards implementation deficits it has been pointed out that sex markets and in particular prostitution in general during the past 50 years did almost completely turn into low priority policing areas and that even a climate of toleration can be observed which then creates difficulties to enforce women trafficking cases [78]. What follows are suggestions to strengthen law enforcement [79], to strengthen criminal penalties [80] and – ultimately – we find proposals to develop and implement integrated and comprehensive plans to combat smuggling and trafficking with repression, prevention, victim assistance [81] and the like all set up to cut down smuggling and trafficking activities (and finally evidently also migration and immigration). Victim assistance in particular is thought to contribute to more efficient law enforcement as testimony provided by witnesses (and victims) of trafficking plays obviously a crucial role in trafficking trials and it is in particular the precarious status of trafficked women - partly due to immigration laws and possible deportation to the home country - which prevents women to serve as witnesses in criminal trials against their traffickers [82]. In fact, it is in particular the risk of criminalization and other negative consequences of disclosing the illegal status or other illegalities associated with entering or staying in the country of destination which prevents possible victim-witnesses to report to police and to provide for evidence. The protocol against the Smuggling of Migrants by land, sea and air, supplementing the United Nations Convention Against Transnational Organized Crime (annex III) suggests in Art. 5 to exempt migrants from criminal liability that could be linked to behaviour criminalized under Art. 6 of the protocol, that is smuggling. So, migrants are seen as victims and

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[75] See Bundeskriminalamt: Lagebild Menschenhandel 2000. BKA: Wiesbaden 2001, pp. 5-6.

[76] Flormann, W.: opus cited., 1999.

[77] See Aronowitz, A.A.: opus cited, 2001, pp. 184-185; Caroni, M.: opus cited, 1996, pp. 109..

[78] Kelly, L, Regan, L.: opus cited, p. 35.

[79] Regtmeier, W.: Menschenhandel - Erfahrungen einer Sonderkommission in einem besonderen Deliktsbereich der Organisierten Kriminalität. Polizeiführungsakademie, Münster 1990, pp. 81-94.

[80] Streiber, P.: Internationaler Frauenhandel. Funktionsweisen, soziale und ökonomische Ursachen und Gegenmaßnahmen. FU Berlin, Berlin 1998, p. 23.

[81] See Aronowitz, A.A.: opus cited, 2001, pp. 185-190.

[82] Niesner, E., Jones-Pauly, Ch.: opus cited, pp. 266.

their contribution to smuggling as a necessary activity which should not fall under criminal statutes against smuggling. The policies suggested in many respects parallel those that have been created and enforced in the field of drug control over the last thirty years and which after all have evidently proven to be not very successfull, to say the least. So, one remarkable point certainly is that international bodies do very hard to learn out of past failures and to build on experiences made in other fields.

6. Summary and Conclusions

The experiences sofar made with international and national control of trafficking in humans and in particular in women point to a multitude of problems that partially are well known from efforts to control organized crime and related issues at large. Some of these problems are linked to the phenomenon of black markets and victimless crime. Trafficking in women certainly cannot be equalled to drug trafficking. But, when women are pressured into prostitution, the social and legal environment to which trafficked women are exposed prevent their active involvement in controlling trafficking and the sex market and this is what creates a parallel to other transaction crimes. It is here where policy changes should first of all create conditions for sex workers which make them less vulnerable to all sorts of negative consequences attached to criminal prosecution of their traffickers as well as those profiting from prostitution. Normalization of prostitution in terms of legislation which draws sex work closer to other legitimate and legal professional activities therefore seems to play a crucial role here. Moreover, as implementation of criminal is dependent on victims reporting crimes and testifying in criminal trials efforts should be made to establish a legal framework which facilitates cooperation for victimized foreign nationals. In particular immigration law and victim protection schemes seem to be relevant in this respect. From a viewpoint of prevention of trafficking it is certainly important to insist on the salience of economic inequality which will continue to produce powerfull motives of migration.

Trafficking offence statutes evidently pose legal problems as far as definitions of protected interests are concerned. The risk of creating moral (and anti-prostitution) criminal law increases with the extent to which trafficking statutes focus on mere endangerement and depart from a narrow range of individually conceived interests. Experiences with law enforcement on the basis of trafficking statutes demonstrate problems that can perhaps be better dealt with by way of applying conventional criminal offence statutes.

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Er beteckning

COOPERATION OVER TRAFFICKING OF WOMEN AND CHILDREN IN THE BALTIC SEA REGION

Introduction

With this glorious opportunity to talk to you I am happy to, on behalf of the Swedish Prosecutor General, present a statement on the Cooperation over Trafficking of Women and Children in the Baltic Sea Region.

In the statement you will be guided through sections. First a geographical overview with a presentation of the countries involved in the cooperation, second a historical overview followed, as a third section, by the actual achievements within the cooperation and finally, the fourth section with conclusions.

Geographical overview

The countries involved in the cooperation are the countries in the Baltic Sea Region. For all of us that have a lack of memory in regard to geography the countries are shown on the map as are the population figures of the countries. They are Finland, Estonia, Latvia, Lithuania, Russia, Poland, Germany, Denmark, Norway, Iceland and Sweden. For the listener that pays attention I can reassure you that the Baltic Sea does not yet in the geographical sense reach Norway or Iceland. However these countries have been considered by tradition to be a part of Baltic Sea cooperation. They are also great contributors in the cooperation. Within the cooperation there are, as you can see, both countries of origin and countries of destination. It is of great importance, not only to the trafficker, to connect the countries of origin with the countries of destination for victims of trafficking. It is important that we have a joint sight of the problems that occur and how we solve them. By connecting these countries we receive a unanimous sight and by doing so we will be more successful in combating traffickers.

Historical overview

In 1995 the Prosecutor Generals of the Baltic Sea States as well as Norway and Iceland established cooperation. Within this cooperation the Prosecutor Generals, with some members of their staff, meet once a year. The meeting place varies between the countries. At the fourth meeting of the Prosecutor Generals which was held in Berlin in 1999 the Prosecutor Generals decided to establish an Expert Group with national experts from each country concerning Trafficking in and Sexual Abuse of Women and Children. The main task for the group was initially to discuss working methods and prerequisites for a future international co-operation. Based on the outcome of the group´s work the Prosecutor Generals decided in the next annual meeting of the Prosecutor General´s which now was held in Copenhagen in 2000, to transform the Expert Group into an informal Network named the Network for trafficking in and sexual abuse of women and children (further The Network) This annual meeting was held in order to intensify judicial cooperation in the field of criminal law between the states of the Baltic Sea Region in particular for the purpose of combating international organized crime. In line with the

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purpose the Prosecutor Generals transformed, as I stated above, the Expert Group into an informal Network consisting of representatives appointed by the Prosecutor Generals, each with expertise in criminal cases of sexual abuse of both women and younger children. It was also decided that the Network in the future shall meet to discuss current issues of importance in the field of trafficking and sexual abuse of women and children. Further more it was decided that the Network should secure contact to and work closely with the Police equivalence of the Network what is known as the OPC Expert Working Group and consists of national representatives from the States of the Baltic Sea Region as well as Europol. That group as such was established in 2000. However already in 1996 the heads of state and chiefs of government decided to establish an actiongroup to strengthen the combat against organized crime in the Baltic Sea region. Within the actiongroup was in 1998 formed an operative committee that has the main responsibility of investigating and developing the operative actions that comes under the group. The operative committee then reports to the actiongroup. Under the operative committee expert groups have been established. One such expertgroup deals with trafficking in human beings. It is with this group that the Network works very closely.

I have now presented the two important actors on the arena of the Network and I am ready to move on to the actual work of the Network.

Achievements within the Network

The mandate for the Network is stated above. – To discuss current issues in the field and to secure contact and work closely with the OPC Espert Eorking group.During the meetings in the Network we have focused on creating a joint sight on certain critical points when it comes to investigating and prosecuting trafficking cases or trafficking related cases. Creating together international investigation strategies and line of actions gives us an advantage. Trafficking in human beings is a major problem and has grown significantly within Europe. The Baltic Sea States are not be compared with Europe in that sense. However in a way we share the same experiences. It is important to work transnational and sharpen the tool that we can use. The Network has chosed to create guidelines and investigationstrategies in order to become more successful. Within our Network different countries are represented with different problems. Victims are regularly moved between the states it is difficult to identify destination countries. The victims are generally being brought in by offenders of the same nationality. It is our experience that the victims often know that they are going to work in the sexindustry but they are not aware of the very harsh conditions under which they are to be employed. Violence is often used and in some cases already in the recruitement stadge. As I said it is hard to point out certain countries of destination. It is also hard to point out certain countries of origin. Some countries in central Europe have moved from being a country of origin to a transit country. However Germany stands out as a destination country as does the CEE countries for countries of origin (Lithuania, Russia, Ukraine, Poland, Latvia and Estonia) Germany are very successful in combating traffickers. It is a great benefit to work with Germany in the Network. As I said earlier it is fruitful to have both countries of destination and countries of origin working in the same group.

The Network has on its meetings focused on the following issues of importance and has in its rapports pointed out the following guidelines.

Generally speaking we have taken into the fact that there is first of all a need for a uniform **legislation** in regards to trafficking in human beings. So far only Sweden and Germany have specific legislation. Denmark, Norway and Estonia are well in preparation for implementing legislation. Between the countries we exchange the legislation and draw attention to the difficulties in practicing it as well as analyzing the legal texts. Based on the outcome in this sense the positive and the negative conclusions are taken back to the countries to be stored in each countries bank of experience. Other countries that does not have specific trafficking legislation prosecute for what is known as traffickingrelated crimes such as procuring, sexual assault, unlawful coercion etc.

As a step in combating trafficking transnational all the member states are aware of each others Rules on international legal assistance in criminal matters as an important tool.

It is of utmost importance that we have a joint sight on the **pretrial issues.** To combat the offence trafficking in human beings it is necessary to classify and treat the crime universally. There is an absolute need for **effective cooperation** between national and international authorities and organizations. The Network members are also contactpersons for their respective country. All national and international authority can contact the members in order to gain or give information. Within the Network work has started to create a cooperation concept between councelling services (NGO´s) and the law enforcement agencies. The fight against the traffickers necessitates coordinated, well-structured and consequent action by all the authoritites involved, as the investigations are difficult and time-consuming. Convictions are possible only on the basis of personal evidence from the victims. Effective protection and professional care of the victims are the basic prerequisites for giving them and stable position and thus to obtain a statement that can be used in penal proceedings. The trafficking in human beings is a control offence. Intimidated by offenders the women are afraid of the the police and the immigration deportation, which would expose them to the offenders once more. Therefore they are usually not willing to supply information on the offence. Other victims are traumatized by prior violence that they are unable to testify. The cooperation concept should state basic understandings between the NGO´s and the law enforcement agencies. This future work will take place jointly with the police network in order to guarantee a joint sight from the law enforcement agencies. To a certain extent it is the state´s responsibility to take care of the victims of trafficking. It is therefore necessary to work closely with the organizations that provides the victims with safety, councelling, housing etc. The Network has also stressed the importance of preventive work. Information must be provided in the countries of origin to victims of trafficking. Here the media as well as the NGO´s play an important role.

The women should be treated like **victims.** In most of the countries the women are not only the victims but at the same time accused of violation of the regulations governing the recidence status under the Aliens Acts. Staying illegally in the countries they also face the threat of deportation. It is the Networks understanding to work for the joint sight of treating the victims as victims and to avoid prosecuting them. The Network members are of course aware of the fact that most countries have mandatory prosecution. However it is of utmost importance not to create a hostile climate between the prosecution service and the victims of traffickers. It is important that the victims appear in court. Questioning before departure is insufficient since new facts often emerge. Summoning the victims abroad often fails. There are great problems in connection to that such as failure to locate the victims or find the victims uninfluenced or even finding out the right identity of the victims. It is therefore important that the victims remain in the countries awaiting the trial. That can be done by giving them recidence status. In most of the countries **cooperation agreements with the immigration authorities** are now on the way or investigated to be able to provide the victims safety and avoid leaving them unattended and an easy prey for their former traffickers. The safety of the victim is important. It is wise to emphasize that witnessprotection programmes and other supportive measures shall be taken during trial. Furthermore in order to create a human climate for the victims to testify in modern technology must be used. It is of importance to work for the use of videoconference in the countries were it is legally possible.

Seen in the light of the victims safety it is of great importance that not all pressure of being the prosecution´s sole witness rests on the victim. We have a tendency of focusing too much on the victims. It is important to focus on the other party in the trial-**the suspect**. The Network has put forward as an investigation strategy to focus on the suspect. It is of great importance to establish an audit trail. If we, in an international aspect, can trace the money from the victims to the suspects we are in position to focus not only on the immediate suspect but also on the organizers. The Network has in its rapports stressed the important value of in this sense concentrating on seizure, forfeiture of profits and confiscation. The criminals go were the risks are low and the profits high. If we can change the stakes we will be very successful in combating the traffickers. By doing an audit trail we will kill two birds with one stone.

Another method of investigation that the Network has stressed is to use **supportive evidence**. It is as stated above of utmost importance to reveal the stress of the victim and also take away the sole

dependency of the victim. Furthermore it is important to find supportive evidence for the prosecution. By doing so we will get high quality pretrial investigations where the outcome can not be changed in the future. The supportive evidence are telephone interception and secret camera surveillance. The methods can be used in all the memberstates but demand a minimum punishment scale. It is of importance as a strategy to put forward and use, when possible, the methods.

