Organized Crime in Thailand

Wanchai Roujanavong

Translated by

Vitaya Suriyawong
&
Lesley D. Junlakan

Organized Crime in Thailand

ISBN : 974-8213-22-6

First edition, 2006

Published by Rumthai Press Co. Ltd.
111/93-6, Soi Samsen 28, Samsen Rd.,
Dusit, Bangkok 10300, Thailand.

Table of Contents

Preface

Thailand is currently afflicted by a range of social problems, among which two stand out as being more seriously detrimental than others: corruption and organized crime. It has even been said that if solutions could be found to these two problems, the rest could be easily dealt with. This is because corruption and organized crime impede the effectiveness of law enforcement and hinder national development.

This book aims to examine the problems involving organized crime in Thailand, including its characteristics, sphere of influence, activities and development, as well as illustrating the severe impact it has had over several decades on Thai

society, economy, politics and national security. It also analyzes the limitations and weaknesses of Thai laws and policies, resulting in the ineffectiveness of law enforcement in dealing with both domestic and transnational organized crime. By detailed analysis of measures in other countries and, in particular, the United Nations Convention against Transnational Organized Crime, it also makes recommendations as to how these laws should be modified and improved.

The book is based on the author's National Defence College thesis, which was designated the Excellent Research Paper of the Year 2003 by the National Defence Council. Much crucial information is drawn from the "Legal Development of the Prevention and Suppression of Transnational Organized Crime" research project, supported by the Thailand Research Fund and the American Embassy's Narcotics Affairs Section (NAS), of which the author was the project manager: I am grateful to all the researchers involved.

I would like to thank Lesley D. Junlakan and Vitaya Suriyawong for translating the original Thai version into English and, additionally, for Ms. Junlakan's assistance as linguistic editor. My thanks also to Piyathida Jermhansa, Brian Pearce, and Yossawan Boriboothana for their time spent in reading the manuscript and making valuable suggestions and comments: without their contribution, this book could not have been published. I would also like to express my gratitude to the NAS for supporting the translation and publication of this book.

Finally, it is my sincere hope that this book will increase public awareness and understanding of organized crime in Thailand and contribute to the development of effective measures to fight against it.

Wanchai Roujanavong
26 April 2006

Chapter 1

Introduction to Organized Crime

Definition of "Organized Criminal Group"

Until the end of 2000, although there were both legal definitions of the term "organized criminal group" and its practical application, such interpretations were extremely diverse, based on both individual understanding of the term and the situation in and experience of different countries. Where a legal definition was lacking, countries interpreted the term in different ways, leading to confusion among law enforcement officials. This was especially apparent in the field of international cooperation against organized crime, resulting in problems as to who could or could not be defined as members of organized criminal groups.[1] The United Nations,

Hundreds of illegal weapons were confiscated by the police after a major operation to seize illegal weapons possessed by organized criminal groups.
(Photo courtesy of the Office of the “Thai Rath” Newspaper)

perceiving the confusion, convened meetings of Member States between 1999 and 2000 in order to draw up a Convention to deal with transnational organized crime which was signed in December 2000.[2] The United Nations Convention against Transnational Organized Crime sets out the following definition:

"Organized criminal group shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit."[3]

In addition, the Convention defines the meaning of "serious crime" as "conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty" and a "structured group" as "a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure."[4]

The definitions provided in the Convention created a universal definition of organized crime. Due to its status as an international law, Member States that have signed and ratified the Convention have an obligation to apply its terms and definitions in their own countries. As of July 2006, one hundred and forty-seven countries, including Thailand, are signatories to the Convention and one hundred and twenty-two countries have ratified the Convention,[5] and this has resulted in the dissipation of the previous confusion and greater clarification of the definition of "organized criminal group", especially in its international application, with intensified global cooperation to prevent and combat this phenomenon.

Characteristics of Organized Crime

Organized crime characteristically involves the cooperation of members to plan and carry out illegal or unlawful activities. Organized criminal groups have a structure for committing crimes, with networking, division of

duties, imposition of secrecy and the use of influence through money or force in order to evade the attention of the police. In addition, influence is used to threaten or to kill witnesses, including bribing officials of all levels, who thus become accessories to the crime and enable the criminals to go unpunished.[6]

1. Historical Organized Criminal Groups

Organized crime is an historical phenomenon, with the following groups being particularly noteworthy:

1.1 Angyee: A Thai criminal group committing unlawful secret activities, established in the reign of King Rama V (1868-1910).

1.2 Mafia: An organized criminal group assuming various forms, which originated in Sicily, Italy, and spread to the United States.

1.3 Yakuza: A group with a long history in Japan, which has adapted itself into its modern form to commit organized crime.

1.4 Triads: An historical group in China, which originated as a society opposed to the Manchu and developed into a criminal syndicate. Nowadays, it has separated into various groups, operating in Hong Kong, Macau, China and other Asian countries, and known under various names, for example, 14K.

2. Contemporary Organized Criminal Groups

Contemporary organized criminal groups include the following prominent examples:

2.1 The Colombia Cartel: This is a powerful, influential group, able to fight against the government, producing and trafficking cocaine worldwide, especially to the United States of America.

2.2 Russian Organized Criminal Groups: Existing historically, these have become more socially harmful since the disintegration of the USSR. The subsequent reduction in the armed forces due to budgetary restrictions resulted in some officers, including former skillful and experienced KGB agents, joining forces with organized criminal groups in order to make a living as

Russian society entered a chaotic economic and administrative phase. As officers crossed over to the criminal underworld, taking their skills and abilities with them, organized criminal groups in Russia became more knowledgeable and skillful, with increased effectiveness in carrying out criminal activities.[7]

2.3 The Drug Dealers of Kun Sa: Kun Sa and his group produced and traded in drugs in order to finance their war of independence against the government of Myanmar. Drugs were trafficked internationally, especially Heroin No. 4, "Double Lion UO Globe Brand", which is renowned as being the finest quality heroin in the world. The principal trade route out of Myanmar passed through Thailand or China before going on to Hong Kong and other countries, having a major impact on the Kingdom. Eventually Kun Sa surrendered to the Myanmar authorities and over ten of his high-level followers were arrested by the Thai government and then extradited to be prosecuted in the United States of America in Operation Tiger Trap.[8]

2.4 The United Wa State Army: A group which took over Kun Sa's sphere of influence and produced methamphetamines sold predominantly to Thailand, resulting in a continuing negative impact on the country.

2.5 Afghanistan Drug Dealers: A group which produces heroin of a lower quality than that emanating from the Golden Triangle, but sold at a lower price and produced in mountainous areas which are difficult for the government to penetrate.

In addition to these, there are many other organized criminal groups all over the world that conform to the definition in the United Nations Convention against Transnational Organized Crime quoted above, including, for example, the Piglet, Goat and Snakehead Gangs in Thailand, all of which are involved in human trafficking for prostitution, illegal migrant labour, or illegal immigration.

Most experts agree that organized criminal groups share the following characteristics:

- Lack of ideology and political views
- Hierarchical structure
- Restricted membership, with members prohibited from being members of other groups
- On-going activities
- Illegal methods, including violence, threats and bribery
- Division of duties
- Long-term monopolies
- Clear rules controlling members and secret operations

3. Distinctions between Organized Crime and Ordinary Crime[9]

The differences between organized crime and ordinary crime can be categorized as follows:

3.1 Offenders

Ordinary Crime Offenders consist of a single person or many people coming together for a single occasion or intermittently. When working together, they have no structure, controls, or strict supervision. In general, they work independently and perform all the activities, from the planning stage through to the carrying out of the crime, or else employ others to act on their behalf, with an absence of complexity.

Organized Crime Offenders, or those involved in planning the offence, consist of a group, with each member having a distinct duty or responsibility. Strict secrecy is enforced. Each member is allowed to know only a limited amount of information. There is also rigid control, with masterminds staying in the background. These masterminds are involved in the initial planning stages, or give authority to a subordinate to act on their behalf, while they remain at the top, controlling the scope and range of the plans. The people who actually commit the crimes are the underlings (street level). In other words, those who commit the crimes, the masterminds, and people who stand to gain from the crime, are three distinct groups.

3.2 Methods of Committing Offences

Ordinary Crime The method of committing crimes is unsophisticated, with only some delegation of duties and no structure. The people involved do not commit crimes together regularly and use ordinary methods of communication. These crimes involve no secrecy or concealment, resulting in their being readily detected. The techniques used also lack sophistication.

Organized Crime Generally speaking, a process, or a complex pattern, is involved in committing the offence. The organization is established with the objective of committing crimes and employs methods to avoid detection. For example, there is a hierarchical structure, with people on each level knowing only those who they have to contact. Communications are made in code to prevent detection by outsiders and to avoid leaving incriminating evidence. Strict rules and methods of secrecy are enforced within the organization, with anyone breaking these codes being severely punished by the group. If members are arrested by the authorities but do not reveal any information or names, they and their families will be supported by the group; conversely, if they provide information to the authorities, they and their families will be brutally treated and the group will swiftly eliminate those who have been implicated in order to avoid detection, following the hierarchical structure. Only highly-trusted members are allowed direct access to the leader.

It can therefore be seen that organized crime uses strict systems of control, with the threat of repercussions for infringements of secrecy making members afraid of revealing any information, while the leaders doubly protect themselves by limiting their direct involvement with their group's activities.

[1]The RICO (Racketeer Influenced and Corrupt Organization) Law of the United States (USCA), Title 18 Sections 1961-1968, which was formulated to combat organized crime in the USA, stipulates types of serious offences that have an impact on the state and the people, and also states that a person who commits similar offences within ten years, regardless of the prison time served, shall be regarded as having violated this law.

[2]The United Nations Convention against Transnational Organized Crime and three of its protocols which are: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition; and the Protocol against the Smuggling of Migrants by Land, Sea and Air.

[3]UN Convention, Article 2.

[4]Ibid.

[5]As of 3 July 2006, according to the website www.unodc.org/unodc/crime_cicp_signatures.html

[6]Sukchotirat, W. and Nivasabutr, T., Types of Crime, Reading Material on Criminology and Penology, Unit 1- 7, 2nd Edition. Nonthaburi: Sukhothaithammathirat University, 1998, p.98.

[7]Finckenauer, J. O, and Voronin, Y. A., The Threat of Russian Organized Crime, Office of Justice Programs, National Institute of Justice, U.S. Department of Justice, U.S.A. 2001.

[8]The author, together with public prosecutors of the International Affairs Department, Office of the Attorney General, prosecuted and extradited fourteen of Kun Sa's followers to the USA, between 1997 and 2000 for narcotic-related offences.

[9]Information from the Office of the Narcotics Control Board on the Summary Report on Preventing and Solving the Problem of Narcotics in Thailand, 1993, cited in Prathan Wattanawanich and Wirasak Sanegsarapan, "The Use of Terms in the United Nations Convention on Transnational Organized Crime and Its Protocols", A Research Report on the Legal Development to Prevent and Suppress Transnational Organized Crime, 2nd Phase, Thailand Criminal Law Institute, Office of the Attorney General, 2003, pp.30-32.

Chapter 2

Organized Crime in Thailand: the State and Impact of the Problem and Measures to Prevent and Combat the Phenomenon

The Problem of Organized Crime in Thailand

Thailand is currently experiencing acute problems with organized crime and in its fight against such crime, both domestically and transnationally. Currently, Thailand has no specific laws to deal effectively with transnational organized crime, although there are many laws concerning narcotics, money laundering, prostitution, and trafficking in women and children. These and other existing laws were formulated to deal with ordinary crime and not specifically organized crime, with just a few exceptions. One such exception is the law dealing with the Angyee syndicate, to which reference has already been made. However this is an isolated law,

Bars and shops on Sukhumvit Road, Bangkok were demolished on 26 January 2003 by an organized criminal group hired by the landlord to evict all tenants in the area. (Photo courtesy of the Office of the "Thai Rath" Newspaper)

and a single section, with no other measures in Criminal Law and Criminal Procedure Code to support it and make it more effective. It is difficult to apply this one provision to organized crime in general. Organized criminal groups' complex structures, use of influence, violent methods, effective measures of concealment and other features render such measures ineffective against them. Organized crime exploits loopholes in the law, corruption and influence in order to evade prosecution, with offenders being unafraid even if they are arrested.

The evolution of an organized criminal group in Thailand usually begins with it committing minor offences, and then graduating to other crimes with higher stakes. Such groups then establish spheres of power in preparation for progressing to other activities. Leaders use bribery or other methods to curry favour with people with prestige in order to get their protection or support. Some unethical government officers use their positions to assist these groups in return for personal gain. Organized criminal groups also bribe or pay off the media to protect their own illegal activities and to attack others, expanding their activities to legal enterprises in order to launder money, to construct a positive image, or to foster long-term investment. They also infiltrate politics at all levels, in order to protect both their illegal and legal activities and act fraudulently in various ways, using both influence and force to support their legal enterprises to give them an advantage in the marketplace or to control competitors. Central to organized crime in Thailand is the figure of the god-father, or the so-called "person of influence" (*poo mee itthipon*), who has a confirmed sphere of influence and derives benefit from illegal activities. The government of Thaksin Shinawatra, fully aware of the problem, introduced a determined policy to suppress "persons of influence", in line with the terms of the United Nations Convention against Transnational Organized Crime.[1] The Order of the Office of the Prime Minister No.139/2546 (dated 8 July 2003)[2] defines a "person of influence" and their behaviour in Annex A:

"*Person of influence* signifies a person, acting independently or in a group, who either commits offences themselves, or orders other people to commit offences or things above the law; and when such behaviour is

a criminal offence, with the virulent results affecting all sectors of society and inciting annoyance, loss or fear. They also construct networks to spread these effects, which are economically, socially and politically destructive in addition to eroding the peace, order and morality of the people."

A "person of influence" may have a network consisting of other "persons of influence", a workforce or agents (hired assassins, underlings) and supporters (civil servants, government officers, politicians of various ranks).

The principal activities of "persons of influence" are as follows:

- Dealing in narcotics
- Bid-rigging and obstruction of price bidding for government projects
- Extortion from public motorcycle taxis and illegal service vehicles
- Extortion from factories, shops, entertainment places and other commercial premises
- Tax evasion on imports, illegal oil, illegal palm oil, illegal tobacco and alcohol, and negotiating with the authorities to help illegal importers
- Gambling dens, gambling on football or soccer, illegal lottery, *Jap Yeegee* (a form of gambling), illegal game machines
- Trafficking in women and children for forced prostitution
- Smuggling of illegal migrants, and harbouring illegal aliens
- Deceiving Thai nationals to go and work abroad
- Deceiving tourists
- Hired assassinations
- Extortion by force or threat
- Arms smuggling and trading
- Illegal encroachment on public land and/or destruction of the natural environment
- Acting as brokers to give bribes to the Highway Police in exchange for the free-passage of overloaded trucks

From the activities of "persons of influence" listed above, it can be seen that their offences involve networking and groups of at least three people, who come together for a period of time, with a division of duties and the objective of committing serious offences, in order to gain benefits in the form of property, either directly or indirectly. Therefore, the government of Thaksin Shinawatra announced a policy to prevent and combat "persons of influence" which in turn would have an effect on organized crime. However, the target of the policy was limited to the fifteen illegal offences listed above, and did not cover other offences committed by organized criminal groups according to the definition in the United Nations Convention. So it can be said that the definition of "persons of influence" in the Order of the Office of the Prime Minister No.139/2546 (2003) denotes those involved in organized criminal groups acting in Thailand both domestically and transnationally.

Domestic and Transnational Activities of Organized Criminal Groups

The predominant illegal activities of organized criminal groups are as follows: using influence to threaten; fraud; extorting protection fees; hired assassinations; kidnapping; extortion by force or threat to collect debts; car theft; threatening to take property; robbery; committing bodily harm with weapons; drug trafficking; arms smuggling and trading; trading in illegal oil; tax evasion on imported goods; human trafficking and prostitution; dealing in illegal immigrants; bid-rigging by the use of power or force to coerce or bribe; dealing in antique artifacts; extorting money or property; embezzling money from financial institutions; infiltrating at high-level in order to control private enterprises and commercial banks; controlling the black market; money laundering; arranging gambling dens by using force or networking; forced eviction of people from areas to be developed on the orders of others in order to gain benefit; bribing government officials; and many other illegal activities too numerous to be listed here. In order to examine the characteristic ways of

carrying out these activities and the strength of organized criminal groups, the following specific examples will be elaborated on in detail: Chinese Organized Crime (COC), a powerful organized criminal group in Asia; and La Cosa Nostra, a large and very active organized criminal group in the United States of America.

1. Organized Crime in Asia

Organized crime is rampant in Asia, involving many criminal groups. Some of these groups have a long history and carry out a range of illegal activities in various countries, resulting in a grave problem throughout the Asian continent. Many groups have networks which cooperate to commit crimes, extending to organized criminal groups in the United States. One such organization with a range of activities that is the root-cause of many problems is the Chinese Organized Crime (COC) group. A study of the COC clearly illustrates the development of organized crime and the illegal activities of organized criminal groups in Asia, as well as the links between this group and four others, viz. Triads, Tongs, Street Gangs and American Chinese Organized Crime Groups.

1.1 Triads: The Triads originated as a group of Chinese nationalists who wanted to fight for their freedom from the Manchu ruler who had invaded and taken over China, overthrown the Ming dynasty and invested himself as the first emperor of a new dynasty, the Ching dynasty, in 1674. The Manchu severely repressed the Chinese, who, believing themselves to be culturally superior to their new Manchu overlords, aimed to overthrow the dynasty and restore a Chinese ruler to the throne. Banding together to fight against the Manchu rulers, they founded a secret society, the "Hung Mun" or "Triads", to achieve this objective, with a triangle, representing the importance of the indivisible trinity of heaven, earth and mankind, as their symbol. Originally, they were not involved in organized crime, but established themselves in a structure commonly found in China in those days. However, as their activities against the Manchu had to be carried out in secret, they used a code and symbols for communicating and had initiation rites for new members

in order to ensure their loyalty. The group also had a hierarchical structure, with members knowing only those on the same level. The Triads financed their activities by asking for donations from the wealthy or from traders, while threatening those who cooperated with the Manchu rulers. As their expenditures rose, they had to find additional income by resorting to accusing those not financing them of not loving their country and using violence to extort money, while those making donations were protected.

The Triads fought against the Chinese government from 1840 to 1912. After being totally defeated, they were forced into exile overseas, for instance, Indochina, Malaysia and Hong Kong. During the same period, they mutated from being a group dedicated to the overthrow of the Manchu dynasty into an organized criminal group, using protection money, especially from fellow Chinese living overseas, to finance their activities and support themselves and their brotherhood in their new countries (e.g. by acquiring land) and make a livelihood. As they established themselves overseas, they expanded into organized crime and high-income activities, for example, the control of prostitution, gambling dens and the labour market.

It can therefore be said that, after 1912, the Triads mutated from being a political group to a fully-fledged organized criminal group, with illegal activities, a hierarchical structure, division of duties, a mastermind and deputies. Their activities expanded to drug trafficking, control of the black market in various commodities and so on. In addition to extortion, their other profitable activities included forced entry into other economic sectors as new fields for investment.

After 1947, the members of the Triads subdivided into several groups, including the infamous 14K, active in China, Hong Kong, Macau and the Southeast Asian region.[3] From 1949, the members of the Triads emigrated from China to Hong Kong, Formosa (now Taiwan), Singapore, Australia and the American continent, where the renowned Fuk Ching is now one of the most powerful of such gangs, based in New York's Chinatown.[4]

1.2 Tongs: The Tongs originated in the late nineteenth century as professional or cultural groups for Chinese immigrants in the United States, as opposed to Triads, who escaped from China and migrated to the United States and developed into underground societies. The Tongs were involved in legal activities in the field of politics and economics. However, as they assisted Chinese immigrants to establish businesses and to join forces against other groups, they themselves mutated into being an organized criminal group or to being involved with other such groups. At first, the Tongs were closely associated with the Triads, and financially supported their activities to overthrow the Ching Dynasty. Later, the members of the Triads became involved in the activities of Tongs and established their own groups in the same structure, proliferating into over a hundred different societies that spread and became involved with illegal activities in Chinatowns in the United States and the control of gambling dens, selling of opium, prostitution and other illegal activities, including extortion. They utilized adolescent organized criminal groups, especially Street Gangs, related to them by nationality and birthplace, as violent tools for their mutual advantage.[5]

1.3 Street Gangs: The Street Gangs originated at the end of the 1960s after many Asian immigrants entered the United States. These migrants were disadvantaged, with no rights, unlike American nationals or American-born Chinese. They worked mainly as unskilled labour, being unable to speak English, and lived in poverty in the Chinatown areas, with no social welfare programmes to help them, and no work skills or knowledge to enable them to find good employment. These unskilled labourers were abused by American-born Chinese and non-Chinese Americans alike, leading to their dissatisfaction and separation from American-born Chinese groups. They eventually formed their own groups, known as Street Gangs, in order to help themselves and to fight against the second and third generation Chinese Americans. Some Street Gangs splintered into independent groups, becoming involved in illegal activities or in carrying out the crimes perpetrated by the Tongs and Triads.

1.4 Chinese Organized Crime Groups (COC): These are currently extremely influential criminal groups in the United States. The organizations can be divided into two categories: American-Chinese groups, consisting of Chinese born in the United States to Chinese immigrants; and the Triads, comprised of newly-arrived, stateless people. However, the methods of the COC are independent, with no links to the Triads or Tongs other than investments to their mutual advantage in legal and illegal businesses. Occasionally disputes arise when there is a conflict of interest or invasion of each other's territories, but each organization tries to resolve the conflict in order to avoid the detection of officials who would then try to combat the group's activities. Therefore, each group tries to negotiate with the other, the terms of any subsequent deal being based on the relative power and strength of either side.

The diverse activities of COC include both legal enterprises, for example restaurants and catering services and monopolies on the wholesaling of food and utensils, and illegal activities, including controlling legal gambling enterprises by collecting extortion money, or opening their own illegal gambling dens; operating brothels; dealing in narcotics; loan-sharking; extortion; money laundering; nightclubs; and dealing in goods in violation of copyright. In summary, these groups became involved with enterprises yielding vast, speedy profits, either directly or by compelling others to accept them as share-holders so that they can gain control.[6]

2. Organized Crime in the United States of America

At the very end of the nineteenth century, the organized criminal group known as the Mafia infiltrated the United States. These immigrants thrived on blood-ties and their fierce pride, with relations from the same birthplace forming a single group. The Mafia originated in Sicily, an island which, during its long history, has been ruled by many nations, including Turkey, France, Spain and Italy, with repression by their rulers being a constant element in the history of Sicilians.

There are many theories about the significance and the meaning of the word Mafia, with different studies drawing different conclusions. As the Sicilians fought against their French oppressors at the end of the thirteenth century, it has been theorized that "Mafia" is derived from "**M**orte **a**lla **F**rancia **I**talia **a**nella", or "Death to the French is Italy's cry." On the other hand, Joe Bonanno, a leader of one Mafia group, liked to relate that the name "Mafia" originated when, after a French soldier raped and killed a Sicilian girl, the girl's mother ran weeping from village to village, constantly sobbing "*ma fia, ma fia*" or "my daughter, my daughter."[7] This aroused the fighting spirit of the Sicilians, who promptly killed the soldier and thenceforth fought more vigorously and consistently against their oppressors.[8] Pratarn Wattanawanit, a researcher on this issue, theorizes that the word came from the Italian "Mafioso", meaning "an order from hell." Others say that it originated in the era when Sicily was under the control of Turkey and Sicilians had to escape and live in the island's caves, with the word "Mafioso" being used for these refugees. Another theory states that it signifies the upholding of one's honour, by fighting fiercely against those who do not respect it and protecting those weaker members of the same group.

In the mid-twentieth century, by which time Sicily had become part of Italy, Mussolini actively combated the various Mafia groups with severity and violence, set on their extermination. This resulted in a mass emigration to the United States, especially New York, following the trail set by their predecessors. Those early immigrants had established their own social framework based on certain livelihoods, and had infiltrated various enterprises, both legal and illegal. At first, the Mafia in the USA still kept in contact with the Mafia in Sicily, but gradually became independent and severed these links. The Mafia's methods of carrying out activities in the United States involved violent organized crime and territorial disputes. There was frequent in-fighting between groups over the control of various spheres of influence that made them a living. In some cases, government officials were murdered when they became

involved with a group that was the enemy of another group. When this kind of incident occurred, it clearly indicated the presence of the Mafia. Government officials gradually began to be aware of the nature of the Mafia but still had no deep understanding of its structure, values and management.

In 1963 Joseph Valachi, an important member of a Mafia group, was arrested and decided to cooperate by disclosing details of the structure and inner-workings of the Mafia's criminal organization. Valachi testified before the McClellan Committee of the United States Senate. Appearing before its Permanent Subcommittee on Investigation, established in 1965, Valachi testified that he was a member of the group known as La Cosa Nostra (LCN). His revelation of so many details resulted in greater understanding of the inner-workings of the Mafia by government officials and increased public awareness. Later, Valachi's story was published as a book, "The Valachi Papers", which was later turned into a film, further heightening public awareness about both Sicily and the Mafia.[9]

La Cosa Nostra was a Mafia group originating in Sicily and based in New York. Its initiation rites included a vow of unconditional secrecy known as "*omerta*" (translated literally as "manliness").[10] J. Edgar Hoover, the former Director of the Federal Bureau of Investigation (FBI) and chairman of a sub-committee of the United States Congress on organized crime, emphasized the significance of La Cosa Nostra. As Hoover recognized, this syndicate was the largest organized criminal group in the United States,[11] with a strong internal structure and involvement in all kinds of criminal activity.

La Cosa Nostra had a patriarchal structure, controlling the territory of the group and cooperating with other criminal groups, both domestic and transnational. Its operations were conducted in secret,[12] with, at the apex, the mastermind (boss) who controlled the "family"[13] and had the final word on all matters. Ranked beneath him were the "under-boss" and the senior advisor or *consigliere*, followed by various *capos* with the duty of controlling the underlings, who could be compared to the foot-soldiers.

William Sullivan, the deputy director of the FBI, wrote in his book "The Bureau: My Thirty Years in Hoover's FBI" that "the Mafia is so powerful, so powerful that entire police forces or even a mayor's office can be under Mafia control. That's why Hoover was afraid to let us tackle it. He was afraid that we'd show up poorly. Why take the risk, he reasoned, until we were forced to by public exposure of our shortcomings."[14]

These examples of the history, development and activities of organized criminal groups in Asia and the United States clearly show their forceful impact and destructive effects on society, the economy, national security and the people's well-being, and the need for effective legal methods to continuously combat such groups. Other organized criminal groups are similar to those described, although they do not have to be historically-based or as large, as can be seen from the definition in the United Nations Convention against Transnational Organized Crime. Both extensive and small groups, old and new, can all be classified as organized criminal groups.

The Impact of Organized Crime on Thailand

Organized crime has a range of impacts on Thailand, affecting every sector and every member of society. The effects can be broadly categorized into those on the economy, society, politics, national stability and government revenue. The leaders of organized criminal groups are "persons of influence" from many spheres - financial, social and, especially, political - having a strong destructive impact on the overall development of the country, and largely contributing to the progressive loss of national stability.

1. Social Impact

Organized criminal groups, as defined by the United Nations Convention against Transnational Organized Crime, exist extensively in Thailand, and are involved in many types of illegal businesses, for example narcotic dealing, prostitution, dealing in illegal goods, dealing in warfare weaponry, gambling or

illegal lotteries, hired assassinations, physical intimidation, eviction and taking over of property, extortion of payments from motor-cycle taxis and public service vehicles and bid-rigging for government projects. These organizations have a definite structure, networks, and a wide sphere of influence. They typically enjoy coordination at the village, sub-district, district, provincial and national levels, especially in politics, and have links with other networks, including local "persons of influence", politicians, government officials, soldiers, police, teachers, traders and those with social standing. Those who are involved, directly or indirectly, with organized criminal groups are aware that the activities are criminal. However, because of the large profits they reap, they are undeterred by the possibility of criminal sanctions.

There are many steps involved in carrying out the activities listed above. Unsophisticated underlings carry out the crimes directly while savvier leaders pursue more complex tasks and are involved in legal and illegal activities simultaneously. Legal businesses typically provide a front for the criminal enterprises and enable the beneficiaries to claim that their funds come from legal sources. The bosses, or "dons", seek to create for themselves the public persona of a benefactor of charitable institutions. They donate money in ways that will enable them to become close to politicians or other powerful people, and thus to form relationships with various social establishments and institutions in the manner of a law-abiding and socially conscious businessman. It is characteristic of Thai society to attach importance to material goods and to people with power and wealth, regardless of their source. This phenomenon enables those involved with organized crime to use the power of money to dubiously attain the standing of socially respected figures and "persons of influence". This way of thinking destroys Thai culture, as people, seeing the power of money, copy such examples.

Many forms of illegal activities have far-reaching effects on people. Most notable among these is the destruction of human life, either instantaneously, as in murder, or gradually, as in drug dealing. For example, from 1997 to 2002, drug abuse spread into every sector of society and every

profession, including students. Drug addicts are a drain on their families and society. Many people with a seemingly bright future have to resort to crime when they become addicted to drugs in order to support their habit, or else have to deal in drugs. As a result, the number of inmates in prisons has risen dramatically, with drug-related crimes accounting for over half of the total. Invaluable human resources are destroyed by narcotics, as prison inmates, drug addicts or traffickers become people without a future who are a long-term drain on society.[15]

Trafficking in women and children for prostitution has a similar impact on human resources. Women and children (and sometimes also men) involved in prostitution, together with their clients, become infected with HIV/Aids, resulting in the need for intensive, continuous treatment. They despair of being useful to society due to their illness and their dependence on the government and their families for treatment. The Human Rights Watch Organization investigated the prostitution in Thailand of Myanmar women, children and minority groups and produced a report about the new form of trafficking. In doing so, this organization has found that political changes in neighbouring countries resulted in a modification of the Thai government's policy towards the border regions and more internal fighting in these countries. The economic differences between Thailand and its neighbouring countries have become more pronounced, with women and children from Myanmar and minority groups, mainly from Shan State, entering Thailand for the purpose of prostitution. These women and children enter the country as virgins, but return to their countries infected with HIV/Aids, as can be clearly seen from figures showing HIV/Aids infection rates in Thailand.[16] The report of the Division of Epidemiology, Office of the Permanent Secretary, Ministry of Public Health, shows that from 1984 to 31 July 2000, the number of people infected with HIV/Aids, amounted to 149,612, with 41,281 dying of the disease. Categorized by gender, 77.45% were male and 22.55% were female, with a male/female ratio for this period of 3.4:1. In 1984, the first year for which figures are available, the ratio was 9:1. These statistics clearly show the rapid rise of HIV/Aids infection in women.[17]

This research shows that the prostitution of women and children has a destructive impact on society, resulting in social degeneration and the commercialization of sex becoming a normal social phenomenon. People come to regard prostitution to make money for luxury goods as commonplace. Women and children, including male adolescents, are becoming increasingly prone to selling sexual services of their own accord, in contrast to in the past, when they were tricked into doing so, both at home and overseas. In the present, fewer people are tricked into prostitution overseas: they are fully aware of what kind of business they are entering into and are frequently already involved in prostitution in Thailand. However, they can be deceived about their conditions of employment, thinking that they can work independently with a division of the proceeds, whereas in fact all too often they are initially confined and forced to service 500 clients in order to repay their expenses, without receiving any of the proceeds themselves, only tips from their clients.[18]

Another activity which has an impact on the well-being and health of society and with which most organized criminal groups in Thailand are involved is the trafficking of illegal migrant labourers from neighbouring countries. Typically, such traffickers avoid all immigration procedures. The standards of health in these countries are lower than in Thailand, with many infectious diseases being endemic there. Many migrant labourers act as carriers and bring into Thailand diseases such as malaria, elephantiasis, HIV/Aids, venereal diseases and tuberculosis, thus contributing to the reemergence of many diseases which had previously been eradicated.

Organized crime results in a lack of public peace and order, with people becoming fearful and afraid of its influence. The victims of organized criminal groups lose their usefulness to society and, conversely, become dependent on society for their care and treatment. Officers in the justice administration system, like the police, have a work overload and have to use ineffective laws to combat organized criminal groups. When this produces few

results, the law enforcement officers involved become disheartened about the fight against organized crime, which thus becomes even less effective. The justice system then lacks public credibility and people do not dare to cooperate with government officers for fear of the invasive influence of organized criminal groups.

In addition to lacking public trust, the justice system in Thailand has difficulties stemming from the lack of effective cooperation between law enforcement agencies with jurisdiction over organized crime. Past events and experience illustrate that individual agencies within the overall justice system are entrenched in their old patterns and beliefs and therefore fail to cooperate as they should. Segregation and mistrust of each other is commonplace, along with jealousy of each other's powers and duties. Institutional relationships are marked by a reluctance to allow the involvement of other agencies and a dislike of working with them as a team. These features of the Thai criminal justice system all stem from a deeply-rooted, anachronistic attitude to power. This attitude, with each party being possessive of their own power and resistant to changes, results in difficulties when attempts are made to adjust and amend the laws, this being especially true of the Criminal Procedure Code. The Thai Criminal Procedure Code has some major shortcomings which result in the laws being ineffective in legal proceedings against "persons of influence" and organized criminal groups. Special importance should therefore be given to a reassessment and adjustment of attitudes towards power in order to develop the Thai justice system. In addition, extensive research needs to be done to systematically solve the problems inherent in the Criminal Procedure Code. Such undertakings are outside the scope of this book.

2. Economic Impact[19]

Illegal and legal businesses both use influence to assist them in their dealings with organized criminal groups, resulting in both positive and

negative effects on the economy. On the positive side, it leads to the circulation of large sums of money because the profits have been easily obtained. This is a way of making a livelihood for the organized criminal groups and those who work in association with them. For example, the operation of gambling dens creates employment opportunities for staff. However, the negative impact of such activities is the severe effect they have on economic stability. Furthermore, some illegal enterprises, for example, drug trafficking, have other severe negative effects, such as destroying the health of drug addicts and causing the proliferation of crimes. The damage such crimes inflict is no doubt tremendous, but up to now, has not been accurately estimated.

Positive Effects

Studies of illegal activities in many countries show that such activities create jobs. For example, drug trafficking in Colombia provided work for half a million people in the 1980s. Gambling created employment for an equal number of people, together with a knock-on effect on other related businesses, such as tourism, restaurants and entertainment. To give another example, illegal lotteries provide supplementary income for ticket vendors.

