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***Effective Measures to Combat Transnational Organized Crime :  
Global Co-operation and the Recovery of Criminal Assets***

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I. Grenville Cross SC  
Director of Public Prosecutions  
Hong Kong Special Administrative Region  
People's Republic of China

*‘Organized crime, having expanded rapidly and widely, now constitutes a global security challenge.’*

- Antonio Maria Costa<sup>1</sup>

Transnational organized crime is the defining issue of the 21st century for all of those involved in the enforcement of the law and the prosecution of crime. At all levels it threatens the rule of law, the proper conduct of transactions and traditional notions of good governance. Criminal networks have proliferated and the threat of terrorism has never been greater. Crime has ceased to be largely local in origin and effect, and has instead established itself on an international scale. If responses by law enforcers are limited, unimaginative or disjointed, things may be expected to go from bad to worse. International mechanisms are required as never before to assist those concerned with upholding the law, and to enable them to strike decisively at the financing of crime and its profits.

All of those who enforce the law and prosecute criminals are aware of the nature and extent of transnational organized crime. Organized crime itself is not a new phenomenon, and may be seen as *‘a systematic and continuing conspiracy to commit serious offences’*<sup>2</sup>. What is new is the manner in which its organisers and controllers have diversified their activities and widened their spheres of operation and influence. Activities are conducted at the global level and without regard to national boundaries. Our communities must react appropriately to the threat, and in a way which reflects the new reality.

The United Nations *Convention Against Transnational Organized Crime*<sup>3</sup> (*The Palermo Convention*), provides a framework within which States Parties assist one another in the investigation, prosecution and punishment of crimes committed by organized criminal groups where either the crimes themselves or the groups which perpetrate them have an element of transnational involvement. An offence is defined as *‘transnational’* if it is :

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<sup>1</sup> Executive Director, United Nations Office on Drugs and Crime, 30 April 2004

<sup>2</sup> The Coad Report, Australia (1994)

<sup>3</sup> Signed at Palermo, Italy, December 2000

- (1) committed in more than one State;
- (2) committed in a single State, but planned, prepared, directed or controlled in another State;
- (3) committed in one State but with an involvement of an organized crime group whose activities cross national boundaries; or
- (4) committed in a single State but with '*substantial effect*' in another State.

The Palermo Convention recognises that the threat posed by organized criminal groups operating at international level is vast and expanding. Types of criminality have been both diversified and refined. This is part of the process of globalisation, and the organized criminals are not just transnational, but also transcontinental, and therein lies the danger. They make full use of legitimate trade networks to move their cash and merchandise around the world, and they are expert at concealing their activities. Full advantage is taken of the new technology, and the monitoring of their transactions is increasingly difficult. Pirated or encrypted phones are used for communications, as are stolen phone cards which are replaced with regularity. At the same time the spread of e-business and the ability to create '*virtual identities*' to facilitate criminal activity and then to conceal it is chilling testament to new levels of sophistication. Advances in computer and printer technology systems have expanded and enhanced counterfeit documentation. Even the wide choice of routes provided by international air travel has enabled those who are wanted by the authorities to keep the risks of apprehension to a minimum as they move from one place to another. Latest techniques are deployed by those who violate our laws and the challenge facing law enforcers everywhere has never been greater.

In the combat of transnational organized crime, the public prosecutor has a vital role to play. It is the prosecutor who knows how to advise the investigator, how to marshal the evidence, how to gather material from other places, how to present a case, and how to confront challenges at court based on legal, constitutional and other grounds. Prosecutors in different places must be prepared to share their experiences and ideas, and to pool the lessons they have learned from their successes as well as from their failures. Prosecution services

everywhere must consider how best they can hit organized criminals in financial terms, always remembering that whereas captured personnel can be replaced with ease, lost profits are gone forever. Prosecutors must develop :

- skill in the deployment of new technology
- creativity in the bringing of offenders to account
- receptiveness to fresh techniques
- capacity to think along global lines
- means to promote better legal assistance
- methodology to retrieve criminal assets
- resolution in the prosecution of crime.