In combating traffickers the prosecutors can not win the war alone. We must work together with the police as is the mandate. All of the above stated strategy and methods of investigation have been supported by the police. In the future we will continue to work with the police. It is of utmost importance that we stand united in the global chase for traffickers. Not only do the cooperation between police and prosecutors flourish but so does also a special form of investigation that the Network and the Police has united in stressing. It is in Europe, I believe more known as the Joint investigation teams but within our member states we have settled for the expression **Exchange of Case Officers.** Within the Rules of International Legal Assistance it is in investigations wise to invite policeofficers and prosecutors to participate in an information exchange. So has successfully been done between Germany and Latvia as well as Denmark and Latvia.

Time and information are two important factors in an international framework. In order to uphold important information in regard to new legislation, cases, education or other important issues in this field a Newsletter is being distributed between the members. Everyone can contribute to the newsletter by email if there are important issues or cases to refer to. Clarifying methods of investigations and taking standpoints in regard to victim and cooperation issues bring forward the investigations faster and quicker by using this knowledge. Of course we all live I would say in maybe the best of worlds in the sence that, with the sole exception of Germany, few traffickers are harboured within our borders. I will not bore you with figures but you can see them behind me. During the year 2000 three pretrial investigations has started and four convictions has been given. The women involved as victims were of Hungarian, Slovakian, Estonian and Lithuanian descent. The policeintelligence strates that between 200- 500 women are being trafficked in Sweden every year. Organized crime is suspected of running trafficking in human beings. The criminals that has been active are working in close groups and networks and are coming from Poland, Russia, Hungary, Lithuania and Irak. It has been noted that in more than 50 % of the cases the victim and the suspect are from the same country. The low figures in comparison to Europe might be for Sweden a bonus effect of the Law against Purchase of Sexual Services. It seems like Sweden is more of a transit country than of a country of destination. But that is another story.

However this has brought me up to the conclusion of my statement.

Conclusion

Trafficking in human beings is a lucrative business. It is not committed by sole actors but by organized crime. It is time to look seriously upon trafficking in human beings and not only because it is a very cynical and horrible form of modern time white slavery but also because trafficking is a part of organized crime. There is an increasing involvement of organized crime groups in trafficking. It is a formidable force challenging us. As such it needs to be combated. That can not be solved solely on a national basis but need to be combated internationally. The borderless crime of trafficking in human beings cannot effectively be countered by law enforcement agencies whose reach is bound by national borders. The greatest obstacle to efficient law-enforcement action against organized crime rests in judicial limitations. The greatest advantage is to make the best use of the many tools that are at the disposal to crimefighting agencies to meet organized crime in a transnational, highly flexible and professional fashion.

I am fortunate to work in a country were the Prosecutor General is very forthcoming in seeing and identifying the need for transnational cooperation. Setting up the Network and urging on the cooperation has put us in the Baltic Sea Region a step ahead.

Coordination is required to spell out the roles and responsibilities of different bodies involved in our fight against traffickers. Most of the necessary tools are already in place to efficiently fight the traffickers and there is no question of the good intentions of all parties involved. However a number of steps forward are needed. A comprehensive strategy is needed in becoming more successful, a strategy that clearly set and coordinate the efforts and stress the method and strategy of running an investigation. We must like the criminal use borders not as hindrance but as an advantage. We must work borderless in order to be successful. Within the Baltic Sea Region we have taken such a step ahead towards a united and borderless fight against the traffickers.

I thank you for your attention.

Situations and Tasks for China to Fight against Narcotic Crimes

Narcotic crime means behavior to violate laws and regulations to prohibit narcotics, to destroy control activities to prohibit narcotics, to have to be punished according to the criminal law. In old China, narcotics brought about enormous calamity to the Chinese nation. After the founding of the People's Republic of China in 1949, the government of China led the people in carrying mammoth struggle to prohibit narcotics, prohibited totally opium narcotics within three years which harmed public interests for one hundred years at one fell swoop, performed miracles acknowledged universally. Since the last stage of 1970s, however, the international narcotic tide has invaded and attacked China uninterrupted, narcotic illegal criminal activities have revived in China, and become ever more violent, caused enormous harm to the health of the people and social stability.

I. Present Situation of Narcotic Crime in China

First, the rate of narcotic crime presents rising trend year by year.

The public security departments and departments of prohibiting narcotics of our country cracked altogether 96000 cases of narcotic crimes in 2000, increased by 61.4% over 1999. In 2001 110000 cases of narcotic crimes were cracked all over the country, increased by 14.67% over 2000. The developing tendency of narcotic crimes in the regions where narcotic crimes occurred frequently still can not be controlled effectively. For example in Yunnan Province which borders on the place of production of narcotics "Golden Triangle ", the courts of the whole province accepted and heard over 3500 cases of narcotics, the amount of people involved in narcotic crimes was over 5500 in 1999; in 2001, accepted and heard narcotic crimes rose to over 4000, the amount of criminal people increased to over 6100; From January to May in 2002, accepted and heard cases of narcotics were 1688, the amount of people involved in crimes was 2621, increasing by 18.62% and 15.97% over the corresponding period last year respectively.

Second, Narcotic Kinds for Cases to Involve in Are Increasing Uninterruptedly.

In the previous cases of narcotics, narcotic kinds involved in were mostly heroin, hemp and opium etc. In recent years, in the narcotic criminal cases except the narcotics mentioned above, still appeared the new kinds of narcotics, such as dancing outreach, icenarcotics, methadon etc. In 2001, public security departments and departments of prohibiting narcotics of our country seized altogether thirteen point two tons of heroin, two point zero seven million pills of dancing outreach and two hundred and eight point two tons of chemicals of various kinds which manufactured narcotics easily, of them heroin and dancing outreach increased two point zero nine times and eight point six time over 2000 respectively. In the thirty-one provinces, autonomous regions, cities in the whole country, cases to take new-type narcotics of excitant kind have discovered, presented overall rising tendency, especially in public places of culture and entertainments in big cities, phenomenon to take dancing outreach is more prominent. For example in recent two years, only in sudden and violent examination of public places of entertainment in Wuhan City, the amount of cases which involved in icenarcotics, dancing outreach and were investigated and handled were over five hundred.

Third, the Scale of Criminal Cases to Produce and Traffic in Narcotics Is Getting Bigger and Bigger.

Narcotics tracked down in recent years have the following characteristics: not only spiritedness is getting higher and higher, but also the amount of narcotics is getting bigger and bigger. For example in Yunnan Province where narcotic crimes are more serious, of the cases for courts at all levels in Yunnan province to accept and hear, cases involved in heroin of over fifty grams amounted to 1004; 1520 in 2000; 1990 in 2001; 606 from January to May in 2002, making

up 56.42% of the sum total. In July 2000, the police departments of Wuhan City discovered the Processing Factory of Icenarcotics invested by Chu Zhuang in Hong Kong, this factory produced nearly 30 tons of liquid icenarcotics every year, they were sold mainly abroad, this is the biggest case of icenarcotics in the world cracked the same year.

Fourth, the Means of Narcotic Crimes is More Deceitful.

The a criminal activities of narcotics in our country have three characteristics in the criminal means: first, groupizing; of narcotic crimes, jointing crimes are in majority; of forms of jointing crimes, group form is in majority. They are organized, self-disciplined, divided work, and possess strongpoints and various groups colluded with each other, coordinated each other, formed a stream of forces of criminal syndicate, when they committed crimes, division of labour is clear and definite, means is diversified, one-way contact, it is difficult to discover them; second, professionising, of the ranks of narcotic crimes, considerable people are narcotic criminals of professional nature, they take obtaining profits as the goal, take narcotic crimes as a means of life, take narcotic criminal activities as profession, they have become "backbone elements" of narcotic crimes; third, modernizing, some criminals adopted the sophisticated technology and bought advanced equipments as communication and traffic tools with the abundant economic strength accumulated by traffic in narcotics so as to carry out contacts before and after committing crimes and to command escaping and hiding. In Guangdong the case for elements of traffic in narcotics abroad to smuggle narcotics with the submarine was cracked. Many criminals still were fitted with various firearms, ammunitions so as to evade and resist striking. In recent years, cases for firearms and narcotics to flow together have the increasing tendency, are very easy to bring out violent crimes to harm public security seriously, bring about considerable difficulty for work of seizing narcotics.

Fifth, the International Infiltration of Narcotic Crimes Is Intensifying Day by Day.

Beginning from 1980s, international groups of traffic in narcotics and elements of traffic in narcotics did their utmost to open up "Channel of China", via our country they transported narcotics from the region of "golden triangle" to Hong Kong and Macao so as to put them into international markets; since the middle period of eighties, China has become a transit country of traffic in narcotics gradually. Since nineties transnational narcotic crimes have infiltrated into and spread to the whole country from the south-west of our country with the momentum of radiation, formed the situation "to enter the country multiply, to infiltrate on all fronts and attack from both within and without". Viewing from the whole counties, in 2500 counties appeared narcotic problems relating to transborder narcotic crimes. Under fright of strong power of the country, the transborder narcotic criminal activities began to transfer to suburban districts and towns where dynamics to suppress smuggling was not strong and was more covert, in some places where did not appeared narcotic problems in the past have appeared narcotic crimes.

Sixth, Exporting Elixir to Produce Narcotics by Means of Smuggling Is Increase.

With development of international and domestic struggle to prohibit narcotics, in order to hide, to carry easily and suit needs of international narcotic markets, elements of traffic in narcotics have changed the sources of narcotics abroad from opium into refined narcotics, from traditional narcotics into the new-type icenarcotics, the amount of demand of elixir to produce narcotics also has increased along with it. In recent years, in two bases of production of narcotics "gold triangle" and "gold crescent", industrial chemicals, such as acetic oxide, ether, trichloromethane, salmiac used in processing and refining heroin is quite short abroad, so prices skyrocketed. In November 1998, the price of ephedrine per ton was 420000 yuan, after being transported to the north of Burma by means of smuggling, its price was eleven million yuan. Under seducement of enormous profits, domestic elements of traffic in narcotics smuggled ephedrine frenziedly. In the region of "the golden triangle", elements to produce narcotics in the north of Burma set up icenarcotics factories,

all raw materials needed in producing icenarcotics were obtained from our country by means of smuggling. In addition, narcotic problems also bring out a lot of illegal criminal cases, such as murder, robbing, stealing, cheating, prostitution etc. Of criminal cases of public security which occurred frequently, such as stealing, robbing, snatch etc. the cases caused because of taking narcotics have made about 30%, this rate even amounted to more than 60% in some regions which were encroached by narcotics seriously. AIDS caused because of taking narcotics also have increased rapidly. People who were infected with AIDS because of intravenous injection and taking narcotics made up 67.8% of total people infected with AIDS

II. Roentgenoscopy of Causes of Narcotic Crimes

1.Historic Cause. The Chinese people suffered of opium narcotics to the full for more than two hundred years. The opium narcotics were prohibited totally in New China only within three years, but affection of opium narcotics had not disappeared. Because of affection of historic traditions, in some places, people have not understood harm of narcotics sufficiently, even formed compatibility psychologically to a certain extent. In some remote and backward regions of the border, planting and taking narcotics has become a custom through long usage, activities of narcotic crimes have not been eradicated from beginning to end. Therefore, the regions where narcotic crimes are rampant at present often also are the regions where harm of opium narcotics was the most serious in history.

2.Econcmic Cause. Through the ages, enormous profit is an important incentive of narcotic crimes. According to related introductions, selling price of heroin per 1000 grams in Yunnan Province is about RMB 100000 yuan, RMB 500000 yuan in Hong Kong, RMB one million yuan in U·S·A. Because of being profitable, some criminals who were obsessed with the desire for gain did not hesitate to take a risk of being beheaded and imprisoned, joined in criminal activities of smuggling, trafficking, producing, transporting narticos. In some places even there was a prevalent argument "if wanting to get rich, go to traffic in narcotics". After taking narcotics, it is very easy to be addicted to narcotics, to produce drug-fast and dependence, it is unable to extricate oneself, so people to take narcotics are getting more and more, dometic narcotics consumptive markets have expanded uninterruptedly. The amount of people to take narcotics registered in public security departments is 148000 in 1991; 520000 in 1995; 681000 in 1999; 901000 by the end of October, 2001, of them the amount of people to abuse heroin is 745000. The counties (cities, regions) which involved in narcotics is 2051, of them counties (cities, regions) of more than 1000 people are 205. The rate of youngsters to take narcotics has made up about 80% from beginning to end. Among people to take narcotics even appeared children six to seven years old. The ranks to take narcotics which are getting enormous day by day not only have provided markets for narcotic crimes, but also made many people to take narcotics participate in producing and trafficking narcotics, forming vicious circle "to support taking narcotics by trafficking in narcotics."

3.International Cause. The south-west border of China borders on "the gold triangle," the mainest place of production of narcotics in the world. There is a very long border between our country and Burma, and there are not natural defence in many sections of the border, the border trade is very brisk. In addition, our country has practiced policy of reform and openness, has increased many ports opening to foreign countries, some elements to traffic in narcotics used these ports to carry out activities to transport narcotics illegally. Since 1980s the original channed to traffic in narcotics from "the gold triangle" to transport and sell narcotics to the West via Singapore and Malaysia etc. has been hindered because various countries along with the channel have adopted severe measures to prohibit narcotics, in addition in recent years, Thailand and Burma have mopped up the nest of narcotics with the armies uninterruptedly, so some groups to traffic in narcotics opened up the so-called "passageway of China", transported a lot of narcotics to our country

illegally from "the gold triangle", then transported to Hong Kong and Macao, put them into international narcotic markets lastly. In order to open up the Chinese passageway, the international forces to traffic in narcotics used the organizations of criminal syndicates of Hong Kong and Macao on the one hand, speeded up transporting, buying and producing narcotics in the mainland of China, then transported again them to foreign countries by means of various ways. On the other hand, they have sought and fostered agents in China by every possible way, while the domestic elements to traffic in narcotics have colluded with elements to traffic in narcotics abroad, forming the professional system to traffic in narcotics to make production, supply, marketing a coordinated process. Taking, producing and trafficking narcotics have spread in most of regions of the whole country, narcotic crimes at home are increasing day by day. Facing with infiltration of international narcotic crimes, our country must strike it firmly, but at the some time we also can not close the gate of the state which has been opened. So the struggle against narcotic crimes at the present stage will be more complex and arduous than the struggle to prohibit narcotics of 1950s.