In addition, it has been found that some types of illegal activities, like football pools, help to support many forms of legal enterprises, such as sports publications, cable TV and radio sports programmes, all of which contribute to an active economy. Another example is the way in which drug trafficking or international prostitution brings foreign currency into the country. Similarly, the use of illegal migrant labour in Thailand has some good effects: it solves the problem of labour shortages in some sectors, while low-priced products result from the payment of low wages and make the goods competitive in the international market. Places employing illegal migrant labourers in 50 provinces were studied by the Asian Research Institute on Migration in July 2000. Many respondents stated that they would be forced to close if the government prohibited the employment of such labourers.[20]

Negative Effects

Illegal businesses result in profits for members of organized criminal groups which are then reinvested in other illegal activities in order to generate further income for the organization. Even though the money is used in businesses, for social causes or in politics, the ultimate objective of investing illegally-derived money is to gain commercial, social or political power. If the money is re-circulated into legal enterprises, it will result in buying resources and the use of influence to assist illegal businesses and give them advantages. Organized criminal groups reap vast sums of money from illegal enterprises, in addition to regular income, giving them an advantage over ordinary traders in the capitalist system. Ultimately, capital from illegal businesses reinvested in legal businesses destroys the enterprises of people operating legally.

Organized criminal groups use funds to create financial influence, and in many cases political influence, at both local and national levels. This allowed those involved in such activities to have a role in the economic activities in the booming economy of the early 1990s: for example, speculation in the stock and real estate markets, in both of which money from illegal activities has been found circulating. The people involved are powerful because, with relatively few individuals involved, they can directly manipulate the funds. These groups were active during the economic boom, accumulating private funds by using the money they had to manipulate the markets so that the prices of stocks and land rose. It can be clearly seen that the stock market can be manipulated by vast sums of money under the control of an individual or an organization. This had an effect on the boom economy, resulting in abnormal economic fluctuations. When the economy stagnated, these groups withdrew their investments and waited for the right opportunity to renew their activities with high profits. When such a situation persists, it has an effect on economic stability, with negative effects on the whole economy and also on the interests of genuine investors, both domestic and overseas, with many small-scale investors being financially ruined.[21]

Large sums of money from illegal enterprises are used to generate income by manipulating prices on the stock and real estate markets, resulting in an abnormal economy. In deviating from its usual patterns, the national economy shows the effects of the involvement of organized criminal groups, especially through money laundering, which is the key objective of such investments, rather than standard long-term investments. The Thai stock and real estate markets are not big enough to absorb this kind of unpredictable movement without side effects. The investment patterns of organized criminal groups thus lead to a state of turmoil, with a subsequent impact on small investors. Savings policy is affected as well, because organized criminal groups have a tendency to use money extravagantly, including illegal foreign currency, which is illegally sent out of the country to launder it. For example, the system of *poi-guwan* (private money-orders used among overseas Chinese) is exploited by organized criminal groups to illegally transfer money out of the country. In the *poi-guwan* system, there are no official records of the transactions, so they are impossible to trace. This has an effect on economic stability and, ultimately, on national stability. As a result of vast sums of money[22] being transferred in this way, the implementation of the policy of maintaining economic stability becomes increasingly difficult. It should be noted that money transferred through normal international financial institutions has no effect on the economy, even though it is a method of laundering money from illegal activities in order to be able to use it in legal enterprises in the commercial market.[23]

As for the large numbers of illegal migrant labourers entering the country, this has more negative than positive economic effects. Although migrant labourers receive low payments resulting in low-priced goods and high profits for their employers, this only has a very short-term positive effect when compared with the long-term negative and destructive impact on economic stability and security. Migrant labourers become competitors with Thai workers because they can be employed for much lower wages. This results in a labour-intensive situation. Instead of using the money to purchase machines to

improve the production process, employers take on more unskilled labour than may be optimal, with a negative impact on the country, particularly in the long-term. Commercial competitiveness in global society now emphasizes technology, so if Thailand invests only in low-paid labourers, it will be unable to compete.

There are many other negative social effects, including children born in Thailand to illegal migrant labourers who are not granted Thai nationality, a problem to which there is no easy solution. It can therefore be seen that the use of illegal migrant labour does not only involve organized criminal groups and those who profit from paying them low wages, but that society in general has to shoulder the various problems that result. When the cost of solving all these future problems is estimated, such a workforce is not as cheap as is currently thought, with many unforeseen expenses yet to come.

Some types of illegal enterprises have the negative effect of destroying human resources, which are important elements in the development of the economy and the country. For example, prostitution and drug trafficking have a negative effect on the people, and therefore the whole country. When women, who should be a major element in the country's workforce and the development of the country, become involved in prostitution, they make no contribution to the advancement of the economy and the country; while drug addicts assist only in destroying the efficiency of the economy and the country. Another clearly seen example is the hiring of assassins by organized criminal groups to eliminate their business rivals, resulting in the government and general public losing human resources which would have been of value in generating income for the country.

The problem of drugs has spread to affect adolescents and students of both sexes and all ages, who become drug addicts and then imprisoned or placed in juvenile detention centers. Thus, instead of the youngsters studying and aiming to be valuable human resources for the future development of the country, their value is weakened or decimated.

Another pronounced negative effect is that the State has to pay enormous sums of money to combat organized criminal groups and various types of illegal businesses. Every year, the Royal Thai Police has to use a substantial amount of both manpower and budget to prevent and combat organized criminal groups, instead of its being invested in the development of the country in other ways. Apart from combating such activities, the State has to be responsible for other issues that have an impact on the citizens of the country, such as the steady spread of the influence of drugs: every year, the State has to divert an enormous amount of money to the treatment of drug addicts.

Prostitution is another problem. Its primary destructive force is the sexual transmission of diseases, the worst of which is HIV/Aids. The victims of the transmission of these diseases are not only the women providing the sexual services, but also the multitude of clients who do not use proper protection and who then infect members of their own family. Moreover, the government's coffers are doubly burdened by both the corruption involved with prostitution and by the costs of policing against prostitution.

The final negative effect of organized crime is the loss of tax revenue. Whereas legal businesses usually have to pay commercial tax, amounting to up to 30% of the profits, illegal enterprises do not pay any tax, even though they make vast profits. This means that the State loses an enormous amount of potential income from tax. Knock-on effects include unfair commercial competition and, in turn, a weakened economy, with economic monopolies in some cases. For example, business concessions result in increases in the prices of goods, due to extortion and the cost of protection money. Ultimately, the consumer has to pay more for the goods.

Money laundering causes chaos in the financial, banking and economic systems, because it does not follow economic principles. It is difficult to calculate the damage caused: indeed, it is incalculable. By their very nature, organized criminal groups are secretive and estimations are therefore

difficult to make. However, it has been calculated that, in monetary terms, the total sum generated from Thai people by organized criminal groups amounts to several hundred billions of baht. This estimate comes from reliable sources, so it can be regarded as being close to the actual figure. An example of these types of underground activities is dealing in narcotics: it has been estimated that the number of methamphetamines produced by the United Wa Army and sent into Thailand each year amounts to one billion tablets. As the estimated market price is 100 baht per tablet, this means that organized criminal groups as a whole stand to profit 100 billion baht from this enterprise alone.

Trafficking in women and children overseas for prostitution also generates a vast amount of money. It has been estimated that, at present, approximately fifty thousand Thai women work in the commercial sex business overseas, with most being controlled by organized criminal groups. They make a profit of about one million baht per head, resulting in a total of 50 billion baht. When this figure is combined with that for the domestic prostitution network, involving an estimated 200,000 people, the final figure is astronomical.

Further examples of economically disruptive organized crime are the illegal off-shore gasoline trade, trafficking in illegal immigrants and arms smuggling. It has been estimated that before the government implemented the project to sell competitively priced gasoline off-shore to Thai fishing vessels under the Off-Shore Green Gasoline policy, it lost between 30 to 60 billion baht per year from oil funds and oil tax. Similarly, trading in illegal immigrants generates an enormous income for organized criminal groups, along with arms smuggling, with Thailand being acknowledged as an Asian hub for the latter. Reportedly, the Sri Lankan government requested the Thai government to investigate arms smuggling from Thailand to the Tamil rebels. It has also been surmised that arms are smuggled from Thailand to the Free Aceh rebels, who demand separation from Indonesia and self-government. Each consignment of smuggled arms involves large quantities and high prices, with most of the weapons involved being heavy weaponry suited to large-scale warfare.

3. Political Impact

Before the introduction of political reform and the implementation of the current Constitution, "money politics" was prevalent in Thailand. Politicians used money for vote-buying through their agents and political canvassers with influence in a specific area by paying money to eligible voters to vote for their candidate. Once elected, these politicians then negotiated to be part of the coalition government, or even to have a ministerial post. In the past, it was necessary to have a faction of 6:1 in order to become a minister, whereas under the present Constitution, the cabinet is limited to thirty-five people. Once a person became a minister, they tried to exploit their political influence to generate income in many ways: for example, by supporting their own business, manipulating the budget or taking kick-backs from mega-projects.[24] This form of politics amounted to just another form of business, hence the alternative coinage "business politics." Money that was used to buy votes was regarded as an investment, while money gained after assuming position was the recuperation of capital, leading to profit-making. Huge sums of money were spent on vote-buying, causing distortion of the political structure which led in turn to systematic and large-scale corruption in government bureaucracy, especially those sectors involved with the national budget and investment from state enterprises.

A prominent example of money politics was the extensive corruption in the Klong Dan Wastewater Treatment Plant project. The State lost enormous sums in this corruption scandal, having invested 23 billion baht in a project which proved to be impractical. Another example is the corruption involved in the order to build a dredger worth 1.2 billion baht from a firm in the United States: the dredger was never delivered while a high percentage of the money was spent on kick-backs.

It has been estimated that no less than 10 billion baht was spent on the general elections of 1992, a figure which had escalated to 17 billion baht[25] by 1995, according to estimates of the Kasikorn Bank Research

Centre. The research of Sangsit, et al (2003) from Chulalongkorn University estimates that between 5.6 and 27.8 billion baht was used in the election of 6 January 2001 and an estimated 10 billion baht was used in the senatorial election of 4 March 2000. It has been estimated that around 80% of all this money was derived from entrepreneurs-turned-politicians or major figures in political parties, with the remaining 20% coming from businessmen and local politicians. Within this total, about 10%[26] stemmed from "persons of influence". Although this is a comparatively small figure, such people have a network and patrons, with their supporters ranging from government officials to local people, thus making them an important resource in the vote-buying system.

"Persons of influence" are involved in illegal or semi-illegal businesses. These businesses generate money which is then laundered into legal enterprises before being invested in vote-buying as part of "money politics." Some "persons of influence" support candidates in various constituencies around their home-base. This support puts enough MPs under their control to back a minister, who then, in turn, protects their illegal enterprises. From such practices it can be seen that money from illegal activities partially supported the growth of "business politics" in the Thai political system, with a detrimental effect on the nation before systematic political reform was introduced in 1997. This resulted in parliamentary members who lacked quality and affected their ability to solve economic problems, as they were still preoccupied with how to recoup the money invested in their election.

The problem of vote-buying has now spread into local elections, with candidates having to spend vast amounts of money in order to be elected. Some money spent on vote-buying stems from illegal businesses. Illegitimate profits from such schemes support these entrepreneur's own businesses, both legal and illegal, and give them the economic strength to consolidate their political power. Political muscle is then used to protect and support their businesses in a never-ending vicious circle.

Political reform began with the introduction of a new Constitution in 1997. Under the 1997 Constitution, the independent Election Commission was established to ensure transparency in elections, along with the National Counter Corruption Commission (NCCC). Even with these reforms, however, it has proved impossible to prevent vote-buying, with money from illegal sources still playing a major role in politics. The changes in the Constitution did not end corruption so much as cause it to take new forms. The Constitution caused political power to become more decentralized, insofar as local agencies received a greater share of the national budget, this making local elections more important. This fact has, in turn, encouraged the misuse of money and violence to rig elections at the local level. Vote-buying networks still exist, but the method of buying votes has become more difficult to trace. In response, the government of Prime Minister Thaksin Shinawatra, introduced a policy to combat "persons of influence" in order to reduce the vote-buying phenomenon. However, corruption is still visible, as was highlighted in late-February to early-March 2004, when a scandal erupting over the policy of maintaining the price of rice was given wide exposure in the media.[27]

4. Impact on National Security

National security depends on many factors. Among the most notable are economic health and stability, social peace and well-being, political stability, and transparent democracy for the sake of the people. Research into the impact of the activities of organized criminal groups has found that they have an enormous destructive effect on both society and the economy. This distorts the political structure, with politicians not acting on behalf of the people but exploiting politics for their own personal gain. If the economy is weakened, then society is damaged and politics distorted, resulting in an impact on national security. This in turn affects the budget, with increased spending on national defence required to counter the country's instability. There have been reports in the media of skirmishes occurring periodically between the Thai border-defence authorities and armed drug-traffickers along the border

between Thailand and Myanmar, which inflict enormous damage on the State. Organized criminal groups are also involved in terrorist and separatist organizations, with the intent of destroying national security. For example, separatists joined forces with arms-traffickers to steal assault rifles from the 4th Development Battalion in Narathiwat Province, southern Thailand, on 4 January 2004, claiming 4 soldiers' lives. They took primarily 300 M16 assault rifles and other accessories, with unconfirmed evidence suggesting that some of them were sold to Aceh separatists to fight against the Indonesian authorities.[28] All such incidents have lowered the morale of the Thai people and seriously damaged national security.

Furthermore, as has been stated above, organized criminal groups bring illegal migrant workers into Thailand, with an estimated two million people being involved. Such immigrants are unskilled, unable to communicate and receive low wages with no welfare benefits. These factors create social pressures and risk creating an alien workforce with the potential to commit crimes, inflict damage on the country and seriously harm the nation's social peace and security. There is also the potential for criminals to enter the country with these illegal migrants, mingle with them and then commit acts of terror in the country. Such people are difficult to trace and investigate because of their base among illegal migrants. All these factors have a major detrimental effect on national security and require immediate action.

Measures for the Prevention and Combat of Organized Crime in Thailand and their Effectiveness

As mentioned elsewhere in this book, Thai laws have been designed to combat individual offenders and not collective organized criminal groups. The Penal Code, Criminal Procedure Code and other related laws cannot fight effectively against organized crime, which continues to grow on both the domestic and international level, with an upsurge in illegal activities inflicting increased damage on the country. Even though some sections of the

laws are designed to combat organized crime, they are ineffective because they were not systematically evolved to deal with this phenomenon, but exist in isolation, lacking the support of other related laws, such as evidence-gathering, investigation, and the assurance of witness protection.

1. Legal Measures

Currently, Thai law has no measures to effectively prevent and combat organized crime, even though the country's legal system has criminal laws which may apply to organized criminals. For example, the Penal Code contains provisions criminalizing membership of an Angyee or criminal association.[29] The Money Laundering Control Act 1999 criminalizes the concealment of illegally-derived funds, while several acts make illegal the use, production and distribution of narcotics.

Such laws appear to be insufficient, however, because trial procedures in Thailand apply the same standards to both ordinary and organized crime, with the rights of criminal offenders and the accused guaranteed. Due process protections are based on the theory that criminal procedures should offset the disparity in power between the State and the accused. Accordingly, the present Constitution[30] guarantees and requires state agencies to respect human dignity, rights and liberties. To counterbalance the might of the State, the Constitution ensures the rights of the offender/accused during arrest, search, and trial. The accused is often permitted temporary release on bail while under investigation to ensure their rights and protect their liberty until and unless the State overcomes the constitutional presumption of innocence. These principles apply equally to members of organized criminal groups, even though there is not the same disparity in power between them and the State. Such groups have more power, influence, financial backing and other supporting factors than ordinary citizens, thus enabling them to challenge State power on a level-footing. Members of organized criminal groups can exercise and abuse the rights recognized by the law: their greater resources and cunning allow

them to more often distort the case, receive temporary release on bail, bribe the authorities concerned, and so on.

For example, Pongsak Rojanasaksakul, also known as Li Yun Chung,[31] a key offender under the narcotic laws, bribed high-ranking officials in the criminal justice system to grant him bail while waiting to be extradited to the United States in accordance with the extradition treaty after his arrest by the Thai police. He then jumped bail and fled to Myanmar. This is far from being an isolated case: offenders have often been able to flee the country after being granted bail, thereby demonstrating a lack of effectiveness in the Thai criminal justice system.

In addition to this shortcoming, there are various other loopholes that members of organized criminal groups can exploit. For example, the lack of an efficient witness protection programme results in attempts to bribe witnesses, as well to threaten or kill them. Such intimidation instills fear in them and results in their failure to appear or to testify accurately in court. Therefore, existing legal measures are clearly inadequate to contain organized criminal groups, especially as trials in the Thai courts emphasize the testimony of the eye-witness, resulting in great difficulty in sentencing members of such groups.

2. Law Enforcement Measures

Thailand has a range of procedural laws which aim to prevent and combat the activities of organized criminal groups. The most noteworthy are: the Money Laundering Control Act 1999, which aims to prevent and combat the laundering of money derived from criminal activities and the concealment of the origin of money and assets; and the Narcotics Control Act 1991, which aims to combat narcotic offenders, especially major traffickers and producers, by allowing authorities to seize and impound money and other assets of the offender, pending the court's decision. In court the laws put the onus on the accused to prove the origin of the siezed money and assets after the prosecutor has provided a probable cause of money laundering. These measures aim to solve the problem of organized crime but have failed to meet expectations because they are isolated

and lack supporting measures. As a result, like a man whose limbs have been amputated, they are unable to be effective in practice against organized criminal groups with their unique characteristics, including wealthy patrons and influential backers. These laws also fail partially because the criminals who they target are relatively well-educated and skilled at concealing their assets and complex criminal hierarchies.

Currently, advancements in technology are extremely rapid, especially in all forms of information and communication technology. Being armed with such state-of-the-art technology, offenders are increasingly well-informed and well-prepared, and better able to operate in the form of an organization. Organized criminals are learning more and more to develop a system, interconnected network or hierarchy, which obstructs tracing the crime to its origins, and methods of evading investigation and arrest. These skills give the authorities further difficulty in gathering evidence to prove their guilt. Therefore, in the fight to find a solution to the problems of organized crime, the State must itself rely on up-to-date technology, such as the interception of communications. In the past, interception was prohibited under Thai law, even for the purpose of combating organized criminal groups, as it could infringe on their personal rights guaranteed under the Constitution. Nowadays, there are many laws permitting the interception of communication : for example, Section 104 of the Criminal Procedure Code permits law enforcement officials to seek a court order instructing postal and telegraph officers to submit printed material or documents sent to or from offenders through the postal system, or to keep such documents while awaiting the court order; and the Telephone and Telegraph Act 1934 gives power to telegraph officers to withhold messages and to examine or destroy postal items, although it does not authorize the tapping of telephones. The National Intelligence Agency Act 1985, the National Security Council Act 1959 and the Martial Law Act 1914 all authorize the competent authority to apply various techniques and to tap communications. The Wireless Communication Act 1955, as amended by

the Amendment Act (No.3) 1992; the Narcotics Act 1976 as amended by the Amendment Act (No.4) 2002 Section 14 Quarter; and the Money Laundering Control Act 1999 all give power to the authorities to tap telephones. However, all these laws impose limitations on the scope of phone tapping, namely being confined to cases of national security, unrest, or other abnormal circumstances and each law is applicable to certain activities only. Even though there are special measures that are authorized, by law, to access information on organized criminal groups through the application of the Special Case Investigation Act 2004, detailed procedures are still being drafted.

The Thai government fully recognizes the importance of witnesses and the fact that, if a witness receives inadequate protection, damage to criminal justice could result. The present Constitution[32] recognizes the rights of witnesses in criminal cases to receive protection, appropriate treatment and necessary remuneration from the state. However, safeguards for witnesses remain inadequate, even though there is in existence the Act for the Protection of Witnesses in Criminal Cases 2003. The protection of witnesses is a sensitive issue and requires a substantial budget, depending on the level of the influence of the offender: this is a major drawback in the law. In addition, it is still difficult for Thai people to have unlimited access to justice. Thai bureaucratic reform and the present Constitution have aroused people's awareness of their rights but they are still not fully confident in the criminal justice system and witness protection: offenders who are members of organized criminal groups or who are close to "persons of influence" are able to permeate all levels and sectors of daily life and therefore to testify against such an offender might result in putting their own safety or that of their family at risk. In addition, there is no plea bargaining system in Thailand which could enable key criminal figures to be brought to justice. Such loopholes are fully exploited by organized criminal groups.

In order to improve the situation, the Department of Special Investigation (DSI) was established under the auspices of the Ministry of Justice. The Special Case Investigation Act 2004 stipulates the DSI's duty to

enforce certain laws and to combat and investigate certain criminal offences, referred to as "Special Offences." These are offences involving taxation, finance and banking; intellectual property and copyright; commerce; the environment; economic crime; collusion in government procurement; and other offences that seriously affect the harmony of society and national security, international relations, the economic and financial systems, transnational organized crime and organized criminal groups. However, the legal measures provided for in the Special Case Investigation Act must be consistent with the Constitution, and the operations of the authorities must pay due regard to the rights of the people. In addition, the authorities' powers still must be governed by rules and regulations set by the Special Cases Committee.

3. Political Measures

In the past, Thai politics were known as "money politics", influenced by the capitalist system whereby funds were raised to spend on elections at all levels, with vote-buying through canvassers to pave the way for their own candidates to enter politics and gain power to deal directly with the government. Having obtained power and political influence, such politicians protected their own businesses, both legal and illegal, and supported their own position in other ways. Even though many independent agencies have been set up under the present Constitution to prevent and combat corruption and to control the direction of politics in Thailand, election fraud and political interference in government agencies still occurs. Election fraud allows politicians to have power over some civil servants, some of who concede to the power of politics, take bribes or become members of organized criminal groups in order to receive protection. Many civil servants succumb to such pressures instead of standing up to the challenge and demanding justice from the State, because they lack confidence in the State's effectiveness.

Even though the political aims of the Thai government are to combat "persons of influence" and organized criminal groups, inadequate laws and the presence of corrupt officials hamper the effectiveness of the Thai criminal justice system.

4. Social and Economic Measures

Thai society reveres the wealthy, regardless of how and where they acquire their money and assets. This attitude helps organized criminal groups exploit their illegitimate financial power to uphold their own financial status and use their influence to enable them to become leaders in society. Inherently, Thai society does not interfere with others. Most Thai citizens regard the problem of organized criminal groups as being beyond them and none of their concern. Consequently, society lacks the leaders and power to make a stand and combat organized criminal groups. Nor do victims of organized crime make a stand against those who have victimized them: they do not dare to voice their concerns because of lack of confidence in the State's ability to protect them.

Illegitimate money can be invested in both legal and illegal businesses. Organized criminal groups have mammoth financial reserves to build up networks for committing their crimes. They use the money gained from illegal enterprises to establish legal businesses, just as ordinary entrepreneurs would do, in order to launder their money. They also use their financial influence to escalate their social status by buying out or interfering with the mass media. When members of their group are arrested, they use their financial power to help them escape from justice. For example, they hire experienced lawyers, offer bribes to both those in authority and witnesses, and exploit their legal rights to distort the case. The Thai economic system lacks preventive and investigative measures to prove the sources of the money or assets which organized criminal groups use in the system. Even though Thailand has a Money Laundering Control Act, it is limited to only eight predicate offences. Therefore, the activities of organized criminal groups have a negative impact on the national economic structure and as organized criminal groups cause chaos in the economic system, investors become wary of investing here.

5. International Cooperation Measures

The problem of organized crime has become interconnected globally, with the establishment of transnational networks giving rise to the term "transnational organized crime." In order to prevent and combat organized crime effectively, international cooperation is essential. Even though, as of the present, Thailand has some laws that enable the country to cooperate with other nations at a certain level, such as the Act on Mutual Assistance in Criminal Matters 1992 and the Act on Extradition 1929, these are still not effective enough to tackle the problem of organized crime: they are too formal and bound by protocol and complex procedures, making requests for cooperation a cumbersome and slow process. In some cases, no specific agreements exist on the matter of cooperation, with too many factors being imprecise, while in other cases problems directly involve the officials concerned, for example the need to translate documents, the time and procedures involved in coordinating cooperation and so on.

As the problem of organized crime has become global, each country has attempted to adopt various methods to deal with it, like formulating legal measures, establishing regional groups and so on. Inevitably, Thailand has not been left unscathed by the problem, with organized criminal groups having an impact on the development and administration of the country as a whole. There is, therefore, an urgent need for the country to develop measures to combat organized crime, such as improvement of the law and criminal justice system, by studying those used by the United Nations and other countries which have already proved to be effective.

Having presented an overview of organized crime, its impact, and measures to prevent and combat the phenomenon in this chapter, it can be seen that Thailand has been seriously affected by the illegal activities of organized criminal groups, resulting in various kinds of social problems as well as economic chaos. It has also damaged the development of the country, an impact which will continue to be felt into the future. This is because people,

the most important resource of any country, are being constantly destroyed. Organized crime is also a key factor in the problem of corruption among politicians and public officials. Organized criminal groups have penetrated the Thai political system, especially prior to the political reform and issuance of the current Constitution. They have a role in supporting politicians, running in elections themselves, or sending their relatives as election candidates, using money generated from illegal activities and their influential network to support their political goals. In this way, organized criminal groups constantly try to infiltrate political parties, resulting in Thai politics becoming "business politics" or "money politics", with the emphasis on regaining capital and seeking profits from political positions. Decisions are not made for the sake of the general public but for personal or group gain. All this is to the constant detriment of national security, destroying the country's potential for development and its ability to compete in the global arena.

Organized criminal groups have made great advancements, gained power in the economic and political spheres, and have a negative impact on society, politics and national security. At the same time, there has been a lack of advancement in the justice system, which has a key role in combating organized criminal groups. While criminal groups have become more organized, the criminal justice system has continued to lack unity and coordination. Existing laws do not have enough measures to deal systematically and effectively with organized crime. The lack of knowledge and understanding of the activities and negative impact of the illegal activities of organized crime, combined with a lack of political will to prevent and combat it, has impeded the overall development and advancement of Thailand. As systematic measures are urgently needed to solve the combined negative impact of this problem, those adopted by the United Nations and other countries merit being studied in order to determine which could be applied in Thailand. Such a study is the aim of the following chapter.

[1] *UN Convention against Transnational Organized Crime, Article 2.*

[2] *Order of the Prime Minister's Office No.139/2546 on the Suppression of Persons of Influence, dated 8 July 2003.*

[3] *Recently, a major news item concerning the 14K gang reported that they had kidnapped the child of a Chinese billionaire and demanded a multi-million yuan ransom. Later on, the Chinese government, together with the Macau authorities, was able to arrest the leader of the gang. While he was being extradited to China, members of the 14K staged a riot in Macau, blockading the road, setting fire to houses, cars and so on in order to protest the extradition. Macau deployed troops to quell the riots, and it took 3 days to restore peace and order. This was given publicity internationally. The head of the gang was extradited to China, given the death sentence and has since been executed. This can be seen as indicative of the development of criminal activities as well as other related activities such as trafficking in heroin and amphetamines from the Golden Triangle region through China and Hong Kong to Western countries. Such activities also involve the smuggling of Chinese immigrants to the USA and Europe directly from China or through Thailand.*

[4] *Finkenauer, J.O., Chinese Transnational Organized Crime: the Fuk Ching, National Institute of Justice, International Center (2004), accessed through the internet at www.ojp.usdoj.gov/nij/international/chinese.html*

[5] *Ibid.*

[6] *Wattanawanich, P. and Sangsarapan, W., Use of Terms in the United Nations Convention against Transnational Organized Crime and Its Protocols, A Research Report on the Legal Development to Prevent and Suppress Transnational Organized Crime, 2nd Phase, Thailand Criminal Law Institute, Office of the Attorney General, 2003 p.27.*

[7] *Sifakis, C., The Mafia Encyclopedia, Facts on File Inc., New York, N.Y., U.S.A., 1987, p.210.*

[8] *The influence of the Mafia group in Sicily could be clearly seen when the Italian government hosted the signing ceremony of the United Nations Convention against Transnational Organized Crime in Palermo, the capital of Sicily, the heartland of the Mafia, 12-15 December 2000. The researcher was a member of the Thai delegation at the signing and observed that the Italian government had deployed approximately 10,000 troops and police, together with heavy arms, in order to ensure the safety of around 2,000 overseas delegates attending the ceremony.*

[9]Maas, P. The Valachi Papers, Battam Books, New York, NY, U.S.A., 1969.

[10]Sifakis, C., ibid. pp.250.

[11]Wattanawanich, P. and Sangsarapan W., ibid, p.29.

[12]Wattanawanich, P. and Sangsarapan W., ibid, p.29-30.

[13]La Cosa Nostra is comprised of around 24 "families", residing in many cities around the USA and has an annual income of around US$60 million from illegal activities.

[14]From Sifakis, C., ibid. p.158.

[15]Recent statistics for the arrest of narcotics offenders throughout the country are as follows: 2000, 222,498 cases; 2001, 206,244 cases; 2002, 183,966 cases; and 2003, after the "War against Drugs", 83,108 cases. Information from the Office of the Narcotics Control Board's website: www.oncb.go.th/c2-article.htm2003.

[16]Human Rights Watch, New Forms of the Slave Trade: the Trafficking in Burmese Women and Children (Roob Baeb Mai Khong Garn Kar That: Gan KarYing Lae Dek Chao Parma Nai Pprathet Thai) Bangkok: Friends of Women Foundation, 1993, p.20.

[17]Suwanpattana, N., Never-ending Story?: HIV/AIDS and Violence against Women, (Rue Ja Mai Mee Tang Sin Sud) Transnational Sex, Cyber Sex (Sex Karm Chart, Sex Internet) Bangkok: Amarin Printing and Publishing, 2001, p.299.

[18]This information was provided in statements and testimonies to police officers and courts by female witnesses who were lured into prostitution in the USA in an extradition case in which the author was the prosecutor. Similar testimonies were also provided by the US authorities to confirm the guilt of the offenders in this case, these being consistent with information from many women tricked and forced into prostitution in Japan and other countries.

[19]Trirat, N., Money Laundering and Its Impact on the Economy, Society and Politics (Karn Fork Ngern Lae Pol Krathop Tor Setakit, Sangkom, Garn Muang), in a Research Report on Outlawed Economy and Public Policy in Thailand, 2000, p.283.

[20]Pitanon, S., Thai Labour Market and Government Policy (Talad Rangngarn Thai Gab Nayobai Rattabarn), Bangkok: Chulalongkorn Press, 2002, p.319.

[21] Trirat, N. and Suksri, P., The Serious Situations of Organized Crime Problems in Thailand, a Research Report on the Legal Development to Prevent and Suppress Transnational Organized Crime, 2nd Phase, Thailand Criminal Law Institute, Office of the Attorney General, 2003, p.95-96.

[22] Ibid. p.96.

[23] In 1999, the author received information from a Hong Kong narcotics control officer that his office often found several hundred million baht being transferred to Hong Kong from Thailand. Later, each sum was transferred back to Thailand. An investigation found that the money was not involved with narcotics activities, therefore the officer did not take any action. However, these cases could in fact be money laundering, involving the transfer of money from one account to an overseas country, then back to the same country but a different account to create a semblance of overseas business, in order to launder money derived from illegal activities.

[24] Trirat, N. and Suksri, P., ibid. p.286.

[25] Ibid. p.287-8.

[26] Ibid. p.288.

[27] Investigation into corruption in the rice pawning programme was given media coverage from 27 February to 2 March 2004.

[28] Media coverage was given to this from 17 - 25 September 2003.

[29] Thai Penal Code, Section 209: "Whoever is a member of a body of persons whose proceedings are secret and whose aim is unlawful, is said to be a member of a secret society, and shall be punished with imprisonment not exceeding seven years and fined not exceeding fourteen thousand baht.

"If the offender be the chief, manager or office-bearer in such a body of persons, such persons shall be punished with imprisonment not exceeding ten years and fined not exceeding twenty thousand baht."

Section 210: "Whenever five persons upwards conspire to commit any offences provided in the Book II and punishable with maximum imprisonment of one year upwards, every such person is said to be a member of a criminal association, and shall be punished with imprisonment not exceeding five years or fined not exceeding ten thousand baht, or both.

"If it be a conspiracy to commit an offence punishable with death, imprisonment for life or imprisonment from ten years upwards, the offender shall be punished with imprisonment of two to ten years and fined four thousand to twenty thousand baht."

[30]*The Constitution of the Kingdom of Thailand B.E. 2540 (1997) Section 26.*

[31]*Li Yun-chung was a high-ranking follower of Kun Sa, in volved with the smuggling of heroin to California, USA. Wanted by the US authorities, he was arrested in Thailand in July 1996. On 8 Noverber the same year, the public prosecutor submitted a petition for a court order to extradite him to the USA under the Extradition Treaty between the two countries. While the case was in progress, on 7 February 1997 Li Yun Chung was granted bail and escaped to Myanmar. He was arrested by Myanmar officials and returned to Thailand on 17 May 1997. During the investigations by Thai authorities, he confessed that several million baht had been given to high-ranking officials of the judiciary. who were later discharged from the service and were charged with criminal activities. Information from The Nation, 28 October 1996, Weekend Nation, 23 July 1997, pp.22-26 and other media coverage during February 1997.*

[32]*The Constitution of the Kingdom of Thailand B.E. 2540 (1997) Section 244.*

Chapter 3

Measures to Prevent and Combat Organized Crime taken by the United Nations and Other Countries

The increase in the incidence and scope of organized crime has become a problem at both national and international levels, with the interconnecting networks linking the two giving rise to the term "transnational organized crime". The pronounced impact has prompted many countries to take specific action to deal with the problem. This chapter looks at measures to prevent and combat organized crime taken by the United Nations and the United States of America, both of which have effective, proven measures in place to deal with the problem.

A passenger van was bombed and gutted on 23 January 2006 as the owner refused to pay extortion fees to an organized criminal group. (Photo courtesy of the Office of the "Thai Rath" Newspaper)

Measures taken by the United Nations

For a considerable time, the United Nations has been very much aware of the serious negative impact of the activities of organized criminal groups operating in a global context on people, the economy and society. According to one United Nations report, it has been estimated that the income generated by such activities is equivalent to 3 - 5% of the total world Gross Domestic Product (GDP).[1] The United Nations proceeded to draft an international agreement, which in turn became international law, to introduce new measures as well as to emphasize the need for international cooperation on the combat of organized crime.[2] This is known as the United Nations Convention against Transnational Organized Crime, together with three of its Protocols: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition; and the Protocol against the Smuggling of Migrants by Land, Sea and Air. This Convention and its protocols have been open for signature since December 2000, with Thailand already having become a Signatory State to the Convention.

