

THE PROMOTION AND DEVELOPMENT OF INTERNATIONAL CO-OPERATION TO COMBAT COMMERCIAL AND ECONOMIC CRIME

Memorandum by the Commonwealth Secretariat and a paper prepared by
Dr. Barry A. K. Rider, Fellow of Jesus College Cambridge; President of the British Institute of Securities

It will be recalled that a considerable amount of attention was given to the question of economic and commercial crime by Law Ministers at their last Meeting in Winnipeg. Concern was expressed about the need to facilitate and develop international co-operation both in the investigation and prosecution of "white collar crime" within the Commonwealth. The importance that Ministers attached to this matter was reflected in the Communiqué which asked the Secretary-General to study and make recommendations for the facilitation of international co-operation and the provision of a greater degree of mutual assistance in this field.

2. The Commonwealth Secretariat commissioned Dr. Barry Rider, who has practical experience as both a lawyer and investigator in the field of corporate fraud, to prepare a paper on the promotion and development of international co-operation to combat commercial and economic crime. During the course of the preparation of this paper we made it possible for him to visit a number of Commonwealth jurisdictions. Dr. Rider also took the opportunity to raise this matter with several non-Commonwealth governments whose co-operation in any Commonwealth initiative could be of major assistance. Dr. Rider was also commissioned to prepare a supplementary paper on the International Criminal Police Organisation (ICPO-Interpol) and this forms Appendix VI to Dr. Rider's main paper.

3. Although the Communiqué spoke in terms of "white collar crime" we invited Dr. Rider to confine his attention primarily to illegal commercial activity—in other words economic and commercial crime. Nevertheless, it will be appreciated that the scope of this subject is such that attention has had to be focussed on certain aspects more than others. Furthermore, it has not been practicable for Dr. Rider to include in his paper other than a small proportion of the evidence and material he has had placed at his disposal whilst preparing it.

4. Dr. Rider is convinced that there is no panacea, and any practical improvement in international co-operation is likely to involve a series of small steps rather than any major leap forward. However, he has made a series of proposals which should work to minimise the more significant practical difficulties presently inhibiting effective international co-operation within the Commonwealth in regard to economic and commercial crime.

5. The recognition by Ministers at Winnipeg that commercial and economic crime is a serious international and national problem is underlined in Dr. Rider's paper. It is pointed out that the Common-

wealth is not alone in recognising the need for urgent and effective action. Such organisations as ICPO-Interpol, the Customs Co-operation Council and various agencies of the United Nations are just as aware of the problem. However, Dr. Rider feels that the common traditions and good-will within the Commonwealth places it in an almost unique position to act effectively against this category of criminal activity which is particularly perilous for developing economies. In discussing the consequences and implications of rampant commercial and economic crime he gives special attention to the laundering and legitimisation of funds obtained from criminal or abusive activity and also the importance of criminal financial intelligence in the fight against organised crime and trafficking operations.

6. Although a number of difficulties and inhibitions impeding effective law enforcement in relation to illegal commercial activity are identified in the paper, the author considers the primary weakness is in deficient co-ordination. Therefore, at the centre of his recommendations is the proposed establishment of a Commonwealth Fraud Liaison Officer (CFLO), a post which might conveniently be within the Commonwealth Secretariat. This officer would be responsible for developing and co-ordinating such matters as criminal financial intelligence and target operations, liaison with other agencies and in particular ICPO-Interpol, the dissemination of intelligence and relevant information, the provision of technical assistance and advice, training and co-operation in the conduct of international investigations. In addition to the CFLO Dr. Rider recommends the setting up of a Commonwealth Panel of Experts (CPE). Members of this Panel would be responsible for providing expert advice and assistance, the conduct of international inspections and discussion and dissemination of information.

7. In making these recommendations Dr. Rider has attempted to ensure that should Ministers wish to implement them this can be done practically and speedily. He does not contemplate a need for legislation in any Commonwealth jurisdiction, nor would there be any threat of intrusion into the national sovereignty or domestic competence of any Commonwealth country. Furthermore, the scheme may be implemented without great cost.