4.Mechanism Cause. After enjoying good reputation without narcotics for several decades, our country desalted idea of harm of narcotics gradually, understood resurgence of narcotics insufficiently. In the end of 1970s and beginning of 1980s when narcotic tides made a surprise attack on our country from foreign countries, we did not prepare sufficiently in all the respects, thinking, psychology, countermeasures and measures. The Criminal Law in 1979 did not stipulated the death sentence for narcotic crimes, did not stipulated the standard of minimum amount to constitute narcotic crimes as well. A small amount of snuggling, trafficking, transporting, producing, possessing narcotics illegally with a little harm was not regarded as committing crimes, was punished too leniently, so encouraged spreading of narcotic criminal activities objectively. Only after "the Criminal Law of the People's Republic of China " had been revised in the Fifth Meeting of the Eighth National People's Congress in 1797, the weak and incompetent situation in legislation to prohibit narcotics was changed, the situation to fight with narcotics was turned. In addition work to seize narcotics also was clearly lagging, after the founding of the Commission of Prohibiting Narcotics of the State the public security organs in 24 provinces, autonomous regions, municipalities directly under the central government as well as 204 prefectures (cities, autonomous prefectures), 735 counties (cities, regions) under them set up police contingents to seize narcotics, but comparing with the severe situation of narcotic crimes, still exist the problems, such as professional contingents are too little and their quality is inferior, equipments are backward, funds are insufficient etc. Consumption of narcotics every year at present is RMB one hundred billion yuan at least, the economic losses which various narcotics caused to the society exceeded RMB one hundred billion yuan greatly, but special money for the state to allocate for prohibiting narcotics is RBM only over one hundred million yuan a year. The criminal investigating departments as main forces to seize narcotics have only one group to seize narcotics, the handling method for narcotic crimes often are: having discovering one, solving one; finding out one, seizing one, it is impossible to stop up sources of narcotics effectively and in time. Because of causes such as funds are insufficient etc., places to compel people of taking narcotics to stop taking narcotics are clearly insufficient, this also is one of causes unable to contain narcotic crimes effectively.

III.the Main Tasks to Fight against Narcotic Crimes

Because the problems of narcotic crimes of our country face with the severe situation and have complex and deep causes of formation, administrative countermeasure must have both urgency and long-term plans. It is necessary to understand clearly that the situation for international narcotic tides to intensify harm to China can not be eliminated at a short period thoroughly, narcotics still are in spreading stage in China, prohibiting narcotics is a task of "the burden is heavy and the road is long."

1.Perfecting Legislative Work to Strike Narcotic Crimes Uninterruptedly.

The legislation of our country on striking narcotic crimes is composed of three parts such as criminal legislation, administrative legislation and international conventions. The criminal legislation mainly indicates "the Criminal Law of the People's Republic of China" revised in the Fifth Meeting of the Eighth National People's Congress in 1997, this law has stipulated twelve charges and their punishment: crimes of smuggling, trafficking, transporting, producing narcotics; crimes of holding narcotics illegally; crimes of hiding, transferring, concealing narcotics, and narcotic booty; crimes of smuggling goods to produce narcotics; crimes of buying and selling goods to produce narcotics illegally; crimes of planting original plants of narcotics; crimes of buying and selling, transporting, carrying, holding original seeds and seedlings of narcotics illegally; crimes of providing anaesthetic drugs and drugs for spirit etc., in addition, this law still has stipulated that it is necessary to punish crimes of money laundering for narcotics, guaranteeing that all behaviors of narcotic crimes should be punished according to laws. The administrative laws and regulations mainly indicate "the Regulations on Management and Punishment of Public Security" as well as administrative laws and regulations on producing, transporting, managing, using narcotics worked out by the related ministries and commissions under the State Council. The international convention means the treaties to fight against narcotics which our country concluded and acceded to for purpose of bearing international duties of strengthening international cooperation to fight against narcotics. The laws and regulations mentioned above laid the foundation for our country to carry out struggle against narcotics, especially "the Criminal Law of the People's Republic of China " revised has embodied fully the principle to punish narcotic crimes with severity. First, stipulating that smuggling, trafficking, transporting, producing narcotic should be investigated criminal responsibility and should be punished, no matter how many their amounts are. The amount of narcotics can not be converted according to purity. Second, stipulating that the narcotic crimes should be sentenced to confiscating property or fining for purpose of depriving of illegal income of narcotic crimes and of destroying economic capacity for them to carry our narcotic crimes again. Third, stipulating that it is necessary to punish with severity suspects who use and instigate people under age to smuggle, traffic, transport, produce narcotics or sell narcotics to people under age; those who seduce, instigate, cheat or compel people under age to take, inject narcotics; those who were sentenced to punishment because of smuggling, trafficking, transporting, producing, holding narcotics illegally. Fourth, stipulating that serious narcotic criminals of smuggling, trafficking, transporting, producing narcotics should be sentenced to death. For China to punish severely narcotic crimes in legislation has suited the needs of actual struggle to prohibit narcotics, indicated the position for China to prohibit narcotics severely, but it is impossible to negate that the criminal law in force also has obviously dissatisfactory places: viewing from legislation, coarse vestiges of legislation still have existed; viewing from judicature, scattered nature and utility nature of judicial explanation are even more obvious, causing directly instability of judicial explanation and increasing understanding difficulty. For example, section 7 of article 347 stipulated that "for people who smuggled, trafficked, transported and produced narcotics and have not been handled, the amount of narcotics will be calculated according to the accumulative number." On the words "having not been handled" mentioned above, some thought that they include both meaning of "having not been handled with the criminal law" and meaning of "having not been handled by administrative departments; some thought that they mean "having have not been carried any handling by the state, including judicial and administrative punishment, but not including punishment within the units; some thought that having not been handled by public security and judicial departments all should be regarded as "having not been handled". In addition, viewing from practices to strike narcotic crimes, still have existed some conflicts in join between the criminal law

and rules and regulations to prohibit narcotics such administrative laws, criminal policies etc. For example in judicial practices of our country, because of cause of heath of body and spirit etc. criminals of old age were punished with leniency generally. The article 18 of "the Detailed Rules and Regulations" of Work of Management and Education of Groups Sentenced to Reform through Labor in Prison" stipulated during serving sentence being tranfor med, criminals over sixty years old who fell ill and lost possibility to harm can be permitted to execute sentence outside of jail except criminals who have been sentenced to death with two-year reprieve and those who were guilty of the most heinous crimes and have earned the bitter hatred of the people. Like this the conflict appeared: In order to prohibit narcotics severely, the criminal laws thinks that it is necessary to punish people of old age who fell ill and trafficked in narcotics, but the administrative laws of departments and the criminal policies think that it is possible to permit them to undergo medical treatment outside the prison, to execute a sentence outside of jail. According to stipulations, after having caught people to traffic narcotics, if they drug addicts, it is necessary to make first them stop taking narcotics in the places to stop taking narcotics, but according to the stipulations of the article 20 of "the Method to Compel to Stop taking Narcotics" by the State Council, people who have suffered from acute infectious deceases or other serious deceases should not be taken in the places to stop taking narcotics, should be stopped taking narcotics outside of it. In fact after these people were put in the society, because residence is disperse, there is not money for cure, manpowers of police departments are not enough, they often are in the runaway situations for nobody to manage them. Like this, the stipulation in the criminal law on trafficking narcotics having to be investigating criminal responsibility, no matter how many narcotics are, comes to nothing, the sanctity of the laws has been damaged seriously.

2.Amplifying Strategy of Struggle to Strike Narcotic Crimes

It is necessary to keep always the situation of high pressure to narcotic criminal activities. On the one hand, it is necessary to increase dynamics to investigate and prohibit transit traffic in narcotics, on the other hand it is necessary to strike ruthlessly narcotic criminal activities at home, never to be irresolute.

The facts have indicated that in recent years achievement which our country has made in punishing narcotic crimes are marked. From 1982 to 2000, only in Yunnan province over 70000 cases of transit traffic in narcotics were tracked down, seized more than eighty tons of heroin 80 coming from the gold triangle". In May 1994, the police departments of Yunnan province cracked successfully especially big transnational case of traffic in narcotics, caught the big formidable man of narcotics of "the golden triangle", the judicial organs sentenced him to death according to the laws, struck heavily frenzied arrogance of criminals of narcotics at home and abroad. Sine carrying out struggle to "strike severely" and to punish this year, procuratorial departments at all levels have taken prompt actions, have gone out, carried out special struggle to prohibit narcotics in depth, struck severely narcotic criminal activities, have cracked 22000 cases of narcotic crimes, caught 15000 suspects, seized two point two tons of heroin, one point two tons of opium, two tons of icenarcotics, 640000 pills of dancing outreach, forty point three kilograms of caffeine, nine tons of methadon, 170000 tubes of dolantrn(pethidine), eighteen point six of poppy capsule, forty point eight various chemicals which were easy to produce narcotics, uprooted 107000 original plants of narcotics. Therefore facing with the situation of "multiple infiltration " of criminal forces abroad, we must continue to increase investment of manpowers, material resources and financial resources, organize the related departments of public security, customs, railways, communication, civil aviation, forestry, post and telecommunication etc. to fight in coordination, "stop up the sources and dam the river" with three lines of defense "to block incoming road, to control sales, stop up outlet," check and prohibit narcotics publicly in main traffic lines as well as airports, stations, seaports,

wharves etc. in all parts of the country. For narcotics which have entered into our country, we must react to them promptly, should stop up them externally and to block them internally, check and seize them bi-directionally" so as to form the situation to surround, to pursue, to stop up and to block. For the domestic narcotic crimes, it is necessary to persist in stinking severely, to carry out special emphatic punishment, to destroy firmly a batch of gangs of traffic in narcotics, to smash a batch of convert markets and networks of narcotic trades. It is necessary to make the momentum for the phenomena of narcotic illegal crimes to spread in our country obtain the maximum control by this coordinating mechanism for various departments and regions to divide labour with individual responsibility and to divide forces for defense but to contact closely and support each other.

The departments of politics and law should apply jurisdiction flexibly and according to laws, starting from overall situation, and in the light of specific characteristics of narcotic crimes. In principle, jurisdiction of narcotic cases take the places where cases happened the earliest (caught) and main criminal places as the dominant factor, the jurisdiction involved in railways and localities should take localities as the dominant factor so as to facilitate and encourage public security organs at the grass-roots level to base themselves on localities, and investigate and handle cases of narcotics actively and more. For jurisdiction involved in the interior of our country as well as Hong Kong, Macao, Taiwan, it is necessary to transfer case criminals to the places of punishing them the most advantageously to carry out trial according to the needs of case situations. For example because there are no death sentence in Hong Kang and Macao, the important narcotic criminals should come within the jurisdiction of the interior to the full. At the same time to punish severely, it is necessary to practice the measure of a handsome rewards, all parts of the whole country should set up stimulating mechanism including special funds to prohibit narcotics, should commend and encourage behaviors for public security organs to seize narcotics actively, should reward the masses to report narcotic crimes actively.

3.Strengthening Construction of Professional Ranks of Seizing Narcotics

First, amplifying organs to prohibit narcotics. According to the reality of our country, the organ to seize narcotics should adopt following models: (1) the organ to command and coordinate, being mainly responsible for defining strategies, guide principle, policies and measures of work to prohibit narcotics, coordinating important problems on work to prohibit narcotics, examining, supervising and urging the executing situation of work to prohibit narcotics. In 1990 the government of China set up the Commission for Prohibiting Narcotics of the State composed of twenty-five departments of the Ministry of Public Security, the Ministry of Public Health, the General Office of Customs etc., which has led unitedly work to prohibit narcotics of the whole country. In 1998 the Stale Council approved the Ministry of Public Security to set up the Bureau to Prohibit Narcotics. This bureau was used as the administrative body of the Commission for Prohibiting Narcotics of the State. At present, the governments of thirty-one provinces, autonomous regions, municipalities directly under the Central Government and most of counties (cities, regions) have set up the corresponding special organs to prohibit narcotics, defined the system of job responsibility of levels for the goal to prohibit narcotics, the higher level grasping the lower level, the lower level being responsible for the higher level, and brought it into checking, comparing and appraising work for the system of job responsibility of goal and management for leaders of this level to ensure the public security of a region, as well as for the system of job responsibility of synthetical administration of social public security. (2) The organs to seize, investigate and solve cases. The organs take public security organs as the dominant factor, draw personnel of the departments of the armed police, customs, public health, chemical industry, medicine etc. into the work. Where narcotics spread unchecked, it is necessary to set up the special organs to seize narcotics within the public security organs, which are concretely responsible for placing the narcotic

cases on file for investigation and prosecution. (3) organs to punish according to laws. The organs are composed of procuratorial organs, people's courts, places to compel to stop taking narcotics, places to stop taking narcotics by reeduction through labor and places to reform through labor etc. (4)organs of informational research. The organs are responsible for collecting various narcotic informations and tendencies, forecasting scientifically developing tendency and putting forward countermeasures in the light of present situations and characteristics of narcotic illegal crimes, carrying out scientific detection and technical appraisement for the related narcotic cases etc. The general goal to set up and amplify organs to prohibit narcotics are: commanding sensitively, dividing labor reasonably, reacting promptly, investigating and solving cases in time, punishing forcefully, preventing closely.