The key objective of this Convention is to promote effective cooperation to prevent and combat transnational organized crime committed by well-established groups. In order to accomplish this objective, the Convention specifies that States Parties must cooperate and render mutual legal assistance in criminal matters,[3] with the most important measure being its insistence that activities specified within the Convention be criminalized as offences by individual States Parties. The measures that States Parties shall apply against organized criminal groups are as follows:

1. Criminalization of Participation in an Organized Criminal Group[4]

According to Article 5, each State Party shall adopt, in accordance with the fundamental principles of its own domestic law, such legislative and other measures as may be necessary to establish participation in

an organized criminal group as a criminal offence, when committed intentionally. Such activity is defined as "agreeing with one or more other persons to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement or involving an organized criminal group".

2. Criminalization of the Laundering of the Proceeds of Crime[5]

Under the terms of Article 6, "each State Party shall adopt, in accordance with the fundamental principles of its own domestic law, such legislative and other measures as may be necessary" to establish predicate offences, in order to apply legal and other measures to deal with money or assets derived from illegal activities.

Specification of the predicate offence is the most important aspect in the enforcement of anti-money laundering laws, as the specification makes it possible to consider the type of offences to which the anti-money laundering laws can be applied. The Convention specifies the predicate offence in broad terms in order to enable each State Party to apply it in accordance with the terms of its own domestic anti-money laundering law. However, in principle, the predicate offence shall cover the following four characteristics:[6]

1. Criminal activities of organized criminal groups
2. Criminal activities that generate substantial proceeds
3. Criminal activities that are complex and difficult to combat
4. Criminal activities that are to the detriment of economic stability

Article 6 of the Convention specifies that the laundering of property derived from criminal activity shall be a criminal offence when committed intentionally. This is additionally defined as "the conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action".[7]

In addition, money laundering offences shall include "the concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime."[8]

3. The Criminalization of Corruption[9]

Each State Party shall specify as criminal offences both "the promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties"[10] and "the solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties."[11]

Article 8 of the Convention also recommends that "each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences" other forms of corruption,[12] including the activities of public officials overseas or international civil servants. Legal liability, according to this Convention, covers direct or indirect conduct, or participation in corruption: given that organized criminal groups involve multiple conspirators with a hierarchical structure, effective measures which can combat and punish key offenders, financial supporters and lower ranking members simultaneously are essential.

4. Criminalization of Obstruction of Justice[13]

In Article 23, the Convention states that each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally,[14] "the use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences covered by this Convention."[15] This shall be extended to legal liability for

"the use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences covered by this Convention."[16] The purpose of this article is to enhance the effectiveness of the justice system and reduce the strength of organized criminal groups.

5. Confiscation and Seizure Measures[17]

Article 12 of the Convention states that "States Parties shall adopt, to the greatest extent possible within their domestic legal systems, such measures as may be necessary to enable confiscation of proceeds of crime derived from offences[18] covered by this Convention or property the value of which corresponds to that of such proceeds." The Convention also extends this to include the confiscation and seizure of "property, equipment or other instrumentalities used in or destined for use in offences covered by this Convention,"[19] endorsing such measures "as may be necessary to enable the identification, tracing, freezing or seizure of any item... for the purpose of eventual confiscation."

Under the terms of the Convention, "property" means "assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets," while property derived from the proceeds of crime means "any property derived from or obtained, directly or indirectly, through the commission of an offence," even though the "proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds." [20] In addition, "If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds."[21]

In enacting procedures for confiscation, according to this Convention, "each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. States Parties shall not decline to act under the provisions of this paragraph on the ground of bank secrecy."[22] In addition, "States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law and with the nature of the judicial and other proceedings."[24]

However, it should be noted that "the provisions of this article shall not be construed to prejudice the rights of bona fide third parties."

6. Extradition Measures[25]

Article 16 of the Convention shall apply to offences covered by this Convention, or in cases where an offence referred to in Article 3, Paragraph 1 (a), involves Article 5, Criminalization of Participation in an Organized Criminal Group; Article 6, Criminalization of the Laundering of Proceeds of Crime; Article 8, Criminalization of Corruption; or Article 23, Criminalization of Obstruction of Justice.

As for Article 3, Paragraph 1 (b), "serious crime" as stipulated in Article 2 of the Convention, means "conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty," and furthermore such an offence is transnational in nature, or is involved with organized criminal groups, and the alleged offender is found in the territory of a State Party to which extradition requests can be made.

7. Transfer of Sentenced Persons[26]

According to this Convention, other measures exist which aim to fight against organized crime in order to promote international cooperation. Article 17 of the Convention stipulates the transfer of sentenced persons as follows: "States Parties may consider entering into bilateral or multilateral

agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences covered by this Convention, in order that they may complete their sentences there." This Article gives discretionary powers to States Parties, rather than binding States Parties to transfer sentenced persons, depending on whether each individual State deems it necessary to have a bilateral or multilateral treaty on this issue.

The offences under this Convention on which States Parties may sign the Treaty on the Transfer of Sentenced Persons, are as follows: Predicate Offences (Article 6); Participation in an Organized Criminal Group (Article 5); Money laundering (Article 6); Corruption (Article 8); Obstruction of Justice (Article 23); and offences stipulated in Article 3, 1 (b), which are "serious crimes" punishable by a term of imprisonment of four years or more, when such an offence is transnational in nature or is involved with an organized criminal group. Transferred persons must have double criminality: in other words, the offence must be regarded as criminal in both the transferring State and the receiving State.

8. International Cooperation in Criminal Matters

The Convention, aiming to fight against transnational organized crime, stipulates that States Parties shall render international cooperation on criminal matters to ensure success in the suppression of transnational organized crime and shall set standards in both legal and justice systems among Member States. The Convention stipulates two measures for cooperation in criminal matters, viz.: international cooperation for purposes of confiscation;[27] and mutual legal assistance.[28]

International Cooperation for Purposes of Confiscation

Article 13, Paragraph 1 of the Convention stipulates that a State Party, upon request by another State, shall render for confiscation proceeds of crime, property, equipment or other instrumentalities within their territory. Such an offence must be an offence stipulated in this Convention.

Article 13, Paragraph 7 stipulates that "Cooperation under this article may be refused by a State Party if the offence to which the request relates is not an offence covered by this Convention."

Additionally, Article 13 Paragraph 8 stipulates that "The provisions of this article shall not be construed to prejudice the rights of bona fide third parties."

Mutual Legal Assistance

Article 18, Paragraph 1 of this Convention lays down the basic principles for States Parties to the Convention to render "mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention." Such offences are participation in an organized criminal group; the laundering of the proceeds of crime; the obstruction of justice; and serious crimes punishable by a term of imprisonment of four years or more when such an offence is transnational in nature or is involved with an organized criminal group. States Parties to this Convention shall be afforded reciprocal treatment, viz. States Parties shall reciprocally extend to one another similar assistance.

Article 18, Paragraph 2 specifies cooperation on all matters related to an offence for which a legal person may be held liable.

Article 18, Paragraph 3 specifies that "mutual legal assistance may be requested for any of the following purposes:

(a) Taking evidence or statements from persons;
(b) Effecting service of judicial documents;
(c) Executing searches and seizures, and freezing assets;
(d) Examining objects and sites;
(e) Providing information, evidentiary items and expert evaluations;
(f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;

(g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
(h) Facilitating the voluntary appearance of persons in the requesting State Party;
(i) Any other type of assistance that is not contrary to the domestic law of the requested State Party."

9. Joint Investigations[29]

Article 19 of the Convention stipulates that "States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected."

Measures under this Article aim to promote effective international cooperation to prevent and combat transnational crime, allowing States Parties to have either bilateral or multilateral agreements, or informal agreements on a case-by-case basis.

10. Special Investigative Techniques[30]

Organized criminal groups commit crimes that pose a threat to the public safety and national security of States worldwide, with the scale of the problem becoming more complex and serious as criminal activities utilize modern advanced technology and become transnational in nature. In order to prevent and combat organized crime, the implementation of both international cooperation and effective measures is imperative, as existing general measures in the justice system may be inadequate to do so. The United Nations, being fully aware of the problems and obstacles in combating transnational organized crime, has specified special investigative techniques to be employed to prove the guilt of offenders and bring them to justice.

Article 20 of the Convention proposes that the law enforcement agencies of States Parties should apply special investigative techniques to offences stipulated in this Convention, viz.:

1. Controlled delivery
2. Undercover operations
3. Electronic surveillance, such as wiretapping or information tapping

The Convention details these measures as follows:

"1. If permitted by the basic principles of its domestic legal system, each State Party shall, within its possibilities and under the conditions prescribed by its domestic law, take the necessary measures to allow for the appropriate use of controlled delivery and, where it deems appropriate, for the use of other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, by its competent authorities in its territory for the purpose of effectively combating organized crime.

2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods, such as intercepting and allowing the goods to continue intact or be removed or replaced in whole or in part."

However, consideration can be given in the context of the Convention as follows:

10.1 Controlled Delivery

According to Article 2 (i) of the Convention, "controlled delivery" is specified as "the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence."

Controlled delivery can be utilized to track trafficking in narcotics, women and children, weapons, counterfeit currency and other illegal items, being applicable when the competent authority is aware of the activity but is unable to apprehend the offenders, having to wait until the completion of the delivery process in order to be able to apprehend the whole group. Such trafficking is thus closely monitored by the authorities without the offenders being aware that they are being observed.

The decision to use controlled delivery shall take into account many factors, such as the officials assigned to deliver the items; the person assigned to control the items; and restricted persons. Such officials must be trustworthy and be adequately briefed and informed before taking part in the operation. When communication devices are used to tap signals, or planted in goods or merchandise to tap information before or during the controlled delivery, undercover officials may be assigned to hand over items or contact restricted persons. This may necessitate cooperation between officials at the points of both origin and destination in order to plan the delivery and the apprehension. Non-official persons may be assigned to work as undercover

agents to deliver items as well as restricted persons under the control of the authorities. Such persons may have formerly been members of organized criminal groups themselves or have had a previous relationship with organized crime but are now deemed trustworthy enough to be assigned such tasks. One final method is using the offender themselves to deliver the items, in cases where, after being apprehended when the delivery is as yet incomplete, the authority has an agreement to allow the offender to complete the delivery under the supervision of the authorities in order to be able to apprehend the masterminds behind the delivery.

The hearing of evidence derived from the controlled delivery method is permissible in court when bilateral or multilateral agreements exist between the States Parties based on the policy of mutual assistance. This is to enable the evidence derived from the controlled delivery to be used in both the country of origin and country of destination, so that if such an offence occurs in the country of destination, the offence may be prosecuted in the country of origin, or vice versa.

Controlled delivery is an effective and successful measure to combat transnational organized crime, especially drug trafficking, because it can be used to trace the ringleader and other key members of transnational organized crime groups. Since the signing of the Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988, controlled delivery, as stated in Article 11, has proved to be beneficial to officials both in individual States Parties and internationally.

Limitations on the use of controlled delivery under the Convention apply when the domestic law of a State Party does not recognize the use of controlled delivery. This limitation obviously impedes the widespread application of such measures.

10.2 Undercover Operations

An undercover operation denotes an investigation undertaken by state officials (or, in some cases, officials from outside the government sector under the control of state officials) that involves subterfuge (e.g. concealment

of their actual rank, the use of pseudonyms, disguised identity and profession) in order to infiltrate an organized criminal group. The purpose of such an operation is to obtain information and evidence not easily obtained by traditional investigation, with the officers involved controlling the timeframe. The undercover operation puts the lives of officers at risk, as their names and positions may be liable to be disclosed. Therefore, the implementation of undercover operations should be thoroughly planned, with only highly experienced officers assigned to the task. International cooperation may also be required in order to facilitate the efficiency of the operation and safety of those involved.

There are two types of undercover operations: short-term and long-term. A short-term undercover operation involves disguise and is typically used to investigate a case lacking in complexity for a limited period of time. In contrast, a long-term undercover operation involves infiltration into an organized criminal group for an extended period of time in order to gain their trust, until the undercover agent is assigned to a major operation which will give them access to information about the target. Long-term infiltration may result in the undercover agents having to commit certain crimes; therefore, there shall be a law giving them immunity from prosecution in this eventuality.

10.3 Electronic Surveillance

The implementation of electronic surveillance under this Convention, such as the tapping of telephones and other methods of communication, is a controversial issue, as it could be seen as an infringement of constitutional and/or human rights. The use of electronic surveillance, therefore, varies from one country to another in accordance with the level of recognition given to human rights in each country. However, electronic surveillance measures are important means of law enforcement in the combat against transnational organized crime, as they can facilitate the gathering of evidence at all levels, from masterminds to the lower ranks, including information on current developments and the state of planning. They can thus result in the arrest and prosecution of a whole organized criminal network.

11. Transfer of Criminal Proceedings[31]

Under Article 21 of the Convention, "States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence covered by this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution."

12. Establishment of a Criminal Record[32]

Article 22 of the Convention stipulates that each State Party may record any previous conviction in another State, as well as bio-data and the court verdict, of a person committing an offence under this Convention, for the purpose of using such information in criminal proceedings relating to the offence.

13. Protection of Witnesses[33]

Article 24 of the Convention specifies that "Each State Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offences covered by this Convention and, as appropriate, for their relatives and other persons close to them."[34] Such measures may include relocation of witnesses, and non-disclosure of information concerning their identity and whereabouts.[35] Furthermore, the Convention provides "evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of the witness, such as permitting testimony to be given through the use of communications technology such as video links or other adequate means."[36]

14. Assistance to and the Protection of Victims[37]

Article 26 of the Convention has similar principles and purposes to Article 24, viz. the standardization and facilitation of international cooperation in legal administration and law enforcement. This article stipulates that

"Each State Party shall take appropriate measures within its means to provide assistance and protection to victims of offences covered by this Convention, in particular in cases of threat of retaliation or intimidation."[38] In addition, "Each State Party shall establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by this Convention."[39]

15. Measures to Expand Cooperation between Law Enforcement Agencies[40]

As stipulated in Article 26, "Each State Party shall take appropriate measures to encourage persons who participate, or have participated, in organized criminal groups:

(a) To supply useful information to competent authorities for investigative and evidentiary purposes, on such matters as:

(i) The identity, nature, composition, structure, location or activities of organized criminal groups;

(ii) Links, including international links, with other organized criminal groups;

(iii) Offences that organized criminal groups have committed or may commit."

In addition each State Party shall consider implementing measures to mitigate the punishment of an accused persons "who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention." Furthermore, each State Party shall have measures to a protect person "who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention" in order to prevent such people from being prosecuted for such offences, subject to the principle of domestic laws. The principle of protecting a person as such shall be in accordance with Article 24 of the Convention.

In cases where such persons are located in the territory of a State Party which is willing to cooperate with the responsible agency of another State Party, the States Parties involved may consider implementing an agreement to facilitate such cooperation in accordance with Article 26, paragraph 5, subject to their domestic law.

16. The Collection, Exchange and Analysis of Information on the Nature of Organized Crime[41]

Organized criminal groups have been able to exploit advances in communication technology and transportation for their criminal activities, mutating them into complex forms which are difficult to combat. The United Nations, aware of this problem, has therefore specified that, "Each State Party shall consider analyzing, in consultation with the scientific and academic communities, trends in organized crime in its territory, the circumstances in which organized crime operates, as well as the professional groups and technologies involved," which should then be shared between States Parties. In addition, "Each State Party shall consider monitoring its policies and actual measures to combat organized crime and making assessments of their effectiveness and efficiency."

17. Training and Technical Assistance[42]

Article 29 of the Convention specifies the purpose and areas of training and technical assistance for law enforcement personnel, including prosecutors, investigating magistrates, customs personnel and others charged with the prevention, detection and control of the offences covered by this Convention. According to Article 29, "Such programmes shall deal, in particular and to the extent permitted by domestic law, with the following:

(a) Methods used in the prevention, detection and control of the offences covered by this Convention;

(b) Routes and techniques used by persons suspected of involvement in offences covered by this Convention, including in transit States, and appropriate countermeasures;

(c) Monitoring of the movement of contraband;

(d) Detection and monitoring of the movements of proceeds of crime, property, equipment or other instrumentalities and methods used for the transfer, concealment or disguise of such proceeds, property, equipment or other instrumentalities, as well as methods used in combating money-laundering and other financial crimes;

(e) Collection of evidence;

(f) Control techniques in free trade zones and free ports;

(g) Modern law enforcement equipment and techniques, including electronic surveillance, controlled deliveries and undercover operations;

(h) Methods used in combating transnational organized crime committed through the use of computers, telecommunications networks or other forms of modern technology; and

(i) Methods used in the protection of victims and witnesses."

The scope for States Parties to assist one another "shall include planning and implementing research and training programmes designed to share expertise in the areas referred to in paragraph 1 of this article". To that end, States Parties shall also, "when appropriate, use regional and international conferences and seminars to promote cooperation and to stimulate discussion on problems of mutual concern, including the special problems and needs of transit States." This cooperation may include "training and technical assistance that will facilitate extradition and mutual legal assistance." Such training and technical assistance may include language training, secondments and exchanges between personnel in central authorities or agencies with relevant responsibilities. Furthermore, "in the case of existing bilateral and multilateral agreements or arrangements, States Parties shall strengthen, to the extent necessary, efforts to maximize operational and training activities within international and regional organizations and within other relevant bilateral and multilateral agreements or arrangements."

Measures taken by the United States of America

In the United States, the common law system and the adversarial system are applied, having been developed from the British system into what is known as the Anglo-American system. The Anglo-American system balances law enforcement priorities against basic rights and liberties in a unique way, with the judge deciding issues of law and the jury determining innocence or guilt. This differs from the inquisitorial system common in Continental countries, in which judges have a greater role in investigating and determining guilt.[43] In Thailand, the adversarial system was introduced through the influence of the British traditional legal system.

As the United States has had a great deal of experience in combating organized criminal groups through using various legal measures, this section takes a timely look at some of these effective measures.

1. Property Forfeiture Measures[44]

Criminal and civil forfeiture has been used to combat organized crime in the United States. Under forfeiture law, the focus is on the offence, rather than the offender. One of the most far-reaching steps taken by the United States to fight organized crime was the Racketeer-Influenced and Corrupt Organizations Law (RICO)[45] which Congress enacted in 1970. It was the first American law giving power to the State to forfeit the property of criminal offenders. Under RICO, property can be confiscated when the offence is stipulated in the RICO Law and the property to be confiscated is derived from offences likewise stipulated in the RICO Law. The aim of the RICO Law was to be an effective tool in the destruction of the economic power of organized criminal groups.

Fourteen years later, in 1984, the USA enacted another law, the Continuing Criminal Enterprise Act (CCE)[47], as a tool to combat drug trafficking. After this, an amendment to the Comprehensive Drug Abuse Prevention Act (CDAPA) gave additional powers to states in the seizure and

confiscation of profits gained from dealings in both narcotics themselves and the equipment used in narcotic offences. This law has proved to be effective in combating the trafficking in narcotics, both domestically and internationally.

A fundamental principle of penal law in the United States and other countries holds that an offender must commit an offence before forfeiture measures can be applied. However, this principle is impractical if the State cannot prove the guilt of offenders, even though evidence may indicate that such property is derived from an offence. Property that may be confiscated according to the law of the USA is as follows:

- Property related to narcotic offences
- Property related to money laundering crimes
- Property that may be forfeited by other laws

1.1 Civil Forfeiture Proceedings[48]

As it has been recognized that the proceeds of crime beget more crime, civil forfeiture proceedings complement criminal sanctions by focusing on the property rather than the offenders. Property that may be confiscated includes items which are illegal to possess and the unusual wealth of offenders who have committed certain offences. Applicable law specifies that the State has the right to accuse and seize such property only after the accused has been unable to reasonably account for the origins of their wealth. This principle is also applied in Thai law: for example, in some cases, the property of politicians who have been accused of unusual and unexplained wealth has been forfeited. Even though the State failed to prove that corruption was involved, the accused was equally unable to prove the legitimate source of such property by a preponderance of evidence.

1.1.1 Categories of Civil Forfeiture[49]

1.1.1.1 Judicial Civil Forfeiture Actions: The process begins with the filing of a complaint, in which the government must establish probable cause to believe that the property is subject to forfeiture. If the court finds that

this standard has been met, it shall issue a preliminary forfeiture. Upon the execution of the order, typically by a US Marshal, the assets are attached or "frozen" while the case is litigated. Then, an announcement in the local newspaper is carried for three weeks in order to allow claimants to assert any interests in the property. Such persons may attempt to raise an "innocent owner" defence, which requires that they were not involved in or aware of the illegal activity and took reasonable measures to prevent it.

1.1.1.2 Civil Forfeiture Administrative Proceedings: As an alternative to judicial proceedings, certain federal law enforcement agencies have the power to initiate administrative actions to confiscate property up to a value of US$500,000. Certain property may be confiscated and forfeited administratively regardless of value, including vehicular property used for the transportation of illegal items, cheques and security bonds. Administrative forfeiture proceeds on the basis of an accusation that the owner has committed an offence stipulated in the law, and that the property in question was the fruits or instrumentality of the crime.

1.2 Criminal Forfeiture Proceedings[50]

In criminal forfeiture proceedings, the defendant is the property or *res*, rather than the alleged offender. At the end of the charging document (i.e. indictment or information), the prosecutor may add forfeiture counts, seeking to deprive the accused of property used in, or derived from, the charged offences. In criminal forfeiture actions, as in civil forfeiture actions, the standard of proof is the preponderance of evidence. In criminal actions, there is no innocent owner defence.

Under US law, criminal forfeiture proceedings shall be terminated on the death of the suspect or the accused person. Federal law also allows for the substitution of assets of equal value in certain cases where the original property is no longer available.

Criminal forfeiture proceedings in the United States fall under the Speedy Trial Act. This law sets forth several deadlines for prosecutors and the court, including the requirement that the trial commence within seventy days of the filing of an indictment or information. Before the complaint is filed, agents investigate the property to determine its ownership, value and background. After estimating the value of the property and determining ownership, the authorities may seek a court order to freeze certain assets before filing the indictment. Then the US Attorney's Office, through the federal grand jury, shall indict the case and describe in the indictment the property which may be confiscated.

A final forfeiture order may be entered if the government meets its burden of showing that the property is forfeitable. It may do so either through a jury finding at trial, or, in the case of plea bargaining, by the findings of the judge after an admission by the defendant. The US Marshal then carries out the order to confiscate the assets and keep them in safe custody while notice of the forfeiture is given to the public through a public announcement issued for thirty days. The order may be challenged by persons with interest in the property superior to the defendant, or who purchased the property from the defendant for fair value and without notice of its illegitimate nature. If the court denies all challenges to the order, or none are raised, a final forfeiture shall be issued. Such an order may include the sale or auction of the confiscated property. After the sale, the state agency has to transfer the money into the confiscated property fund, or put non-cash property to official use. If the forfeiture order is rescinded, the seized property shall be returned to the owner.

1.3 The Relation Back Doctrine[51]

The confiscation of property can be back-dated to the time the offence was committed and such confiscated property shall be regarded as being the property of the state from that date: this is known as the "relation back doctrine", which aims to prevent offenders concealing or withholding property from being confiscated. The exception is when the owner of the property can prove their innocent ownership.

2. Anti-Money Laundering Measures

The fundamental aim of money laundering is to use illegally gained money in legal commercial transactions to make it appear to be legitimately earned, and to eliminate all traces of its connection to crime.[52]

The American government, having long been aware that organized criminal groups use money laundering methods, stipulated money laundering as an offence in both the RICO and CCE laws. After the terrorist attack on the World Trade Centre on 11 September 2001, the American government accorded greater urgency to the impact of organized crime, perceiving that money laundering and terrorism were enabling it to wreak havoc on the public. Therefore, the USA Patriot Act, 2001, was enacted as a law to combat terrorist activity, including money laundering. This law gives increased investigative power to the authorities in both the national and international arenas, starting with empowering officials from the Treasury Department to combat corruption in financial institutions. In order to prevent abuse, the Department of Justice has the overall authority to oversee this law.

The US Patriot Act also contains important measures on wiretapping, another investigative method which is allowed under the Omnibus Crime and Safe Street Control Act, 1968, and which has proved useful in combating serious crime, subject to court permission.[53] The Patriot Act authorizes federal agents to set up wiretapping devices in the telephone network through which suspects are communicating, allowing courts throughout the country to authorize wiretapping. With a court order, agents may make tapes of telephone conversations and submit them as evidence to the court. With state-of-the-art equipment, agents can capture the conversations on word-searchable CD-ROMs, similar to emails recorded in the computer. Wiretapping typically involves the cooperation of the service-provider, which cannot exercise its discretion in whether or not to comply with a valid wiretapping order but is legally required to do so.[54]

Furthermore, measures exist in the Patriot Act for the protection of witnesses who cooperate with the authority in exercising power under Section 3 of the Act. It also enhances cooperation between investigating officials of the United States and of other countries.

In cases where the individual rights of a person are violated, the victim may sue the government officials for abuse of power.

The Patriot Act also criminalizes international terrorism and cyber-crime under the Anti-Money Laundering Law. Persons who refuse to cooperate with the authorities, both domestic and international, are subject to prosecution under this law.[55]

Links with the Anti-Money Laundering Law[56]

The Patriot Act empowers Treasury Department officials to examine the financial transactions of every financial institution in order to discover whether or not they have links with international terrorism. It allows for the following powers and measures:

1. The power to order brokers or dealers in stock-markets to report suspicious financial dealings within their institution.

2. The power to order every commercial enterprise to report all cash transactions of over US$10,000

3. Measures to prevent American financial institutions from doing business with unauthorized financial institutions.

4. Measures to prevent financial institutions from providing services outside their normal scope of business that may facilitate the concealment of suspicious financial transactions.

5. The power to order financial institutions to record the financial situation of their new clients, and to have measures for screening potential clients.

6. Measures to cooperate on information-sharing between law enforcement personnel and financial institutions regarding the modes of suspicious transactions in both anti-money laundering and financial support of international terrorism.

Furthermore, the Patriot Act adds the following activities as offences under the Anti-Money Laundering Law:

1. The laundering of money in the United States that has links to overseas crime and the planning to commit political crime in the United States.

2. Cyber money laundering for the support of international terrorist organizations.

3. An increase in the penalty for taking out of the country excessive amounts of currency.

4. Failure to report to custom officials currency in excess of US$10,000.

5. The fraudulent use of US credit cards overseas, with state authorities empowered to prosecute offenders.

6. The use of premises for the planning or preparation of money laundering, with state authorities empowered to prosecute the owners of such premises.

As for the enforcement of confiscation orders, the Patriot Act amended many criminal procedures in order to enable officials to access property involved in the planning of both domestic and international terrorism. It also empowers officials to confiscate property that has been used for, or is derived from, transnational terrorism.

New Forms of Punishment under the Patriot Act

The Patriot Act gives law enforcement new powers to combat international terrorism and the laundering of money derived from international terrorism, and defines new offences in this context, such as the supply of arms and components; the harbouring of terrorists; the laundering of money linked to terrorism; engaging in business to generate income to support terrorism; and fraudulent charitable solicitation. The Patriot Act also stipulates new forms of punishment, with an increase in the maximum penalties for international terrorism, including conspiracy to commit certain terrorist offences, the smuggling of illegal currency, cyber-crime and public fraud in the form of establishing charitable organizations.

3. Witness Protection Measures [57]

The Witness Protection Law was introduced in the United States in 1971. The US Department of Justice then laid down measures and criteria for the protection of witnesses in criminal cases under the Witness Protection Programme. Later on, in 1974, a committee for the protection of victims and witnesses was established by the Department of Justice and the American Association of Public Prosecutors. Since then, the Witness Protection Programme has been improved from the point of view of both methods and measures, and has been extended to cover family members, including, for example, relocation, change of identity, assistance with employment and children's education. These measures are stipulated in the United States Code (USC), Title 18 Paragraph II, Chapter 224, giving the Attorney General the power to consider who should be eligible for the witness protection programme and at what level.

Criteria for the Protection of Witnesses

Under the Witness Protection Programme, those eligible for selection shall be witnesses in the case, members of their family or other persons having a close relationship with the witness. The Attorney General has the power to consider the eligibility of each person, taking into account their criminal record; the level of protection; the feasibility of obtaining similar testimony from other sources; the importance of the testimony of that witness; and the results of a psychological examination, with the threat to public safety and the threat to the victim being weighed against the testimony of that witness. Then, a memorandum of understanding is arranged.

Measures under the United States Witness Protection Programme include the changing of name, family name, physical characteristics and identity, relocation, arrangements to enable such a person to make a living and the payment of a stipend, the amount and duration of which shall be determined by the Attorney General. Measures to maintain the confidentiality of the witness also exist under this programme.

Categories of Witness Protection[58]

1. Short-term Protection: The US Marshal shall be responsible for accommodation and basic needs by relocating persons out of the endangered area, or away from the person(s) who might assault them, for as long as such a threat is deemed to exist. If a witness is imprisoned, they shall be confined in a separate section of the facility, with cooperation between the police, federal authorities, and state authority to ensure the safety of the witness during a trial enforced in the United States.

2. Long-term Protection: The US Marshal is responsible for the witness and members of their family, by changing their identity and relocating them to a safe place. Witness protection in this category is very strict and inflexible. The US Marshal and the Attorney General shall jointly consider the necessity of the witness's receiving protection and measures for their safety, and shall stipulate the penalty, including both imprisonment and fines, for those making unauthorized disclosure of information about the witness. Since the inception of the Long-term Witness Protection Programme for prominent cases, in which the offenders are influential figures in the world of organized crime, the numbers of those participating in the programme have been very limited, due to the complex criteria and procedures involved.

4. Plea Bargaining Measures[59]

In general, plea bargaining involves a deal being made between the authorities and the suspect, or the accused, in exchange for a guilty plea and other cooperation, and the consent of the authority to recommend a reduced punishment.

Plea bargaining measures aim at reducing the number of cases in the courts and obtaining information to prosecute the masterminds of organized criminal groups by using inside information from within the group. Such measures have been applied in many countries where the courts use the adversarial system. These countries are influenced by the common law system, which regards the two sides as adversaries, and the protection of the rights of both parties are given priority. Plea bargaining avoids complexity and delays in the

pre-trial process and trial by securing from the defendant a waiver of some of the protections ordinarily afforded by the justice system, such as the right to a trial. In securing the cooperation of defendants, plea bargaining reduces some of the most severe difficulties faced by law enforcement officers in combating crime.

4.1 Plea Bargaining in the United States Court under Federal Law

In the United States, there is a three-tiered federal court system of justice and 50 different state court systems, each with its own trial and appellate courts. In the federal system, there is a fair degree of uniformity because all federal courts are governed by the Federal Rules of Criminal Procedures (FRCP).

The American Constitution protects the rights of the accused in many important ways. The accused may refuse to give self-incriminating testimony. To be admissible in court, any confession must have been made voluntarily, and not as a result of promises, deceit, intimidation, force or any other such inadmissible conduct. When the accused refuses to give testimony, the prosecution may not comment on this fact, and the judge instructs the jury not to draw adverse inferences from the decision not to testify or give a post-arrest statement.[60]

4.2 Principles of Testimony of the Accused Person in Criminal Cases in the United States of America

4.2.1 The testimony shall be given voluntarily and with complete understanding of the charges and the results of such testimony.

4.2.2 The person shall be conscious and able to anticipate the results of their testimony. During the investigation, the accused may be wrongly solicited, resulting in testimony being given without intent. Therefore, before entering the court, the accused must be fully advised of the charges and related issues before they are permitted to give testimony.

Although different states in the United States have different systems of plea bargaining, these systems are generally consistent with basic principles found in Rule (11) (3) of the Federal Rules of Criminal Procedure. Rule 11(e) lays down the two principles of plea bargaining: the principle of

contract (i.e. the plea must be entered into voluntarily and without prejudice); and the principle of due process, which requires that the agreement be entered into voluntarily, consciously and with awareness of the results. These two principles must be mutually reconcilable.

4.3 Authorities Involved in Plea Bargaining

4.3.1 The Prosecutor: the United States Department of Justice, in federal cases, or District Attorney's Office, in state cases, will only enter into plea bargaining with the accused after considering the strength of the evidence of guilt, and the risks of taking the case to trial. If the case has solid evidence, out-of-court plea bargaining is not necessary.

4.3.2 The Accused and Defence Counsel: in general, the suspect or the accused receives an offer to enter into plea bargaining from the prosecutor through their attorney. To be sure that the suspect or accused fully comprehends the process and the rights they are waiving, it is advisable for a lawyer to be involved: the FRCP Rule 11 requires the judge to advise the defendant in open court of the rights they are waiving, including the right to legal counsel at all stages of the criminal proceeding.

4.3.3 The Court: under Rule 11, the federal judge shall not be involved in the negotiation of the plea agreement. Rather, the main role of the judge is to ensure that the defendant understands the agreement and to decide whether to accept and follow it. This is in order to allay concerns that if the court were to be involved in the negotiation of a plea agreement, the defendant's decision to plead guilty might not be fully voluntary. However, this concept is not universally accepted in the United States. State judicial systems tend to allow the judge a greater role in the negotiation stage.

4.3.4 The Victim: traditionally, victims have had no formal role in the plea bargaining system, though informally they often are in contact with prosecutors about the case and prosecutors often may take into account the victim's views in deciding whether and how to plea bargain a case.

Increasingly, laws are being passed giving victims the right to be informed about the outcome of the case, to give statements at sentencing, and to be told when the defendant is being released from prison.

4.4 Forms of Agreement in Plea Bargaining

4.4.1 Charge Bargaining: Charge bargaining is a negotiated resolution in which the public prosecutor agrees to dismiss certain charges in exchange for a guilty plea to other charges. The benefit to the defendant may be a reduction in the number of counts, or in the severity of the charges, or both, in exchange for a guilty plea to one or more of the remaining counts in the indictment, or a newly charged (and generally less serious) count.

4.4.2 Sentence Bargaining: Sentence bargaining involves the accused pleading guilty in exchange for a favourable sentencing recommendation from the public prosecutor. The prosecutor may agree to recommend, or not oppose, the application of a favourable sentencing guideline, or may agree not to recommend certain enhancements under the sentencing guidelines.

4.4.2.1 Procedures for Different Forms of Plea Bargaining in the Court: Under FRCP Rule 11, the court is given the power to consider the plea bargaining agreement. The court typically receives a copy of the plea agreement from the prosecutor before conducting the Rule 11 plea colloquy, at which the court questions the defendant to determine whether their guilty plea is knowing and voluntary. The court then decides whether to accept or reject such an agreement. The records of court proceedings in American courts are extremely detailed in order to ensure maximum transparency. A court reporter makes a verbatim transcript of the plea colloquy in order to have a full record of the proceedings in the event that the defendant later seeks to withdraw their plea or challenge the trial court's conduct of the proceedings on appeal. In general, the court seldom rejects a plea bargaining agreement, as most plea agreements are not binding on the judge. Rather, they allow the judge to accept the plea without limiting the judge's discretion to determine the sentence at the

sentencing hearing, typically held several weeks after the guilty plea is entered. In most plea agreements, the prosecutor agrees to make a favourable recommendation to the judge, and the defendant hopes that the judge will therefore be more likely to sentence leniently.