The momentum for much organized crime is provided by the trade in narcotics. The profits to be made are enormous, and any strategy of law enforcement which does not have at its core the effective prosecution of drug trafficking lacks the appropriate focus. In an operation in Los Angeles in 1989, law enforcers seized 21.4 metric tons of cocaine hydrochloride. This was the world's largest seizure at the time. The cocaine seized had a street value of about US\$6 billion, which was estimated to be '*more than the gross national product of 100 sovereign states*'<sup>4</sup>. This provides a chilling perspective for those concerned about the scale of the power and influence of transnational organized crime.

Once the profits made from drug trafficking are available, they need to be invested. Money laundering therefore becomes the inevitable consequence of the trade, and it has rightly been called the '*matrix of global crime*'<sup>5</sup>. As the money launderers develop methods of investing the cash in ways that are secure, anonymous and legitimate, links are developed both with other crime groups in other places and with legal and established entities. The involvement of organized criminal groups in legitimate economies is increasingly hard to identify, not least because they pursue the same types of joint venture and forge the same sorts of strategic alliance as do legitimate global businesses. They are entrepreneurial and can adapt themselves as and when new circumstances arise and fresh opportunities present themselves. This has significant consequences across the board for our societies.

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<sup>4</sup> Walter Laqueur, '*The New Terrorism : Fanaticism and Arms of a Mass Destruction*' (1999)

<sup>5</sup> Manuel Castells, '*End of Millennium*' (1998)

When organized crime deploys its financial muscle, the proper functioning of national economies can be eroded. Legitimate businesses are denied free and fair competition. Illegal or unethical practices may take hold. The capacity of criminal networks to diversify is formidable, and examples abound. President Alvaro Uribe of Colombia has implemented legislation to facilitate the confiscation and sale of assets derived from the profits of drug trafficking. Law enforcers recently used these powers to seize the fortune of two of Colombia's most powerful drug lords, valued at US\$212 million. In the largest asset seizure in Colombia's history, about 3,200 police and over 450 prosecutors seized assets belonging to the two Orejuela brothers, the heads of the Cali drug cartel, which before their arrest in 1995 was one of the most powerful and sophisticated crime syndicates in the world. Among the 3,000 assets seized were houses, companies and a national chain of pharmacies, Droga La Rebaja, which means '*Discount Drugs*' in English. All 432 branches of the chain have been seized by the authorities. The fear in Colombia was that the drug cartels posed a danger to the State itself, and that is a concern of wider application. It explains precisely why it is that law enforcers and prosecutors everywhere must co-operate to seek the creation of international mechanisms which can be used to track and seize criminal assets anywhere in the world.<sup>6</sup>

The proceeds of crime provide the means by which new stages of organized crime can be financed. Illicit assets are used in some places to bribe officials and to impede the control of money laundering. The effective investigation of those who launder money on behalf of organized crime and the seizure of criminal assets must be the priority for law makers and law enforcers everywhere. If that is done a blow will have been struck directly at the working capital of the organized criminal groups, and this will disrupt their capacity to invest in new enterprises and to pay their employees. As a recent example of what can be done, Great Britain in 2003 established its Asset Recovery Agency (ARA) to boost its fight against organized crime. The ARA can seek '*civil recovery orders*' under the country's Proceeds of Crime Act 2002. Over the past year the ARA and allied agencies have seized around US\$97.5 million from criminals in Britain.<sup>7</sup>

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<sup>6</sup> *The Daily Telegraph*, England, 18 September 2004

<sup>7</sup> *The Daily Telegraph*, England, 21 September 2004

Organized criminal networks will often seek to achieve their objectives through corruption. This is yet another outlet for their cash. Sometimes they regard corruption as a more successful way of ensuring that people co-operate with them than violence or intimidation, and it will often be more durable. If corruption arises at a high level, it may inhibit growth and damage economies. In such an environment priorities and choices are determined by considerations of personal gain rather than national advantage. The combat of corruption is, accordingly, yet another reason why the profit must be taken out of crime.

The United Nations *Convention Against Corruption*<sup>8</sup> has recognised asset recovery as '*a fundamental principle of the Convention*'. In the case of embezzlement of public funds, the confiscated property would be returned to the State requesting it. As regards the proceeds of the offences covered by the Convention, the property would be returned upon proof of ownership by, or recognition of the damage to, a requesting State. In all other cases, priority consideration would be given to the return of confiscated property to the requesting State, to the return of such property to the prior legitimate owners, or to the compensation of the victims. Effective asset recovery provisions will without doubt support the efforts of countries to redress the effects of corruption, while sending a message to corrupt officials that they cannot conceal their illicit assets with impunity.