Second, increasing investment. At present the biggest difficulty in work to prohibit narcotics in our country is that the investment of manpowers, material resources and financial resources is seriously insufficient. The amount of the organs and personnel to prohibit narcotics are little, the equipments are not good. Because of financial difficulty in some places existed the phenomenon "to have more money, to handle more cases; to have less money, to handle less cases; not to have money, not to handle cases." This situation has hampered seriously carrying out of struggle to prohibit narcotics, In order to change this situation, the governments at all levels of China have brought the funds needed in prohibiting narcotics into financial budget, and with development of national economy and needs of the situation to prohibit narcotics, will increase funds year by year. In 1998, the State Council approved to set up the Foundation of Prohibiting Narcotics of China, which has absorbed and accepted funds of the society so as to support work to prohibit narcotics. With uninterrupted increase of manpowers, material resources and financial resources, it is necessary to renew technology and equipments uninterruptedly. The organs to seize narcotics must be provided the equipments which are not lower than those of narcotic criminals so as to contain narcotic crimes. For example airports, customs, detection departments of public security should be provided some high precision equipments so as to cope with those goods with slight content of narcotics especially, the professional departments to seize narcotics at all levels should be provided computers and on-line system so as to reserve materials and exchange situations, to strengthen mutual cooperation and support of different regions and departments in prohibiting narcotics, at the same time, it is necessary to heighten level to execute laws and level to handle cases uninterruptedly by various special trainings, thus heightening fighting capacity of the tanks to seize narcotics.

4. Strengthening Cooperation of International Prohibiting Narcotics.

Strengthening cooperation of international prohibiting narcotics possesses important significance for promoting struggle to prohibit narcotics in the world sphere and solving problems of narcotic crimes in China thoroughly. We should participate in international affairs to prohibit narcotics actively, support and promote actively activities of cooperation to prohibit narcotics in intersubregions which the United Nations has advocated, strengthen bilateral and multilateral international cooperation to prohibit narcotics with foreign countries, show position, policies and measures for the government of China to prohibit narcotic firmly, win over international support, at the same time we also should learn from and use advanced experiences and successful practices in the international field to prohibit narcotics, improve the equipments of the ranks to the prohibit narcotics of China, heighten level to prohibit narcotics.

In recent years, China has expanded and strengthened bilateral and multilateral professional exchange and cooperation with all the countries of the world, especially with peripheral countries, participated in more international cooperative mechanisms to prohibit narcotics, practiced seriously various assistant projects for the United Nations to set up, promoted forcefully deepening carrying out of struggle to prohibit narcotics. In June 1985, China acceded to "the Narcotic Single

Convention in 1961" of the United Nations revised by the protocol in 1972, "the Spirit Medicine Convent in 1971". In September 1989, China acceded to "the Convention for the United Nations to Prohibit Traffic in Narcotics and Spirit Medicines Illegally", has become one of the countries to accede to the convention the earliest. In 1993, China signed "the understanding Memorandom" with five countries of Kampuchea, Lao, Burma, Tailand, Vietnam, decided to carry out cooperation to prohibit narcotics in this region. In May this year China chaired convening the international meeting to prohibit narcotics for the five countries mentioned above and the Office of Prohibiting Narcotics of the United Nations to take part in. China still participated in action plan against dangerous narcotics of the Association of Southeast Asian Nations, is making great efforts for realizing the goal to make the Association of Southeast Asian Nations become the region without narcotics by 2015. Since many years, bilateral and multilateral cooperation for China and other countries to carry out in the field to prohibit narcotics has obtained the marked effects. China and the U.S.A. have carried out cooperation to prohibit narcotics starting from 1985, the governments of two countries signed "the Memorandom of Cooperation for China and the U.S.A. to Prohibit Narcotics". In April 1996, China and Russia signed "the Cooperative Agreement on Prohibiting Traffic in and Abuse Narcotics and Spirit Medicines Illegally". In 1998 the heads of five states of China, Kazakhstan, Kirghizia, Russia and Tadzhikistan signed the joint statement, took striking narcotic crimes and transnational crimes as an important content of cooperation of five states. In addition , the government of China signed the bilateral agreements to prohibit narcotics with the governments of the states of Mexico, India, Pakistan, Columbia, Tadzhikistan etc. The police departments of China and the U.S.A., Canada, Japan, Republic of Korea etc. cracked the cases of traffic in narcotics unitedly many times through the international informational exchange to prohibit narcotics and judicial assistance, struck effectively transnational narcotic riminal activities. This year, under common promotion of the governments of two states of China and Burma, the police department of Yunnan Province of China and the police department carried out "Summer Snake Hunting", and "the Thunderbold Action" successively, caught a batch of formidable men of narcotics, shot big formidable man Liu Ming dead, destroyed a batch of processing factories of narcotics abroad. In April this year under the coordination of police departments of Tailand, Burma, Hong Kong Special Region and the Office to Seize Narcotics of U.S.A., the police departments of China cracked especially big international case of traffic in narcotics "March 30" successfully, seized 356.95 kilograms of heroin. The successful investigation and solving of these cases have indicated powers of international cooperation to prohibit narcotics.

5. To Prohibit Taking Narcotics Firmly

Taking narcotics and producing as well as trafficking in narcotics depend on each other. Existence of a lot of people to taking narcotics has brought up and formed enormous consumptive markets of narcotics at home and abroad, become an important reason for narcotics to refuse to stop after repeated prohibitings. At the same time, taking narcotics brings out also other criminal offences, hampers the stability of the society. Therefore at the same time to punish the narcotic crimes, all the countries all pay great attention to compel people to take narcotics to stop taking narcotics and to be cured. In China, compelling to stop taking narcotics and stopping taking narcotics by reeducation through labour are the most main method to stop taking narcotics, the places to compel to stop taking narcotics and places to stop taking narcotic by reeducation through labour are special schools to educate and save people to take narcotics. Drug addicts should be sent to places to compel to stop taking narcotics set up unitedly by the governments at all levels to stop taking narcotics, people to retake narcotics after being compelled to stop taking narcotics should be sent to the places to reeducation through labour managed by the judicial departments, where they are compelled to stop taking narcotics; people who are not suitable to be sent to the to compel to

stop taking narcotics are ordered to stop taking narcotics within the definite time under guardianship of their family members and education and management of police substation at their residence. By 2000, there were 746 places to compel to stop taking narcotics, 168 places to stop taking narcotics by reeducation through labour in the whole country. In 1999, 224,000 people were compelled to stop taking narcotics, people compelled to stop taking narcotics in the places to stop taking narcotics were 120,000 people. It is quite evident that there is considerable difference between the amounts mentioned above and urgent requirement of the situation to prohibit narcotics The Party committees, governments and public security departments in all parts of the whole country must strengthen energetically construction of the places to stop taking narcotics and tracking management of people to be compelled to stop taking narcotics. The governments in localities must plan scales and funds of places to stop taking narcotics according to the situation of narcotics in the locality, especially the amount of people relating to narcotics, and bring the funds into the budget of local finance so as to guarantee the funds to prohibit narcotics can be provided in time. The public security organs, especially managing departments to stop taking narcotics should strengthen management of the places to compel to stop taking narcotics, plan seriously the tracking cure and educational measures after people to be compelled to stop taking narcotics returned to the society at the same time to guarantee the quality to stop taking narcotics.

"Stopping taking narcotics is easy, consolidating results to stop taking narcotics is difficult". At present the rate for people to be compelled to stop taking to retake narcotics is higher, this relates to carrying out only acute cure to withdraw from addiction and not having complete process of recovered cure in the most of situations to be compelled to stop taking narcotics in our country. In order to solve the problem of the high rate of retaking narcotics after being compelled to stop taking narcotics, we must depend on the masses of the people, mobilize the forces of the whole society to carry out work to continue to help and educate them after people to be compelled to stop taking narcotics returned to the society, encourage the public security organs, community organizations, units, families to coordinate closely with the places to stop taking narcotics , combine compelling to stop taking narcotics organically with helping and educating them, set up universally social helping and educating systems; the mass organizations of trade union, the communist youth league, women's federation, association of indioidual industrialists and businessmen should use fully their own superiority, carry out work to help and educate women, staff and workers, youngsters, self-employed lakourers of people to take narcotics in view of the situations. In recent years, Nei Monggel Autonomous Region, Yunnan,Guangxi Zhuang Autnomous region, Guizhou Province have saught the new way to begin to grasp from the communities at the basic levels and promote whole work to prohibit narcotics by using prohibiting to take narcotics and compelling to stop taking narcotics as the center, developing from carrying out help and education of the communities to activities to create "communities without narcotics". In 1999 the Commission of Prohibiting Narcotics of the State spread the advanced the experience in the whole country, disposed to carry out activities to create "communities without narcotics". At present, creating "communities without narcotics" is being carried out in all parts of the whole country smoothly, has made a lot of achievements of stage nature.

6. Heightening Consciousness for All the People to Prohibit Narcotics.

The key to prohibit narcotics is to arouse the masses of the people. Carrying out propaganda and education activities to prohibit narcotics must cooperate closely with the departments of propaganda, culture, broadcast, television, film, news, press etc., use fully the news media of newspapers and periodicals, broadcast, television etc. and forms for the masses to love to see and hear, carry out often activities of propaganda, education and consultation on prohibiting narcotics, popularize knowledges on prohibiting narcotics and legal knowledges. In recent years, the Office of

Prohibiting Narcotics of the State and the offices of prohibiting narcotics in all localities still have set up "the hot line" telephones for service of consultation of prohibiting narcotics. On the commemoration day for Lin Zexu to destroy opium by burning in Human "on June 3" and before and after international day to prohibit narcotics on June 26 every year, the governments in all localities organize bigger scale propaganda activities, form the high tide of propaganda to prohibit narcotics. In view of taking narcotics being an important way to spread AIDS, before and after international day to prevent AIDS on December 1 every year, the departments of public health organize and carry out propaganda activities with "refusing narcotics and preventing AIDS" as the content. From May to July, 1998 the government of China held the exhibition of prohibiting narcotics of the whole country for two months, 1660,000 personalities of various circles of the society visited it, The Commission of Prohibiting Narcotics of the State turned the contents of the exhibition into "the Hanging Charts of Exhibition of Prohibiting Narcotics of the Whole Country", issued them to all parts of the whole country, and organized the mobile exhibition for half a year, visitors directly educated amounted to over 166 million people. In order to make education to prevent narcotics systemize and regularize, the Commission of Prohibiting Narcotics of the State disposed unitedly to set up "five-one project" to prohibit narcotics in the whole country from 1999 to 2001, namely all provinces, autonomous regions and municipalities directly under the central government all must set up one base of education of prohibiting narcotics; all universities, middle schools, primery schools all must carry out one activity to prohibit narcotics; all localities must organize one batch of achievements of the theoretical research of propaganda to prohibit narcotics; create one batch of literary and artistic works; foster one batch of volunteers of prohibiting narcotics.

Youngsters who can not understand enough narcotic harm nature and illegal nature as well as have seen little of the world are easy to be seduced and used, adopt indifferent thinking and cherish curiosity, therefore paying attention to carrying out education to prevent narcotics among them looks especially important. We should pay attention to educational functions of "three in one" of "family-school-society" in the light of characteristics of narcotic crimes of youngsters, perfect the socializing content of every link to the full, set up actively strategical line of defence to prevent from youngster involving in narcotics. In recent years we have made a lot of work in this respect. "The Law of Protection of People under Age" issued in the Twenty-first Meeting of the Standing Committee of the Seventh National People's Congress in 1991 and "Law of Proventation of Crimes of People under Age" issued in the Tenth Meeting of the Standing Committee of the Ninth National People's Congress in 1999 all made stipulations for profecting youngsters. According to the train of thought for the education of preventing and prohibiting narcotics to grasp from childhood, the Educational Committee of the State issued announcement jointly with the Commission of Prohibiting Narcotics, stipulated for taking education to prohibit narcotics as a component part of education of national quality, for bringing formally it into the teaching programme of moral education of middle school and primery school, asked to carry out various education of prohibiting narcotics in the universities, middle schools and primery schools in the light of the situation. The Educational Committee of the State and the Commission of Prohibiting Narcotics of the State compiled jointly the series of books of prohibiting narcotics suitable to reading of students and pupils. The Communist Youth League has carried various propaganda activities to prohibit narcotics among youngsters, mobilize and organize the masses of youngsters to declare war to narcotics. Many provinces and autonomous regions carried out educational activities of priventation of narcotics with youngster as main objects. In 1999 according to requirement of the Commission of Prohibiting Narcotics of the State, the departments of prohibiting narcotics at the county and above have set up the contacting points for education of preventation of narcotics in 24,223 middle and

primery schools, guiding directly the schools in carrying out education to prohibit narcoties. In the future, we still must concentrate our efforts on deepening contents of propaganda and education and innovating forms of propaganda and education, make youngsters establish consciousness to prohibit narcotics from childhood realistically.

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Trafficking in Money

Money laundering is the process whereby criminals conceal, move and legitimise the money they make from crime. The ultimate aim of major criminals is to make money. To use that money, its illegitimate provenance has to be concealed and the money washed so that it can be fed into the wider financial system, spent on valuable assets or a lavish lifestyle, or, as usually happens, used to fund further criminal activities, paying off associates, and increasing the power and influence of the crooks themselves and their gangs.

How do they do it?

Banking channels are, of course the traditional route for laundered funds. Casinos, bureaux de change, buying real estate or expensive pieces of jewellery and fine art and even buying lottery tickets are all used by criminals to launder dirty money. More sophisticated players filter their funds through their solicitor's client account, or through securities and commodities brokers and off-shore trusts. I examine in detail later such methods as underground and corespondent banking, using companies as a "front" and cashing in insurance policies, shares or high-yield savings accounts.

The latest EU Money laundering directive (No. 2) extends coverage of money laundering controls to –

- Accountants and auditors
- Real estate agents

- Legal advisers
- Precious metals dealers
- Transporters of funds
- And casino operators.