The court may reject an agreement on several grounds. The judge may disagree with the recommendation made by the public prosecutor, or with the prosecutor's application of the sentencing guidelines. If the judge finds that the defendant does not understand the plea agreement, its consequences or the rights they are waiving, or feels that the defendant has been pressurized to enter into the agreement (e.g. to help another defendant), the court may not accept the plea agreement. In the unusual case of a binding plea agreement (i.e. one in which the parties present the judge with a jointly recommended sentence, with the defendant's plea made conditional on advance acceptance of the proposed sentence by the judge), the judge may reject the agreement on the grounds that it excessively reduces the sentence or excessively limits the court's right to use discretionary powers.

The court, upon accepting an agreement, will typically mark a signed copy as an exhibit and make it part of the court record. In most cases, the court will assign the file to a probation officer and review the officer's pre-sentence investigation and report before determining whether to sentence according to the plea agreement.

If the court rejects the plea agreement, the court so notifies the two parties in open court. The case will be put back on the court's trial calendar, and the parties will either then begin preparing for trial or resume plea negotiations in the hope of reaching an agreement the court will accept. In a typical case, the plea agreement does not limit the judge's discretion at sentencing, and the defendant is informed that they will not be able to withdraw their plea if they are dissatisfied with the sentence imposed by the court. While the defendant may not withdraw their plea, many plea agreements preserve the defendant's right of appeal if the judge imposes a sentence (or "offence level")

higher than that specified in the agreement. However, in practice, judges usually impose a sentence that is lower than or equal to the prosecutor's recommendation under the agreement. Neither plea negotiations nor a properly withdrawn guilty plea shall be used against the accused in either criminal or civil cases, as the court did not accept the agreement and therefore it became legally null and void.

4.4.2.2 The termination of the plea bargaining agreement: The plea bargaining agreement of both the public prosecutor and the accused may be terminated according to the following criteria:

1. In cases where the agreement is admitted by the court, and the court shall pass sentence according to such an agreement, the agreement is terminated after the sentence is passed.

2. In cases where the court refuses the plea bargaining agreement, such an agreement is terminated immediately: the accused has the right to withdraw their plea and the public prosecutor is no longer obliged to honour the agreement.

3. The failure to comply with the plea bargaining agreement on the side of either the public prosecutor or the accused shall terminate the agreement, if the court is unable to compel either the accused or the public prosecutor to comply with the agreement.

5. Measures to Combat Human Trafficking[61]

In the United States, a specific law exists concerning human trafficking, especially trafficking in women and children: the Trafficking and Victim Protection Act, 2000. This law is consistent with the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which aims to protect the victims from being traded. In addition, the United States uses diplomatic channels to pressure, persuade or encourage other countries to cooperate and assist in combating human trafficking.

Organizations in the United States to Monitor and Eradicate Human Trafficking[62]

Under US law, the President of the United States has assigned special tasks to the following agencies to monitor and eradicate the problems of human trafficking:

1. The Secretary of State
2. The Administrators of the United States Agency for International Development (USAID)
3. The Attorney General
4. The Secretary of Labour
5. The Secretary of Health and Human Services
6. The Director of the Central Intelligence Agency and other appropriate officials.

The United States is aware that human trafficking is a transnational issue, involving networks of organized criminal groups. International cooperation is therefore needed to combat it, with no one country, however powerful it may be, being able to solve this problem individually. The US government has appointed the Secretary of State as a leader on this issue, with the law specifying details for the government to render assistance to other countries in improving their measures to eradicate human trafficking and/or meet minimum standards according to the US law. These include investigative techniques, knowledge about victim protection, the exchange of visits and the allocation of grants and advice. These forms of assistance may be given directly to the country or through inter-governmental organizations or to non-governmental organizations that are involved with the enforcement of this law.

The US government is also aware that human trafficking, especially transnational human trafficking, has expanded rapidly due to the involvement of organized criminal groups and corruption in the countries of origin, transit and/or destination. Corruption is a major obstacle to the enforcement of the anti-human trafficking laws, with some corrupt state

officials taking part in the process and assisting organized criminal groups involved in human trafficking. Therefore, the United States' efforts against human trafficking involve bilateral and multilateral cooperation with other countries. Countries that offer inadequate cooperation, or avoid cooperating, may have their non-humanitarian assistance suspended, a form of sanction which sometimes makes the United States appear to be interfering with the sovereignty of other countries.

The US government emphasizes giving assistance to the victims of human trafficking, as they may be the keys to obtain evidence for arresting the broker, those with vested interests in the operations and the actual organized criminal groups involved in human trafficking. There are many cases in which victims of human trafficking also become offenders under the immigration anti-prostitution and/or labour laws, or become involved in document forgery, exposing the victim to criminal liability and damaging important evidence which may obstruct measures to combat organized crime.

6. Measures to Criminalize the Obstruction of Justice[63]

In the United States, a law exists which systematically criminalizes the obstruction of justice and this, over time, have been developed to cover a wide range of offences relating to this issue. Such laws are stipulated in Title 18 of the United States Code, Section 1501-8, which prevent the obstruction of justice and uphold the justice of all procedures of the federal court and other state agencies.

When the law concerning the obstruction of justice in the United States is compared with Article 23 of the United Nations Convention against Transnational Organized Crime, it is evident that the former is much broader in scope.

For example, Section 1506 of the United States Code stipulates that it is a federal offence to steal, modify or forge any court warrant so as to change, nullify or void the order or verdict of the court.

Section 1507 makes it a federal offence to exhibit a placard or stage a demonstration in or near the court premises, in or near the residence of

the judge, the jury, the witness or court officials with the intention of obstructing or delaying the administration of justice or preventing the carrying out of the duty of the court.

Section 1508 stipulates that anyone who records, or attempts to record, the procedures during a confidential trial of the jury, or secretly listens to such, or attempts to do so, shall be liable to be charged with a criminal offence.

Section 1513 stipulates that anyone who commits the criminal offences of murder, attempted murder, bodily assault or damage to property for the purpose of retaliation as a result of a victim's testimony or submission of evidence against them, shall be criminally liable.

Even though the four above-mentioned sections involve offences that clearly obstruct the procedure of justice, they are not covered by Article 23 of the United Nations Convention against Transnational Organized Crime.

Section 1503, known as the Omnibus Obstruction Provision, is of great importance, aiming to protect those who are involved in the trial process and to prevent the abuse of justice during trials in American courts. This law also aims to ensure that criminals are unable to escape the intention of the law by using new methods to interfere with the administration of justice. It prohibits attempts to influence the jury or court officials by threats, use of force, or any other conduct that has an impact on the administration of justice. This section applies to both criminal and civil cases, as well as to attempts to obstruct justice.

As for the elements of the offence under Section 1503,[64] the State has the duty to prove that:

1. the accused has a relation to the case which is being tried in the court;
2. the accused knows, or should know, the trial process of that case; and
3. the accused wrongfully intends to obstruct or interfere with the trial process or the administration of justice.

To be guilty of the foregoing offences, the defendant must intend to interfere with the administration of justice. Federal courts have held that the

government must prove that the accused knowingly and intentionally committed conduct which could foreseeably obstruct the administration of justice. This specific intent may be proved by circumstantial evidence.[65]

Section 1512 stipulates two measures for witness protection, viz. extensive protection covering prospective witnesses of the jury or investigative officers; and the addition of new laws and interpretations of the laws. This section also applies to all types of interference with witnesses.

As for the elements of Section 1512 (b), the government must prove the following four elements to show that the accused has wrongfully interfered with witnesses:

1. Conduct with full knowledge (intentional conduct)
2. Conduct involving threatening by force, corrupt conduct or corrupt solicitation of others
3. Intentional conduct which uses influence that aims to delay or prevent the testimony of others, or the concealment by others of information, documents or testimony
4. The three above elements interfere with the trial process.

In the case of the second element (threatening or the use of force), the law shall focus on the intent of the perpetrator to obstruct justice rather than the success or completion of the act.[66]

7. Measures to Combat Corruption[67]

The United States has been effectively able to combat corruption, resulting in a drastic reduction. Key factors include the strict prosecution of offenders, leading to the punishment of a large numbers of corrupt officials; publicity given in the mass media to serious corruption cases; and ongoing anti-corruption campaigns. However, corruption still exists, especially within the justice system itself, in particular law enforcement officials. Nevertheless, the United States is still a pace-setter when it comes to combating international corruption.

Corruption within the American justice system mostly occurs in the police force, with members of the force receiving lower salaries than prosecutors or judges and interacting more closely with the public, creating a range of opportunities for the receipt of bribes.

According to the report of the Knapp Commission, appointed by the Mayor of the City of New York in May 1970 to study factors involved in police corruption in the United States, those offering bribes to the police range from the general public to organized criminal groups. The general public offers bribes involving minor offences, while organized criminal groups offer bribes to facilitate their carrying out serious crimes without interference. However, bribe-taking by public prosecutors and judges is difficult to examine because they have independent discretionary powers and politics are involved in their recruitment.[68]

The Law against Corruption in the United States

Title 18 of the United States Code criminalizes many corrupt activities, such as offers of bribes, the abuse of power and misappropriation of property, with many sections covering the corruption of state officials at all levels, ranging from local and state to federal levels. There are also codes of ethical conduct, administrative regulations, and presidential orders to combat corruption. In general, measures to punish the offence of corruption under the United States' law are relatively severe, with the judge allowed very narrow discretionary powers to determine the sentence of the accused.[69] The Federal Bureau of Investigation (FBI), under the Department of Justice, has the power to investigate cases of corruption involving public agencies and high-level state officials who have abused their power for personal gain. The FBI has measures to examine the background and recruitment process of those who apply to join the bureau. The FBI, staffed by officials evincing honesty, integrity and a pride in their agency, has successfully combated corruption in the United States, with the Government Accounting Office, the Office of the US Attorney General and

the judiciary as well as the general public offering full cooperation.[70]

Apart from legal measures, the United States Office of Government Ethics holds training courses for officials in morals and ethics, in order to inculcate awareness and good moral practice. This office has the power to set out directives for high-level officials, such as the President, Vice President, members of Congress and certain officials prone to being corrupt, making them declare their annual income and its origins in order to prevent officials from receiving undue rewards from any person to the detriment of state interests.

The United States plays a leading role in combating international corruption, especially as the existing domestic laws of many individual countries do not cover international corruption. America, therefore, cooperates with many countries and inter-governmental organizations to set up groups to combat corruption, such as the Organization of Economic Cooperation and Development (OECD), the World Bank International Monetary Fund (IMF), the United Nations, and the Global Coalition for Africa. In 1997, the USA, together with thirty other countries, signed the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions in order to suppress such actions.[71]

8. Special Investigative Techniques

Wiretapping

The great potential of current advancements in communication technology are exploited by organized criminal groups, so governments of all countries are in need of additional measures to combat these organizations.

The United States Constitution guarantees "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall be issued, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized" (Amendment IV).

Similarly, the Omnibus Crime Control and Safe Streets Act, 1968, aims to protect individual rights while enabling states to obtain the information necessary for law enforcement.

Reasons to Request Interception of Electronic Communication

Although Section 2511[72] of the Omnibus Crime Control and Safe Streets Act 1968 prohibits the interception of electronic communication by telephone so as to protect individual rights, in order to investigate certain crimes to which normal investigative procedures do not apply, the law authorizes the interception of electronic communication by telephone in certain circumstances.

Criminal offences for which the interception of electronic communication may be authorized under Section 2516 (1) are mostly serious offences, or offences that may severely affect national security, or conduct that may obstruct law enforcement. Serious offences are as follows:

- Any offence punishable by death or by imprisonment for more than one year
- Any offence relating to the sabotage of nuclear facilities or fuel.
- Any offence relating to treason or riots
- Any offence relating to gang robbery, robbery and extortion
- Any offence relating to the offering of bribes to an officer and witness
- Any offence relating to the use of illegal explosions
- Any offence relating to the obstruction of law enforcement, obstruction of criminal witness testimony
- Any offence relating to murder and abduction
- Any offence relating to the offer, acceptance, or solicitation to influence operations of employee benefit plans
- Any offence relating to engaging in monetary transactions in property derived from specified unlawful activity

- Any offence relating to fraud by wire, radio, or television
- Any offence relating to the violation of witness protection measures
- Any offence relating to threats or retaliation against US government officials
- Any offence relating to the violation of the fiscal code
- Any offence relating to air piracy and espionage
- Any offence relating to the violation of the law relating to conspiracy

Competent Authorities for Authorizing the Interception of Electronic Communication

Each application for an order to authorize or approve the interception of a wire, oral, or electronic communication shall be made in writing upon oath or affirmation to a judge of a competent jurisdiction and shall state the applicant's authority to make such application.

Each application shall include the following information:[73]

1. The identity of the investigating or law enforcement officer making the application, and the officer authorizing the application;

2. A full and complete statement of the facts and circumstances relied upon by the applicant, to justify their belief that an order should be issued, including:

2.1 details as to the particular offence that has been, is being, or is about to be committed,

2.2 except as provided in subsection (11), a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted,

2.3 a particular description of the type of communications sought to be intercepted,

2.4 the identity of the person, if known, committing the offence and whose communications are to be intercepted;

3. A full and complete statement as to whether or not other investigative procedures have been tried and failed, or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;

4. A statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;

5. A full and complete statement of the facts concerning all previous applications known to the individual authorizing and making the application, made to any judge for authorization to intercept, or for approval of interceptions of, wire, oral, or electronic communications involving any of the same persons, facilities or places specified in the application, and the action taken by the judge on each such application; and

6. Where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

Criteria for Considering the Authorization of the Interception of Electronic Communication[74]

Before authorizing the interception of electronic communications, the court must find sufficient evidence to meet the "probable cause" standard under federal law. Probable cause must be found as to the following:

1. There is probable cause for belief that an individual is committing, has committed, or is about to commit a particular offence enumerated in the law;
2. There is probable cause for belief that particular communications concerning that offence will be obtained through such interception;

3. Normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous;
4. There is probable cause for belief that the facilities from which, or the place where, the wire, oral, or electronic communications are to be intercepted are being used, or are about to be used, in connection with the commission of such offence, or are leased to, listed in the name of, or commonly used by such person.

Each order authorizing or approving the interception of any wire, oral, or electronic communication shall specify the identity of the person whose communications are to be intercepted, if known; the nature and location of the communications facilities or the place where authority to intercept is granted; a particular description of the type of communication sought to be intercepted, and a statement of the particular offence to which it relates; the identity of the agency authorized to intercept the communications, and of the person authorizing the application; and the period of time during which such interception is authorized shall not exceed thirty days, except when necessary application for extension can be made and such application shall include details and reasons as using the same criteria as at first.

The above detailed procedures aim to control unreasonable interception. However, the Omnibus Crime Control and Safe Streets Act allows for certain circumstances in which interception is of the utmost urgency and in which it is impractical to wait for the official authorization of the court. Therefore, the law states criteria for the competent authority to intercept electronic communication without the authorization of the court in the following emergencies involving:

1. Immediate danger of death or serious physical injury to any person,
2. Conspiratorial activities threatening the national security interest, or

3. Conspiratorial activities characteristic of organized crime
4. The cases being intercepted must be cases which the court may authorize according to the law.
5. The application for this interception must be made to the court within forty-eight hours after the interception has occurred, or begins to occur.

However, methods to intercept communication were relaxed when the Patriot Act was introduced, as this act allows for the interception of electronic mail, as previously mentioned.

9. Measures for International Cooperation between the United States and Other Countries[75]

Since overseas organized criminal groups have developed international networks by exploiting loopholes in jurisdictions and state sovereignty for their personal gain, the government of the United States has initiated important cooperation on law enforcement with the governments of other countries as follows:

9.1 The Penal Code

The Penal Code of the United States gives power to the Attorney General to set up the United States National Central Bureau (USNCB) to liaise between domestic law enforcement agencies and those in overseas countries which are members of Interpol.

9.2 The United States' Naturalization and Immigration Laws

The law of the United States gives power to the Overseas Immigration and Naturalization Office to cooperate with other countries in collecting and analyzing intelligence on immigration, and the training of law enforcement officers, including the investigation and prosecution of illegal immigrants and the trafficking in migrants. Cooperation between the Overseas Immigration and Naturalization Office and the UNSCB results in the effective enforcement of laws in combating transnational organized crime.

9.3 Presidential Decision Directive

The 42nd Presidential Decision Directive (PDD) is considered to be the starting point of law enforcement cooperation in preventing and combating transnational organized crime and is a prototype which the United States has developed in order to render cooperation under Article 27 of the United Nations Convention against Transnational Organized Crime, 2000.

9.4 Legal Attache Programme

The United States deploys agents from the FBI in their overseas embassies as legal attaches under the Legal Attache Programme, with the duty of facilitating the combat of crime and international terrorism by liaising with security and law enforcement agencies in other countries. At present, there are 50 American embassies or consulates at which eighty-two legal attaches are employed. This programme has proved successful in furthering cooperation on law enforcement with other countries.

10. Multi-Agency Task Forces[76]

As outlined in Chapter 2, the United States has a long history of being seriously affected by activities of organized criminal groups, dating back to the days of Al Capone and on through the migration of many Mafia families to New York City and Boston. At first, the Mafia committed general street crime, such as collecting protection money and gambling. Later, they expanded into narcotics, firearms, threats and debt-collecting, progressing to using labour unions as their tool for collecting protection money. More recently, other types of organized criminal groups have expanded into the United States, in particular Chinese organized crime and criminal gangs from other countries in Asia. Even though the country has great experience of dealing with organized criminal groups, the fact that the American Constitution guarantees the rights and liberty of individuals has resulted in the country encountering legal difficulties in combating the masterminds behind organized crime.

Furthermore, organized criminal groups have vast resources in terms of manpower, money and influence, as well as personnel well-versed in

both economics and law. They are able to employ experts in various fields to carry out their activities in ways that are systematic and complex to trace, including the use of dummy companies as a front for illegal activities, increasing the difficulty faced by the police or specialized agencies in arresting the members.

In the light of its experience, the United States has been forced to review the role of individual agencies and pursue the concept of integrated law enforcement agencies and expertise in order to systematically and thoroughly trace and investigate criminal activities and prosecute members of organized criminal groups. This has resulted in the setting up of a multi-agency taskforce known as the Organized Crime Drug Enforcement Task Force (OCDETF). OCDETF is comprised of experts from federal, state, and local levels, such as the FBI, public prosecutors, excise, revenue and treasury officers, experts in the fields of finance, information technology, forensic science, the interception of electronic communications and others. OCDETF members work together as partners, using their expertise to investigate and collect evidence of the illegal activities of organized criminal groups. This type of teamwork over an extended period of time, unlike the committee system prevalent in Thailand, enables extensive training to be effectively given to a specific target group. For example, having a public prosecutor working in a team from the outset eliminates possible legal loopholes that organized criminal groups could use to evade prosecution. This is of the utmost importance, as organized criminal groups are able to conceal many things if they employ a capable lawyer who can identify and exploit loopholes ready to serve their organization. In the past, this use of legal techniques enabled many members of organized criminal groups to evade justice, especially by exploiting flaws in police methods which the police themselves regard as being of little importance. After the OCDETF had been set up for some time, the US government formally established OCDETF as a permanent taskforce with the duties of investigating, preventing and combating specific cases of organized crime.

Having such a special multi-agency taskforce has proved to be useful in carrying out raids, arrests and searches: even though accused persons who belong to organized criminal groups have well-planned methods and ways of concealing their tracks, there are still clues left to be investigated by the experts. For example, information technology experts are able to examine the vestiges of information left in a computer and have the necessary expertise to decode the owner's password. In addition, if the authority cannot find any other evidence, offenders can be charged under the Anti-Money Laundering Law if there is evidence of suspicious financial transactions. In some cases where the actual income has been laundered to erase all traces of its origin, taxation measures may still be applied resulting, for example, in tax evasion charges. In the past, many key members of organized criminal groups had to be imprisoned on such charges. Because of the lack of witnesses to testify against them for other offences, often the only charges remaining, which would sustain a conviction, were for tax evasion.

Measures Adopted in Other Countries

In addition to the measures adopted by the United States and United Nations to prevent and combat organized crime and discussed above, many effective measures are in use in other countries. Some of the more noteworthy ones are referred to below.

1. Measures for the Confiscation of Property

1.1 Measures in the United Kingdom for the Confiscation of Property under the Anti-Money Laundering Law

In the United Kingdom, the common law system has been influenced by Christianity, with the confiscation of property being mentioned in the Bible: "If a cow causes the death of a person, the animal will be stoned and the meat not eaten. The owner of the cow will not be punished".[77] This means

that if a cow inflicts damage on others, the owner of the cow will lose the right to the property (i.e. the cow), the owner will not be guilty of an offence. This religious precept led to the legal principle which focuses on the agent inflicting the damage, so that if property, animate or inanimate, inflicts damage on others, it shall be forfeited to the State or destroyed

Process of Confiscation

There are two schools of thought regarding the process of confiscation:

1.1.1 *In Rem* Proceedings: the process of confiscating property specifically, without considering the liability of the owner. The verdict shall apply only to the property and is not intended to punish the offender(s). The confiscation of property shall affect those claiming ownership, or stakeholders, even though they are unaware that their property is being confiscated.[78]

1.1.2 *In Personam* Proceedings: the process of confiscating property taking into consideration the persons who have been accused of committing a crime. It shall consider whether the accused is guilty as charged or not. Once the accused is found guilty, the court may punish the accused by means of the confiscation of property without considering whether such property is part of the offence or not. The process of property confiscation shall be regarded as part of the criminal prosecution. The trial in this case aims to punish persons and the verdict shall be binding only to those who appear before the court.[79]

1.2 Measures in Australia for the Confiscation of Property[80]

The Australian Proceeds of Crime Act, 1987, is a law for the confiscation of property existing in Commonwealth countries, giving powers to officials to trace, seize, impound and confiscate the property of offenders. Although this law prohibits the confiscation of property or any order involving property until the person has been sentenced and their guilt has been proved, it empowers the Australian Attorney General to freeze the rights to property that may be

confiscated after the charge has been notified to the accused, or within 48 hours before the charge is notified.

This law gives power to confiscate property used in, related to, or derived from criminal activities. The law gives power to the Attorney General to issue a Pecuniary Penalty Order[81] to confiscate the profits gained from criminal activity to the government, and is applicable to any property of any person who has been proved to be involved with criminal activity, with the court estimating the value of the income or profits derived from the criminal activity.

Furthermore, under this law, offences involving money laundering are stipulated by specifying that financial institutions must maintain documents for up to seven years. The goal of this law is to give power to the state to trace and confiscate the property of offenders, and to reduce the economic power of the criminal by applying the confiscation of property as a legal tool. The law also stipulates a punishment of up to twenty years imprisonment or a fine of up to A$200,000 for natural persons and of up to A$600,000 for legal persons who commit money laundering offences.

Moreover, in 2001 the federal government of Australia passed the Proceeds of Crime Bill, which aims to facilitate greater use of the confiscation of property and has become an important measure in combating organized crime.

2. Anti-Money Laundering Laws

2.1 Anti-Money Laundering Laws in Australia[82]

Australia has fully-developed legal measures against money laundering, with preventative and combative measures against all forms of this crime in addition to a strong central agency, the Australian Transaction Report and Analysis Centre (AUSTRAC). The Customs Act of 1901 is an important law which empowers states to seize income derived from the narcotics trade, irrespective of whether it is cash, cheques or any other form of property, and also empowering the court to order fines of an amount equivalent to the interest gained from narcotics trade. This law does not clearly stipulate narcotics offences as predicate offences. However, it authorizes the State to prevent and

combat money laundering through the confiscation of property derived from illegal activities in general.

Moreover, the Proceeds of Crime Act, 1987, specifies criteria for the court to order the confiscation of property that has been used for, or involved in, illegal activities. This law also authorizes police officers to apply for a court order to summon financial institutions to submit information to the police when there is probable cause or reason to believe that a serious offence has been committed, or is about to be committed, involving narcotic trafficking, public fraud, tax evasion or money laundering; or that a person has received, or is about to receive, interest, either direct or indirect, from illegal activities. The act orders financial institutions to keep financial transaction documents for up to seven years, and empowers the police to seek a search warrant from the court, even by telephone in the case of emergency, when there is probable cause to believe that a person is in possession of tainted property. This law punishes both natural and legal persons who launder money, with severe fines and long terms of imprisonment.[83]

The Proceeds of Crime Act does not stipulate any predicate offences which must underlie the offence of money laundering. Rather, it specifies both the power of authorities, such as the court and the police, to combat money laundering, and punishments for offenders, both natural and legal persons, who launder money or who aid and abet money launderers (e.g. by attempting to procure or move property to help offenders evade punishment).

The Telecommunications Act of 1991 allows competent authorities to apply for court orders to intercept telephone communications in serious cases, such as narcotics trafficking, murder, abduction and tax evasion. The interception of telephone communications is an important tool in combating money laundering offences as it gives additional powers to officials and supports their searches for the necessary information for preventing and combating money laundering.

The Financial Transaction Report Act of 1988 aims to solve the problem of tax evasion and the concealment of funds in order to commit further crimes. The range of offences includes those involving financial institutions; narcotic trafficking; money laundering; and organized crime. This law compels all financial institutions to report to AUSTRAC suspicious financial transactions involving irregular persons, processes or circumstances, such as the type of business and its relation to other crime. The measure is aimed primarily at cash dealers who are known to violate the regulations.[84]

According to the AUSTRAC definition, "a financial transaction" means any business transacted between a dealer and their client, including normal transactions and special transactions which are not specified by law, with cash dealers having the duty to report suspicious transaction to the authorities in all cases.

The Financial Transaction Report Act covers not only cash but also other forms of financial transactions, such as telegraphic transfer of funds and the purchase of cheques, drafts or traveller's cheques over A$10,000 which shall be accompanied by the completed Significant Cash Transaction Report.

Under the Financial Transaction Report Act, "suspicious transactions" can be inferred in the case of:

1. Opening an account with a cash dealer in a false name.
2. A financial transaction process that is related to the evasion of transaction report or other forms of crime
3. Transnational money laundering and tax evasion in nature.
4. Each transaction involves large amounts of money which cannot be accounted for.
5. Financial transaction involving public fraud.
6. A financial institution involved in the smuggling in of income from an overseas business.
7. A financial transaction affects the system of domestic financial institutions.

In addition, AUSTRAC specifies that the transfer of funds into the following countries shall be regarded as a suspicious financial transaction.

1. To countries involved in narcotic trafficking or transit countries thereof, for example some countries in the Middle East, Eastern Europe, or Central and Southern America.

2. Countries involved in money laundering for organized criminal groups and tax evasion (i.e., tax havens), such as some countries in the Caribbean, some parts of Europe, and some parts of the Pacific.

Furthermore, the law specifies principles to determine unusual transactions, such as:

1. The changing of substantial amounts of low value banknotes
2. Undocumented financial transactions
3. The transfer of high amounts of funds without legitimate origin
4. The making of frequent deposits into an account by transferable monetary documents such as bank cheques, cashier cheques, bearer bonds, each deposit falling just within the legal maximum.
5. The use of high amounts of traveller's cheques.
6. The unusual opening of accounts, such as opening more accounts than normal for a business; using different account holder names; accounts having no direct relation to the business; or the opening of accounts by many people in numerous countries for the purpose of moving funds.
7. Unusual transfer of funds, such as telegraphic transfer, involving large sums of money; the transfer of money into temporary accounts or to account holders lacking an address or business; or financial transactions with financial institutions for the purpose of transferring funds only.
8. Depositing large amounts of money in a deposit box at night.

9. Laundering money from illegal businesses by depositing it into the account of a legitimate business.[85]

2.2 Anti-Money Laundering Laws in Malaysia[86]

The Malaysian Anti-Money Laundering Law 2001 is a detailed law to combat money laundering, with as many as 119 predicate offences,[87] which imposes severe punishments and has supportive measures for state officials to combat money laundering. The law also stipulates punishments for those who obstruct the work of officials by various means, including assault, refusal to cooperate on giving information, giving false testimony, destroying evidence and compromising the secrecy of the investigation. All these offences may result in a fine of up to one million ringits, or imprisonment of up to one year. This law gives power to the authorities to search or arrest without warrant, leading to the observation that it may violate human rights and liberties.

The definition of money laundering under the Malaysian law means the direct or indirect management of transactions involving illegal activities; property derived from illegal activities; the procurement, transfer, change in form, exchange, destruction, use, export or import of property involved with, or derived from, illegal activities.

The elements of the offence under the Malaysian Anti-Money Laundering Law[89] include any person who takes part in illegal activities, or who attempts to do so, or who renders any assistance whatsoever to persons committing crime or involved in any offences stipulated under this law.

Moreover, under the Malaysian law, the Labuan Offshore Financial Services Authority (LOFSA) has been established with responsibility for the operation of unregistered financial institutions with international networks, such as casinos. This office provides international services, like policy-setting to control the work of financial institutions and the standards of laws to prevent and combat money laundering; enforcing the law to register new financial transactions; providing investment incentives; maintaining

personal information on the clients of financial institutions; and reporting the origins of money. The prominent features of the Malaysian Anti-Money Laundering Law are that it itemizes many predicate offences and sets out severe punishments for offenders, resulting in the effective combating of money laundering.

2.3 Anti-Money Laundering Laws in Italy[90]

In Italy, the Anti-Money Laundering Law is explicitly stipulated in the Criminal Code, and is a specific law aiming to combat Mafia-type criminal activities. It gives full power to the police and public prosecutors to investigate, search and arrest those who are involved with such activities and enables the authorities to seize the property of Mafia groups, even though such property has not yet been proved to be involved with criminal activity. The Italian Criminal Code also stipulates that the offering of money or financial support to Mafia groups is an offence. This includes the demanding, receiving and concealing of money or merchandise involved in the criminal activity of the Mafia being classified as offences liable to imprisonment or a fine, with supporters, or those rendering assistance in any way, receiving punishment on a par with the key perpetrators.

In addition, the Decree-Law 306 has been enacted to amend the Code of Criminal Procedures, while the Provision against Mafia-Type Activity has been enacted in order to enable the Criminal Code to cope with the criminal activities of the Mafia and to provide protection for the authorities during the performance of their duties.

Such laws give power to public prosecutors to seize or freeze property when there are sufficient grounds to do so according to the law, or when they receive a request from the police. Furthermore, they authorize the court to demand additional investigations, or give orders to seize or freeze the property of persons who may be involved, directly or indirectly, with criminal activities, or take other precautionary measures, when there are grounds for suspicion, or their income is incommensurate with their professional status. It

also gives power to officials to take special measures to intercept communications in certain types of offences.

Italian law regards the control of financial transactions as an important measure to prevent and combat money laundering. The Decree-Law No. 143 of 1991, amended by the Decree-Law No. 153 of 1997, aims to prevent financial institutions from being used to launder the money of organized criminal groups. It specifies that financial transactions of over 20 million lira must be done through authorized financial or business institutions.

Financial institutions that are required to report transactions are as follows:

1. Post office
2. Loan companies
3. Real estate companies
4. Stockbrokers
5. Money exchangers
6. Security trading companies
7. Investment consulting companies
8. Finance and security companies
9. Insurance companies
10. Any other businesses that provide financial transactions, such as lease holdings, international money transfers and credit cards.

In summary, the Italian law aims specifically to control the financial criminal activities of Mafia-type groups, because organized criminal groups in Italy have global economic and political power. The Italian government therefore pays special attention to financial transactions that display the characteristics of money laundering. In addition, the Italian laws have been applied in the surrounding regions, such as the Mediterranean.

3. Witness Protection Measures

3.1 Witness Protection Measures in Germany[91]

In Germany, no specific law exists to provide witness protection to those who are involved with organized criminal groups. However, the Witness Protection Programme, under the Criminal Law Procedures and the Police Law, can be applied to terrorist crimes and organized criminal groups as follows:

3.1.1 Witness protection under the Criminal Law Procedures gives priority to the confidentiality of the witness, with information provided by the witness being kept in secret. In important cases, the law stipulates that a lawyer must be provided for the witness in order to ensure that they are fully informed of their own rights.

During a trial in court, visual contact between the witness and the accused is avoided, as it may either intimidate the witness and lead to their not revealing the whole truth, or arouse their anger and wish for revenge. The court may authorize the witness to testify in the absence of the accused, although the court must then inform the accused of the content of such testimony. Testifying through video-conferencing, whereby the witness is in a secure place but able to give testimony to the court, is also practised.

3.1.2 Witness protection under the Police Law is an additional measure to support the Witness Protection Programme under the Criminal Law Procedures, which does not cover the period both before and after the trial. The Witness Protection Programme under the Police Law provides psychological care and counselling as well as police protection for the witness, the duration of which depends on the severity of the crime. Arrangements can also be made to change the witness's identity and personal history and to provide both a temporary subsistence allowance and occupational support to enable them to make a living

3.1.3 In practice, the police, together with the court, arrange a Witness Protection Programme by setting up a Witness Protection Agency which has experience in providing witness protection. Witnesses must consent to participate in this programme and have to meet its physical and psychological criteria.

3.2 Witness Protection Measures in Australia[92]

Witness protection in Australia was introduced in conformity with the American model, and has been developed and enforced throughout the country, resulting in the successful combat of organized crime.

The law stipulating witness protection is the Witness Protection Act 1994. This lays out criteria involving effective witness protection.

The Commissioner of the Australian Federal Police has the responsibility for determining the eligibility for admission to this programme; for developing methods and forms of protection; and for reporting to the Australian Minister of Justice the implementation of the programme and any problems and obstacles which occur.

Witnesses must disclose all information before they are considered by the Commissioner of the Australian Federal Police for admission to the programme. Such information includes their legal liability under any other laws; debts; criminal record; medical history; business activities; financial and property liability. In addition, they must undergo a physical and psychological check-up.

Once the agreement has been made, a memorandum of understanding between the officials and the witness is signed. This aims to document the reasons for providing witness protection; details of the protection and assistance to be rendered; the termination of the programme if the conditions are violated; and other measures, such as the establishment of a new identity, relocation, cost of moving and transportation, the provision of lodging for the witness, assistance with occupational training to make a living and so on. The disclosure of witness information shall be prohibited, and shall be under the responsibility of the Commissioner of the Australian Federal Police, who has a duty to keep the confidentiality of the information and the authority to authorize the controlled disclosure of the witness's new identity, location and so on. The law allows the public prosecutor to refrain from presenting to the court witness information under this programme, except when it is compulsory that they do so. The law also prohibits the court from disclosing information about such witnesses.[93]

3.3 Witness Protection Measures in Japan[94]

Witness protection in Japan is stipulated in the Criminal Procedures Code and includes important measures, such as bail not being granted to the accused if there are reasonable grounds to believe that the accused may intimidate or cause harm to the witness, lawyer or relatives of the witness, even though such relatives are not directly involved in the case; and the presence of a partition between the witness and the accused during the witness's testimony, with a provision for the use of closed circuit television.