8. In the supplementary paper on ICPO-Interpol [Appendix VI] a general description of its organisation and operation is given, with a detailed examination of its capabilities in regard to economic and commercial crime. Dr. Rider recommends that co-operation should be developed in appropriate areas between the General Secretariat of ICPO-Interpol

and the Commonwealth Secretariat. He suggests that the proposed CFLO could play an important role here, and not only in regard to illegal commercial activity. It is suggested that the Commonwealth Secretariat should send observers to the various proceedings of ICPO-Interpol and Commonwealth countries should be more prepared to second police officers to the General Secretariat of ICPO-Interpol for short periods. Attention should also be given to the improvement and development of communications. Dr. Rider makes other proposals whereby the Commonwealth could assist ICPO-Interpol both in training and research.

9. It is appreciated that Ministers will not be in a position to arrive at final decisions with regard to

these proposals without an opportunity for adequate discussion with their respective Governments. Indeed, as Dr. Rider points out in many instances the appropriate agency is not necessarily a police or law enforcement agency, but a securities commission or corporate affairs commission. On the other hand it is anticipated that Ministers will not wish the Commonwealth's initiative in this area to lose momentum. Therefore, the Meeting might wish to consider inviting the Commonwealth Secretariat be responsible for securing the views of Ministers, after they have had time for consultation with their Governments and advisers, and finalising a set of recommendations. These recommendations could then be circulated among Commonwealth governments and appropriate action taken.

THE PROMOTION AND DEVELOPMENT OF INTERNATIONAL CO-OPERATION TO COMBAT COMMERCIAL AND ECONOMIC CRIME

By Dr. Barry A. K. Rider, Fellow of Jesus College, Cambridge;
President of the British Institute of Securities.

CONTENTS

Introduction	5		
Summary of Recommendations	5	(v) Facilitating international investigations	
Terms of Reference	6	(vi) Training	
“White Collar” Crime	6	(vii) The role of the Metropolitan and City of London Company Fraud Department	
A Worldwide Problem	8	The Commonwealth Panel of Experts (CPE)	38
The need to regulate economic and commercial crime	10	(i) Provision of expert advice	
(a) The effect on national economies		(ii) Inspection and special investigations	
(b) Political stability		(iii) Legislative drafting	
(c) Investor and market confidence		(iv) Counsel and amicus curiae	
(d) Effect on social structure		Conclusions	42
(e) The funding of other crimes		Appendix I: Resolution, 37th General Assembly Session, ICPO-Interpol, Tehran 1968	42
(f) The mushroom effect		Appendix II: Resolution, 41st General Assembly Session, ICPO-Interpol, Frankfurt 1972	43
Practical difficulties impeding law enforcement and international co-operation	18	Appendix III: Resolution, 45th General Assembly Session, ICPO-Interpol, Accra 1976	43
(a) The problem of definition and drafting		Appendix IV: Extract from ICPO-Interpol General Secretariat Report No. 5, International Frauds and Commercial Crime	44
(b) The international dimension		Appendix V: Memorandum of the U.S. Drug Enforcement Administration on “The Exchange of Financial Information with Foreign Countries”	46
(c) Detection		Appendix VI: Supplementary Report on the ICPO-Interpol by Dr. B. A. K. Rider	48
(d) Investigation			
(e) Extradition			
(f) Prosecution			
(g) Trial and punishment			
Proposals for the promotion and facilitation of international co-operation within the Commonwealth	30		
The Commonwealth Fraud Liaison Officer (CFLO)	31		
(i) Criminal financial intelligence			
(ii) Liaison with ICPO-Interpol			
(iii) Dissemination of information and targeting exercises			
(iv) Technical assistance			

THE PROMOTION AND DEVELOPMENT OF INTERNATIONAL CO-OPERATION TO COMBAT COMMERCIAL AND ECONOMIC CRIME

By Dr. Barry A. K. Rider, Fellow of Jesus College, Cambridge;
President of the British Institute of Securities.

Introduction

This report has been prepared in a relatively short time and whilst a good deal of thought has been given to the proposals there has not been time to prepare as much detailed factual analysis as one would have wished. However, the present report and the supplementary report of ICPO-Interpol and the Commonwealth contained in the Appendix have been prepared in time for submission to Law Ministers in advance of the next Commonwealth Law Ministers' Conference, in Barbados.