The Proceeds of Crime Act[1], which was passed in July gives effect to that Directive and makes the controls on failure to disclose suspicious transactions much tighter and the prosecution of money laundering very much more comprehensive. Not only conventional criminal make use of these channels to transport and conceal cash: so too do terrorists and the investigations of how terrorists networks are financed which ratcheted up a notch after September 11th last year revealed an intricate and sophisticated network of transmitters of funds to and from terrorists and their organisations.

In the 14 years the Serious Fraud Office has been in existence, investigating and prosecuting major fraud, we have seen many examples of money laundering. That experience has also confirmed that efficient money laundering facilities are required by professional and organised criminals just as much as by the opportunist who knows a good thing when it comes his way and is content to take a secret and dishonest advantage. The purpose of organised crime is to make a profit by illegal activity - it matters not whether it is through fraud or trafficking in drugs, arms or immigrants, or other crimes. The profits which can be made are huge and cannot conveniently be kept in cash. If the criminal wants to use his profit, for example to buy a house or a car, he has to introduce it into the legitimate banking system. All too often he cannot do that without the help of other criminals who have, all too frequently, qualifications as lawyers, accountants or bankers.

Please be under no illusions. The money launderer who helps criminals enjoy the fruits of their crimes is just as much a criminal himself. It is often said that there would be no thieves without receivers of stolen goods and that is why the penalty for handling stolen goods is 14 years; the penalty of theft is 7 years. If the original offence happens to be of theft or obtaining property

by deception then the money launderer very probably commits the offence of dishonestly assisting in the retention or disposal of stolen goods under the Theft Act 1968 as well as offences of money laundering per se, for which the penalty is 14 years on indictment.

Where there is laxity, or even more importantly, the perception that there is laxity in controls, in banking and investment supervision and regulation, money launderers and criminals will be attracted. And no regime, however benevolent wants that sort of business. These are not the gentleman crooks of "Raffles" fame; he was a creation of fiction and should remain there. The sort of criminals who make use of gaps in banking supervision, who take advantage of eyes that are shut to tax evasion, or of money emanating from drug deals, prostitution rings or the trafficking in human beings, will not hesitate to use guns, bombs and any other means at their disposal to protect themselves and their cash.

Assisting criminals has a corrupting and corrosive effect on the professionals who associate with them. Once he has helped a criminal launder money he is in their sway. It is difficult to refuse the next request for help. There is the risk of blackmail - if not by the offender then by others with whom he conspires. Too often people who never for one moment thought they would become involved in crime are sucked into the conspiracy and become more or less willing participants in the execution of that conspiracy.

Involvement of professional advisers

Professional advisers help serious and organised criminals to launder money, either by providing expertise or lending credibility to financial transactions. Solicitors, independent financial advisors, and accountants are obvious targets for criminals looking for help, but others may also be drawn into the process, for example estate agents may help criminals to make property purchases with large sums of cash. Meanwhile, professionals continue to account for only a tiny percentage of suspicious financial transaction disclosures. In fact

NCIS, the recipient of all STRs record that 62% of all STRs come from banks, 15% from bureaux de change and 7% from building societies.

Our experience tends to suggest that, on the whole solicitors who launder money fall into two groups: those (a very small minority) who actively and knowingly assist criminals ; and those who are either intimidated by their clients (the recent Customs and Excise prosecution of Louis Glatt, who was imprisoned for 7 years for money laundering, may have been such a case) or genuinely over-trusting of an old and valued client. The popular perception of the crook who comes in off the street and deposits a bag marked swag on the solicitor's desk and asks him to mind it for him for a year or so belongs back with "Raffles" on the fiction shelf. Far more realistic is the client who has been in and out of the solicitor's office for many years, with a variety of transactions, may of them mundane and non-contentious and casually slips in the odd request for the solicitor to "do him a favour". What better cover for a criminal's funds than a nice clean cheque drawn on a respectable solicitor's client account?

The solicitor may allow his client account to be used to receive deposits for investments. The lure to the investor is that the money is safe because a solicitor is regarded as trustworthy and in any event the Law Society will compensate should there be any theft. Or perhaps the solicitor's indemnity insurance policy will be used to guarantee the safety of the investment.

Do not get the impression that all solicitors, accountants, bankers and other professionals in the financial services industry are dishonest. On the contrary. The evidence I have seen suggests that the overwhelming majority of such people are honest; they just may not be alert to the dangers. The Head of the Economic Crime Unit at NCIS, Jon McNally, was recently quoted as saying he was "frustrated that [lawyers and accountants] had done relatively little to assist the police since September 11th."

The number of suspicious transaction reports (STRs) last year amounted to 21,251, up 13,000 from the year before, but referrals from solicitors accounted for only 1% of these. The number of STRs from accountants was even less: 0.35%, half the amount reported in 1998. NCIS say than motoring organisations, such as the AA and the RAC have submitted more STRs than accountants at in recent years. Mr McNally suggested that, in contrast to the number of STRs reported, half of all money laundering cases involve funds handled by solicitors or accountants.

In fairness, it would not always be particularly easy to spot as an obvious laundering of money. There is evidence that laundering is becoming more and more sophisticated.

Let me share one or two examples of money laundering cases involving solicitors that the SFO has had to deal with:

Charles Deacon practised as a solicitor in Newcastle-under-Lyme, Staffs. Together with his co-defendant, James Fuller and a US citizen,]John Savage, he was responsible for a fraud which took place over a four year period and extended into Europe and beyond. Over $19 million was obtained from victims, of which $14 million has not been recovered.

The nature of the fraud was simple. The victims needed to borrow money. The defendants claimed to have access to enormous amounts available for loans – for a fee (the first year's interest) payable in advance. The advance fee was to be kept in Deacon's solicitors clients account ad not to be removed until the loan was made available. However, the victims never received their money for the loans and as soon as it reached Deacon's client account, it was used, either for his own purposes or for those of Savage and others, or to repay earlier victims who were threatening to report the matter to the Law Society.

The victims included a German engineering company, a Finnish food processing company, a wealth Danish woman , a firm of English solicitors and Belling & Co Ltd, the well-known cooker manufacturer.

Experienced and wealthy businessmen were convinced by the claims made by Deacon and Fuller that they were acting on behalf of the CIA and the US Government with the direct authority of the American president. Victims were shown forged letters to convince them that the scheme was genuine. Some were shown letters from (then) president Bush Snr, the CIA and the NatWest Bank. Deacon (the solicitor)'s role was to secure the trust of the victims and to launder the money through his client account. He got 9 years in prison for his offences on charges conspiracy to defraud and obtaining property by deception. He was disqualified as a director for 10 years. His co-defendants received marginally lesser sentences, proving that the courts look more severely on a professional man who abuses the trust placed in him.

In another case, a solicitor a Mr A, working within a firm as a consultant, embarked on a string of fraudulent conduct quite distinct from his work for the firm.

He disregarded restrictions placed on his practising certificate by the OSS (in respect of an earlier and unrelated transgression with the legal aid fund) and operated as a solicitor practising from home, mainly dealing with residential conveyancing.

For several years, he failed to discharge client mortgages from the proceeds of sale of their properties, putting aside just enough money to cover the ongoing mortgage repayments for a year or so and then teeming and lading from further clients to cover his tracks as necessary.

In respect of a particularly bold act Mr A re-mortgaged the home of a client he had known for over 30 years to the tune of £320,000. That money was telegraphically transferred to the account of another firm of solicitors and dispersed by a solicitor there, a protégé of our man, who had been grooming him for some time to assist him in his criminal endeavours, at his behest over a 4 month period. The second solicitor,

when quizzed on this by the OSS (after initially refusing to co-operate with them) stated:

- He had not created a client file in respect of this matter but recalled that A had stated that it was the proceeds of a re-mortgage.

- All instructions had come from A via a mobile telephone.

- He had not received receipts for any of the cash payments he had purportedly made, totalling more than £47,000

- He did think it was a bit peculiar

We are still looking for Mr A (photograph and brief summary have now been passed to Crimestoppers and he is Red flagged with Interpol) and we are waiting to speak with him prior to interviewing his protégé, who is likely to be charged with s.93A money laundering and a substantive theft.

One of the problems we face in this country as investigators and prosecutors is that generally we do not take jurisdiction to try criminal offences unless they have been committed in England and Wales. The offence in money laundering is the disposal, handling and transmission of "criminal property", which is defined in the Proceeds of Crime Act as the benefit derived from criminal conduct; and criminal conduct, in turn is defined as -

" conduct which-

(a) constitutes an offence in any part of the United Kingdom, or

(b) would constitute an offence in any part of the United Kingdom if it occurred there."

In money laundering cases, the criminal conduct or predicate offence, the offence which has produced the proceeds which the offender has laundered, has been committed overseas, the laundering taking place in the UK. Very often it is not possible, for logistical reasons, to obtain the evidence from

overseas to prove the predicate offence and the prosecution for laundering must fail.

Criminals' use of cash

Cash, as the old saying has it, "has no smell". It leaves no audit trail; it is readily transportable and convertible into other currencies. It is the conventional method of payment for drugs, for prostitution, for the underworld. While use is made in the pursuit of financial fraud itself of the range of non-cash payment and money transfer methods, cash is vital to the workings of most organised crime.

NCIS reports that organised criminals make use of couriers to transport cash out of the UK, either to pay into banks or other institutions in countries with less rigorous money laundering regimes, to purchase assets such as property, or pay for supplies of drugs or other commodities. For example, they say that UK-based Turkish organised criminals involved in the heroin trade have used couriers to take cash through UK regional airports. In 2001-2002, HM Customs and Excise seized approximately £15 million cash at UK ports, airports and other embarkation points, a significant increase on the previous year.

Criminals frequently launder cash through legitimate and quasi-legitimate businesses. These businesses are often owned or part-owned by the criminals or by close associates, although legitimate businessmen may also be duped into providing the means for laundering criminal proceeds. The businesses typically have a high cash turnover, since this makes it easier for criminally acquired cash to be fed in, for example taxi firms, restaurants, nightclubs and car sales or repair companies. The same businesses may support money-making criminality, for example providing the means to transport drugs or the venue where they are sold.

We have seen a number of cases coming through the courts where cash was laundered through bureaux de change; In one case, a few years ago, another triumph for HM Customs and Excise, the proprietor of a bureau de change was given 14 years imprisonment for laundering millions through a bureau in Notting Hill Gate. Criminals have traditionally made use of bureaux de change and money transmission agents (MTAs), on the assumption that fewer questions will be asked than at banks, to convert and transfer cash. Typically, a number of individuals connected with a particular organised crime group will use several different agents, to chance multiple amounts of around £1,000 to £2,000 over a period of several days in an attempt to avoid suspicion. Other criminals are reported to launder profits from drugs trafficking through electronic transfers to destinations in South America via the US or Europe, sometimes through travel agents. A recent prosecution in the UK involved Colombian drugs traffickers who had laundered around £47 million through a London bureau de change owned by members of the group.

Underground and correspondent banking

I have mentioned the transmission of terrorist funds and one method which raised particular suspicion in the aftermath of September 11th was "underground banking" as a possible method which was employed by terrorists. It operates on trust, and no records are kept as a rule. Having paid money to an underground banker, the customer trusts the banker, for a commission, to arrange with another underground banker abroad that the intended recipient will receive the agreed sum, usually in the local currency. It is estimated that there are more than 1,000 underground bankers in the UK alone, mostly within Asian communities, where the majority of their customers will be ordinary individuals not criminals. NCIS reports that since 11 September 2001 there has been an increase in financial disclosures regarding underground banking. This may indicate increased vigilance amongst financial institutions in respect of suspected terrorist funding.

The use of correspondent banking is also seen as a method of laundering funds. Correspondent accounts are held between banks in order to facilitate inter-bank transactions. They enable smaller banks or those operating in foreign jurisdictions to offer a wider range of international banking services.

Although correspondent banking is a legitimate part of the international banking system, it may be open to abuse if less stringent customer identification and know your customer checks are required by the banks involved.

Hey, Big Spender.....

The simplest way to launder criminal cash is to buy assets or to spend on a lavish lifestyle. Traditionally, major criminals have always purchased luxury goods, such as big houses, in the UK and overseas, valuable jewellery, artwork and antiques, high performance cars and boats. I mentioned, in a recent speech, fine art auctions as a particular attraction to criminals to buy expensive art anonymously, only to have an outraged Sotheby's on my tail, reassuring me that their "Know Your Customer" controls are as good as any bank's and they employ a compliance officer who reports STRs with the best of them. Although simple, the use of cash in this way carries the risk of drawing attention to the big spender, particularly if the pattern of spending exceeds any obvious sources of income. Therefore, the more astute and sophisticated criminals are either discreet in their spending habits, or develop a plausible cover story, such as a business, or losses and gains at a casino. POCA will be useful here as well; for where there is evidence of a "criminal lifestyle", assets will, in the future, be liable to be seized and restrained and the onus placed on the possessors of the assets to proved the legitimacy of their provenance.

Confusing the audit trail

Once cash has been placed in the financial system, serious and organised criminals use a variety of methods to confuse the audit trail, often by passing

transactions through several stages (layering), each one making it more difficult to trace the true origin of the funds. For example, cash may be run through legitimate or quasi-legitimate businesses in the UK, such as travel agents, takeaway food outlets and money exchanges, and paid into a UK bank as business income. The UK bank is then used to transfer money to an overseas bank, often located where the regulatory regime is weak. From there, the laundered proceeds may be transferred again to another country by any one of a number of means, including hawala banking, high value imported goods, or bank transfer. The increased availability of internet banks and the inherent secrecy of offshore accounts may also provide alternative means of confusing the audit trail.