Furthermore, the court may order the accused to leave the court when there is sufficient reason to believe that the witness is not able to fully testify if the accused remains in the court chamber. In special circumstances, the Criminal Procedures Code allows the witness to testify outside the court. In this case, the accused or the defence counsel may participate in the questioning of the witness only if the questioning will not interfere with the witness's testimony, with questioning on the whereabouts of the witness and personal information about the witness being prohibited.

4. Legal Measures Involving the Obstruction of Justice

4.1 Legal Measures Involving the Obstruction of Justice in Germany[95]

In Germany, there is no specific law involving the obstruction of justice, with measures being embedded within various sections of the Criminal Code itself, although they are not as detailed or extensive as the laws in the United States. However, the German law conforms to the commitment contained in Article 23 of the United Nations Convention against Transnational Organized Crime. Noteworthy measures of the German law include the punishment of those who encourage others to give false testimony, with up to two years imprisonment or a fine; and six months imprisonment or a fine for those who encourage others to verify a false statement. The attempt to commit false testimony is also an offence.

Furthermore, the law stipulates that those who use force or intimidation to make people do or not do something, as well as the attempt to do so, shall be liable to imprisonment or a fine. The punishment shall be increased in cases where the offences are committed by officials. Those who use force, or threaten to use force, to encourage resistance against, or serious attack on, law enforcement officials in the course of their duties shall be liable to punishment, which shall be increased if weapons or violence are used, resulting in danger to, and the injury or death of the victim.

4.2 Legal Measures Involving the Obstruction of Justice in Australia

In Australia, the obstruction of justice is an offence stipulated in three parts of the Crimes Act, 1914, and in twenty-two of the Sections of Offences Relating to the Administration of Justice. The following important measures exist:

- The intimidation or use of force causing damage or loss to witnesses, or prospective witnesses, is subject to five years imprisonment.
- Punishment for those who offer bribes to witnesses, or prospective witnesses, by demanding or encouraging people to give false testimony or to refrain from giving the truth.
- Punishment for those who deceive or lure witnesses, or prospective witnesses, with the intention of distorting their testimony.
- Punishment for those who destroy documents or other materials which have been, or are to be, used as evidence in the prosecution of the offence.
- Punishment for those who intentionally obstruct persons from receiving a subpoena to be a witness in any case, or from receiving a court order to be a witness in the court.
- Punishment for those who intentionally collude, or attempt to collude, to obstruct the administration of justice involving the

court, or to prevent the implementation of the agreement as decided upon. However, this section does not cover interference with the witness's testimony in the court.

5. Anti-Corruption Measures

5.1 Anti-Corruption Measures in the People's Republic of China (Hong Kong S.A.R)

In the past, as a legacy of its status as a British Colony, Hong Kong was riddled with corruption and was a transit hub for various kinds of activities. Corruption amongst officials, in particular the police, was rampant, with people accepting bribery as part of daily life in Hong Kong.[96]

In 1974, the Independent Commission against Corruption (ICAC) was set up, reporting directly to the Governor of Hong Kong. This agency aims to prevent and combat corruption at all levels, in both the public and private sectors.

Laws Relating to Corruption

1. The Independent Commission against Corruption Ordinance is the law under which the ICAC was established.
2. The Corrupt and Illegal Practices Ordinance is the law concerning corruption and illegal activities
3. The Prevention of Bribery Ordinance is the law preventing the offering of bribes

The ICAC has used the above three laws to combat corruption by focusing on the criminal case rather than disciplinary action.[97]

The ICAC itself is divided into three Departments - Operations, Corruption Prevention and Community Relations - with the ICAC Director, or authorized personnel, having the power to investigate and submit a case to the public prosecutor for further legal action.[98]

The three departments have different responsibilities:

1. Operations Department: responsible for receiving complaints and considering and investigating alleged corruption charges. ICAC officials

must act within 48 hours, having the power to detain people for no longer than this, and powers to arrest and search suspects when there are sufficient grounds to suspect corruption, subject to the court warrant.

2. Corruption Prevention Department: responsible for the prevention of corruption in both the public and private sectors. It has a duty to advise the private sector on the issue of corruption prevention, which is then bound to implement such recommendations. Corruption prevention officers are recruited from amongst experts in various disciplines, such as law, engineering, accountancy and administration.[99] This unit adheres to the principle of prevention rather than suppression, with the emphasis on the improvement of the system rather than changes in personnel.

3. Community Relations Department: Hong Kong recognizes that the general public make the best partner in combating corruption. It therefore arranges for officials of ICAC to meet people of all backgrounds and professions. They disseminate knowledge and run public campaigns through the media to increase people's awareness of the impact of corruption, encourage moral education in schools, starting at the primary level, and mobilize people to combat corruption.

Anti-corruption methods in Hong Kong have been widely recognized as being extremely successful. China and many other countries have therefore adopted the Hong Kong model for use in their own countries. The reason the ICAC in Hong Kong has been so successful is the strength of government support for adopting effective measures as government policy. Each year, more than US$90 million and 1,300 personnel are allocated to this task, and more than 2,780 supporting agencies have been set up to support the ICAC's operations.[100] Other salient factors contributing to the success of the ICAC are strict implementation; a good recruitment system emphasizing expertise; and the fact that Hong Kong has a relatively small population, with the majority having received moral inculcation since early childhood. The ICAC receives full cooperation from the general public and other countries to combat corruption.

5.2 Anti-Corruption Measures in Singapore[101]

Corruption was prevalent in Singapore during the era of British colonization and its early years of independence. In that era, corruption was carried out in a systematic way which was difficult to combat. One small office, the Anti-Corruption Branch, existed to combat corruption and was unsuccessful because public officials themselves were involved in the corruption and the authorities had limited powers under the law.

Later on, in 1959, the People's Action Party was elected to office and implemented counter-corruption measures as part of its policy. Its election marked the inception of serious anti-corruption activities in Singapore. The government began by increasing the penalties and widening the scope of offences in the Anti-Corruption Act. It also gave more investigative powers to the authorities and the Corrupt Practices Investigation Bureau (CPIB). Recognizing that low salaries may be one factor leading to corruption, the salaries of government officials and politicians were increased.

Laws Relating to Corruption

Under the Prevention of Corruption Act, 1960, an amendment to the Prevention of Corruption Ordinance of 1937, corruption is defined as the demanding, receiving, agreeing to receive, or making a promise to offer remuneration to encourage people to do or refrain from doing any activities with the intention to corrupt. This law penalizes both the instigator and recipient, including those who receive by proxy. Furthermore, by enacting two laws, the court was given powers to freeze and confiscate unaccountable property derived from corruption: the Corruption (Confiscation of Benefits) Act of 1989, and the Corruption, Drug Trafficking and Other Serious Crimes Act of 1999. In addition to imposing fines and imprisonment, the court may order the accused to return the bribes that have been received.[102]

The CPIB is an independent agency, reporting directly to the Prime Minister of Singapore.[103] It has similar powers to the police to investigate, arrest and detain suspects in corruption cases; to confiscate and freeze property; to examine accounts; and to prosecute offenders in the court, subject to the

approval of the public prosecutor. The CPIB has powers to examine the implementation of every agency, to track irregularities and give advice to the agencies involved, and also to check the backgrounds of officials involved in investigating corruption.[104]

The law stipulates that all public officials, their spouses and underage children shall annually declare their property and other investments. Those who are found to be unusually wealthy may be asked to account for the sources of their income. Other noteworthy measures include the prohibition of officials from receiving gifts or money from people who contact them in an official capacity, as well as any form of entertainment. As for souvenirs from visitors, officials may receive them, but they must be given to the agency or, if kept in private, they must pay its estimated value to the agency at the rate set by the Accountant General.

Furthermore, the office provides education and training for public officials involved in the enforcement of anti-corruption laws and has compiled an operational manual to ensure strict compliance and to prevent public officials from taking part in any corrupt activities themselves.

6. Plea Bargaining Measures

Plea bargaining, with the aim of reducing the case-load in the courts, is an important measure that can identify and trace the key perpetrators or masterminds behind criminal activities and bring them to justice. Apart from the effective plea bargaining measures used in the United States, the Israeli and Italian plea bargaining systems are also effective in obtaining information and reducing the numbers of cases in the courts.

6.1 Plea Bargaining Measures in Israel[105]

Israeli law has been influenced by the common law system which regards both sides as adversaries, although Israel does not use the jury system. When a crime occurs, police have the power to investigate and the public prosecutor has discretionary powers to determine which cases should be prosecuted. Due to the country's domestic situation, the law in Israel gives priority to public interests.

Originally, the law concerning plea bargaining arose through court decisions. Later on, in 1995, plea bargaining measures were included in the Criminal Procedure Law, Section 19, which binds the judge and the plea more tightly and provides more opportunities to search for the truth. This law also increases the chances for public prosecutors to present facts to the court and to receive more information from the alleged offender.

Section 155 (a) of Israel's Criminal Procedure Law defines plea bargaining as "an agreement between the prosecutor and the accused concerning the content of the punishment, or concerning any other issue that relates to the outcome of the trial or to another criminal proceeding, including that of investigation; and this is in exchange for the accused person's undertaking to make an in-court admission to the facts stated in the indictment and to fulfill the condition specified by the agreement."[106]

Plea bargaining in Israel utilizes two methods: charge bargaining and sentence bargaining, which cover other issues related to the result of the court verdict and other processes, including investigation.

Plea bargaining can be entered into at various stages, ranging from pre-trial to any stage during the trial.[107]

The Scope of Plea Bargaining[108]

1. The public prosecutor shall utilize their discretionary power when entering into plea bargaining by prioritizing public interests.
2. Plea bargaining that involves multiple offenders shall be considered on the following two grounds:
   2.1. Attempts should be made to maximize the public interest.
   2.2. Attempts should be made to minimize losses to the public interest.
3. The public prosecutor is prohibited from entering into an agreement with the accused on the following two issues:

3.1. Non-submission of the criminal record of the offender to the court, as this would prevent the court from knowing about the past criminal behaviour of the alleged offender.

3.2. Any agreement on non-opposition to sentence reduction of the accused.

4. In important cases, the public prosecutor must take into consideration the opinion of the aggrieved parties in plea bargaining.

When both sides submit a plea bargaining agreement to the court to determine the sentence, the court verdict shall be bound to the plea bargaining agreement. An opportunity shall be given to the court to review the public prosecutor's agreement and it may reject the deal made by the public prosecutor if it deems that such an agreement is not in the public interest. The decision of the court may come under scrutiny; therefore the court must be certain that the plea bargaining agreement was truly not in the public interest. It can therefore be seen that Israeli law is extremely delicate.

Criteria for Plea Bargaining[109]

In principle, plea bargaining must be undertaken by the defence lawyer and the public prosecutor: as the accused person may not be able to understand or foresee the consequences of any agreement entered into, the involvement of a lawyer to provide advice aims to protect the rights of the accused. However, if the accused has no lawyer, they may enter into an agreement by themselves and have the right to receive detailed explanations of the plea bargaining process. In such a case, the court remains neutral and does not take part in any negotiations. Plea bargaining in serious cases must be done in writing, except when verbal agreements are made in front of the court and the court admits such an agreement into the system, after which the agreement shall be put into writing. The court records an agreement when it is certain that

the accused has full understanding of the contents and entered into it voluntarily, consciously, and with the ability to foresee the consequences of having done so.[110]

A plea bargaining agreement is not a civil contract to which both sides must be bound: the accused is permitted to terminate the agreement, their rights not to go against themselves in a criminal case having been recognized, while the law allows the public prosecutor to terminate the agreement as they have a duty to uphold public interests.

Nevertheless, there is a provision which protects the accused: the documents and information of the plea agreement cannot be used against the accused when the plea bargaining agreement is incomplete, as to do so would violate their rights not to incriminate themselves.

6.2 Plea Bargaining Measures in Italy[111]

The legal system in Italy has a fundamental principle of not regarding both parties as true adversaries. Plea bargaining takes two forms: summary trial and plea bargaining in cases of misdemeanours. The Italian method of plea bargaining differs from those of the common law countries, being an agreement on the form of prosecution. Since the Italian Constitution upholds the principle of prosecution, the power of the public prosecutor is limited to an examination of truth from evidentiary and legal aspects, whether or not it is sufficient to prosecute, and there is no opportunity for public prosecutors to trade public interests with the interests of the accused in either of the two forms of plea bargaining.

6.2.1 The Summary Trial

Under an agreement between the public prosecutor and the accused person, a summary trial can be chosen instead of a normal trial. Subject to the approval of the public prosecutor, the accused is given an opportunity to petition to the court to be tried under a summary trial. The public prosecutor

may petition to the court to accept, in order to either reduce their case load or when there is inadequate evidence to lead to the conviction of the offender in a normal trial.

In a summary trial, aggrieved parties in civil and criminal cases may be part of the considerations, or may refuse the request to hold the trial in this form.

The trial procedure of the summary trial, as agreed upon by both parties and granted by a court, has the following characteristics:

- The court must reduce the sentence by one third or commute life imprisonment to a thirty-year term of imprisonment.
- The summary trial will be held only at preliminary hearings. The court will consider the case from the file of the public prosecutor without questioning the witness.

6.2.2 Plea Bargaining

Plea bargaining is an agreement by both parties to determine a fixed term of punishment which is then submitted to the court. This differs from a summary trial which is an agreement to choose the form of the trial.

Plea bargaining in Italy is used only in criminal cases that have light punishments, with the requirement that, at any time before the trial, both parties may request the court to approve their agreement on appropriate punishment. The court may do so when the reduction of sentence is not more than one-third or no more than two years imprisonment.

After studying the problems and measures for the prevention and combat of problems derived from organized crime in Thailand, the author found that they lack effectiveness. The law in Thailand has not yet been amended to specifically prevent and combat the illegal activities of organized criminal groups which not only exploit loopholes in the law but also advancements in modern technology to improve their forms and methods of committing crimes and create ways of expanding and protecting their network. As their activities have

a tremendous impact on the development of the country in general and on public well-being, there is an urgent need for measures to prevent and combat this problem.

This chapter has examined the impact of problems derived from organized crime in many countries and how these countries responded by introducing new measures to cope with the problem. Some countries have successfully implemented such measures, while attempts have been made to have an international agreement to deal with this problem. Many countries have become States Parties to a range of United Nations Conventions. Some countries, such as the United States and Australia, have unique measures to combat organized crime, leading to successful solutions to the problem. It is, therefore, suggested that Thailand adopt similar measures, consistent with the nature of organized crime in the country, to combat the problem, while striving for an appropriate balance between the combat of organized crime and the protection of people's rights. Such measures are to be proposed in detail in the next chapter.

[1] *The Thailand Criminal Law Institute and the National Research Council, "Transnational Organized Crime: A Crisis that Needs Solving", Conference Materials, 21 June 2001, p.1.*

[2] *The United Nations Convention against Transnational Organized Crime became effective as international law on 29 September 2003. 147 countries are signatories to this Convention and 122 countries have ratified the Convention (as of 3 July 2006). www.unodc.org/unodc/crime_cicp_signatures.html.*

[3] *UN Convention, Article 2.*

[4] *Ibid, Article 5.*

[5] *Ibid, Article 6.*

[6] *Prayoonrat, S., An Explanation of the Anti-Money Laundering Law, (Kham Atibai Phrarachabanyat Pongan Lae Prabpram Garn Fork Ngern) 1st Edition, Bangkok: Winner Asia Trade Co. Ltd, 1999 (B.E. 2542) , p.72.*

[7] *UN Convention, Article 6 Paragraph 1(a) (i).*

[8] *Ibid. Paragraph 1(a) (ii).*

[9] *Ibid. Article 8.*

[10] *Ibid. Article 8 Paragraph 1 (a).*

[11] *Ibid. Article 8 Paragraph 1 (b).*

[12] *Ibid. Article 8 Paragraph 2.*

[13] *Ibid. Article 23.*

[14] *Ibid. Article 23.*

[15] *Ibid. Article 23 (a).*

[16] *Ibid. Article 23 (b)*

[17] *Ibid. Article 12.*

[18] *Ibid. Article 12 Paragraph 1(a).*

[19] *Ibid. Article 12 Paragraph 1(b).*

[20] *Ibid. Article 12 Paragraph 3.*

[21] *Ibid. Article 12 Paragraph 4.*

[22] *Ibid. Article 12 Paragraph 6.*

[24] *Ibid. Article 12 Paragraph 7.*

[25] *Ibid. Article 16.*

[26] *Ibid. Article 17.*

[27] *Ibid. Article 13.*

[28] *Ibid. Article 18.*

[29] *Ibid. Article 19.*

[30] *Ibid. Article 20.*

[31] *Ibid. Article 21.*

[32] *Ibid. Article 22.*

[33] *Ibid. Article 24.*

[34] *Ibid. Article 24 Paragraph 1.*

[35] *Ibid. Article 24 Paragraph 2 (a).*

[36] *Ibid. Article 24 Paragraph 2 (b).*

[37] *Ibid. Article 25.*

[38] *Ibid. Article 25 Paragraph 1.*

[39] *Ibid. Article 25 Paragraph 2.*

[40] *Ibid. Article 26.*

[41] *Ibid. Article 28.*

[42] *Ibid. Article 29.*

[43] *Nitisiri, C., Comparative Criminal Procedure Laws, Reading Material for Master Degree Programme, Dhurakitbundij University, 1997.*

[44] *Chularojmontri, P. and Makornwattana. P., Mutual Legal Assistance, A Research Report on the Legal Development to Prevent and Suppress Transnational Organized Crime, 2nd Phase, Thailand Criminal Law Institute, Office of the Attorney General, 2003, p.78.*

[45] *Title 18 USCA Sections 1961-1968.*

[47] *Ibid, Title 21, Section 848.*

[48] *Chularojmontri, P. and Makornwattana, P., op.cit. p.79.*

[49] *Ibid. p.79.*

[50] *Ibid. p.81.*

[51] *Ibid. p.83.*

[52] *Boonyopas, V., Panwichit, S., and Lipipan, J., The Criminalization of Money Laundering by Transnational Organized Criminal Groups and International Cooperation and Measures to Combat Money Laundering, Including Seizure, Freezing and Confiscation of Property, A Research Report on the Legal Development to Prevent and Suppress Transnational Organized Crime, 2nd Phase, Thailand Criminal Law Institute, Office of the Attorney General, 2003, p.6.*

[53] *Ibid. p.31.*

[54] *Ibid. p.31.*

[55] *Ibid. p.32.*

[56] *Ibid. pp.33-4.*

[57] *Thaweechaikarn, S. and Thirapattaranon, A., Witness Protection Measures and Measures to Render Assistance and Protection to Victims, A Research Report on the Legal Development to Prevent and Suppress Transnational Organized Crime, 2nd Phase, Thailand Criminal Law Institute, Office of the Attorney General, 2003, pp. 101-105.*

[58] *Ibid. p.102.*

[59] *Likitjittha, A., Rattanakul, N., and Hanchai, K., Measures to Encourage Persons to Assist or Give Information to Law Enforcement Agencies, A Research Report on the Legal Development to Prevent and Suppress Transnational Organized Crime, 2nd Phase, Thailand Criminal Law Institute, Office of the Attorney General, 2003, pp.139-155 and see also US Federal Rules of Criminal Procedure, Rule 11.*

[60] *US Federal Rules of Criminal Procedure (FRCP), Rule 11.*

[61] *Kumprapan, S. and Khantikul, P., Measures to Solve Human Trafficking, Especially in Women and Children, A Research Report on the Legal Development to Prevent and Suppress Transnational Organized Crime, 2nd Phase, Thailand Criminal Law Institute, Office of the Attorney General, 2003, pp.53-54.*

[62] *Trafficking and Victim Protection Act, Article 105, "Interagency Task Force to Monitor and Combat Trafficking."*

[63] *Thaweechaikarn, S. and Thirapattaranon, A., The Criminalization of the Obstruction of Justice, A Research Report on the Legal Development to Prevent and Suppress Transnational Organized Crime, 2nd Phase, Thailand Criminal Law Institute, Office of the Attorney General, 2003, pp.47-49.*

[64] *Ibid. p.48.*

[65] *Ibid. p.48.*

[66] *Ibid. p.48.*

[67] *Meenakanit, T. and Tienhiran, O., Anti-Corruption Measures, A Research Report on the Legal Development to Prevent and Suppress Transnational Organized Crime, 2nd Phase, Thailand Criminal Law Institute, Office of the Attorney General, 2003, pp.34-42.*

[68] *Ibid. p.37.*

[69] *Castberg, A. D., "Corruption in Japan and the US", UNAFEI Resource Material Series No. 56, Tokyo, Japan, 2000, pp.435-439.*

[70] *DeFeo, M. A., "Prevention and Repression of Corruption within a Law Enforcement Agency", UNAFEI Resource Material Series No. 56, Tokyo, Japan, 2000, pp.440-454.*

[71] *Meenakanit, T. and Tienhiran, O., op.cit. p.46.*

[72] *Title 18 USCA, Chapter 119, Wire and Electronic Communications Interception and Interception of Oral Communications, Sections 2510-2522.*

[73] *Trakulkasemsuk, S., The Protection of Individual Rights from Telephone Interception, Master Degree Thesis, Faculty of Law, Dhurakitbundij University, 2000, pp.77-78.*

[74] *Ibid. p.84 and Title 18 USCA, Section 2518.*

[75] *Laokortee, B., Kerdsuk, S. and Charoensuk, M., Law Enforcement Cooperation on Article 27, A Research Report on the Legal Development to Prevent and Suppress Transnational Organized Crime, 2nd Phase, Thailand Criminal Law Institute, Office of the Attorney General, 2003, pp.30-35.*

[76] *www.usdoj.gov/criminal/ocdetf.html*

[77] *Boonyopas, V., Panwichit, S., and Lipipan, J., op.cit. p.159.*

[78] *Sojirat, P., A Comparison of Common Law and Thai Law on the Confiscation of Assets through Civil Proceedings, Master Degree Thesis, Faculty of Law, Chulalongkorn University, 1996, p.10.*

[79] *Ibid. p.11.*

[80] *Document received from the Australian Deputy Attorney General who attended a meeting at the International Affairs Department, Office of the Attorney General (SYD/WORK/WGROUPS/DIRECTOR/JJJ/POC(money laundering/POCA General Outline.doc).*

[81] *Arie, F., Confiscating the Proceeds of White-Collar Crime, Australian Institute of Criminality, http://www.library .wjin.net/ 2004*

[82] *Boonyopas, V., Panwichit, S., and Lipipan, J., op. cit. pp.35-44 and see also www.austrac.gov.au/text/publications/overview_money_laundering/*

[83] *www.austrac.gov.au/text/publications/overview_money_laundering/*

[84] *Boonyopas, V., Panwichit, S., and Lipipan, J., op.cit. pp. 35-44.*

[85] *Ibid. pp.35-44.*

[86] *Ibid. pp.45-50.*

[87] *Ibid. p.44.*

[89] *Anti-Money Laundering Law 2001, Rule 4.*

[90] *Boonyopas, V., Panwichit, S., and Lipipan, J., op.cit. pp. 54-58.*

[91] *Thaweechaikarn, S. and Thirapattaranon, A., Witness Protection Measures and Measures to Render Assistance and Protection to Victims, A Research Report on the Legal Development to Prevent and Suppress Transnational Organized Crime, 2nd Phase, Thailand Criminal Law Institute, Office of the Attorney General, 2003 (B.E.2546), p.106.*

[92] *Ibid. p.108.*

[93] *www.austlii.edu.au/au/legis/cth/consol_act/wpa1994248*

[94] *Thaweechaikarn, S. and Thirapattaranon, A., op.cit. p.111.*

[95] *Ibid. pp.50-1.*

[96] *Meenakanit, T. and Tienhiran, O., op.cit. p.17.*

[97] *Ibid. p.19.*

[98] *Chan, T., "Corruption Prevention-The Hong Kong Experience", UNAFEI Resource Material Series No. 56, Tokyo, Japan, 2000, pp.365-377.*

[99] Meenakanit,T. and Tienhiran, O., op.cit. p.21.

[100] Ibid. p.23.

[101] Ibid. pp.27-34.

[102] Mar Landette, M. M. Combating Corruption: What the Ecuadorian Anti-Corruption Agency Can Learn from International Good Practice, Thesis (Master Degree), School of Public Policy, University of Birmingham, U.K, 2002, pp.40-5.

[103] Ibid.

[104] Polasen, K., Problems in Enforcing the Laws of the National Counter Corruption Commission, Master Degree Thesis, Faculty of Law, Thammasat University, 2001, p.80.

[105] Likitjittha, A., Rattanakul, N. and Hanchai, K., Measures to Encourage Persons to Assist or Give Information to Law Enforcement Agencies, A Research Report on the Legal Development to Prevent and Suppress Transnational Organized Crime, 2nd Phase, Thailand Criminal Law Institute, Office of the Attorney General, 2003, pp.155-156.

[106] Ibid. p.164.

[107] Ibid. p.165; see also the Israeli Criminal Procedure Code, Section 155 b.

[108] Ibid. p.165.

[109] Ibid. p.168.

[110] Ibid. p.170.

[111] Ibid. p.173.

A ship carrying heroin was captured in the Andaman sea off Ye township, Myanmar on 9 July 2004.
This led to further investigation under the terms of Thailand-Myanmar cross border cooperation.
(Photo courtesy of the Office of the Narcotics Control Board, Ministry of Justice)

Chapter 4

■ Measures for Strengthening the Potential to Prevent and Combat Organized Crime in Thailand

Specific Laws to Prevent and Combat Organized Crime

Before the government of Thaksin Shinawatra took office, narcotics and crime in the country had started to exhibit a growing tendency to violence and increased complexity. For example, figures for the abuse of narcotics showed an estimated one million casual users of methamphetamines in Thailand and half a million regular users, with narcotics networks existing at every social level involving sums at the multi-billion-baht level. Additional criminal problems stemmed from illegal migrant labour; the abuse of women and children in the sex industry; gambling dens along the borders with neighbouring countries, including illegal lotteries and other forms of gambling illegal in Thailand,

More than five hundred kilograms of heroin were seized from the ship impounded in Ye township, Myanmar on 9 July 2004. Further investigation led to the arrests of members of an organized criminal group (Photo courtesy of the Office of the Narcotics Control Board, Ministry of Justice)

involving billions of baht; the illegal exchange of foreign currency; and the unrest in the Southern Thai provinces bordering with Malaysia.[1] In view of this, on coming into power Prime Minister Thaksin Shinawatra instigated a policy of combating "persons of influence" and declared a "war on drugs". Although this resulted in reducing the narcotics problems to more acceptable levels, the campaign against "persons of influence" was not as successful.

A vast range of criminal problems in Thailand is directly related to "persons of influence" or organized criminal groups, with their sophisticated structure and complex procedures; hierarchical chain of command headed by a mastermind; and use of various kinds of influence to support and expand their networks, which have even become transnational in nature. The reason why Thailand has been unsuccessful in solving the problem of organized crime is the lack of any specific laws to deal directly with this problem. Although the Thai government foresaw the impact of the problem and has tried to introduce various laws, they have not been systematically arranged but, instead, have been introduced randomly to solve certain specific problems, thereby limiting their effectiveness. For example, narcotics laws deal only with offences relating to narcotics while the Money Laundering Control Act extends to only eight predicate offences, thus failing to cover the whole range of the activities of organized criminal groups.

Many countries have been unable to escape the impact of the problems derived from the activities of organized criminal groups and have set up both legal and other measures to deal with them. Some countries have been notably successful in preventing and combating organized crime. For example, the United States of America introduced the Racketeer Influence and Corrupt Organizations Act of 1970 (RICO), which specifically gives power to the State to confiscate the property of offenders and which has proved to be an effective tool to destroy the economic and financial power of organized criminal groups.

In 2004, the Special Case Investigation Act was promulgated, setting out measures to prevent and combat problems derived from organized crime, specifying its jurisdiction as special cases which need to be dealt with by special measures under this act. However, although it is constructive in its specific intention of dealing with organized criminal groups, it lacks a definition of such groups and their members, resulting in problems of interpretation. Therefore, there is a need for an additional definition, or the introduction of a specific new law containing a clear definition, covering the broad range of illegal activities committed by organized criminal groups in order to enhance the effectiveness of attempts to deal with these problems.

Money Laundering Control Act

The operations of organized criminal groups involve illegal businesses generating vast amounts of interest and the laundering of illegitimate money to be used as capital to protect and expand their operations. In some cases, bribes are paid to officials to conceal the operations or to provide financial support for other activities in order to develop a network, resulting in the expansion of organized crime from the domestic to the international arena. Members of organized criminal groups may enter politics, at both local and national levels, using illegal money for campaigning, vote-buying and other electoral activities. These are all key practices that support the "money politics" phenomenon in Thailand. Although political reform has already been introduced, such activities are still rampant, mutating their forms in response to evolving situations.

The laundering of money by organized criminal groups inflicts tremendous damage on Thailand and other countries. The Thai government, aware of the importance of specific legislation to combat this problem, introduced the Money Laundering Control Act 1999, which criminalizes the laundering of money or property.[2] This law conforms to Article 6 of the United Nations Convention against Transnational Organized Crime, which stipulates certain criminal activities, including money laundering, as offences under this Convention. Section 3 of the Money Laundering Control Act stipulates the following forms of conduct as predicate offences under the law:

1. Offences relating to narcotics under the Narcotics Control Act or the Act on Measures for the Suppression of Offenders in an Offence Relating to Narcotics;
2. Sexual offences under the Penal Code, in particular those involving procuring, seducing, taking or enticing for indecent acts women and children in order to gratify the sexual desire of another person; or offences under the Prevention and Suppression of Trafficking in Women and Children Act; offences under the Prevention and Suppression of Prostitution Act, in particular those relating to the offences of procuring, seducing, enticing or kidnapping a person for the purpose of prostitution; or offences relating to being an owner of a place of prostitution, or an operator, or a manager of a place of prostitution, or supervising persons who commit prostitution for money;
3. Offences relating to cheating and defrauding the public under the Penal Code; or offences pursuant to the Fraudulent Loans and Swindles Act;
4. Offences relating to embezzlement or cheating and fraud involving assets, or acts of dishonesty or deception as described in the law governing commercial banks, or the law governing finance, securities and credit foncier businesses, or the law governing securities and the stock exchange;
5. Offences relating to malfeasance in office, or malfeasance in judicial office under the Penal Code; offences pertaining to the law governing public officials of a state enterprise or government office; or offences pertaining to malfeasance or dishonesty in carrying out official duties under other related laws;

6. Offences relating to the commission of extortion or blackmail by a member of an unlawful secret society or organized criminal association as defined in the Penal Code;
7. Offences relating to customs revenue evasion under the Customs Act;
8. Offences relating to terrorism under the Penal Code.

This law includes important measures which enable the authorities to seize or freeze money or property derived from criminal activities, regardless of how many times its ownership or form has changed. Moreover, punishments equivalent to those for the perpetrators themselves are set out for those who support or assist in any way the laundering of money, whether domestically or overseas. The money laundering activities of organized criminal groups are extremely complex, with no set form or clear methods, involving concealment, transnational characteristics and modern technology, especially the transfer of money derived from criminal activities through electronic transactions or unauthorized money changers, transfer agents or companies.

In view of this, there is an urgent need for Thailand to update its Money Laundering Control Act to be in line with the current situation, thus enhancing its effectiveness. Also, in order to more readily punish offenders, there should be an expansion of predicate offences under the Money Laundering Control Act to cover the increasingly diversified illegal activities perpetrated by organized criminal groups, by adopting the principles of the Malaysian Anti-Money Laundering Law, which specifies 119 predicate offences[3] and has measures to assist officials to combat money laundering, with severe punishments for offenders.

Australia is another country which has a complete and effective Anti-Money Laundering Law covering a whole range of variables. As discussed in Chapter 3, the Australian Transaction Report and Analysis Centre was set up to provide the financial intelligence crucial to countering money laundering. Australia's Proceeds of Crime Act 1987 specifies the criteria for

the court to order financial institutions to keep financial transaction documents for up to seven years in order that the movements of money can be examined. Another noteworthy measure is that police officers may ask for search warrants from the court, even by phone in case of emergency, when there are sufficient grounds to believe that persons are in possession of property derived from criminal activities. This law specifies severe penalties for those involved in money laundering, applicable to both natural and legal persons.[4]

Thailand should adopt measures already in force in countries like Malaysia and Australia in order to improve the existing Money Laundering Control Act, including specifying both measures to examine and monitor the transfer of cash and transferable securities and the forms of suspicious transactions that financial institutions or banks should report to the State in order to block existing loopholes in the law that are currently being utilized to avoid scrutiny. However, the impact on personal rights and liberties guaranteed under the Constitution as well as on both commercial development and the international movement of funds must also be taken into consideration.

Another important measure that needs to be improved is the management of property derived from the laundering of money. Under Section 51 of the Money Laundering Control Act 1999, it is stipulated that property derived from money laundering shall be confiscated to the State. However, in the case of international cooperation in confiscating property under the Mutual Assistance in Criminal Matters Act 1992, Section 35 stipulates that confiscated property shall belong to the requested state rather than the requesting state. Therefore, the Act needs to be amended, i.e. its provision on the confiscation of property derived from money laundering should specify the sharing of property between the requesting state and the requested state for the sake of reciprocity, a move which would improve the effectiveness of combating money laundering.

Apart from improving the law, Thailand should develop measures on international cooperation in rendering assistance and the exchange of information relating to money laundering. On its part, Thailand should set up a

special agency to collect financial intelligence and act as a national centre for the collection, analysis and dissemination of information involving the conduct of organized criminal groups, especially that which may involve money laundering.

The Prevention of Corruption Linked to Organized Crime

The problems stemming from organized crime have resulted in many countries establishing measures to deal with the issue. However, some countries are faced with difficulties, with corrupt officials either being actually involved with organized criminal groups or assisting them to carry out their activities

There is an urgent need for measures to combat corruption linked with organized crime, especially the involvement of public officials in illegal activities. Organized criminal groups frequently offer bribes to officials of all levels, up to and including politicians, in order to smooth the way for their operations and avoid inspection by the state authorities. The corruption associated with organized crime has inflicted great economic, social and political damage on Thailand, as well as having a negative impact on national security, the justice system and the nation's overall administration and development.