The momentum which has been generated by the ratification of the Palermo Convention must be maintained, and it includes within it some of the best crime-fighting practices from around the world. It incorporates those practices into an instrument designed to promote effective co-operation among countries investigating those criminals who operate at the transnational level. Much of the value of the Palermo Convention lies in the framework it provides for the confiscation and seizure of the proceeds of organized crime and of property or equipment used in criminal acts. It provides also for co-operation in the recovery of assets obtained through corruption in one place and hidden in another. There is the clearest possible recognition of the need to combat transnational organized crime at the global level through an assault on its financing.

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<sup>8</sup> Signed at Merida, Mexico, December 2003

Efforts by States acting alone to counter the financial power of organized criminal networks cannot be expected to succeed if other places do not take similar action. If interlocking national controls are not created, there will be places that offer safe haven to the money launderer. Even in jurisdictions with anti-money laundering legislation in place, orders for asset recovery are often small and few and far between, and such money laundering prosecutions as are successfully mounted have frequently netted people of little significance, those on the periphery of organized crime. A global response requires not just effective legislation and determined enforcement, but also administrative regulations and guidelines for the national authorities that oversee financial markets. Above all, there must be effective co-operation in campaigns at the global level against money laundering.

The most substantial Article in the Palermo Convention is that concerned with mutual legal assistance. Practical guidance is provided as to how States can co-operate successfully with one another. Techniques which have proved effective in bilateral co-operation arrangements are elevated to global status. The electronic transmission of requests from one jurisdiction to another is recognised by the Convention, and this is vital for speed is of the essence in the control of money laundering. Funds can be moved around swiftly with a few clicks of the keyboard, and States must be able to seize assets before they leave the jurisdiction. Systems are required to facilitate the immediate freezing of suspicious assets upon notification, pending the making of a formal request, or, in a domestic case, by the time a restraint order can be applied for. At the same time as systems for mutual legal assistance are strengthened, attention must be given to better co-operation between investigators and prosecutors in cases of transnational organized crime, and to greater co-ordination of investigations and prosecutions in cases of cross-border crime.

International agreements exist at present in relation to the location of persons, the service of documents, search and seizure, the giving of testimony and the tracing of crime proceeds. This is an area in which Hong Kong has played a full part. The Mutual Legal Assistance in Criminal Matters Ordinance<sup>9</sup> is an instrument which has enabled Hong Kong to assist those in other places who are involved in the investigation and prosecution of crime, and the scope of such

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<sup>9</sup> Laws of Hong Kong, Chapter 525

assistance is wide. Evidence can, for example, be taken in Hong Kong in a criminal case which arises elsewhere but which is still at the investigative stage. Orders issued elsewhere for the confiscation of the proceeds of crime can be enforced in Hong Kong. Search warrants can be used in Hong Kong to obtain evidence for production elsewhere. To take advantage of these procedures, the State seeking assistance is required either to enter into a mutual legal assistance agreement with Hong Kong, or to provide an undertaking of reciprocity to assist Hong Kong in comparable circumstances. As at September 2004, Hong Kong had signed or initialled 29 Mutual Legal Assistance Agreements with other jurisdictions and that process is ongoing. Hong Kong is determined to protect the integrity of its own financial system, and to assist others to safeguard theirs. The number of requests made to, and received by the police for assistance in money laundering and confiscation matters over the past five years is as follows :

	Australia		Canada		U.S.A.		Others		Total
	To	From	To	From	To	From	To	From	
<b>1999</b>	25	16	10	7	41	3	34	14	<b>150</b>
<b>2000</b>	26	6	27	19	27	7	14	8	<b>134</b>
<b>2001</b>	33	10	29	15	51	5	46	18	<b>207</b>
<b>2002</b>	74	27	43	20	90	15	163	27	<b>459</b>
<b>2003</b>	49	36	10	16	26	12	110	75	<b>334</b>

The globalisation of crime requires the parameters of co-operation between jurisdictions to be strengthened and expanded. Just as crime crosses borders, so also must law enforcement. The need for effective mutual legal assistance is recognised at all levels. It is only if the profits are taken out of organized crime that people will be deterred from involvement. Resolute action from law makers and law enforcers everywhere is imperative, and this cannot be delayed.

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