Financial products

One way of laundering money is to invest in financial products with a view to selling them quickly. The use of insurance policies, share portfolios, or high yield savings accounts to launder money often involves incurring penalties for the early withdrawal of savings or closing of policies, or the selling of shares at a loss. Criminals may be prepared to bear such costs if they perceive that the overall risk of detection is lower than other money laundering methods. Given that some level of financial expertise may be needed to launder money effectively in this way, this is an area where criminals may look to corrupt a financial professional into helping them.

Trusts, too, can be used to launder the proceeds of crime. Assets are placed into the trust by the settlor and the legal interest of the assets then transfers to the trust. The trustee then administers the trust according to the wishes of the settlor. The beneficiary, designated by the settlor, holds the beneficial interest of those assets. There is evidence of the misuse of trusts by serious and organised criminals to conceal the proceeds of crime, principally as a means of layering rather than for the initial placement of cash. The secretive nature and flexibility of trusts explains their appeal to money launderers, and also to fraudsters. Some are designed to hide any information relating to the

settlor and beneficiary, to the point where the trust deed, if one exists and can be traced, would be misleading. Others give the trustee discretion to administer the trust as he or she sees fit. The latter type was used, in an NCIS example, by one drugs trafficker to place a large amount of money in trust with his son as beneficiary and himself as trustee, thereby retaining full control and use of the money. Trusts are often set up in conjunction with front companies, thus further confusing audit trails and hiding the identities of the parties. While a trust does not have to be set up by a solicitor, or require the involvement of a financial advisor or accountant, as with criminal misuse of financial products, there is some evidence of collusion between criminals and professional advisors to set up trusts as a means to launder money.

The changing nature of money laundering methods

The methods used to launder the proceeds of crime vary according to criminals responding to law enforcers cracking down on particular laundering avenues and to changes in legislation and regulation, and even changes in the economic environment. In respect of the last, it was widely predicted that criminals would take advantage of the increased exchange and circulation of cash during the period of changeover to the euro, particularly from January to March 2002 after its introduction while the old currencies were still in circulation as legal tender. However, the FATF (Financial Action Task Force)'s report on money laundering for 2001-2002 noted little evidence of a significant increase in financial disclosures directly attributable to the changeover. It is believed that it is likely that the higher denomination euro notes, for example the 500 euro note, will be attractive to criminals looking to deal in cash across Europe, since it will reduce the bulk of large sums. This may mean that criminals looking to export cash from the UK will also be drawn towards high denomination euro notes.

Proceeds of crime legislation in the second half of 2002 aimed at ensuring that criminals do not profit from crime will prompt serious and organised criminals to look for new and better ways to hide their assets. Some may try

to move assets overseas, especially those that have ties to countries where the threat of confiscation is lower.

What is needed urgently is a change in culture, world-wide. We need a culture which rejects money laundering and regards it as unacceptable to accept money from dubious sources. Professionals must be prepared to look long and hard at dubious transactions before accepting the money - no matter how attractive the business looks on the surface. To help criminals must be regarded as unacceptable and those who are known to facilitate it should become pariahs within the financial services sector.

They should know that they will be reported to the authorities by their peers. Countries –

- where the controllers of the financial institutions were prepared to forget the real victims of the kind of frauds that are perpetrated every day;

- where they were prepared to close their eyes when transactions came across their desk for which there appeared to be no economic purpose;

- where they were prepared to avoid asking any questions when their customers appeared to acquired wealth from no apparent legitimate source;

rapidly become the target for those seeking to launder the proceeds of their crimes. Dirty money, as everybody knows, drives out clean and there is always the danger that once really serious criminal money takes hold in financial institutions, the word gets around. Once the world's top 500 banks got the perception that that was the case over here, then you would not see them for dust.

The fact that we continue to attract and retain the world's quality financial institutions here in London shows that we have succeeded in avoiding many of the dangers I have outlined - but constant vigilance remains vital.

- The Law Society has recently issued new guidance on money laundering
- The Metropolitan Police and the FSA maintain websites with up to date warnings about common frauds and scams
- Our own SFO website gives details of the modus operandi of all our convicted defendants
- Police Forces, Trading Standards Offices and the FSA mount Consumer education and awareness campaigns

And of course I and my colleagues take every possible opportunity, at fora such as this, to drive home the message to fellow professionals that we all have a part to play in ensuring that financial criminals do not us our services to assist them in defrauding the public or the financial services industry.

The watchwords must be vigilance and scepticism. These will not stifle commercial enterprise nor drive away clients. A professional adviser or lender who takes a close and healthy interest in his clients business will be welcomed by the honest client. If the client seems reluctant to explain precisely what his intentions are and how his scheme will make money – beware !

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[1] **Proceeds of Crime Act 2002**
Part 7

Section 327 Concealing etc
(1) A person commits an offence if he-
(a) conceals criminal property;
(b) disguises criminal property;
(c) converts criminal property;

(d) transfers criminal property;
(e) removes criminal property from England and Wales or from Scotland or from Northern Ireland.
(2) But a person does not commit such an offence if-
(a) he makes an authorised disclosure under section 338 and (if the disclosure is made before he does the act mentioned in subsection (1)) he has the appropriate consent;
(b) he intended to make such a disclosure but had a reasonable excuse for not doing so;
(c) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.
(3) Concealing or disguising criminal property includes concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.

Section 328 Arrangements
(1) A person commits an offence if he enters into or becomes concerned in an arrangement which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person.
(2) But a person does not commit such an offence if-
(a) he makes an authorised disclosure under section 338 and (if the disclosure is made before he does the act mentioned in subsection (1)) he has the appropriate consent;
(b) he intended to make such a disclosure but had a reasonable excuse for not doing so;
(c) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.

Section 329 Acquisition, use and possession
(1) A person commits an offence if he-
(a) acquires criminal property;
(b) uses criminal property;
(c) has possession of criminal property.
(2) But a person does not commit such an offence if-
(a) he makes an authorised disclosure under section 338 and (if the disclosure is made before he does the act mentioned in subsection (1)) he has the appropriate consent;
(b) he intended to make such a disclosure but had a reasonable excuse for not doing so;
(c) he acquired or used or had possession of the property for adequate consideration;
(d) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.
(3) For the purposes of this section-
(a) a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property;
(b) a person uses or has possession of property for inadequate consideration if the value of the consideration is significantly less than the value of the use or possession;
(c) the provision by a person of goods or services which he knows or suspects may help another to carry out criminal conduct is not consideration.

Section 330 Failure to disclose: regulated sector
(1) A person commits an offence if each of the following three conditions is satisfied.
(2) The first condition is that he-
(a) knows or suspects, or
(b) has reasonable grounds for knowing or suspecting,
that another person is engaged in money laundering.
(3) The second condition is that the information or other matter-
(a) on which his knowledge or suspicion is based, or
(b) which gives reasonable grounds for such knowledge or suspicion,
came to him in the course of a business in the regulated sector.
(4) The third condition is that he does not make the required disclosure as soon as is practicable after the information or other matter comes to him.
(5) The required disclosure is a disclosure of the information or other matter-

(a) to a nominated officer or a person authorised for the purposes of this Part by the Director General of the National Criminal Intelligence Service;

(b) in the form and manner (if any) prescribed for the purposes of this subsection by order under section 339.

(6) But a person does not commit an offence under this section if-

(a) he has a reasonable excuse for not disclosing the information or other matter;

(b) he is a professional legal adviser and the information or other matter came to him in privileged circumstances;

(c) subsection (7) applies to him.

(7) This subsection applies to a person if-

(a) he does not know or suspect that another person is engaged in money laundering, and

(b) he has not been provided by his employer with such training as is specified by the Secretary of State by order for the purposes of this section.

(8) In deciding whether a person committed an offence under this section the court must consider whether he followed any relevant guidance which was at the time concerned-

(a) issued by a supervisory authority or any other appropriate body,

(b) approved by the Treasury, and

(c) published in a manner it approved as appropriate in its opinion to bring the guidance to the attention of persons likely to be affected by it.

(9) A disclosure to a nominated officer is a disclosure which-

(a) is made to a person nominated by the alleged offender's employer to receive disclosures under this section, and

(b) is made in the course of the alleged offender's employment and in accordance with the procedure established by the employer for the purpose.

(10) Information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to him-

(a) by (or by a representative of) a client of his in connection with the giving by the adviser of legal advice to the client,

(b) by (or by a representative of) a person seeking legal advice from the adviser, or

(c) by a person in connection with legal proceedings or contemplated legal proceedings.

(11) But subsection (10) does not apply to information or other matter which is communicated or given with the intention of furthering a criminal purpose.

(12) Schedule 9 has effect for the purpose of determining what is-

(a) a business in the regulated sector;

(b) a supervisory authority.

(13) An appropriate body is any body which regulates or is representative of any trade, profession, business or employment carried on by the alleged offender.

Section 331 Failure to disclose: nominated officers in the regulated sector

(1) A person nominated to receive disclosures under section 330 commits an offence if the conditions in subsections (2) to (4) are satisfied.

(2) The first condition is that he-

(a) knows or suspects, or

(b) has reasonable grounds for knowing or suspecting,

that another person is engaged in money laundering.

(3) The second condition is that the information or other matter-

(a) on which his knowledge or suspicion is based, or

(b) which gives reasonable grounds for such knowledge or suspicion,

came to him in consequence of a disclosure made under section 330.

(4) The third condition is that he does not make the required disclosure as soon as is practicable after the information or other matter comes to him.

(5) The required disclosure is a disclosure of the information or other matter-

(a) to a person authorised for the purposes of this Part by the Director General of the National Criminal Intelligence Service;

(b) in the form and manner (if any) prescribed for the purposes of this subsection by order under section 339.

(6) But a person does not commit an offence under this section if he has a reasonable excuse for not disclosing the information or other matter.

(7) In deciding whether a person committed an offence under this section the court must consider whether he followed any relevant guidance which was at the time concerned-

(a) issued by a supervisory authority or any other appropriate body,

(b) approved by the Treasury, and

(c) published in a manner it approved as appropriate in its opinion to bring the guidance to the attention of persons likely to be affected by it.

(8) Schedule 9 has effect for the purpose of determining what is a supervisory authority.

(9) An appropriate body is a body which regulates or is representative of a trade, profession, business or employment.

Section 332 Failure to disclose: other nominated officers

(1) A person nominated to receive disclosures under section 337 or 338 commits an offence if the conditions in subsections (2) to (4) are satisfied.

(2) The first condition is that he knows or suspects that another person is engaged in money laundering.

(3) The second condition is that the information or other matter on which his knowledge or suspicion is based came to him in consequence of a disclosure made under section 337 or 338.

(4) The third condition is that he does not make the required disclosure as soon as is practicable after the information or other matter comes to him.

(5) The required disclosure is a disclosure of the information or other matter-

(a) to a person authorised for the purposes of this Part by the Director General of the National Criminal Intelligence Service;

(b) in the form and manner (if any) prescribed for the purposes of this subsection by order under section 339.

(6) But a person does not commit an offence under this section if he has a reasonable excuse for not disclosing the information or other matter.

Section 333 Tipping off

(1) A person commits an offence if-

(a) he knows or suspects that a disclosure falling within section 337 or 338 has been made, and

(b) he makes a disclosure which is likely to prejudice any investigation which might be conducted following the disclosure referred to in paragraph (a).

(2) But a person does not commit an offence under subsection (1) if-

(a) he did not know or suspect that the disclosure was likely to be prejudicial as mentioned in subsection (1);

(b) the disclosure is made in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct;

(c) he is a professional legal adviser and the disclosure falls within subsection (3).

(3) A disclosure falls within this subsection if it is a disclosure-

(a) to (or to a representative of) a client of the professional legal adviser in connection with the giving by the adviser of legal advice to the client, or

(b) to any person in connection with legal proceedings or contemplated legal proceedings.

(4) But a disclosure does not fall within subsection (3) if it is made with the intention of furthering a criminal purpose.

Section 334 Penalties

(1) A person guilty of an offence under section 327, 328 or 329 is liable-

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both, or

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or to a fine or to both.

(2) A person guilty of an offence under section 330, 331, 332 or 333 is liable-

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both, or

(b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both.

Section 335 Appropriate consent

(1) The appropriate consent is-

(a) the consent of a nominated officer to do a prohibited act if an authorised disclosure is made to the nominated officer;
(b) the consent of a constable to do a prohibited act if an authorised disclosure is made to a constable;
(c) the consent of a customs officer to do a prohibited act if an authorised disclosure is made to a customs officer.

(2) A person must be treated as having the appropriate consent if-
(a) he makes an authorised disclosure to a constable or a customs officer, and
(b) the condition in subsection (3) or the condition in subsection (4) is satisfied.

(3) The condition is that before the end of the notice period he does not receive notice from a constable or customs officer that consent to the doing of the act is refused.

(4) The condition is that-
(a) before the end of the notice period he receives notice from a constable or customs officer that consent to the doing of the act is refused, and
(b) the moratorium period has expired.

(5) The notice period is the period of seven working days starting with the first working day after the person makes the disclosure.

(6) The moratorium period is the period of 31 days starting with the day on which the person receives notice that consent to the doing of the act is refused.

(7) A working day is a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 (c. 80) in the part of the United Kingdom in which the person is when he makes the disclosure.

(8) References to a prohibited act are to an act mentioned in section 327(1), 328(1) or 329(1) (as the case may be).

(9) A nominated officer is a person nominated to receive disclosures under section 338.

(10) Subsections (1) to (4) apply for the purposes of this Part.

Section 336 Nominated officer: consent

(1) A nominated officer must not give the appropriate consent to the doing of a prohibited act unless the condition in subsection (2), the condition in subsection (3) or the condition in subsection (4) is satisfied.