Various countries are cooperating in an attempt to solve this problem, setting up specific measures under the United Nations Convention against Transnational Organized Crime, to which Thailand is already a signatory. Article 8 of the Convention criminalizes corruption, while Article 9 specifies that States Parties shall adopt legal, administrative and other effective measures to deal with corruption.

The Thai government, aware of and foreseeing the impact of this problem, has specified measures to prevent and combat corruption in the Criminal Code and the Prevention and Suppression of Corruption Act 1999. A comparison of legal measures in Thailand and those set out in the United Nations Convention against Transnational Organized Crime clearly shows that

Sections 144[5] and 167[6] of the Thai Criminal Code conform with Article 8 Paragraph 1 (a) of the Convention, which defines the offence of bribery as "the promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties." Similarly, Sections 149 and 201 of the Thai Criminal Code conform with Article 8 Paragraph 1 (b) of the Convention. These sections criminalize "the solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties."

The Prevention and Suppression of Corruption Act 1999 is Thailand's principal legal measure aiming to combat corruption, specifying the establishment of the National Counter Corruption Commission (NCCC) as an independent agency. NCCC commissioners have the power to examine property and debts of public officials, those who hold political positions, their spouses and underage children, both before and after they take office. However, this law has been enforced only for general offences and cannot be applied systematically to corruption involving organized crime because it is premised on individual liability, which is necessarily narrower in scope than the principles of group or derivative liability needed to combat organized criminal groups.

Although Thailand employs various measures to combat corruption which conform to the United Nations Convention against Transnational Organized Crime, problems still exist because of the inefficiency of both law enforcement and justice officials. The patronage system is an inherent part of Thai culture and society, with stakeholders having shared interests and public officials receiving inadequate salaries. These shortcomings create a weakness which is exploited by organized criminal groups for their own ends, so the prevention and combat of corruption among public officials must be addressed forthwith.

In order to effectively punish corruption linked to organized crime, the laws relating to corruption need to be improved and expanded to include the activities of organized criminal groups. Measures against corruption that have already been implemented in countries such as the United States should be adopted as models by Thailand. Severe punishments for offenders, detailed background checks of public officials prior to recruitment and regularly thereafter, and assurances of transparency are among the areas needing improvement. In the United States, training programmes for public officials in morals, ethics and codes of conduct are run by the Office of Government Ethics[7] in order to inculcate in them a sense of conscientiousness and morality. The provision of adequate income for public officials, enabling them to live without resorting to corruption, should also be given priority.

In the People's Republic of China (Hong Kong SAR), important measures aiming to combat corruption have already been implemented, such as the inclusion of the prevention and combat of corruption in state policy. Moreover, since the majority of the population of Hong Kong receives moral inculcation from early childhood, the general public thus fully cooperates with public officials. Furthermore, Hong Kong renders full international cooperation in the fight against corruption.

Singapore has also implemented successful measures to combat corruption. Public officials are prohibited from being entertained by any person in the course of their duties and must refuse to accept any gifts offered. Souvenirs from visitors may be accepted but must be given to the agency or, if kept personally, their value as estimated by the Accountant General must be paid. Moreover, education and training is provided to public officials on related issues in order to ensure that they perform their duties appropriately and to prevent them from inadvertently becoming involved in corruption.[8]

In order to enhance the effectiveness of anti-corruption measures in Thailand, corruption linked to organized crime should be criminalized specifically, with severe punishments imposed. This should be done by amending the Counter Corruption Act 1999, or by enacting a specific law against corruption.

The Criminalization of the Obstruction of Justice

Thailand has been gravely affected by the activities of organized criminal groups and "persons of influence", damaging the justice system and rendering it inefficient and unable to solve the problems involved. Laws relating to the obstruction of justice currently being enforced lack effectiveness, such as the Criminal Code; the Criminal Procedures Code; the Money Laundering Control Act 1999; the Prevention and Suppression of Trafficking in Women and Children Act 1997; the Narcotics Control Act 1979; and the Act on Measures for the Suppression of Offenders in Offences Relating to Narcotics 1976. Therefore, Thailand needs to specify legal measures to conform to Article 23 of the United Nations Convention against Transnational Organized Crime, which specifies the obstruction of justice as a criminal offence.

Currently, the obstruction of justice is only stipulated in the Thai Criminal Code, which deals with the obstruction of public officials,[9] conforming to Article 23 of the Convention, with provisions in certain parts of the laws referred to in the previous paragraph lacking both major elements and unified punishments.

Thailand thus needs to improve the law and conform to Article 23 of the United Nations Convention against Transnational Organized Crime by adding an additional section to the Criminal Code criminalizing the obstruction of justice, using as a model measures in the Australian Crime Act Part III that stipulate the obstruction of justice. The criminalization of the obstruction of justice in Thailand should cover a wide range of conduct, as in comparable measures introduced by the United States of America and stipulated in the United States Code (USC), Title 18, Sections 1501-1510.[10] This law criminalizes those who obstruct justice, aiming to protect the processes of investigation, interrogation and prosecution; to protect public officials against assault and other interference in the course of their duties; to prevent the intimidation of witnesses, victims or informants; to prevent the bribery or solicitation of witnesses or aggrieved parties not to testify or to provide a false

statement; to prevent the obstruction of extradition; to prevent the obstruction of the examination of financial institutions; and to prevent other conduct intended to distort the justice system in order to conceal organized criminal activities.

Thai law would be more effective in its fight against organized crime if it adopted Article 23 (a) of the United Nations Convention against Transnational Organized Crime into Thai domestic law. This article criminalizes "the use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences". The punishment for obstruction of justice should be increased so that it is more severe than for similar offences which do not include the intent to obstruct justice. Improvements in this aspect of the law would have a great impact on organized crime and help prevent organized criminal groups from manipulating the justice system, victims, witnesses and public officials.

Measures to Protect Witnesses and Victims

Currently, many countries are affected by problems stemming from organized crime, on both domestic and international levels. Needless to say, witnesses and victims are the key elements that can lead to the masterminds behind organized criminal groups. However, as such figures are influential in terms of both finance and power, witnesses and victims are often threatened or assaulted in order to intimidate them from giving testimony. This is a major obstacle in the processes of investigation and interrogation, as well as the trial itself. The ending of witness protection after the trial may also result in witnesses and victims being endangered.

In Articles 24 and 25, the United Nations Convention against Transnational Organized Crime stipulates measures to assist and protect witnesses and victims "from potential retaliation or intimidation" by organized criminal groups. Such measures are important in the overall combat of such groups.

As Thailand is a Signatory State to the Convention, it has made a commitment to set up legal measures to conform to its terms, especially on the issue of the protection of witnesses and victims. Legal measures that offer witness and victim protection are stipulated in the Thai Constitution 1997; the Protection of Witnesses Act 2002; the Compensation of Victims and Accused Persons in Criminal Cases Act 2001; and measures stipulated in other laws, such as the Penal Code and the Criminal Procedure Code.

Article 244 of the Thai Constitution 1997 states the overriding principle in the protection of witnesses, viz. that persons who are witnesses in a criminal case have the right to receive necessary and appropriate protection and compensation from the State. Under this principle, witnesses have the right to safety in life, body, property, family, relatives and those close to them. Therefore, no direct contact between the witness and alleged offender is permitted during the identification of the latter. Measures are also specified to change the identity and status of witnesses and to relocate them. Witnesses are entitled by law to necessary and appropriate compensation to cover transportation costs, daily subsistence, family resettlement costs, and so on, including medical benefits.

Article 245 of the Constitution provides for the protection of victims in criminal cases. In addition to their right to compensation from the State, they are entitled to protection. Article 245 recognizes the rights of the victim to receive assistance from the State when affected by criminal activities with which they were not involved. This assistance may consist of compensation in the form of money, property or other benefits to which they may be entitled to remedy damage inflicted.

Articles 21 to 23 of the Protection of Witnesses Act criminally sanction the making of a threat to a witness or victim.

However, the Thai Witness Protection Act has no procedures aiming to build confidence; or to ensure that witnesses under this programme do not testify in order to retaliate against others; or commit murder; or fail to cooperate

with the Witness Protection Office, unlike in the USA where measures enable an attorney or marshal to examine prospective witnesses prior to their admission onto the programme. Such measures aim to identify and exclude those who wish to exploit these benefits or to retaliate against their fellow conspirators.

Thailand should, therefore, consider measures for improving witness protection by improving the Criminal Procedure Code, Article 108, on the consideration of granting temporary release. Criteria for granting temporary release should be tightened up and those who are suspected of probable involvement in organized crime, or who may harm witnesses, their relatives or property, should not be released on bail. The pre-trial release criteria for such criminals should be comparable to measures applied to prominent cases involving narcotic producers or traffickers. Witnesses and victims should have the right to oppose the temporary release of alleged offenders in cases involving either potential long-term imprisonment and/or organized crime.

Moreover, the Thai Criminal Procedure Code should be improved in respect of the testimony of witnesses and victims involved in cases of organized crime. This could be facilitated, for example, by allowing witnesses and/or victims to identify alleged offenders at any appropriate place, and preventing alleged offenders from seeing either witnesses or victims. There should be specific measures to record electronically the testimony given by witnesses or victims in organized crime cases, in order to avoid direct contact between them and the alleged offender(s) and to ensure their safety. However, laws need to be amended to support all these measures, especially the admissibility of the witness's testimony, to ensure that the practices do not contradict the right of the accused to confront witnesses in open court set forth in the Criminal Procedure Code.

There should also be measures, both general and specific, to provide assistance for witnesses and to increase the range of witness protection. The Ministry of Justice, together with other competent authorities, should have the power to specify witness protection measures when it can be clearly seen that

the witness may be in danger, for example, at the initial stage; the protection of witnesses, both openly and covertly, by police or the competent authority; necessary and appropriate measures to maintain the confidentiality of the identity and status of witnesses during questioning; the setting up of special measures to relocate witnesses in criminal cases involving organized crime to a safe place; and measures that allow the public prosecutor not to submit the name list of witnesses who are to testify, subject to court approval, on the grounds that such witnesses may be harmed, intimidated or murdered if the accused were to be aware of the identity of prospective witnesses. Such measures should be strictly enforced by the Thai government with severe punishment meted out to those who contravene this.

As for measures to render assistance to victims, at present the Compensation of Victims and Accused Persons in Criminal Cases Act 2001 does not provide compensation for victims who have been affected by activities perpetrated by organized criminal groups, nor does it cover offences stipulated under the United Nations Convention against Transnational Organized Crime and its Protocols.

Thailand, therefore, should improve the law by adding offences committed by organized criminal groups and offences according to the three Protocols of the United Nations Convention against Transnational Organized Crime, such as money laundering, corruption, obstruction of justice and human trafficking, in order to enable victims of organized crime to receive compensation. However, these measures should be broadly specified in order to allow for flexibility and to determine the amount of compensation as well as an adequate budget from the State.

The Interception of Communication and the Use of Other Tools to Obtain Evidence

Organized criminal groups have a hierarchical and complex structure, making it difficult to gain access to the mastermind and to bring to justice those involved in planning, commanding and controlling criminal activities, due to

lack of evidence. Sometimes, members of such an organization will destroy evidence, or use influence to intimidate, bribe or even murder witnesses. Therefore, normal measures of gathering evidence to prove the guilt of offenders may not be practical when applied to organized criminal groups and may not lead to the mastermind.

Currently, when gathering evidence in cases involving organized crime, Thailand applies measures similar to those used in normal criminal cases: no specific measures to obtain evidence against organized criminal groups exist in the country and no special powers are given to public officials to use as tools to combat the activities of such groups. Public officials must therefore abide by the existing laws when performing their duty and risk being sued if found to have violated them.

The use of communication interception as a tool to combat organized crime is one of a range of necessary measures because such criminal groups have the ability to conceal or cover their illegal activities as well as to block access to information, thereby rendering it difficult for officials to uncover the facts and identify the mastermind or key perpetrator.

In Thailand, no specific laws authorize public officials to intercept communications through the telephone, or to use other devices to obtain evidence to prove the guilt of organized criminal groups. Even though the Thai law has measures for public officials to access information, their application is limited to certain offences. For example, Article 14, Paragraph 1 of the Narcotics Control Act 1976, as amended by the Amendment Act (No.4) 2002, states that "when there are probable grounds to believe that documents or other information sent by post, telegraph, telephone, computer, tools or other communication device, electronic media or other electronic communication have been used for the benefit of committing an offence relating to narcotics, the competent authority, with the approval of the Secretary General of the Office of the Narcotics Control Board (ONCB), may submit a unilateral petition to the Chief Justice of the Criminal Court, to ask for approval to act on such

information". Article 46, Paragraph 1 of the Money Laundering Control Act 1999 stipulates that "when there are probable grounds to believe that the accounts of financial institutions, tools or instruments for communication, or computers are being used or have been used for the benefit of committing a money laundering offence, the competent authority, with the approval of the Secretary-General of the Anti-Money Laundering Office (AMLO), may submit a unilateral petition to the Civil Court to seek approval to access accounts, communication information or computer instruments in order to acquire such information."

However, measures to access information under these acts are limited in scope to narcotic offences and predicate offences under the Money Laundering Control Act and do not cover other organized crime activities.

There are other measures that public officials may use to obtain evidence. For example, Section 105 of the Criminal Code, empowers officials to seek a court order to instruct postal officials to pass on to the competent authority letters, telegraphs, postal parcels, reading materials and other documents sent to or from the suspect or accused person. The Article under this law is applied during investigation and preliminary hearing stages, but does not cover the exchange of documents between the suspect or the accused person and their lawyer. Under the National Intelligence Act 1985, military personnel are authorized to intercept communications but only in abnormal national circumstances or a state of war. The Martial Law Act 1914 empowers the intelligence agency to use techniques and/or communication devices to intercept communications through the radio in order to obtain information on insurgent groups that may threaten national security. However, such measures do not allow for telephone interception, as it is not considered a form of radio communication.

The Special Case Investigation Act 2004,[11] effective since 20 January of that year, gives public officials broader powers of access to information, including organized crime activities, the interception of communications and obtaining of information advantageous to the investigation

of special cases under the following Sections:

Section 25: In cases where there are reasonable grounds to believe that any other document or information sent by post, telegram, telephone, facsimile, computer, communication device or equipment or any information technology media has been used or may be used to commit a Special Case offence, the Special Case Inquiry Official, approved by the Director-General in writing, may submit an *ex parte* application to the Chief Judge of the Criminal Court asking for an order to permit the Special Case Inquiry Official to obtain such information.

Section 3: "Special Case" means a criminal case provided for in Section 21

Section 21: Special Cases required to be investigated and inquired into according to this Act are the following criminal cases:

(1) Criminal cases according to the laws stated in the attached Annex and in the ministerial regulations as recommended by the Board of Special Cases (BSC),[12] both of which shall have any of the following characteristics:

(a) a complex criminal case that requires special inquiry, investigation and collection of evidence;

(b) a criminal case which has, or might have, a serious effect upon public order and morals, national security, international relations or the country's economic or financial stability;

(c) a criminal case involving serious transnational crime or committed by an organized criminal group; or

(d) a criminal case in which a "person of influence" is a principal figure, instigator or supporter.

This, however, shall be in line with details of the offence provided by the BSC.

(2) Criminal cases other than those stated in (1), resolved by the BSC at a ratio of no less than two-thirds of the votes of its existing Board members.

Paragraph (1) (d) of Section 21 includes persons who are principal instigators or supporters of the offence. However, these enhanced investigative powers apply only to "special cases". Section 21(1)(c) defines "special cases" as those that are transnational in nature or committed by organized criminal groups. However, the terms "transnational" and "organized criminal group" are not clearly defined under this act, making it difficult to apply the law and access information. It can therefore be remarked that as there is a need for definitions of these terms, the draft Anti-Organized Crime Law should provide such definitions that conform to those in the United Nations Convention against Transnational Organized Crime to which Thailand is a Signatory State.[13]

It can therefore be seen that the Thai law fails to give public officials timely and decisive authority to intercept telephone communication, even though the government is aware of the impact of organized crime and recognizes the importance of applying measures to access information using interception methods, as has already been stipulated in many laws. Such measures target cases involving national security and when the country is in abnormal circumstances. Some legal measures apply to only a few limited offences and do not cover the whole range of activities perpetrated by organized criminal groups, with only the Special Case Investigation Act 2004 giving power to public officials to access information concerning organized crime. Measures under this law can be completely enforced only when the definition of "organized crime" and detailed procedures governing the use of power have been finalized.

Currently, there is a trend in many countries to recognize telephone interception as an important investigative tool to obtain evidence to prove the guilt of the offender. When telephone interception is endorsed by the law, it results in evidence which is admissible to the court, and vice versa. That is, when such interception is not endorsed by the law,[14] evidence obtained in such a manner is inadmissible. However, telephone interception must be strictly controlled in order to avoid violations of personal rights beyond reasonable limits.

The Constitutions of many countries guarantee the rights of their citizens to be protected against undue intrusions on their privacy. For example, the Wire and Electronic Communications Interception and Interception of Oral Communications Acts, included in the United States Code, Title 18, Section 2511[15], provides for the protection of citizens' rights, and prohibits telephone interception. However, it states that in exceptional cases interception is allowed (e.g. for offences involving serious penalties or having a serious impact on national security).

American law has measures to control and examine the use of power by public officials. Those who request to intercept telephone communication must file a detailed application and sworn affidavit with the court, which will use its discretionary power to verify the claim of probable grounds for suspecting the offender or prospective offender. In addition, the requesting officials must prove that all other existing mechanisms have been exhausted. Interception measures under Thailand's Money Laundering and Narcotics Control Laws, which must receive prior court approval and have a limited duration of interception, follow this US model.[16]

In addition to the interception of communication, other measures exist under the United Nations Convention against Transnational Organized Crime to seek evidence that will lead to the arrest and prosecution of the masterminds. These measures include controlled delivery, undercover operations, and other forms of electronic surveillance besides wiretapping.

In order to combat organized crime activities in Thailand, there is an urgent need for effective measures to allow access to information pertaining to such groups, especially telephone interception. This should be codified under a law covering the wide range of offences committed by organized criminal groups, in order to obtain useful evidence to prove the guilt of offenders who are members of such groups. However, as telephone interception and access to information may violate citizens' rights, there should be controlled measures to examine the use of power by public officials, clearly specifying the scope and

methods of obtaining information. Apart from measures under the Special Case Investigation Act, the Money Laundering Control Act and the Narcotics Control Act, Thailand should also consider adopting other measures under the United Nations Convention against Transnational Organized Crime.

The Use of Plea Bargaining to Lead to the Principal Instigators

In Thailand, criminal proceedings are based on the adversarial system, but the Thai Criminal Procedure Code has the inquisitorial system as a principle. The law gives inquisitorial power to the court to conduct the additional questioning of witnesses, if the court deems appropriate or either party asks for such. This questioning can be done either within the same court or in another specified court.[17] During the trial, when the court deems it appropriate, it has the power to question the prosecutor, or the accused, or any witness, but is prohibited from posing any additional questions to the accused to benefit the case of the prosecutor, except when the accused proffers themselves as a witness.[18] The Thai Criminal Procedure Code allows for some parts of the Civil Procedure Code to be used. For example, one section provides that "at any time during or after the testimony of the witness but before the court passes sentence, the court has the power to question witnesses on any matters that it deems necessary in order to complete or clarify the testimony of the witness; or to find out the reason why the witness has testified in such a way."[19] Although the Thai Criminal Procedure Code gives inquisitorial powers to the court, in practice the court remains neutral because the judges are not accustomed to this system and fear that the use of this power may be to the detriment of the accused and may violate their right to be presumed innocent. Conversely, if the application of inquisitorial power were to benefit the accused, the judge may be suspected of being a biased or interested party. In the Thai criminal justice system, criminal cases must be investigated by the police and examined by the public prosecutor before coming to the court. Persons who bring the cases to the

court must either be the victims or the public prosecutor.[20] Prosecutors in criminal cases have a duty to prove the guilt of the accused persons beyond a reasonable doubt. If a reasonable doubt exists, the benefit shall be given to the accused.

When the suspects or the accused are members of an organized criminal group, they will have used carefully planned strategies to commit their crime, evincing a high level of responsibility, using influence to eliminate witnesses and offering bribes to witnesses and officials, resulting in insufficient evidence to lead to the mastermind. Furthermore, the financial power of organized criminal groups enables them to engage highly qualified lawyers or legal counsels who can assist them or find legal loopholes to fight against the State. Given the fact that Thai law and the trial system rely on evidence, when there is inadequate evidence or a lack of witnesses, it is difficult to prove the guilt of the accused. Furthermore, if the accused persons collude or conspire together, it will be even more difficult to find evidence or witnesses that will lead to the incrimination of the mastermind.

Plea bargaining is another effective measure to deal with organized crime; to help reduce the caseload in the courts; and to bring the principal instigators to justice, by using information from the confession of a conspirator to further investigate the real mastermind or principal instigator in exchange for a reduction of sentence or charges. In some countries, like the United States, Italy and Israel, plea bargaining is used in criminal proceedings and is a measure to enable the gathering of evidence to prove the guilt of the principal instigator. In the United States, more than ninety percent of all federal cases result in a guilty plea obtained through plea bargaining.[21]

In the United States, plea bargaining often involves the accused or the defence lawyer agreeing to be a State witness against the crime committed by the principal instigator in exchange for the withdrawal of other charges or non-opposition to the reduction of sentence. The plea bargaining agreement enables a fixed and appropriate sentence to be passed and may provide some protection for the defendant as a cooperating witness in some cases.

In Israel, plea bargaining may be entered into by negotiating the charges or the sentence. Israeli law defines plea bargaining as "an agreement between the public prosecutor and the accused on the contents of the charges or punishment or other issues involved in the trial or a confession to the facts before the court or the accomplishment of conditions written within the plea bargaining agreement." Plea bargaining in Israel has a particularly interesting facet: it specifies that plea bargaining can be undertaken only for the sake of public interest, with the public prosecutor initially considering whether plea bargaining will be in the public interest or not. Such a decision will be examined by the court, which may reject the agreement if it deems it not to be in the public interest.[22]

As for plea bargaining in Italy, it is mostly used in cases involving light punishments, for example with less important members of organized criminal groups and small-scale drug pushers, as a measure to reduce the caseload in the courts.[23]

Plea Bargaining in Thailand

Although there is no specific law on plea bargaining in Thailand, some laws provide opportunities for negotiations and agreements between public officials and the accused, such as Article 37 of the Criminal Procedure Code, which stipulates that the following criminal cases, which carry light punishments, may be dropped:

- Cases involving fines only, when the offender agrees to pay the highest fine levied for that case to the authority
- Cases of misdemeanour or other cases involving fines not in excess of 10,000 baht, or offences against tax and duty laws involving fines not in excess of 10,000 baht, when the offender pays the amount at the level determined by the investigating officers.

- Cases of misdemeanour, or cases that have punishments not in excess of those for cases of misdemeanour, or cases that have fines only and not in excess of 10,000 baht, occurring in the Bangkok Metropolis, when the offender pays the fine at the amount determined by a local police officer with the rank of inspector or above, or a commissioned officer acting in this position.
- Other cases punishable by a fine, and when the offender pays the fine

Under Article 38 of the Criminal Procedure Code specifying offences listed in Article 37 (1) to (3), when the competent authority under Article 37 determines that the offender should not receive imprisonment, the fine shall be imposed if the amount of the fine has been determined, and if the offender and the victim agree to the payment of the fine within 15 days, then the case is final. As for cases involving compensation, it is applicable if the victim and the offender agree to a fine as a punishment and the amount of compensation has been agreed upon.

Furthermore, there are cases under other laws that allow public officials to enter into agreements with offenders to drop the case. This type of case mostly carries light sentences and aims to protect the interests of the State, such as Article 102 of the Customs Act 1953 which stipulates that in the case of a person being prosecuted under the Customs Act and agreeing to pay a fine or entering into an agreement, the Director-General of the Customs Department may suspend the prosecution. The law gives power to the Director-General to enter into an agreement not to prosecute in exchange for a guilty plea and offenders must pay the fine. This practice is also applied to the Mineral Resources Act 1967.

Apart from the above plea bargaining measures, in certain offences, such as negligence resulting in serious injury to another person or assault causing injury to another person, investigating officers commonly allow

the victim and the offender to make an agreement first. When the parties have reached a mutually acceptable agreement, the investigating officer will allow the accused to confess to lesser charges; or, in the case of bodily assault that has caused injury to others, when both parties have reached a mutually acceptable agreement, the investigating officer will allow the accused to plead guilty to the lesser charge of assault without injury, an offence which is punishable by a fine. However, this practice is against Articles 295 and 391 of the Penal Code[24] because, in principle, the investigating officer must acquire evidence in accordance with the Criminal Procedure Code to ascertain the truth, prove the guilt, and bring the offender to justice.[25] Thus the use of discretionary powers by the investigator in this case is not legitimate under the Thai justice system.

Plea bargaining in criminal cases in Thailand should be done by investigating officers making a recommendation to the public prosecutor, and should adopt the forms used in the United States and Israel, especially the principle of public interest. Offenders may be asked to testify against the principal instigator, with the public prosecutor considering whether or not to prosecute on appropriate charges according to Article 142 of the Criminal Procedure Code. The prosecutor will then screen the use of power by the investigating officers. When the public prosecutor approves the recommendation of the investigating officer, this should be considered as plea bargaining.

The Use of Undercover Agents and Their Protection

Organized crime groups utilize an abundance of tools and mechanisms to enable them commit their crimes. In the main, they use political and economic influence to support their activities, therefore general investigative techniques may not be adequate to combat organized crime and prove the guilt of those involved. Therefore, special measures are necessary to secure witnesses and evidence in order to bring offenders belonging to organized criminal groups to justice. The use of covert operations or undercover agents is necessary in order to infiltrate the inner workings of a mission and activities of organized criminal

groups. In countries like the United States, undercover agents and covert operation measures have been effectively applied to combat organized crime, leading to the arrests of the principal instigators as well as other members of the group. The undercover agents, or those who are assigned to covert operations, must infiltrate the organization, therefore the persons selected must have appropriate qualifications: namely, be knowledgeable, skilful at solving immediate problems, intuitive, fully aware of the mission details, and have suitable characteristics to enable them to infiltrate the target group.

However, there are risks in using undercover agents to infiltrate organized criminal groups. The agent must gain the trust of group members in order to be admitted without suspicion. They have to commit crimes on the orders of the organized criminal group to gain complete acceptance into the group, notwithstanding that such activities are criminal offences. When the undercover agent is arrested, it is difficult to refute their criminal liability because there is no law to exempt such actions, even though the aim is to obtain information with no intent to commit crime.

In addition, the use of covert operations and undercover agents to obtain evidence to prove the guilt of offenders has other drawbacks: the acquisition of such evidence may not be regarded as legitimate, and the undercover agent may not be able to reveal all the information to the court for the sake of protecting their own personal safety, making it unreliable. In some cases, undercover agents may informally give information about the criminal activities of the organized crime group but are afraid to testify against them in court for fear that members of the group may use their influence against them and their family. This reduces the usefulness of the agent, as the principal instigator cannot be brought to justice due to the lack of witnesses in the court. For example, the narcotics police in Thailand were able to arrest Laota Sanlee and other conspirators who were believed to be part of a major drug network in the northern part of Thailand. However, the Court of First Instance dropped the charges because of unreliable witnesses and the evidentiary standard of reasonable

doubt,[26] a verdict that was later confirmed by the Court of Appeal. One reason why the case was dropped was that the investigating officer did not record the statement of the undercover agent in the case file for fear that such disclosure might put the witness's safety in jeopardy. Therefore, the statement of this witness did not appear in the proceedings and the prosecutor did not call the witness to testify to the court.[27]

Measures for Controlled Delivery of Illegal Items

Controlled delivery is another investigative method in the search for evidence to prosecute offenders, especially members of organized criminal groups and their networks, which utilize complex methods.

"Controlled delivery" means "the technique of allowing illicit or suspect consignments to pass out of, through, or into the territory of one or more States, with the full knowledge of and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence."[28] When an arrest is made in a normal way, the officer is usually able to apprehend only minor offenders. However, when the officers make a controlled delivery, it can lead to evidence capable of identifying the key perpetrator or mastermind. In a controlled delivery, law enforcement officers may act as undercover agents, or the newly arrested suspect may deliver the contraband under their supervision. Controls must be used to ensure that the delivery at the destination is actually made and to safeguard the illicit item(s) from being lost during the transfer or on the black market. In a controlled delivery, all the elements of an offence are present except criminal intent, as the public officials involved have no intent to transfer possession of the contraband to the buyers, only to find and arrest them. In any event, a law should be passed authorizing controlled deliveries to remove any doubt that such operations are lawful.

Other methods of controlled delivery are to use an undercover agent or a cooperating informant to carry illicit items under the control of officials. The undercover agent or cooperating informant may be someone familiar with the organized criminal group and who has a confidential relationship with its members. In an operation of this type, the cooperating courier must be well-trusted and under strict supervision. Furthermore, if an offender is deployed to perform the controlled delivery (which technically could constitute another offence), arrangements must be made not to prosecute the first offence, or to offer leniency in exchange for the cooperation through plea bargaining.

In Thailand, there are no measures authorizing public officials to operate a controlled delivery, except the Narcotics Control Act 1979, as amended by the Amendment Act (No.5) 2002. This law conforms to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988, which gives power to the Minister of Public Health to allow the production, import, export, sale and possession of narcotics for official use when it is in official interests.[29] However, this law has yet to be put into practice because there are no criteria, methods or conditions included in ministerial regulations. Apart from this, Thailand has no existing law authorizing the operation of controlled delivery of other illicit items, for instance, women and children or firearms

Controlled delivery has been effectively implemented to combat organized crime in both the United States of America and Germany, due to the existence in these countries of additional supporting measures, such as plea bargaining, other investigative techniques and systematic methods.

There is an obvious need for the introduction of controlled delivery into the Thai legal system. Currently, since there is no clear written law, controlled delivery operations are regarded as a violation of the law and officers taking part in the delivery may be charged with an offence, while other officials aware of these activities but not making an arrest may be charged with failing

to perform their duty. In the case of an undercover agent being used and their subsequent arrest, the offence may not be waived, as there is no law authorizing controlled delivery. However, consideration needs to be given to other aspects, such as that the failure of the controlled delivery assignment, resulting in the loss of the illicit item in the organized criminal group's black market, may inflict damage on the public, or that corrupt officials may abuse their power.

Controlled delivery should be introduced into Thailand's criminal justice system as a measure supporting other laws to combat the nation's organized crime problem. Such a law would enable the authorities to access the masterminds, an essential feature of any campaign against organized crime. Thailand should enact laws authorizing public officials to perform controlled deliveries by appointing special competent officials responsible for controlling and setting the scope of the operation. These laws should cover all offences committed by organized criminal groups and specify criteria for the operation to ensure that it conforms to best practices, gains the trust of people, safeguards officials from harm, and prevents officials from abusing the measure. The most important factor is its practical implementation.

The Use of Fines to Punish Offences Committed by Organized Criminal Groups

Organized criminal groups have strong economic and financial power, which they use to create and protect their networks. The reduction of such powerful support for their networks and activities is an effective way of combating the problems stemming from organized crime. The Money Laundering Control Act 1999 contains measures to deal with the money and property of organized criminal groups. The law was enacted to prevent offenders from laundering money derived from criminal activities into other forms, then reusing such money or property to expand their network. This law has measures to deal with all kinds of property derived from criminal activities. The confiscation of property under the civil law also applies. This means that the focus of the law

is on the property. If the court finds by a preponderance of evidence that such property is derived from criminal activity, it may be confiscated to the State forthwith, without having to consider whether or not the offender is guilty of the predicate offence, as specified in Section 3.[30] The confiscation measures under the Money Laundering Control Act are effective for dealing with organized crime, especially financial transactions. However, one principle underlying this law is that the property to be confiscated must be derived from criminal activity, i.e. from a predicate offence or from supporting or assisting criminal activity under the predicate offence; or property derived from a sale or transfer in any form, including the interest from such property, regardless of how many times such property has been transferred or sold or changed its form, or in whose possession it is, or whose name appears in the record of ownership.[31] This measure can be applied only to criminal activities which are predicate offences. Organized criminal groups have the power to evade, conceal and hide the origins of money or property and employ seamless processes to sell or transfer property derived from criminal activities, rendering public officials unable either to trace the cash derived from such activities or to apply the Money Laundering Control Act.

The use of fines is therefore another measure to combat organized crime as they can effectively reduce the wealth of offenders. Civil actions may be brought whereby offenders may have to pay a fine at an amount determined by the court regardless of the origin of the money used to pay the fine, with no need to prove whether or not such money or property was derived from criminal activity or has been used in committing an offence. This is different from the principle of confiscation under the Penal Code and the Money Laundering Control Act for a predicate offence. The use of fines aims to reduce the economic power of organized criminal groups which commit crimes for financial gain, with the emphasis being on the confiscation of their assets. Substantial fines should be meted out, together with imprisonment when dealing with organized criminal groups. However, under the Thai Penal Code,

when offenders cannot afford to pay the fine, the alternative punishment is limited to confinement of no longer than two years. An amendment should be made to the Thai Penal Code concerning the use of punitive fines, while confinement in lieu of fines should not be used in cases involving organized crime. Instead, the group's property should be confiscated and auctioned off to pay the fine within ten years of the court's verdict.

Measures to Penalize Legal Persons Committing Crime

Many organized criminal groups use the facade of a legal person to traffic in contraband, carry out unlawful businesses, or to launder money, with the hiring of other persons to claim to be the owner of a gambling den, or the manager of a massage parlour or entertainment place. If an arrest is made, only the easily replaced manager or hired staff are exposed to arrest and punishment. Most partners in such businesses claim that they are not involved with such illegal activities and are merely shareholders. In some cases, although no traces of the involvement of organized crime in the company can be found, it is present in the background, controlling the business from outside through violence and influence. It is therefore extremely difficult to trace information about criminal activity that leads to the key perpetrator or mastermind. In such cases, imposing criminal sanctions on the manager alone, only for the organized criminal group to hire other replacement staff, perpetuates the never-ending circle, with organized crime being the sole beneficiary. It is necessary, therefore, to restrict organized criminal groups by punishing legal persons with substantial fines that outweigh such offences, which involve considerable economic gain, together with the imposition of sanctions on the legal persons; voiding or foreclosing on their business; or barring the managing director or director from assuming the administrative function of the legal person or from being a shareholder in a company doing a similar business that may commit crimes in the future, with or without a time limitation.

Thai law has measures to impose criminal liability on legal persons, mostly involving fines. However, the amount of the fines imposed does not outweigh the damage done or profit gained from committing the offence by the legal persons, and there is no law barring a person from being a director in lieu of a legal person when there are grounds to believe that such a person is aware that the legal person has committed an offence. The law should therefore be further developed in this direction.