(2) The condition is that-
(a) he makes a disclosure that property is criminal property to a person authorised for the purposes of this Part by the Director General of the National Criminal Intelligence Service, and
(b) such a person gives consent to the doing of the act.

(3) The condition is that-
(a) he makes a disclosure that property is criminal property to a person authorised for the purposes of this Part by the Director General of the National Criminal Intelligence Service, and
(b) before the end of the notice period he does not receive notice from such a person that consent to the doing of the act is refused.

(4) The condition is that-
(a) he makes a disclosure that property is criminal property to a person authorised for the purposes of this Part by the Director General of the National Criminal Intelligence Service,
(b) before the end of the notice period he receives notice from such a person that consent to the doing of the act is refused, and
(c) the moratorium period has expired.

(5) A person who is a nominated officer commits an offence if-
(a) he gives consent to a prohibited act in circumstances where none of the conditions in subsections (2), (3) and (4) is satisfied, and
(b) he knows or suspects that the act is a prohibited act.

(6) A person guilty of such an offence is liable-
(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both, or
(b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both.

(7) The notice period is the period of seven working days starting with the first working day after the nominated officer makes the disclosure.

(8) The moratorium period is the period of 31 days starting with the day on which the nominated officer is given notice that consent to the doing of the act is refused.

(9) A working day is a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 (c. 80) in the part of the United Kingdom in which the nominated officer is when he gives the appropriate consent.
(10) References to a prohibited act are to an act mentioned in section 327(1), 328(1) or 329(1) (as the case may be).
(11) A nominated officer is a person nominated to receive disclosures under section 338.

Section 337 Protected disclosures
(1) A disclosure which satisfies the following three conditions is not to be taken to breach any restriction on the disclosure of information (however imposed).
(2) The first condition is that the information or other matter disclosed came to the person making the disclosure (the discloser) in the course of his trade, profession, business or employment.
(3) The second condition is that the information or other matter-
(a) causes the discloser to know or suspect, or
(b) gives him reasonable grounds for knowing or suspecting,
that another person is engaged in money laundering.
(4) The third condition is that the disclosure is made to a constable, a customs officer or a nominated officer as soon as is practicable after the information or other matter comes to the discloser.
(5) A disclosure to a nominated officer is a disclosure which-
(a) is made to a person nominated by the discloser's employer to receive disclosures under this section, and
(b) is made in the course of the discloser's employment and in accordance with the procedure established by the employer for the purpose.

Section 338 Authorised disclosures
(1) For the purposes of this Part a disclosure is authorised if-
(a) it is a disclosure to a constable, a customs officer or a nominated officer by the alleged offender that property is criminal property,
(b) it is made in the form and manner (if any) prescribed for the purposes of this subsection by order under section 339, and
(c) the first or second condition set out below is satisfied.
(2) The first condition is that the disclosure is made before the alleged offender does the prohibited act.
(3) The second condition is that-
(a) the disclosure is made after the alleged offender does the prohibited act,
(b) there is a good reason for his failure to make the disclosure before he did the act, and
(c) the disclosure is made on his own initiative and as soon as it is practicable for him to make it.
(4) An authorised disclosure is not to be taken to breach any restriction on the disclosure of information (however imposed).
(5) A disclosure to a nominated officer is a disclosure which-
(a) is made to a person nominated by the alleged offender's employer to receive authorised disclosures, and
(b) is made in the course of the alleged offender's employment and in accordance with the procedure established by the employer for the purpose.
(6) References to the prohibited act are to an act mentioned in section 327(1), 328(1) or 329(1) (as the case may be).

Section 339 Form and manner of disclosures
(1) The Secretary of State may by order prescribe the form and manner in which a disclosure under section 330, 331, 332 or 338 must be made.
(2) An order under this section may also provide that the form may include a request to the discloser to provide additional information specified in the form.
(3) The additional information must be information which is necessary to enable the person to whom the disclosure is made to decide whether to start a money laundering investigation.
(4) A disclosure made in pursuance of a request under subsection (2) is not to be taken to breach any restriction on the disclosure of information (however imposed).
(5) The discloser is the person making a disclosure mentioned in subsection (1).
(6) Money laundering investigation must be construed in accordance with section 341(4).
(7) Subsection (2) does not apply to a disclosure made to a nominated officer.

Section 340 Interpretation

(1) This section applies for the purposes of this Part.

(2) Criminal conduct is conduct which-

(a) constitutes an offence in any part of the United Kingdom, or

(b) would constitute an offence in any part of the United Kingdom if it occurred there.

(3) Property is criminal property if-

(a) it constitutes a person's benefit from criminal conduct or it represents such a benefit (in whole or part and whether directly or indirectly), and

(b) the alleged offender knows or suspects that it constitutes or represents such a benefit.

(4) It is immaterial-

(a) who carried out the conduct;

(b) who benefited from it;

(c) whether the conduct occurred before or after the passing of this Act.

(5) A person benefits from conduct if he obtains property as a result of or in connection with the conduct.

(6) If a person obtains a pecuniary advantage as a result of or in connection with conduct, he is to be taken to obtain as a result of or in connection with the conduct a sum of money equal to the value of the pecuniary advantage.

(7) References to property or a pecuniary advantage obtained in connection with conduct include references to property or a pecuniary advantage obtained in both that connection and some other.

(8) If a person benefits from conduct his benefit is the property obtained as a result of or in connection with the conduct.

(9) Property is all property wherever situated and includes-

(a) money;

(b) all forms of property, real or personal, heritable or moveable;

(c) things in action and other intangible or incorporeal property.

(10) The following rules apply in relation to property-

(a) property is obtained by a person if he obtains an interest in it;

(b) references to an interest, in relation to land in England and Wales or Northern Ireland, are to any legal estate or equitable interest or power;

(c) references to an interest, in relation to land in Scotland, are to any estate, interest, servitude or other heritable right in or over land, including a heritable security;

(d) references to an interest, in relation to property other than land, include references to a right (including a right to possession).

(11) Money laundering is an act which-

(a) constitutes an offence under section 327, 328 or 329,

(b) constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (a),

(c) constitutes aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a), or

(d) would constitute an offence specified in paragraph (a), (b) or (c) if done in the United Kingdom.

(12) For the purposes of a disclosure to a nominated officer-

(a) references to a person's employer include any body, association or organisation (including a voluntary organisation) in connection with whose activities the person exercises a function (whether or not for gain or reward), and

(b) references to employment must be construed accordingly.

(13) References to a constable include references to a person authorised for the purposes of this Part by the Director General of the National Criminal Intelligence Service.

MONEY LAUNDERING: PROBLEMS IN SOUTH AFRICA AND ACTIONS TAKEN TO COUNTER THEM- AN OVERVIEW

PAPER DELIVERED BY ADV LYNETTE C DAVIDS AT THE INTERNATIONAL ASSOCIATION OF PROSECUTORS' 7TH ANNUAL CONFERENCE, LONDON, 8 – 12 SEPTEMBER 2002

A. INTRODUCTION

Money laundering can be described as an international phenomenon, as it is no longer confined to a particular country or region. It is widely accepted that the rapid development in communication and information exchange systems impacts on financial and commercial transactions. This means that information and money are increasingly being accessed and moved by individuals and enterprises through communication networks, which transcends our national borders.

With the demise of trade barriers between countries, foreign direct investment and the technological advancements, as the main drivers of globalization[1], conditions conducive to the expansion of money laundering across the globe have been created.

The global threat of the illicit trafficking in money is reflected in the following:

> *"The money screamed across the wires, its provenance fading in a maze of electronic transfers, which shifted it, hid it, broke it up into manageable wads which would be withdrawn and redeposited elsewhere, obliterating the trail."*[2]

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1 Hill, *Global Business*, 2nd ed. 2000.

2 Linda Davies, Nest of Vipers, quoted in an Internet article on Money Laundering.

In a paper by the International Monetary Fund it has been stated that globalization and financial market integration in particular, facilitates financial abuse, which includes money laundering. [3] There is general international consensus that money laundering erodes the effectiveness of macro-economic policies, destabilizes financial markets, weakens financial systems, which could lead to the decline in foreign investment, corrupts financial and legal institutions and undermines democracies.

Although South Africa has not been unaffected by global developments, money laundering as a phenomenon is relatively new to the country. As the pre-democratic era was characterized by political events and the isolation of South Africa from the international arena, serious crime (in particular organized crime and money laundering) did not pose a problem. The former government's efforts were directed at suppressing the democratic movement.

In 1994 the change in government not only heralded in a new democratic dispensation, but South Africa reentered the international arena. Consequently, the opening up of South Africa's borders, foreign trade and investment became an integral part of the new South Africa. With these developments, South Africa also experienced an escalation in its crime levels, particularly from organized crime groups (such as the Nigerians, Chinese Triads, Russians and Bulgarians) who took advantage of the well – developed infrastructures of the South African society. The law enforcement agencies at the time were not designed to deal with the sophisticated criminal activities that started to infiltrate our social and financial structures.

The new government had to contend with major reconstruction processes to rebuild a society that has been destroyed by apartheid. At the same time it had

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[3] Paper prepared by the Monetary and Exchange Affairs and Policy Development and Review Departments of the International Monetary Fund, February 12, 2001.

to focus its attention on fighting the escalation in criminal activities with scant resources, as there was an outflow of skilled people from the public sector and law enforcement agencies to the private sector. Faced with a weakened law enforcement and ineffective laws to deal with organized crime and money laundering, the government of the day had to redress these areas.

In this context the paper will consider the extent and impact of money laundering in South Africa, the regional factors conducive to money laundering, emerging trends and the actions taken to counter the problems facing South Africa.

B. MONEY LAUNDERING IN SOUTH AFRICA

(i) Extent and Impact (Some Statistics will be provided during the presentation)

As indicated above money laundering as a phenomenon[4] is relatively new in South Africa. The extent of money laundering and its full impact must still be determined.[5] There are no official statistics readily available on money laundering incidence in South Africa.[7] However recent reports indicate that from an international perspective, South Africa attracts a large amount of laundered

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4 The proceeds of criminal activity has been criminalized in the Drugs and Drug- Trafficking Act, Act No 142 of 1999, Proceeds of Crime Act, Act No 76 of 1996 and Prevention of Organized Crime Act, Act 121 of 1998. See *infra* for a discussion on the developments around the criminalisation of money laundering in South Africa.

5 The debate as to how to measure money laundering and whether it can be determined is ongoing. There has been little research conducted to determine the extent and impact of money laundering in South Africa.

7 P Smit, *Clean Money Suspect Source, Turning Organized Crime Against Itself*, Institute for Security Studies Monograph No. 51 January 2001. In order to have some idea of the extent of the problem (both locally and globally) reliance has been placed on indicators such as the number of suspicions transactions identified by the financial institutions, number of organized criminal groupings identified by law enforcement agencies, the number of prosecutions for money laundering and forfeiture of the proceeds of criminal activities.

money. [8] In another report it has been suggested that evidence has been found that a substantial amount of "dirty" money is transferred internationally from South Africa in both physical and electronic form.[9]

According to international indications of money laundering in South Africa, the Walker Model of 1998[10] rated South Africa relatively low as a country to attract money launderers and suggests that South Africa falls outside the top 20 countries in terms of the flows of money laundering. The lack of available official statistics and the apparent favourable rating, however, are not indicators for the non-existence of money laundering. In fact current indications are that South Africa is fast becoming a target for laundering activities.

(ii) Regional factors contribution to the growth of money laundering

Some of the regional factors creating the conditions for targeting South Africa as a destination for money laundering are the following:

The presence of organized groups[11]: According to official statistics there were 278 active criminal organizations known to the South African Police in 1994. By 1995 this number has grown to 481.[12] In 1999 an additional 500 groups have been identified, of which the full extent of the criminal groups is still unknown.[13]

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8 Article published in Business news, 3 August 2001 (by G Choppin of the Business Advisory Firm Ernst & Young).

9 S Saunders, *Money Laundering and the Rand*, Professional Management Review, June 2002.

10 Modelling Global Money Laundering Flows, 1998.

11 The link between money laundering and organized crime is well established.

12 P Smit, 19.

13 P Smit, 19.

The most significant offences committed by the organized groups are drug trafficking. It has been stated that the growing criminalization of South African society is notably linked to drug production and trafficking. However, drugs are not the only crime commodity, South Africa's natural resources, such as gold, diamonds, ivory, abalone and rhino horn are marketed through organized groups to other parts of the world.

Strong financial institution and market systems: Although South Africa is described as a developing country it has a dynamic economy, which is served by a well-developed modern banking system and a sophisticated stock exchange. This, and the easy capital flow to and from international financial markets makes it's easy to recycle dirty money. At the same time it becomes more difficult to trace the illegal money flows.

Parallel economies: South Africa has a large informal business sector, which at times operates within the formal sector of the economy. However, in some instances, they operate in a largely unregulated environment or do not comply with stringent financial control systems. There is also evidence of a growing underground banking systems where cash is not the only commodity. Gold in particular, appears to be offering an attractive alternative to money launders in that it provides anonymity and can be traded on world markets. Given the secretive nature of money laundering the informal business sector undoubtedly provides a breeding ground for money launderers and remains widely open to abuse.

Porous borders: South Africa has very porous borders (long land and sea borders with little natural boundaries), which facilitates the smuggling of contraband into the country. They are also being exploited for the smuggling of goods out of the country, for example, hijacked cars and cash or foreign currency to neighbouring countries. Weak border controls in South Africa also provide added opportunities for transporting illegal goods in and out of the country,

(iii) Emerging Trends

Although activities relating to the proceeds of crime (only later criminalized as money laundering *per se)* have been criminalized since 1992, there is a limited understanding of the money laundering patterns.[14] In a recent study, a first of its kind undertaken in South Africa, an attempt was made to identify the major money laundering trends. According to this limited study the following trends seem to be emerging:[15]

- *The purchasing of goods and properties*: It is stated that South African criminals are inclined to spend their ill-gotten gains on luxury items, such as, luxury motor vehicles, property, expensive clothes, yachts and jet skis. It is difficult to determine whether these purchases are being made with the intention to launder the money or simply to maintain or improve their life styles.