Taxation Measures to Penalize Organized Criminal Groups

Apart from using fines as a punitive measure to prevent and combat organized crime as has been already mentioned, the use of taxation under the Taxation Code is another effective measure to monitor and inspect the financial transactions of organized criminal groups.

The Constitution of the Kingdom of Thailand 1997 states that the payment of tax is a duty of both Thai citizens and overseas residents in Thailand who have an income, in accordance with the conditions set forth in the Taxation Code.[32] The Taxation Code further provides that anyone who earns taxable income has a duty to pay tax according to the stipulated rates and conditions. Taxable income is defined as including money in both Thai and foreign currencies: in the case of the latter, it shall be converted into Thai currency according to the exchange rate specified by the Revenue Department. The Taxation Code states that:

1. Property that may be calculated as money means property under the Civil Code, which includes tangible or intangible assets. However, when received it shall be calculated in monetary terms.
2. Benefits that may be calculated in monetary terms.
3. Tax or duty, paid directly by others or through a proxy.
4. Tax credit specified under the law

Taxable income under the Taxation Code includes money or property derived from both legitimate and illegitimate sources. This means that the money or property of organized criminal groups derived from illegal activities shall also be subject to taxation. Money transferred into the bank accounts of organized criminal groups can be considered as taxable, yet the enormous amounts of money derived from the activities of organized crime have never been taxed, but, on the contrary, have been used to further damage the country.[33] The imposition of taxation measures requires the competent authority to have information or evidence concerning the financial or property movements of suspects who are members of organized criminal groups, and then to prove whether such income is taxable under the law or not. If it is found that tax has not been paid, this may result in imprisonment and/or a fine, as well as the payment of the tax, a penalty and a surcharge. Failure to comply with such an order will result in the competent authority impounding the property until the tax is paid, otherwise confiscation for auction to pay the unpaid tax will result, without having to resort first to court procedures.

Such a measure exists in the Thai Taxation Code but lacks concrete implementation[34] with the punishment of violators of the Taxation Code being applied in general, and not specifically to tax evaders who are members of organized criminal groups. This is due to the fact that the Thai justice system views tax evasion as a misdemeanour, not as an economic crime. The application of taxation measures to punish organized criminal groups needs cooperation among public agencies in providing information or clues about tax evasion, especially between the Anti-Money Laundering Office (AMLO), which examines the property of persons or groups suspected of laundering money, and the Revenue Department, which has a direct duty to enforce the Taxation Code. In addition, the Revenue Department should encourage non-governmental organizations or individual citizens to provide information on tax evasion by organized criminal groups: the Department should provide appropriate rewards, and protection measures should be provided to them in return. There should

also be a division or specialized personnel to examine and collect tax from organized criminal groups. The justice system at all levels should admit that tax evasion, especially on income derived from criminal activities, is a serious economic crime and not a misdemeanour, and the punishment scale should directly correspond to both the amount of evaded tax and the nature of the criminal activities.

Measures for Mutual Legal Assistance

Recently, criminal activities have developed rapidly through the application of modern technology both to develop new forms of crime and to expand criminal networks through international links into transnational organized crime syndicates, a phenomenon which is now a global problem. When organized criminal groups develop a transnational format, no single country is capable of solving the problem alone, as each country has its own sovereignty limiting law enforcement within its own jurisdiction, with justice officials in any one country unable to enforce the law beyond their own national borders. On the other hand, organized crime has expanded to become borderless, making international cooperation on legal matters a necessary measure to assist in solving the problem of transnational organized crime.

Many countries are now aware of the importance of cooperation and the rendering of mutual assistance to prevent and combat organized crime. The 30 paragraphs of Article 18 of the United Nations Convention against Transnational Organized Crime call for mutual legal assistance between States Parties and joint efforts to combat transnational crime through the use of mutual legal assistance in criminal matters as a legal tool. Such measures are symbolic of the attempt to establish and upgrade criminal justice administration standards to an international level. In order to facilitate international mutual legal assistance, Article 13 of the United Nations Convention against Transnational Organized Crime creates an important legal tool by specifying the cooperation provided by a Member State upon receiving a request from another Member State for the confiscation of proceeds of crime of organized criminal groups.

Thailand is a Signatory State to the United Nations Convention against Transnational Organized Crime and has adopted measures on the provision of mutual legal assistance and international cooperation to confiscate property. In essence, these two measures represent international cooperation on criminal matters. The Mutual Assistance in Criminal Matters Act 1992 embodies the principle of rendering assistance to and requesting assistance from other countries. If Thailand already has a Mutual Legal Assistance treaty with a country, the requesting and rendering of assistance proceeds under that treaty, not the act. At present, such treaties exist between Thailand and five countries, viz. the United States, Canada, the United Kingdom, France and Norway.[35] Moreover, Thailand may render assistance in criminal matters to non-treaty countries, but the requesting state must promise to render similar assistance upon receiving a request from Thailand, in accordance with the principle of reciprocity. This law specifies the Attorney General as the Central Authority responsible for coordinating the requesting/rendering of assistance from or to other countries to implement this act. For countries with a treaty, the request shall be sent directly through the Central Authorities. As for non-treaty countries, the request shall be made via a diplomatic channel through the Central Authority. In both cases, the Central Authority shall then consider whether or not such a request falls within the criteria for the rendering of international cooperation.

In addition, the following ministerial regulations and procedures have been enacted under this act:

1. Ministerial Regulation (1994), enacted under the Act on Mutual Assistance in Criminal Matters (1992), specifying criteria for transferring a person in custody in Thailand to give testimony as a witness in the requesting state, or receiving such a person from a another country to give testimony as a witness in Thailand.

2. Ministerial Regulation (1994), enacted under the Act on Mutual Assistance on Criminal Matters (1992), specifying criteria for expenses involved in rendering assistance.

Regulations of the Central Authority relating to the rendering and requesting of assistance under the Act on Mutual Assistance in Criminal Matters (1992) specify the details of information to be included in the request form and supporting documents.

The existing Thai law conforms to Articles 13 and 18 of the United Nations Convention against Transnational Organized Crime on the rendering of mutual legal assistance and cooperation on confiscating property. Therefore, in principle there should be no obstacle to Thailand applying such laws, especially on the confiscation of property.

Article 13 of the United Nations Convention against Transnational Organized Crime states that the scope of cooperation in confiscating property depends on the domestic law of each country and stipulates alternative measures for the implementation of a request to confiscate property, in order that Member States can choose one that is most appropriate under their domestic law. Upon receipt of a request, Member States may choose to process it through the competent authority in their country, such as the court or any other agency. Measures involving the confiscation of property appear in many Thai laws, such as the confiscation of property under the Penal Code, the confiscation of property derived from criminal activity under special laws, viz. the Money Laundering Control Act 1999, and the Act on Measures for the Suppression of Offenders in Offences Relating to Narcotics 1991.

The confiscation of property under the Thai Penal Code is linked to the conviction-based system, whereby States may not be able to confiscate property without a court verdict to do so, even though there may be clear evidence that such property is involved in criminal activities. The exception to this is the Money Laundering Control Act, which does not rely on the court verdict, although this is limited to only eight predicate offences.

Even though Thailand has effective laws to facilitate mutual legal assistance in criminal matters, some improvements are still needed, especially an increase in the speed and ease with which cooperation on the confiscation of property can be rendered: nowadays electronic transfers of money can be done

extremely rapidly, so a failure to cooperate swiftly will result in the inability to confiscate the funds in question.

Another necessity is the clarification of the ownership of confiscated property. At present, Thai law provides that all confiscated property shall belong to the State, and as such it cannot be returned to the rightful owner or the victim. This results in problems in rendering cooperation, especially in cases where the ownership is already clearly apparent: if Thailand strictly applies this principle, the country will experience problems reciprocating when other nations share recovered assets with the Thai government or victims. Therefore, the law should be amended to be more flexible than at present, meaning that Thailand should be able to follow the principle of reciprocity by returning confiscated property to its rightful owner if the requesting state also applies the same principle. In cases involving assets from overseas, Thailand should confiscate property to the State only if the law in the requesting state would not allow for the return of confiscated property to Thailand. Moreover, in the return of property to its rightful owner, the expenses involved in the process of confiscation and return of the property may be deducted at the rate applied by the requesting country, except when the requesting country would not itself levy such a charge. In the case of cooperation in confiscating property of unknown ownership, such as money derived from the sale of narcotics, such property may be divided, based on the costs incurred by the respective parties involved.

Extradition Measures

Nowadays, modern information technology and other developments have resulted in the expansion of the illegal activities of organized criminal groups, with international cooperation being required to combat them. Recognizing this, the United Nations Convention against Transnational Organized Crime specifies extradition as one of three measures for legal cooperation, the others being mutual legal assistance on criminal matters and the transfer of prisoners.

Extradition measures in Thailand are set forth in the Extradition Act 1939, a domestic law which authorizes treaties with many countries, such as the United States, the United Kingdom, China, Malaysia and Indonesia. There are two criteria for extraditing fugitives on which Thailand has signed treaties with other countries:

1. Specified offences: Extraditable fugitives must have committed a felony that carries a severe penalty: for example, the treaty between Thailand and the United Kingdom.

2. Specified minimum punishment: Extraditable fugitives must have committed an offence punishable by imprisonment or the deprivation of liberty for one year or more: for example, the treaty between Thailand and the United States.

In addition, apart from extraditable offences, such an offence must be punishable in the requesting state as well, i.e. it must have double criminality. However, this principle has been relaxed for some time, and nowadays, if both states have an offence listed in the treaty in their domestic laws, it can be assumed that the countries recognize that it is an offence that can be covered by the extradition treaty. Nevertheless, there are some practical problems involved, as the elements of extraditable offences in the requesting and requested states may differ.

Thailand has solved this problem by specifying that the principle of interpretation be included in the treaty and the facts involved in the offence should be taken into consideration, whether or not it is an offence in both States. This principle appears in the Extradition Treaty between Thailand and the People's Republic of China. [36]

Another important principle is that the court of the requested state should consider only whether there is enough evidence to prosecute the fugitive to be extradited, with the determination of the guilt of the offender resting with the court of the requesting state.

Methods of Extradition

Thailand uses the following two methods of extradition:

1. Formal extradition: This method is a lengthy and complex procedure. In the initial stages, the executive branch of the government, viz. the Ministry of Foreign Affairs, upon receiving a request for extradition, shall consider the request together with the supporting documents. If there is reason to render assistance, the case shall be brought to the court, in accordance with Article 12 of the Extradition Act 1939.[37] When the court decides that all the requirements have been met, it shall order that the fugitive can be extradited and shall notify the executive branch to use discretionary powers to extradite such an offender.

2. Simplified extradition: Under this method, the wanted person relinquishes their rights to undergo formal extradition proceedings under the Extradition Law and other rights under the treaties. These include the right to contend that the offence is not an extraditable offence or lacks double criminality, or to claim that they are not the wanted person, or to claim innocence. The relinquishing of such rights shall be done in writing in front of the police or public prosecutor. The Consent Form must state three details: that the person has been informed of all their rights according to the Extradition Law; that they volunteer to travel to defend themselves in the requesting state; and that they are willing to relinquish their rights to a formal extradition proceeding in the requested state and they shall not revoke these articles of consent. The Ministry of Foreign Affairs shall then use discretionary power to decide whether or not to extradite the person under this simplified procedure.

Initially, simplified extradition was applied in cases involving Thailand and the United States, as it is stipulated in the treaty between the two countries. Later on, it was also included in treaties between Thailand and other countries, such as the People's Republic of China. There are many advantages to simplified extradition, such as a reduction in procedures and the wanted person being able to express their voluntary consent, with the method not violating their rights and liberties but aiming to render justice.

Comparing existing extradition measures with the purpose and intention of the United Nations Convention against Transnational Organized Crime, the Extradition Act 1939 should be amended to conform to the Convention and to foster cooperation on legal matters to effectively combat transnational crime. Such an amendment should include a clear specification of extraditable offences, which must be punishable by one year of imprisonment or more, as in the treaty between Thailand and the United States.

The requirement of punishment greater than one year imprisonment would enable all offences under the United Nations Convention against Transnational Organized Crime to become extraditable offences, as well as offences not specified in the Convention but punishable by one year imprisonment or more. Moreover, other offences which are not yet specified in the law but which may be criminalized in the future with imprisonment of one year or more would then also be extraditable offences. Such amendments would enable Thailand to extradite offenders to other countries which have comparable definitions, and enable the law to become more up-to-date and enforceable without any amendments or stipulation of additional offences.

Simplified extradition should be clearly stipulated in the Extradition Act for the purpose of speedy and effective law enforcement and to reduce procedures. Such an amendment would result in speedier and more effective international cooperation in combating transnational crime.

In this chapter, a comparison of all the measures in force in other countries examined above with those in Thailand clearly shows that the latter are inappropriate for combating organized crime and urgent improvements to laws and measures are needed to effectively solve the problem. Measures implemented in other countries or stipulated in the United Nations Convention against Transnational Organized Crime should be adopted in Thailand as tools for officials engaged in the prevention and combat of organized crime: the problem should be solved systematically by upholding the rule of law in Thailand instead of resorting to violence or extra-judicial methods, or leaving people to face alone the fear of the illegal activities of organized criminal groups. The measures that should be implemented are discussed in the following chapter.

[1] Trirat, N. and Suksri, P., The Serious Situation of the Transnational Organized Crime Problem in Thailand, A Research Report on the Legal Development to Prevent and Suppress Transnational Organized Crime, 2nd Phase, Thailand Criminal Law Institute, Office of the Attorney General, 2003, pp.101-106.

[2] The Money Laundering Control Act 1999, Section 6.

[3] Boonyopas, V., Panwichit, S. and Lipipan, J., The Criminalization of Money Laundering by Transnational Organized Criminal Groups and International Cooperation and Measures to Combat Money Laundering, including Seizure, Freezing and Confiscation of Property, A Research Report on the Legal Development to Prevent and Suppress Transnational Organized Crime, 2nd Phase, Thailand Criminal Law Institute, Office of the Attorney General, 2003, p.44.

[4] www.austrac.gov.au/text/publication/overview_money_laundering

[5] The Thai Penal Code, Section 144 stipulates that "whoever gives, offers or agrees to give a property or any other benefits to any official, member of the National Assembly, member of the Provincial Council or member of the Municipal Council in order to induce such person to do or not to do any act, or to delay the doing of any act, which is contrary to his functions, shall be punished with imprisonment not exceeding five years or fine not exceeding ten thousand baht, or both."

[6] The Thai Penal Code, Section 167 stipulates that "whoever gives, offers or agrees to give a property or any other benefits to an official in a judicial post, public prosecutor, official conducting cases, or enquiry official in order to induce him wrongfully to do, or not to do an act or to delay the doing of any act, shall be punished with imprisonment not exceeding seven years or fine not exceeding fourteen thousand baht."

[7] Meenakanit, T. and Tienhiran, O., Anti-Corruption Measures, A Research Report on the Legal Development to Prevent and Suppress Transnational Organized Crime, 2nd Phase, Thailand Criminal Law Institute, Office of the Attorney General, 2003, p.42.

[8] Ibid. pp.22-3.

[9] The Thai Penal Code, Section 138.

[10] Title 18 USC, Sections 1501-1510.

[11] The Royal Gazette, Vol. 121, Section 8 a, 19 January B.E. 2547 (2004 A.D.), pp. 1-16.

[12] The Board of Special Cases is under the Department of Special Investigation, Ministry of Justice.

[13] UN Convention, Article 2.

[14] Trakulkasemsuk, S., The Protection of Individual Rights from Telephone Interception, Master Degree Thesis, Faculty of Law, Dhurakitbundij University, 2000, p.61.

[15] Title 18 U.S.C.A., Section 2511.

[16] Title 18 U.S.C.A., Sections 2510-22.

[17] The Criminal Procedure Code, Section 228.

[18] Ibid, Section 235.

[19] The Civil Procedure Code, Section 119.

[20] The Criminal Procedure Code, Section 28.

[21] Likitjittha, A., Rattanakul, N. and Hanchai, K., Measures to Encourage Persons to Assist or Give Information to Law Enforcement Agencies, A Research Report on the Legal Development of Transnational Organized Crime, 2nd Phase, Thai Criminal Law Institute, Office of the Attorney General, 2003, p.134.

[22] Ibid. p.164.

[23] Ibid. p.175.

[24] Ongpisut, N., Plea Bargaining, Masters Degree Thesis, Faculty of Law, Chulalongkorn University, 1984, p.24.

[25] The Criminal Procedure Code Section 2 (11).

[26] See all major media reports during the period 6-10 May 2004.

[27] This case is pending an appeal to the Supreme Court by the prosecutor, therefore, until the verdict is announced, no decision can be made as to how the case should be pursued hereafter.

[28] United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, Article 1 (b).

[29] The Narcotics Act (5th edition) 2002, Section 15 Paragraph 1.

[30] "Predicate offence" means a criminal offence that generates, involves, or receives, money and/or property which are the proceeds of crime, after which such money and/or property are transferred, changed in form, or subjected to any other act with the intent of concealing their origins. Such a process is known as "money laundering".

[31] The Money Laundering Control Act 1999, Section 3.

[32] The Constitution of the Kingdom of Thailand, 1997, Chapter 4, Section 69.

[33] Trirat, N. and Suksri, P., The Serious Transnational Organized Crime Problem in Thailand, A Research Report on the Legal Development to Prevent and Suppress Transnational Organized Crime, 2nd Phase, Thailand Criminal Law Institute, Office of the Attorney General, 2003, p.79.

[34] Chantawaro, K., Taxation Measures and Suppression of Persons of Influence, http://www. ago.go.th .//2004

[35] Thailand has entered in agreements or treaties on mutual legal assistance in criminal matters (MLAT) with five countries, viz. the United States of America, effective from 10 June 1993; Canada, 3 October, 1994; the United Kingdom, 10 September 1997; France, 1 June 2000; and Norway, 22 September 2000. http://www.mfa.go.th/web/202.php.2004

[36] The Treaty was signed on 26 August 1993.

[37] The Extradition Act B.E. 2472 (1929) stipulates in Section 12 that the court must be satisfied that the accused is the actual person to be extradited; there is enough evidence to detain the accused for trial if such an offence was committed within the Kingdom of Siam; and such an offence must be extraditable and is not one of a political character.

A former Member of Parliament was brutally murdered in her car by assassins armed with M-16 rifles on 27 May 2006. The assassination bore all the hallmarks of having been committed by an organized crimminal group. (Photo courtesy of the Office of the "Thai Rath" Newspaper)

Chapter 5

■ Conclusion and Recommendations

Conclusion

From this book, it can be seen that organized criminal groups engage in illegal activities, both domestic and international, causing problems and enormous damage to Thailand in terms of public well-being, state administration and national security. The activities of organized crime progressively destroy human resources through, for example, the production of/trading in narcotics, hired assassinations, human trafficking, arms smuggling, money laundering, gambling, extortion of gambling debts, the collection of protection money, illegal gasoline trading, bribing public officials and many other illegal activities. Such activities generate enormous income and create influence for the key perpetrators of organized criminal group, enabling them to become well-respected "persons of influence" in Thai society which, having become materialistic, admires the wealthy regardless of their source of income.

Three Chinese were arrested on 23 September 2004 as they attempted to smuggle more than 400 kilograms of heroin from Myanmar into China's Yunnan province. This led to the joint Sino-Thai "Fox Hunter" operation resulting in the apprehension of organized criminal groups in both countries. (Photo courtesy of the Office of the Narcotics Control Board, Ministry of Justice)

Organized crime inflicts serious damage on the economic system: research carried out by Phasuk Pongpaijit, et al from the Faculty of Economics, Chulalongkorn University, Thailand, in 1996, estimated that just six selected organized crime activities inflicted annual damage of as much as 200 billion baht: if all the activities of organized criminal groups were to be included, the figure would be much higher than this.

Apart from the economic damage, such activities also have a negative social impact, with organized crime destroying human resources, creating social unrest, and causing people to lack confidence in the justice system. Members of organized criminal groups seek to constantly improve themselves, amassing political influence to protect their activities and even paying off the mass media to create influence. Some government officials cooperate with or protect members of organized criminal groups in exchange for material and political benefits, with a view to being appointed to positions of power.

Honest government officials are unable either to combat organized crime or enforce the law effectively, due to a plethora of weaknesses and loopholes in the law and the system, leaving them with only two choices: to carry out their duties perfunctorily and admit defeat when faced with obstacles; or to use extra-judicial or other similarly violent means to combat organized crime, as when, for example, the masterminds and members of organized criminal groups have been gunned down on various occasions in the past. Investigations into these cases showed that they could have been either actions of revenge as part of a power struggle between rival gangs, or extra-judicial killings perpetrated by government officials. The weakness of the Thai legal system hampers government officials from enforcing the law, which is unprepared to combat modern organized crime. Attempts to amend the

law appear to be difficult and sluggish, therefore legal measures are still unable to cope with the activities of organized crime. The Thai public, therefore, are forced to accept this social reality and that there are some privileged people who are beyond the scope of the law.

When the activities of organized crime weaken the economy and society, especially through the wholesale destruction of human resources, this inevitably has an erosive effect on national security in the long run, as can be seen in the corrupt activities of several district offices in remote provinces under the control of the Ministry of the Interior. (For example, sometimes when a death was reported to a corrupt official, they would issue a death certificate but not record the death or delete the deceased's name from the main registration record; the deceased's official identification card would then be given to a drug trafficker, a member of a transnational organized criminal group, or an illegal immigrant who was willing to pay the price demanded. When the Ministry of the Interior investigated the corrupt acts of the official, the whole district office was likely to be deliberately burned down at night to destroy the documents and evidence, in accordance with the basic *modus operandi* for destroying the evidence of such corrupt officials.) If such activities are not controlled or eliminated, they will further damage the country and make the problem increasingly difficult to solve, hindering other aspects of national development and resulting in Thai society lagging behind other countries and unable to compete. This is because the factors that lead to the success or failure of any country in the global marketplace are the quality of its human resources and its social and economic strength.

The government of Thaksin Shinawatra, acknowledging the importance of this problem, therefore introduced two major measures to combat organized crime, viz. measures to combat large-scale drug traffickers and measures to combat "persons of influence". (This has been discussed in Chapter 2 with the definition of "persons of influence" under the Office of the Prime Minister's Order No. 139/2546 [2004 A.D.] being

similar to that in the United Nations Convention against Transnational Organized Crime.) The government's so-called War on Drugs was successful, even though its impact involved human rights issues, with many people being killed during the three-month intensive anti-drugs campaign. However, measures to combat "persons of influence" have not made much progress and have had a much lesser impact, due to both the far-reaching influence of such people in the spheres of power, finance and politics, and the complex activities of organized crime, with public officials lacking awareness of the importance of combating this phenomenon. In some cases, public officials refuse to relinquish the regular benefits they derive from organized crime, a factor which contributed to the relative lack of success of the policy when compared to the campaign against narcotics.

Another reason for the lack of success of the campaign against organized crime is the inadequacy of legal measures to combat modern organized crime. Policies which lack adequate legal measures are inevitably insufficient for public officials to combat organized crime, as the principle of Thai law is based primarily on the assumption of the weakness of criminal offenders to be prosecuted by the mighty State, which is equipped with resources and trial processes. This principle guarantees the rights of offenders in order to assist them in contending with the State. In the past, especially when Thailand was under a military regime, as the country lacked legal measures, law enforcement officials and some agencies resorted to using extra-judicial means as an alternative solution to combat organized crime, for example, by taking people into custody without arrest warrants; using torture and other methods similar to those employed by organized criminal groups themselves; or implementing detention without trial or under charges of hooliganism. However, since the country progressed under democratic governments and especially after the introduction of the current Constitution, the rights of the citizens have been upheld and independent organizations, including human rights organizations, have come into existence on both domestic and international

levels to examine the actions of states and public officials. The awakening of human rights awareness among people and the trend towards globalization have resulted in extra-judicial measures being no longer acceptable, as such methods lack control, transparency and appropriate balancing of power, and can be used to harm innocent people through misunderstanding, personal prejudice, or their opposition stance against the government.

Currently, the government requires adequate legal measures to prevent and combat organized crime and "persons of influence", such as arranging for agencies to cooperate and work effectively together. Legal measures are the only internationally acceptable method of dealing with organized crime, and so Thailand, as a legal State, must rely on its legal system to solve such problems and gain the respect of the international community.

The impact of organized crime is not simply a Thai internal problem: globally, all countries face similar issues. Internationally, a range of improved measures have been introduced to combat organized crime, with the United States of America being the country that has been best able to rapidly improve the law while giving due emphasis to the rights and liberties of its citizens. When there is a necessity to protect the public from danger, the United States is able to stipulate effective legal measures and find a balance between the protection of individual rights and liberties, the prevention and combat of organized crime, and the protection of innocent people from its impact. A study of the American model has been used as a directive in this book to improve legal procedures and measures in order to set up agencies to combat organized crime.

As many countries were facing the problem of organized crime, the United Nations initiated discussions among international experts in order to collect and codify effective legal measures which could be applied consistently in, and be recognized by, the international community. This resulted in the issuance of the international treaty, the United Nations Convention against Transnational Organized Crime, together with three of its Protocols:

the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition; and the Protocol against the Smuggling of Migrants by Land, Sea and Air. Thailand is a signatory to the Convention, and also to both the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea and Air. As a Signatory State to the Convention and the two Protocols, some amendments in the country's domestic law are needed in order to comply with the Convention itself and these two Protocols.

The book has examined measures under the United Nations Convention against Transnational Organized Crime as directives for the improvement of Thai law and the establishment of agencies responsible for the combat of organized crime. Important measures stipulated in the United Nations Convention against Transnational Organized Crime, in the laws of the United States and the laws of other countries that have been studied in this book are as follows:

1. The definition of an organized criminal group and its members.
2. The criminalization of being a member of such a group or taking part in its criminal activities.
3. The expansion of predicate offences, especially to cover offences involving an organized criminal group and its members, which shall not be applied to individuals; international cooperation against money laundering; the seizure, freezing and confiscation of the proceeds of all crimes.
4. The criminalization of corruption, especially involving the activities of organized criminal groups.

5. The legal liability of legal persons, especially measures to combat the use of legal persons to commit crimes, in particular those involving an organized criminal group, its members or representatives.

6. Extradition and international cooperation on criminal matters.

7. The criminalization of the obstruction of justice.

8. The creation of measures to protect witnesses and victims in cases under investigation or trials involving organized criminal groups.

9. Joint international investigations for the effective combat and prosecution of organized crime and a reduction in the obstacle of multiple-jurisdictions while maintaining countries' sovereignty.

10. The legalization of special investigation techniques, such as the interception of communications through telephone and other communication devices, such as electronic mail; the use of undercover agents in organized criminal groups to gather evidence for the prosecution of the entire group; and measures to prevent the implementation of such special investigation techniques from being abused or harming innocent people.

11. The creation of measures to encourage offenders to cooperate in giving information to law enforcement officials in exchange for legitimate legal benefits.

12. The exchange of information, and the collection and analysis of criminal records, both domestically and internationally.

13. The rendering of technical assistance to effectively combat organized crime.
14. The use of fines and confiscation for auction to pay the fines as additional measures to imprisonment and capital punishment.
15. The establishment of a special agency comprised of various experts from a range of fields to improve expertise in the prevention and combat of organized crime.

These important measures are not exhaustive, with other measures still being required. Those stated above need to be detailed in order to create laws, ministerial regulations and procedures capable of constructing a controlled system that ensures the rightful enforcement of the law; the prevention of the abuse of power harming innocent people; and the avoidance of violations of rights and liberties protected under the Constitution. The measures are mostly severe and therefore require careful enforcement against the right targets, while striving for an appropriate balance between the protection of rights and liberties and preventing people from becoming victims of organized crime. Moreover, it is recognized that Thailand needs these measures to be written into the law so that the fight against organized crime can be consistent with the rule of law. Existing laws and legal measures are inadequate while the use of extra-judicial methods is no longer acceptable. There is a need to study and draft laws that can effectively prevent and combat organized crime, thus enabling Thailand to progress and have greater economic security and reduce corruption-derived political distortion. Other positive effects of defeating organized crime include restoring peace to society in order that people can live with safety and well-being, and preventing human resources from being destroyed so that they can instead become important contributors to development and enable Thailand to compete in the global community.

Recommendations

This book has examined the problem of organized crime, its impact on Thailand, and the ineffectiveness of attempts to deal with the problem by public officials. Three main causes have been identified:

1. Obsolete laws, unable to prevent and combat organized crime because they were not systematically prepared for this purpose, with the basic principle in drafting such laws aiming at individual crimes rather than those committed by organized criminal groups.

2. Before 2004, there existed no specialized agency with expertise in the prevention and combat of organized crime, or to mobilize resources from other agencies, especially experts, skills and abilities, to work together to maximize the prevention and combat of all aspects of organized crime.

3. The country lacks both the political will and policies for the serious, continuous and systematic combat of organized crime.

As a result, Thailand has been seriously damaged by organized crime. People's fear of the threats of organized crime results in social unrest, which, in turn, has serious effects on politics and national security.

In order to develop effective measures to deal with organized crime in Thailand, the book has examined various measures implemented in other countries as well as international laws. Countries used as examples in this book are those which have long been beset by the problem of organized crime, while the international law studied for this book, the United Nations Convention against Transnational Organized Crime, contains many fundamental principles of interest, viz.:

1. The Convention originated in the brainstorming of experts in the fields of law and the combat of organized crime from nearly 120 countries, who spent two years in drafting an

international law in the form of a United Nations Convention. The Convention aims to be an effective law to prevent and combat organized crime, by pooling ideas to create effective measures and systematically codify them to support each other.

2. Measures stipulated in the Convention must be acceptable and practical in Member States: if such measures were impractical and received inadequate signatories, they would be ineffective as international law.
3. Measures stipulated in the Convention must not violate the principles of human rights and liberties, except in cases of extreme necessity to protect innocent persons or the public.
4. The Convention aims to encourage as many signatories as possible in order to establish a complete network and maximize the prevention and combat of organized crime.

In addition, the author studied and analyzed laws and measures in various countries, as well as international law (above all, the United Nations Convention against Transnational Organized Crime), and compared them with domestic laws and measures aiming to solve comparable problems in Thailand. It was found that although Thaksin Shinawatra had a concerted policy to combat organized crime, as written in the Office of the Prime Minister's Order No. 139/2546 (2003 A.D.), the war against "persons of influence" (i.e. organized criminal groups) has been unsuccessful due to the lack of unified laws and specialized agencies and, in part, because some public officials still receive benefits from organized criminal groups. Therefore, it is necessary to create modern laws that are able to effectively combat organized crime, and to establish a specialized agency comprised of experts from various related fields.

Therefore, the author recommends that if Thailand wants to combat "persons of influence" and organized criminal groups effectively, the following measures should be implemented.

1. Thailand is in urgent need of specific laws to prevent and combat organized crime, together with a definition of organized criminal groups and their members; the criminalization of offences; and the creation of specific measures in legal texts and legal procedures for the investigation, prosecution and trial of offences involving organized crime. As for the definition of organized crime and other definitions, they must conform to the United Nations Convention against Transnational Organized Crime, to which Thailand has been a Signatory State since December 2000.

2. There should be measures to criminalize being a member of an organized criminal group, or taking part in the activities of such a group. As organized criminal groups are outlawed and practise illegal activities, merely being a member or taking part in their activities, with intention or full knowledge, should be a prosecutable offence.

3. Amendments should be made to the Money Laundering Control Act which, at the present, is narrow in scope with only eight predicate offences that enable officers to seize and confiscate property and does not cover the wide range of offences committed by organized criminal groups. Currently, therefore, the laundering of money from other illegal activities, such as the operation of illegal gambling dens, does not fall under any of these predicate offences. Such loopholes enable organized criminal groups to launder money with impunity. Therefore, the law should focus on the characteristics of offenders rather than the offence. There should be a ninth predicate offence on "the laundering of money by organized criminal groups or its members or representatives, regardless of whether the money or property is derived from legal or illegal activities." This additional offence would have no impact on individuals or the general public, as it focuses on organized criminal groups and their members. Such a law should permit international cooperation in anti-money laundering and the seizure and confiscation of property derived from criminal activities, including accrued interest, regardless of the number of times the property has been transferred or changed in form.

4. Corruption should be criminalized, with effective, severe punishment for corruption involving, or related to, the activities of organized crime. This could be done by amending the Penal Code and the Prevention and Suppression of Corruption Act, or stipulated in a law specifically created for the prevention and combat of organized crime.

5. The legal liability of legal persons should be established, along with measures to prevent and combat the use of legal persons to commit an offence, in particular on the orders of an organized criminal group, or the use of legal persons as a facade for illegal activities, including the laundering of money. The punishment should involve criminal sanctions, fines and the confiscation of the property belonging to legal persons.

6. Extradition laws should be improved and modernized to facilitate swift extradition, in particular the improvement of the simplified extradition procedures in order to reduce obstacles and complexity in extradition trials, especially in cases where the wanted person has admitted that they are the person involved and are willing to contend the case in the court of the requesting state, and to relinquish the right to disclaim being the wanted person. However, at the same time, there should be measures to ensure justice for the person to be extradited.

7. Laws and procedures on mutual legal assistance in criminal matters should be improved to cover not only criminal cases but also related civil cases in order to reduce unnecessary procedural obstacles and thus enable speedy mutual legal assistance and enhance efficiency in combating organized crime.

8. The Thai Penal Code should be amended in order to criminalize the obstruction of justice in case of any action that causes the criminal justice system to be unfair. This includes the intimidation or bribing of witnesses, victims or officials, or any action that distorts documents and evidence. Such offences should carry heavier punishments than similar offences that lack the

intention to obstruct justice: for example, the abduction of a person is an offence against liberty, but if it is carried out in order to prevent such a person from becoming a witness, the offence should carry a heavier punishment than if committed with other motives.

9. There should be effective measures to protect witnesses and victims in order to ensure their full confidence in cooperating with public officials investigating or prosecuting members of organized criminal groups. Although a law on witness protection is currently available, the implementation of this law needs to be developed and cases involving organized crime prioritized.

10. International joint investigation among law enforcement officials in Thailand and elsewhere needs to be improved. This would overcome multiple-jurisdiction issues, while upholding the sovereignty of individual states.

11. There is a need to create and improve special investigative techniques, such as the interception of communication through the telephone or other forms of communication such as electronic mail, or using undercover agents to infiltrate organized criminal groups in order to obtain evidence to prosecute the entire organization. Such measures must be legalized and cover the whole range of illegal activities of organized criminal groups. Strict measures of control should be available to ensure that such measures are used specifically against organized criminal groups and their members; to prevent the abuse of this power; to provide protection for private agencies that cooperate with officials when conducting interception; and to enable evidence obtained through interception to be used legally in the court.