  The problems associated with these types of purchases are that they are often made in cash and from second hand dealers. In the case of property purchases, front companies are sometimes formed to register the property in its name. Often times, the trust accounts of attorneys are being used to launder the money. It seems that the assets purchased with the proceeds of some or other criminal activity remain in the country, as there are no clear indications of the exportation of goods to other countries. Given the porous borders it is possible that some of the goods might find their way to neighbouring states.

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[14] L De Koker, Money Laundering Trends in South Africa, 2002. The study was a result from a workshop held on 5 December 2001 hosted and facilitated by the Centre for the Study of Economic Crime of the Rand Afrikaans University, which has drawn on the experience of law enforcement agencies and other experts in the field. The British High Commission in South Africa primarily funded this study.

[15] L De Koker, pages 15 – 26.

- *Abuse of businesses, corporate entities and Trusts*: Criminals are using business activities and business enterprises to launder their money. It has been found that front companies are being incorporated with legitimate businesses as a veil to disguise their illegal criminal activities, for example, drug trading or fraudulent investment schemes. The opportunity is therefore created to mix the proceeds of the illegal activities with those of the legitimate business and deposited into a bank account as the proceeds of the company. A common feature of these companies is that they are involved in export and import trade.

  It has also been found that family trusts are often registered for the purpose of using the bank account of the Trust to conceal the source of the money or to register property purchased with the proceeds of crime, in the name of the Trust.

- *Abuse of financial Systems*: Although the strict exchange control system has contributed to the deterrence of large scale abuse of the financial system by international launderers, South African criminals are abusing the system in a variety of ways, for example, use of bank accounts, financial instruments (such as Bearer Bonds, Negotiable Certificates of Deposits and Prime Bank Instruments) and credit card facilities, purchasing of securities and insurance policies.

  South Africa also has a large market for second hand insurance policies (i.e. where policy holders sell their policies in the secondary market), which up until now falls outside the regulatory framework of the investment and insurance industry. These secondary markets are open to abuse and often the mechanism through which various fraudulent schemes are being perpetrated. There is a growing tendency for criminals to use second hand insurance policies to launder their ill-gotten gains due to the

anonymity they provide and the fact that it does not leave a trail. This market therefore provides the ideal opportunity for criminals to remain undetected.

- *The use of cash and currency:* There is evidence that substantial amounts of cash are being transported to and from South Africa across its borders. It was found during the monitoring of domestic flights that a substantial amount of cash was carried by passengers, either on their bodies or suitcases. It was also found that cash are sometimes exchanged for foreign currency or laundered through legal and illegal casinos. In the former case it is not unreasonable to assume that such purchases of foreign currency are destined to support further criminal activity in a foreign country.

It is evident from this study that money laundering in South Africa is emerging along the same lines as the trends found internationally discussed in the Egmond Report on the 100 money laundering cases in the world. This is a clear indication that money laundering is universal in nature, but might differ in the degree of sophistication. The South Africa study seems to indicate that money laundering in South Africa has not yet reached the levels of sophistication found internationally.

C. ACTIONS TAKEN TO COUNTER THE PROBLEMS

(i) Legislation

The Drugs and Drug-Trafficking Act

South African legislation pertaining to money laundering dates back to 1992 with the criminalisation of the conversion of any property, which is the proceeds of a

drug related offence.[16] The Drugs and Drug-Trafficking Act has criminalized *inter alia* the laundering of proceeds of specific drug-related offences and required the reporting of suspicious transactions involving the proceeds of drug – related offences. It also made provision for mechanisms for restraining and confiscation orders in respect of such proceeds, including international assistance to enforce foreign confiscation orders.

The fact that the laundering of the proceeds of crime was not criminalized outside of this Act, limited its scope, so that even if laundering activities were taking place outside the drug context, it would not be an offence. This legislation was therefore inadequate to combat money laundering in a broader context. Because money laundering was not itself an offence, little attention was paid to the investigation of money laundering schemes. Even with the limited scope of money laundering in the context of drug-related offences, little resources were devoted to fighting this crime.[17] As pointed out earlier, the law enforcement agencies were not designed to fight serious crime.

The result was that there were no prosecutions instituted in terms of this Act. The reporting of suspicious transactions in terms of the Act also had limited success. Mixed reports have been received as to the number of suspicious transactions that were reported by the banks in terms of the Act. Whatever the correct number it appears that it was less than 80 reports. As far as the confiscation provisions are concerned, it appears that they were only applied in one prosecution.[18]

The Proceeds of Crime Act

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16 The Drugs and Drug Trafficking Act No 142 of 1992 limited the scope of the offence to the laundering of the proceeds of drug offences.

17 P Smit, 31.

18 P Smit, 32

In 1996, the Proceeds of Crime Act[19] was promulgated to widen the scope of the laundering of proceeds to any type of underlying criminal activity. This was part of a broader Law Reform Program put into motion by the new government in 1994.

In terms of this Act it was an offence for any person who performed any act that resulted (or may have resulted) in concealing the nature of the proceeds of crime, enabling a person to avoid prosecution or diminishing such proceeds. In addition to this, the Act also created two new offences by criminalizing the actions of a person who assisted another to benefit from the proceeds of crime and any person who acquired, possessed or used the proceeds of crime of another person. These offences were introduced to deal with those situations where individuals became involved in the later stages of the money laundering scheme.

The Act also widened the scope of the reporting duty, first introduced under the Drug-Trafficking Act, to place an obligation on any person who carries on a business (or is in charge) to report suspicious transactions. Previously this obligation was only on directors, managers or executive officers of a financial institution. Although some banks and businesses were reluctant to report suspicious transactions, indications are that the majority of the reported transactions under the Proceeds of Crime Act came from the banks.

The Act also repealed the confiscation procedures and made provision for similar procedures, however, it could only be instituted after the conviction of the accused of a profit – generating crime, such as fraud, theft, drug-trafficking etc.

There are no reported cases on the money laundering offences under this Act, nor has there been any prosecutions instituted. The confiscation procedures have been applied in three cases.

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[19] Act No. 76 of 1996. See L De Koker, *Money Laundering Control in South Africa – A South African Response to an American Comment*, Financial Crime Review, Spring 2001, 10.

The little success achieved under this Act, once again highlighted the lack of effective implementation mainly due to lack of skills and experience in investigations and prosecutions. The lack of cooperation received from the banks and businesses also made it difficult to investigate money laundering, thus contributing to the unsuccessful implementation of the Act.

The Prevention of Organised Crime Act: The Current Law

As the two previous pieces of legislation were inadequate to combat organized crime and money laundering, the Prevention of Organized Crime Act[20] (POCA), which is modeled on the RICO statutes of the United States was promulgated and came into effect on 21 January 1999. It repealed the Drugs and Drug-Trafficking Act and the Proceeds of Crime Act, bringing about major improvements in the ambit of money laundering offences, reporting obligations and asset forfeiture and confiscation provisions. This law now criminalizes money laundering as a separate and distinct offence. It is also the first legislation to criminalise organized crime and gang groups. This Act contains comprehensive provisions relating to:

- racketeering offences and criminal gangs;
- money laundering in general and also in respect of racketeering activities; whether it was committed in or outside of the Republic of South Africa;
- reporting obligations for businesses coming in possession of suspicious property; and
- the creation of mechanisms for both the criminal confiscation of the proceeds of crime and for civil forfeiture of proceeds and instrumentalities of offences.

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[20] Act No 121 0f 1998.

The seriousness with which the South African legislature views money laundering and organized crime is reflected in the penal provisions. In respect of the money laundering offence provision is made for a penalty of R100million Rand (US$ 9 million) or for a period of imprisonment not exceeding 30 years. In respect of money laundering in the context of racketeering, a fine not exceeding R1000 million ($US 90 million) or for a maximum of life imprisonment can be imposed.

The Financial Intelligence Centre Act

In November 2001 The Financial Intelligence Centre Act[21] was promulgated and certain provisions came into operation on 31 January 2002. This Act makes provision for the establishment of a Financial Intelligence Centre within the National Treasury Department and a Money Laundering Advisory Council and related matters as a control mechanism to facilitate the prevention, detection, investigation and prosecution of money laundering.

The Act therefore includes extensive money laundering control measures in respect of the following duties of Accountable Institutions:[22]

- identifying clients and other persons;
- keeping records;
- reporting of cash transactions;
- reporting of suspicious and unusual transactions;
- reporting of electronic transfers to and from the Republic of South Africa

In addition, the Act places an obligation on any person who conveys cash, which exceeds the prescribed limit to and from the Republic of South Africa. It further

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21 Act No 38 of 2002.

22 Casinos, estate agents, attorneys, insurance brokers, postal services and car dealerships are among 19 commercial institutions, which will be affected by these duties.

places an obligation on Supervisory Bodies[23] and the South African Revenue Service to convey all information, which they might obtain, which indicates that an Accountable Institution has (knowingly or unknowingly) received the proceeds of unlawful activities. This latter duty really ensures that Accountable Institutions are not left unaffected where they are being used for money-laundering purposes.

Accountable Institutions are now forced to comply with their obligations under this Act, as it is a criminal offence for any failure on their part.

South Africa also has legislation to deal with matters requiring international cooperation.[24] The International Co-operation in Criminal Matters Act facilitates the obtaining of evidence to and from foreign States, the transferring of the proceeds of crime, the carrying out of foreign penal orders and sentences. These legislations again were part of the law reform program to deal with serious crime in a comprehensive manner.

(ii) International Responsibility to Combat Money Laundering

South Africa has also taken positive steps to comply with its international responsibility to combat money laundering. In this regard the following can be cited as examples:

- South Africa has acceded to the Vienna Convention (Un Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic substances) in 1998.

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[23] The Supervisory Bodies include the Financial Services Board, South African Reserve Bank, Registrar of Companies, Public Accounts and Auditors board, Johannesburg Securities Exchange, Estate Agent's Board, National Gambling Board and the Law Society of South Africa.

[24] International Co-Operation in Criminal Matters Act, Act No 75 of 1996 and the Extradition Amendment Act, Act No 77 of 1996.

- South Africa has also participated in all the meetings in connection with the Convention against Transnational Organised Crime and became a signatory in December 2000 in Palermo.

- Although South Africa is not a member of the Financial Action Task Force, indications are that a process in this regard is underway. On 17 May 2002 representatives of FATF met with Law Enforcement Agencies and Supervisory Bodies in South Africa as a first step in this direction.

- In a Joint Statement on Development signed by the South African Minister of Finance and the US Secretary of Treasury, it was agreed to fight all forms of financial crimes, especially money laundering and terrorist financing as set out in the 40 +8 FATF Recommendations.

(iii) Establishment of additional structures

As part of an integrated strategy to fight serious crime, including money laundering, an Asset Forfeiture Unit within the Office of the National Director of Public Prosecutions has been operational since May 1999. This Unit has surpassed the 4 year targets set for itself. To date there has been 150 seizures to the value of R373 million ($30million) with a success rate of 85%. Fifty Five (55) forfeiture orders were granted to the value of R65 million ($6.5 million). Economic Crime cases and Drug cases accounts for 34% and 31%, respectively, which the Unit are dealing with.

The Directorate of Special Operations is a specialist investigative unit, which was formerly established in January 2001 within the Office of the National Director of

Public Prosecutions to deal specifically with serious national priority crimes.[25] Organised Crime, Corruption and Financial Crimes (including money laundering) are the key focus areas of this Unit. This Unit is in the process of developing a money laundering strategy to ensure an increase in the number of money laundering related prosecutions.

The Asset Forfeiture Unit provides support to both the DSO and the South African Police Service in the seizure of the proceeds of crime.

In order to build the capacity around money laundering investigations and prosecutions the National Director of Public Prosecutions has also established a Money Laundering Desk in his office. This Desk will also interface with the Financial Intelligence Centre to ensure effective implementation.

With the strengthening of its structures and laws to fight organized crime and money laundering, South Africa has witnessed its first two prosecutions under the new laws. There are also a number investigations relating to money laundering by the Directorate of Special Operations underway.

D. CONCLUSION

It is evident that South Africa has since 1998 developed its money laundering legislation and improved its structures to deal with organized crime and money laundering more effectively. The establishment of the Financial Intelligence Centre, which becomes operational on 1 October 2002, completes the picture in the South African anti-money laundering regime. As it will provide the administrative system to drive successful investigations and prosecutions, current indications are that the anti-money laundering regime will have an impact

[25] The formation of this unit was announced by the President in September 1999. Its establishment was formalized on 12 January 2001. The South African Police Service as the agency to maintain law and order in the Republic, also focus on money laundering activities.

on current trends. However, successful implementation will to a large extent be determined by the effective functioning of the Centre.

Appropriate skills and resources still remain a problem, something, which is not unique to South Africa. Urgent steps are being taken to develop training courses in financial investigations under the auspices of the National Prosecuting Authority. The British High Commission in South Africa is playing a crucial part in this regard.

As there are also various agencies dealing with money laundering, it will become necessary to establish cooperation networks to avoid duplication and wastage of resources. It is envisaged that the Financial Intelligence Centre would facilitate this kind of cooperation. This will lead to a more focused approach to money laundering.

The establishment of Units, such as the Asset Forfeiture Unit, Directorate of Special Operations and the Money Laundering Desk within the National Prosecuting Authority, has increased the State's capacity to fight organized crime and money laundering. The National Director of Public Prosecutions has also commissioned a study into money laundering which would improve our understanding of money laundering and assist with the development of a comprehensive money laundering strategy.

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