In the case of an undercover agent being deployed to gather information and evidence, the assignment must be systematic and supported by legal measures to approve the operation and maintain confidentiality. There should be a law exempting punishment in the case of an undercover agent having to commit an offence assigned to them by the organized criminal group

in order to gain their trust and gain access to information. Such an offence must not exceed the benefit the state may receive, and must be written in the law.

12. There should be measures to encourage offenders to give information to law enforcement officials, including being witnesses against the key perpetrator, in particular plea bargaining measures, to reduce charges against minor offenders or keep them as witnesses to encourage cooperation that leads to the arrest of the key or actual perpetrator in order to effectively combat organized crime.

13. There should be a system to collect and analyze the criminal history of offenders and their *modus operandi*, and for cooperation on the exchange of information relevant to the activities of organized criminal groups.

14. Various laws involving the illegal activities of organized criminal groups should be amended, especially by the addition of fines as a supplementary sanction to imprisonment. The level of fines for a crime committed by an organized criminal group or its members should be higher than the income derived from the offence, so that the fine becomes a true economic sanction against the group and not just a "business expense". The laws that should be amended include, for example, the Penal Code's prohibition against the use confinement instead of fines, with the confiscation and auctioning off of property, regardless of whether such property is the proceeds of crime.

15. There should be a permanent, specialized agency with the duty to prevent and combat organized crime. This agency should be comprised of experts skilled in the necessary fields for the investigation and prosecution of organized criminal groups, working together in a systematic way. It should have a pivotal role in dealing with organized crime professionally, aware of both what needs to be done and what action to take. The establishment of such an agency would enable the capacity of other agencies to be improved,

along with the skills of the experts involved, through learning and gaining experience from their work until they are effectively able to prevent and combat organized crime.

From the summary and recommendations made above, it can be seen that Thailand has already developed its laws and some measures to solve the problem of organized crime, for example, the Money Laundering Control Act, the Protection of Witnesses Act, and telephone interception, while some relevant measures, for example on corruption, extradition and international cooperation on mutual legal assistance in criminal matters, already exist. However, most of these laws have a limited scope and do not cover the illegal activities of organized criminal groups and are thus ineffective to combat this phenomenon. Several important measures are notably lacking in Thai law, such as specific anti-organized crime measures; the use of undercover agents to infiltrate organized criminal groups for the purpose of gathering information and evidence to prosecute the key perpetrators or all the members of an organized criminal group; the exemption of punishment for undercover agents in the case of their having to commit a crime; the solicitation of minor offenders to cooperate with officials to prosecute the key perpetrator; and the criminalization of the obstruction of justice. Moreover, Thai laws aiming to combat organized crime have been introduced randomly from time to time, and not in a systematic or continuous process giving due consideration to linkage or continuity, and thus fail to support each other effectively, while the country lacks an agency consisting of professionals from various fields to establish expertise and maximize the effectiveness of combating organized crime.

In conclusion, it can be seen that Thailand needs to systematically and holistically improve its legal and practical measures in order to combat organized crime, which is a matter of overriding national concern. At this point, the setting up of a specialized agency, fully-equipped with laws and measures, would present a good opportunity for Thailand to systematically

improve its law. As a Signatory State to the United Nations Convention against Transnational Organized Crime, Thailand has an obligation to amend its domestic laws to conform to the Convention before ratifying it. Apart from introducing and amending laws, there should be administrative measures to combat not only transnational but also domestic organized crime. If the word "transnational" is not specified in such laws and measures, thus limiting their application, they could then be applied to both organized crime in general as well as to transnational organized crime.

Bibliography

I Books, theses, articles

Arie, F., Confiscating the Proceeds of White-Collar Crime, Australian Institute of Criminality, http://www.library.wjin.net/2004

Boonyopas, V., panwichit, S. and Lipipan, J., The Criminalization of Money Laundering by Transnational Organized Criminal Groups and International Cooperation and Measures to Combat Money Laundering, Including Seizure, Freezing and Confiscation of Property, A Research Report on the Legal Development to Prevent and Suppress Transnational Organized Crime, 2nd Phase, Thailand Criminal Law Institute, Office of the Attorney General, 2003.

Castberg, A. D., "Corruption in Japan and the US", UNAFEI Resource Material Series No. 56, Tokyo, Japan, 2000, pp.435-439.

Chan, T., "Corruption Prevention - The Hong Kong Experience", UNAFEI Resource Material Series No. 56, Tokyo, Japan, 2000, pp.365-377.

Chantawaro, K., Taxation Measures and the Suppression of Persons of Influence, http://www.ago.go.th .//2004

Chularojmontri, P. and Makornwattana, P., Mutual Legal Assistance, A Research Report on the Legal Development to Prevent and Suppress Transnational Organized Crime, 2nd Phase, Thailand Criminal Law Institute, Office of the Attorney General, 2003.

DeFeo, M. A., "Prevention and Repression of Corruption within a Law Enforcement Agency", UNAFEI Resource Material Series No. 56, Tokyo, Japan, 2000, pp.440-454.

Finckenauer, J. O. and Voronin, Y. A., The Threat of Russian Organized Crime, Office of Justice Programs, National Institute of Justice, U.S. Department of Justice, U.S.A. 2001.

Finkenauer, J.O., Chinese Transnational Organized Crime: the Fuk Ching, National Institute of Justice, International Center (2004), accessed through the internet at www.ojp.usdoj.gov/nij/international/chinese.html

Human Rights Watch, New Forms of the Slave Trade: The Trafficking in Burmese Women and Children (Roob Baeb Mai Khong Garn Kar That: Gan KarYing Lae Dek Chao Parma Nai Prathet Thai) Bangkok: Friends of Women Foundation, 1993.

Kumprapan, S. and Khantikul, P., Measures to Solve Human Trafficking, Especially in Women and Children, A Research Report on the Legal Development to Prevent and Suppress Transnational Organized Crime, 2nd Phase, Thai Criminal Law Institute, Office of the Attorney General, 2003.

Laokortee, B., Kerdsuk, S. and Charoensuk, M., Law Enforcement Cooperation on Article 27 , A Research Report on the Legal Development to Prevent and Suppress Transnational Organized Crime, 2nd Phase, Thai Criminal Law Institute, Office of the Attorney General, 2003.

Likitjittha, A., Rattanakul, N. and Hanchai, K., Measures to Encourage Persons to Assist or Give Information to Law Enforcement Agencies, A Research Report on the Legal Development to Prevent and Suppress Transnational Organized Crime, 2nd Phase, Thai Criminal Law Institute, Office of the Attorney General, 2003.

Maas, P., The Valachi Papers, Battam Books, New York, NY, U.S.A., 1969.

Mar Landette, M. M., Combating Corruption: What the Ecuadorian Anti-Corruption Agency Can Learn from International Good Practice, Thesis (Master Degree), School of Public Policy, University of Birmingham, U.K, 2002.

Meenakanit, T. and Tienhiran, O., Anti-Corruption Measures, A Research Report on the Legal Development to Prevent and Suppress Transnational Organized Crime, 2nd Phase, Thai Criminal Law Institute, Office of the Attorney General, 2003.

Nitisiri, C., Comparative Criminal Procedure Laws, Reading Material for Master Degree Programme, Dhurakitbundij University, 1997.

Ongpisut, N., Plea Bargaining, Masters Degree Thesis, Faculty of Law, Chulalongkorn University, 1984.

Pitanon, S., Thai Labour Market and Government Policy (Talad Rangngarn Thai gab Nayobai Rattabarn), Bangkok: Chulalongkorn Press, 2002.

Polasen, K., Problems in Enforcing the Laws of the National Counter Corruption Commission, Master Degree Thesis, Faculty of Law, Thammasat University, 2001.

Pongpaijit, P., The Outlook for an Outlawed Economy in Thailand and Policy Proposals (Parb-ruam Setagit Nok Kodmai Korng Thai Leh Kor Sa-ner Dhan Nayobai), Conference Material for a Research Report on Outlawed Economy and Public Policy in Thailand, 2-3 December, 1996.

Prayoonrat, S., An Explanation of the Anti-Money Laundering Law, (Kham Atibai Phrarachabanyat Pongan Lae Prabpram Garn Fork Ngern) 1st Edition, Bangkok: Winner Asia Trade Co. Ltd, 1999.

Sifakis, C., The Mafia Encyclopedia, Facts on File Inc., New York, N.Y., U.S.A., 1987.

Sojirat, P., A Comparison of Common Law and Thai Law on the Confiscation of Assets through Civil Proceedings, Master Degree Thesis, Faculty of Law, Chulalongkorn University, 1996.

Sukchotirat, W. and Nivasabutr, T., Types of Crime, Reading Material on Criminology and Penology (Prapet Archayakam) Unit 1- 7, 2nd Edition. Nonthaburi: Sukhothaithammathirat University, 1998.

Suwanpattana, N., Never-ending Story?: HIV/AIDS and Violence against Women, (Rue Ja Mai Mee Tang Sin Sud): Transnational Sex, Cyber Sex (Sex Karm Chart, Sex Internet) Bangkok: Amarin Printing and Publishing, 2001.

Thaweechaikarn, S. and Thirapattaranon, A., The Criminalization of the Obstruction of Justice, A Research Report on the Legal Development to Prevent and Suppress Transnational Organized Crime, 2nd Phase, Thailand Criminal Law Institute, Office of the Attorney General, 2003.

Thaweechaikarn, S. and Thirapattaranon, A., Witness Protection Measures and Measures to Render Assistance and Protection to Victims, A Research Report on the Legal Development to Prevent and Suppress Transnational Organized Crime, 2nd Phase, Thailand Criminal Law Institute, Office of the Attorney General, 2003.

The Thailand Criminal Law Institute and the National Research Council, Transnational Organized Crime: A Crisis that Needs Solving, Conference Materials, 21 June 2001.

Trakulkasemsuk, S., The Protection of Individual Rights from Telephone Interception, Master Degree Thesis, Faculty of Law, Dhurakitbundij University, 2000.

Trirat, N. and Suksri, P., The Serious Transnational Organized Crime Problem in Thailand, A Research Report on the Legal Development to Prevent and Suppress Transnational Organized Crime, 2nd Phase, Thailand Criminal Law Institute, Office of the Attorney General, 2003.

Trirat, N., Money Laundering and Its Impact on the Economy, Society and Politics (Karn Fork Ngern Lae Pol Krathop Tor Setakit, Sangkom, Garn Muang), in a Research Report on Outlawed Economy and Public Policy in Thailand, 2000.

Wattanawanich, P. and Sangsarapan, W., Use of Terms in the United Nations Convention against Transnational Organized Crime and Its Protocols, A Research Report on the Legal Development to Prevent and Suppress Transnational Organized Crime, 2nd Phase, Thailand Criminal Law Institute, Office of the Attorney General, 2003.

II Laws

The Anti-Money Laundering Law 2001, Australia

The Civil Procedure Code, Thailand

The Constitution of the Kingdom of Thailand 1997

The Criminal Procedure Code, Thailand

The Extradition Act 1929, Thailand

The Special Case Investigation Act 2004, Thailand

The Money Laundering Control Act 1999, Thailand

The Narcotics Act (5th edition) 2002, Thailand

The Penal Code, Thailand

The Royal Gazette, Vol. 121, 19 January B.E. 2547 (2004), Thailand

The Trafficking and Victim Protection Act 2000, United States of America

The United States Federal Criminal Code and Rules (USCA)

The United States Federal Rules of Criminal Procedure (FRCP)

United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988

United Nations Convention against Transnational Organized Crime (The Palermo Convention 2000) and three of its Protocols

UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME

UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME

Article 1
Statement of purpose

The purpose of this Convention is to promote cooperation to prevent and combat transnational organized crime more effectively.

Article 2
Use of terms

For the purposes of this Convention:

(a) "Organized criminal group" shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit;

(b) "Serious crime" shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty;

(c) "Structured group" shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure;

(d) "Property" shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets;

(e) "Proceeds of crime" shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence;

(f) "Freezing" or "seizure" shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority;

(g) "Confiscation", which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority;

(h) "Predicate offence" shall mean any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in article 6 of this Convention;

(i) "Controlled delivery" shall mean the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence;

(j) "Regional economic integration organization" shall mean an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to it; references to "States Parties" under this Convention shall apply to such organizations within the limits of their competence.

Article 3
Scope of application

1. This Convention shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of:

(a) The offences established in accordance with articles 5, 6, 8 and 23 of this Convention; and

(b) Serious crime as defined in article 2 of this Convention; where the offence is transnational in nature and involves an organized criminal group.

2. For the purpose of paragraph 1 of this article, an offence is transnational in nature if:

(a) It is committed in more than one State;

(b) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;

(c) It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or

(d) It is committed in one State but has substantial effects in another State.

Article 4
Protection of sovereignty

1. States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

2. Nothing in this Convention entitles a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law.

Article 5
Criminalization of participation in an organized criminal group

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) Either or both of the following as criminal offences distinct from those involving the attempt or completion of the criminal activity:

(i) Agreeing with one or more other persons to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement or involving an organized criminal group;

(ii) Conduct by a person who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes an active part in:

a. Criminal activities of the organized criminal group;

b. Other activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the above-described criminal aim;

(b) Organizing, directing, aiding, abetting, facilitating or counselling the commission of serious crime involving an organized criminal group.

2. The knowledge, intent, aim, purpose or agreement referred to in paragraph 1 of this article may be inferred from objective factual circumstances.

3. States Parties whose domestic law requires involvement of an organized criminal group for purposes of the offences established in accordance with paragraph 1 (a) (i) of this article shall ensure that their domestic law covers all serious crimes involving organized criminal groups. Such States Parties, as well as States Parties whose domestic law requires an act in furtherance of the agreement for purposes of the offences established in accordance with paragraph 1 (a) (i) of this article, shall so inform the Secretary-General of the United Nations at the time of their signature or of deposit of their instrument of ratification, acceptance or approval of or accession to this Convention.

Article 6
Criminalization of the laundering of proceeds of crime

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(b) Subject to the basic concepts of its legal system:

(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

2. For purposes of implementing or applying paragraph 1 of this article:

(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

(b) Each State Party shall include as predicate offences all serious crime as defined in article 2 of this Convention and the offences established in accordance with articles 5, 8 and 23 of this Convention. In the case of States Parties whose legislation sets out a list of specific predicate offences, they shall, at a minimum, include in such list a comprehensive range of offences associated with organized criminal groups;

(c) For the purposes of subparagraph (b), predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;

(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence;

(f) Knowledge, intent or purpose required as an element of an offence set forth in paragraph 1 of this article may be inferred from objective factual circumstances.

Article 7
Measures to combat money-laundering

1. Each State Party:

(a) Shall institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions and, where appropriate, other bodies particularly susceptible to money laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer identification, record-keeping and the reporting of suspicious transactions;

(b) Shall, without prejudice to articles 18 and 27 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end,shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.

2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.

3. In establishing a domestic regulatory and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.

4. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat moneylaundering.

Article 8
Criminalization of corruption

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences conduct referred to in paragraph 1 of this article involving a foreign public official or international civil servant. Likewise, each State Party shall consider establishing as criminal offences other forms of corruption.

3. Each State Party shall also adopt such measures as may be necessary to establish as a criminal offence participation as an accomplice in an offence established in accordance with this article.

4. For the purposes of paragraph 1 of this article and article 9 of this Convention, "public official" shall mean a public official or a person who provides a public service as defined in the domestic law and as applied in the criminal law of the State Party in which the person in question performs that function.

Article 9
Measures against corruption

1. In addition to the measures set forth in article 8 of this Convention, each State Party shall, to the extent appropriate and consistent with its legal system, adopt legislative, administrative or other effective measures to promote integrity and to prevent, detect and punish the corruption of public officials.

2. Each State Party shall take measures to ensure effective action by its authorities in the prevention, detection and punishment of thecorruption of public officials, including providing such authorities with adequate independence to deter the exertion of inappropriate influence on their actions.

Article 10
Liability of legal persons

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in serious crimes involving an organized criminal group and for the offences established in accordance with articles 5, 6, 8 and 23 of this Convention.

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

Article 11
Prosecution, adjudication and sanctions

1. Each State Party shall make the commission of an offence established in accordance with articles 5, 6, 8 and 23 of this Convention liable to sanctions that take into account the gravity of that offence.

2. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences covered by this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

3. In the case of offences established in accordance with articles 5, 6, 8 and 23 of this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.

4. Each State Party shall ensure that its courts or other competent authorities bear in mind the grave nature of the offences covered by this Convention when considering the eventuality of early release or parole of persons convicted of such offences.

5. Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence covered by this Convention and a longer period where the alleged offender has evaded the administration of justice.

6. Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law.

Article 12
Confiscation and seizure

1. States Parties shall adopt, to the greatest extent possible within their domestic legal systems, such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds;

(b) Property, equipment or other instrumentalities used in or destined for use in offences covered by this Convention.

2. States Parties shall adopt such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

3. If proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

4. If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

5. Income or other benefits derived from proceeds of crime, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

6. For the purposes of this article and article 13 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. States Parties shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

7. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law and with the nature of the judicial and other proceedings.

8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

9. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State Party.

Article 13
International cooperation for purposes of confiscation

1. A State Party that has received a request from another State Party having jurisdiction over an offence covered by this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or

(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with article 12, paragraph 1, of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, situated in the territory of the requested State Party.

2. Following a request made by another State Party having jurisdiction over an offence covered by this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

3. The provisions of article 18 of this Convention are applicable, mutatis mutandis, to this article. In addition to the information specified in article 18, paragraph 15, requests made pursuant to this article shall contain:

(a) In the case of a request pertaining to paragraph 1 (a) of this article, a description of the property to be confiscated and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;

(b) In the case of a request pertaining to paragraph 1 (b) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested;

(c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested.

4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral treaty, agreement or arrangement to which it may be bound in relation to the requesting State Party.

5. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.

6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.

7. Cooperation under this article may be refused by a State Party if the offence to which the request relates is not an offence covered by this Convention.

8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

9. States Parties shall consider concluding bilateral or multilateral treaties, agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this article.

Article 14
Disposal of confiscated proceeds of crime or property

1. Proceeds of crime or property confiscated by a State Party pursuant to articles 12 or 13, paragraph 1, of this Convention shall be disposed of by that State Party in accordance with its domestic law and administrative procedures.

2. When acting on the request made by another State Party in accordance with article 13 of this Convention, States Parties shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated proceeds of crime or property to the requesting State Party so that it can give compensation to the victims of the crime or return such proceeds of crime or property to their legitimate owners.

3. When acting on the request made by another State Party in accordance with articles 12 and 13 of this Convention, a State Party may give special consideration to concluding agreements or arrangements on:

(a) Contributing the value of such proceeds of crime or property or funds derived from the sale of such proceeds of crime or property or a part thereof to the account designated in accordance with article 30, paragraph 2 (c), of this Convention and to intergovernmental bodies specializing in the fight against organized crime;

(b) Sharing with other States Parties, on a regular or case-by-case basis, such proceeds of crime or property, or funds derived from the sale of such proceeds of crime or property, in accordance with its domestic law or administrative procedures.

Article 15
Jurisdiction

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with articles 5, 6, 8 and 23 of this Convention when:

(a) The offence is committed in the territory of that State Party; or

(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State Party;

(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or

(c) The offence is:

(i) One of those established in accordance with article 5, paragraph 1, of this Convention and is committed outside its territory with a view to the commission of a serious crime within its territory;

(ii) One of those established in accordance with article 6, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 6, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory.

3. For the purposes of article 16, paragraph 10, of this Convention, each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences covered by this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

4. Each State Party may also adopt such measures as may be necessary to establish its jurisdiction over the offences covered by this Convention when the alleged offender is present in its territory and it does not extradite him or her.

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that one or more other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.

6. Without prejudice to norms of general international law, this Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

Article 16
Extradition

1. This article shall apply to the offences covered by this Convention or in cases where an offence referred to in article 3, paragraph 1 (a) or (b), involves an organized criminal group and the person who is the subject of the request for extradition is located in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

2. If the request for extradition includes several separate serious crimes, some of which are not covered by this article, the requested State Party may apply this article also in respect of the latter offences.

3. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

4. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

5. States Parties that make extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of their instrument of ratification, acceptance, approval of or accession to this Convention, inform the Secretary-General of the United Nations whether they will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) If they do not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

6. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

7. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

8. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

9. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

10. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

11. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 10 of this article.

12. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting Party, consider the enforcement of the sentence that has been imposed under the domestic law of the requesting Party or the remainder there of.

13. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

14. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.

15. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

16. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

17. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

Article 17
Transfer of sentenced persons

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences covered by this Convention, in order that they may complete their sentences there.

Article 18
Mutual legal assistance

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention as provided for in article 3 and shall reciprocally extend to one another similar assistance where the requesting State Party has reasonable grounds to suspect that the offence referred to in article 3, paragraph 1 (a) or (b), is transnational in nature, including that victims, witnesses, proceeds, instrumentalities or evidence of such offences are located in the requested State Party and that the offence involves an organized criminal group.

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 10 of this Convention in the requesting State Party.

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(a) Taking evidence or statements from persons;

(b) Effecting service of judicial documents;

(c) Executing searches and seizures, and freezing;

(d) Examining objects and sites;

(e) Providing information, evidentiary items and expert evaluations;

(f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;

(g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;

(h) Facilitating the voluntary appearance of persons in the requesting State Party;

(i) Any other type of assistance that is not contrary to the domestic law of the requested State Party.

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.

7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply these paragraphs if they facilitate cooperation.

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

9. States Parties may decline to render mutual legal assistance pursuant to this article on the ground of absence of dual criminality. However, the requested State Party may, when it deems appropriate, provide assistance, to the extent it decides at its discretion, irrespective of whether the conduct would constitute an offence under the domestic law of the requested State Party.

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

11. For the purposes of paragraph 10 of this article:

(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;

(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal

assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally, but shall be confirmed in writing forthwith.

15. A request for mutual legal assistance shall contain:

(a) The identity of the authority making the request;

(b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;

(c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;

(d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;

(e) Where possible, the identity, location and nationality of any person concerned; and

(f) The purpose for which the evidence, information or action is sought.

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter

case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

21. Mutual legal assistance may be refused:

(a) If the request is not made in conformity with the provisions of this article;

(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;

(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;

(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

23. Reasons shall be given for any refusal of mutual legal assistance.

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requested State Party shall respond to reasonable requests by the requesting State Party on progress of its handling of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness,

expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

29. The requested State Party:

(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;

(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

Article 19
Joint investigations

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

Article 20
Special investigative techniques

1. If permitted by the basic principles of its domestic legal system, each State Party shall, within its possibilities and under the conditions prescribed by its domestic law, take the necessary measures to allow for the appropriate use of controlled delivery and, where it deems appropriate, for the use of other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, by its competent authorities in its territory for the purpose of effectively combating organized crime.

2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the

international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods to continue intact or be removed or replaced in whole or in part.

Article 21
Transfer of criminal proceedings

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence covered by this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

Article 22
Establishment of criminal record

Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence covered by this Convention.

Article 23
Criminalization of obstruction of justice

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences covered by this Convention;

(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences covered by this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public officials.

Article 24
Protection of witnesses

1. Each State Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offences covered by this Convention and, as appropriate, for their relatives and other persons close to them.

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

(b) Providing evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of the witness, such as permitting testimony to be given through the use of communications technology such as video links or other adequate means.

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

Article 25
Assistance to and protection of victims

1. Each State Party shall take appropriate measures within its means to provide assistance and protection to victims of offences covered by this Convention, in particular in cases of threat of retaliation or intimidation.

2. Each State Party shall establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by this Convention.

3. Each State Party shall, subject to its domestic law, enable views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

Article 26
Measures to enhance cooperation with law enforcement authorities

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in organized criminal groups:

(a) To supply information useful to competent authorities for investigative and evidentiary purposes on such matters as:

(i) The identity, nature, composition, structure, location or activities of organized criminal groups;

(ii) Links, including international links, with other organized criminal groups;

(iii) Offences that organized criminal groups have committed or may commit;

(b) To provide factual, concrete help to competent authorities that may contribute to depriving organized criminal groups of their resources or of the proceeds of crime.

2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.

3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.

4. Protection of such persons shall be as provided for in article 24 of this Convention.

5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

Article 27
Law enforcement cooperation

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. Each State Party shall, in particular, adopt effective measures:

(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;

(ii) The movement of proceeds of crime or property derived from the commission of such offences;

(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

(c) To provide, when appropriate, necessary items or quantities of substances for analytical or investigative purposes;

(d) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;

(e) To exchange information with other States Parties on specific means and methods used by organized criminal groups, including, where applicable, routes and conveyances and the use of false identities, altered or false documents or other means of concealing their activities;

(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the Parties may consider this Convention as the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

3. States Parties shall endeavour to cooperate within their means to respond to transnational organized crime committed through the use of modern technology.

Article 28
Collection, exchange and analysis of information on the nature of organized crime

1. Each State Party shall consider analysing, in consultation with the scientific and academic communities, trends in organized crime in its territory, the circumstances in which organized crime operates, as well as the professional groups and technologies involved.

2. States Parties shall consider developing and sharing analytical expertise concerning organized criminal activities with each other and through international and regional organizations. For that purpose, common definitions, standards and methodologies should be developed and applied as appropriate.

3. Each State Party shall consider monitoring its policies and actual measures to combat organized crime and making assessments of their effectiveness and efficiency.

Article 29
Training and technical assistance

1. Each State Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its law enforcement personnel, including prosecutors, investigating magistrates and customs personnel, and other personnel charged with the prevention, detection and control of the offences covered by this Convention. Such programmes may include secondments and exchanges of staff. Such programmes shall deal, in particular and to the extent permitted by domestic law, with the following:

(a) Methods used in the prevention, detection and control of the offences covered by this Convention;

(b) Routes and techniques used by persons suspected of involvement in offences covered by this Convention, including in transit States, and appropriate countermeasures;

(c) Monitoring of the movement of contraband;

(d) Detection and monitoring of the movements of proceeds of crime, property, equipment or other instrumentalities and methods used for the transfer, concealment or disguise of such proceeds, property, equipment or other instrumentalities, as well as methods used in combating moneylaundering and other financial crimes;

(e) Collection of evidence;

(f) Control techniques in free trade zones and free ports;

(g) Modern law enforcement equipment and techniques, including electronic surveillance, controlled deliveries and undercover operations;

(h) Methods used in combating transnational organized crime committed through the use of computers, telecommunications networks or other forms of modern technology; and

(i) Methods used in the protection of victims and witnesses.

2. States Parties shall assist one another in planning and implementing research and training programmes designed to share expertise in the areas referred to in paragraph 1 of this article and to that end shall also, when appropriate, use regional and international conferences and seminars to promote cooperation and to stimulate discussion on problems of mutual concern, including the special problems and needs of transit States.

3. States Parties shall promote training and technical assistance that will facilitate extradition and mutual legal assistance. Such training and technical assistance may include language training, secondments and exchanges between personnel in central authorities or agencies with relevant responsibilities.

4. In the case of existing bilateral and multilateral agreements or arrangements, States Parties shall strengthen, to the extent necessary, efforts to maximize operational and training activities within international and regional organizations and within other relevant bilateral and multilateral agreements or arrangements.

Article 30
Other measures: implementation of the Convention through economic development and technical assistance

1. States Parties shall take measures conducive to the optimal implementation of this Convention to the extent possible, through international cooperation, taking into account the negative effects of organized crime on society in general, in particular on sustainable development.

2. States Parties shall make concrete efforts to the extent possible and in coordination with each other, as well as with international and regional organizations:

(a) To enhance their cooperation at various levels with developing countries, with a view to strengthening the capacity of the latter to prevent and combat transnational organized crime;

(b) To enhance financial and material assistance to support the efforts of developing countries to fight transnational organized crime effectively and to help them implement this Convention successfully;

(c) To provide technical assistance to developing countries and countries with economies in transition to assist them in meeting their needs for the implementation of this Convention. To that end, States Parties shall endeavour to make adequate and regular voluntary contributions to an account specifically designated for that purpose in a United Nations funding mechanism. States Parties may also give special consideration, in accordance with their domestic law and the provisions of this Convention, to contributing to the aforementioned account a percentage of the money or of the corresponding value of proceeds of crime or property confiscated in accordance with the provisions of this Convention;

(d) To encourage and persuade other States and financial institutions as appropriate to join them in efforts in accordance with this article, in particular by providing more training programmes and modern equipment to developing countries in order to assist them in achieving the objectives of this Convention.

3. To the extent possible, these measures shall be without prejudice to existing foreign assistance commitments or to other financial cooperation arrangements at the bilateral, regional or international level.

4. States Parties may conclude bilateral or multilateral agreements or arrangements on material and logistical assistance, taking into consideration the financial arrangements necessary for the means of international cooperation provided for by this Convention to be effective and for the prevention, detection and control of transnational organized crime.

Article 31
Prevention

1. States Parties shall endeavour to develop and evaluate national projects and to establish and promote best practices and policies aimed at the prevention of transnational organized crime.

2. States Parties shall endeavour, in accordance with fundamental principles of their domestic law, to reduce existing or future opportunities for organized criminal groups to participate in lawful markets with proceeds of crime, through appropriate legislative, administrative or other measures. These measures should focus on:

(a) The strengthening of cooperation between law enforcement agencies or prosecutors and relevant private entities, including industry;

(b) The promotion of the development of standards and procedures designed to safeguard the integrity of public and relevant private entities, as well as codes of conduct for relevant professions, in particular lawyers, notaries public, tax consultants and accountants;

(c) The prevention of the misuse by organized criminal groups of tender procedures conducted by public authorities and of subsidies and licences granted by public authorities for commercial activity;

(d) The prevention of the misuse of legal persons by organized criminal groups; such measures could include:

(i) The establishment of public records on legal and natural persons involved in the establishment, management and funding of legal persons;

(ii) The introduction of the possibility of disqualifying by court order or any appropriate means for a reasonable period of time persons convicted of offences covered by this Convention from acting as directors of legal persons incorporated within their jurisdiction;

(iii) The establishment of national records of persons disqualified from acting as directors of legal persons; and

(iv) The exchange of information contained in the records referred to in subparagraphs (d) (i) and (iii) of this paragraph with the competent authorities of other States Parties.

3. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences covered by this Convention.

4. States Parties shall endeavour to evaluate periodically existing relevant legal instruments and administrative practices with a view to detecting their vulnerability to misuse by organized criminal groups.

5. States Parties shall endeavour to promote public awareness regarding the existence, causes and gravity of and the threat posed by transnational organized crime. Information may be disseminated where appropriate through the mass media and shall include measures to promote public participation in preventing and combating such crime.

6. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that can assist other States Parties in developing measures to prevent transnational organized crime.

7. States Parties shall, as appropriate, collaborate with each other and relevant international and regional organizations in promoting and developing the measures referred to in this article. This includes participation in international projects aimed at the prevention of transnational organized crime, for example by alleviating the circumstances that render socially marginalized groups vulnerable to the action of transnational organized crime.

Article 32
Conference of the Parties to the Convention

1. A Conference of the Parties to the Convention is hereby established to improve the capacity of States Parties to combat transnational organized crime and to promote and review the implementation of this Convention.

2. The Secretary-General of the United Nations shall convene the Conference of the Parties not later than one year following the entry into force of this Convention. The Conference of the Parties shall adopt rules of procedure and rules governing the activities set forth in paragraphs 3 and 4 of this article (including rules concerning payment of expenses incurred in carrying out those activities).

3. The Conference of the Parties shall agree upon mechanisms for achieving the objectives mentioned in paragraph 1 of this article, including:

(a) Facilitating activities by States Parties under articles 29, 30 and 31 of this Convention, including by encouraging the mobilization of voluntary contributions;

(b) Facilitating the exchange of information among States Parties on patterns and trends in transnational organized crime and on successful practices for combating it;

(c) Cooperating with relevant international and regional organizations and non-governmental organizations;

(d) Reviewing periodically the implementation of this Convention;

(e) Making recommendations to improve this Convention and its implementation.

4. For the purpose of paragraphs 3 (d) and (e) of this article, the Conference of the Parties shall acquire the necessary knowledge of the measures taken by States Parties in implementing this Convention and the difficulties encountered by them in doing so through information provided by them and through such supplemental review mechanisms as may be established by the Conference of the Parties.

5. Each State Party shall provide the Conference of the Parties with information on its programmes, plans and practices, as well as legislative and administrative measures to implement this Convention, as required by the Conference of the Parties.

Article 33
Secretariat

1. The Secretary-General of the United Nations shall provide the necessary secretariat services to the Conference of the Parties to the Convention.

2. The secretariat shall:

(a) Assist the Conference of the Parties in carrying out the activities set forth in article 32 of this Convention and make arrangements and provide the necessary services for the sessions of the Conference of the Parties;

(b) Upon request, assist States Parties in providing information to the Conference of the Parties as envisaged in article 32, paragraph 5, of this Convention; and

(c) Ensure the necessary coordination with the secretariats of relevant international and regional organizations.

Article 34
Implementation of the Convention

1. Each State Party shall take the necessary measures, including legislative and administrative measures, in accordance with fundamental principles of its domestic law, to ensure the implementation of its obligations under this Convention.

2. The offences established in accordance with articles 5, 6, 8 and 23 of this Convention shall be established in the domestic law of each State Party independently of the transnational nature or the involvement of an organized criminal group as described in article 3, paragraph 1, of this Convention, except to the extent that article 5 of this Convention would require the involvement of an organized criminal group.

3. Each State Party may adopt more strict or severe measures than those provided for by this Convention for preventing and combating transnational organized crime.

Article 35
Settlement of disputes

l. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Convention through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of

the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Convention, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 36
Signature, ratification, acceptance, approval and accession

1. This Convention shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.

2. This Convention shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Convention in accordance with paragraph 1 of this article.

3. This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance

or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Convention is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Convention. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 37
Relation with protocols

1. This Convention may be supplemented by one or more protocols.

2. In order to become a Party to a protocol, a State or a regional economic integration organization must also be a Party to this Convention.

3. A State Party to this Convention is not bound by a protocol unless it becomes a Party to the protocol in accordance with the provisions thereof.

4. Any protocol to this Convention shall be interpreted together with this Convention, taking into account the purpose of that protocol.

Article 38
Entry into force

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Convention after the deposit of the fortieth instrument of such action, this Convention shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument.

Article 39
Amendment

1. After the expiry of five years from the entry into force of this Convention, a State Party may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Convention. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Convention and any earlier amendments that they have ratified, accepted or approved.

Article 40
Denunciation

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Convention when all of its member States have denounced it.

3. Denunciation of this Convention in accordance with paragraph 1 of this article shall entail the denunciation of any protocols thereto.

Article 41
Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Convention.

2. The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall bedeposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.