In preparing these submissions I have worked on the assumptions that economic and commercial crime is prevalent and that it is desirable that law enforcement and international co-operation should be made more effective in regard to this sort of criminal activity. Both assumptions are based on comments made by Commonwealth Law Ministers at their Winnipeg Meeting. It must also be emphasised that I have confined my attention almost exclusively to the problem of promoting international co-operation. This is not in any way to underestimate the importance of effective domestic law enforcement. The capability to deal with commercial and economic crime at a national level must be presupposed when one considers regulation at the international level. Of course, in practice this capability at national level is invariably severely limited.

Commonwealth Law Ministers at their last Meeting expressed the need for urgency in developing and facilitating international co-operation in regard to "white collar" crime. During the last six months I have had the privilege of discussing this matter with a number of Commonwealth Law Ministers, and it would seem that this sense of urgency is still present. Therefore, I have attempted to present proposals which can be implemented with speed and which should not require lengthy consideration by Commonwealth governments. The proposals do not involve great expense, either at national or Commonwealth level. Nor do they require amendment of any domestic law. Obviously, these necessary constraints have restricted the scope and nature of these proposals, for it would be wholly counterproductive to submit unrealistic schemes which stood no chance of implementation in the foreseeable future. If the proposals are accepted by Commonwealth Law Ministers and implemented by their respective governments, international co-operation in this field of law enforcement would be significantly enhanced. However, it is vital to realise that there is no readily available panacea, and although no effort should be spared in pursuing the goals that all hold dear, there is no way that every problem can be resolved.

Summary of Recommendations

1. For the facilitation and development of international co-operation and mutual assistance within the Commonwealth with regard to commercial and economic crime, the following scheme is proposed:

(a) The post of Commonwealth Fraud Liaison Officer (CFLO) be established, perhaps conveniently within the Commonwealth Secretariat. The CFLO would be a senior post calling as it does for considerable experience and ability.

The CFLO would be responsible for, inter alia,

- (i) the development of criminal financial intelligence,
- (ii) liaison with ICPO-Interpol and appropriate other international agencies,
- (iii) dissemination of information on such matters as modus operandi, and the co-ordination of targeting,
- (iv) technical assistance,
- (v) co-ordination of international investigations, and
- (vi) training.

(b) A Commonwealth Panel of Experts (CPE) would be established. Members of the CPE would be experts in relevant professions (e.g. lawyers, accountants, investigators) nominated by their Law Minister. Members of the CPE would only receive compensation for specific assignments undertaken for the Commonwealth or a Commonwealth country. Subcommittees and individual members of the CPE would be responsible for, inter alia,

- (i) provision of expert advice,
- (ii) inspections and special investigations,
- (iii) legislative drafting,
- (iv) counsel and *amicus curiae*, and
- (v) discussion and dissemination of relevant information.

(c) Implementation of the above scheme would not appear to require enactment or amendment of any law in any Commonwealth jurisdiction.

2. For the facilitation and development of co-operation with ICPO-Interpol and the strengthening of that organisation within the Commonwealth, the following proposals are made in the Supplementary Report ICPO-Interpol and the Commonwealth (see Appendix VI):

(a) co-operation between the Commonwealth Secretariat and the General Secretariat of ICPO-Interpol,

(b) Commonwealth countries should be encouraged to second police officers to the ICPO-Interpol General Secretariat and consideration should be given to

the provision of assistance at Commonwealth level to facilitate this,

(c) consideration should be given to the improvement of communications between certain Commonwealth jurisdictions and ICPO-Interpol,

(d) the Commonwealth Secretariat should assist the General Secretariat of ICPO-Interpol in developing an intelligence and liaison capability with regard to international commercial crime. This assistance should be primarily the responsibility of the proposed CFLO,

(e) consideration should be given to ways in which expert assistance and advice could be made available to ICPO-Interpol by the Commonwealth. The creation of the proposed CPE would greatly assist in this,

(f) the Legal Division of the Commonwealth Secretariat and other Commonwealth institutions should be equipped to assist and participate in studies and research projects initiated by ICPO-Interpol,

(g) Commonwealth assistance, both in expertise and finance, should be made available to ICPO-Interpol with regard to the organisation of seminars and conferences of particular interest to Commonwealth jurisdictions, and

(h) Commonwealth assistance, both in expertise and finance, should be made available to ICPO-Interpol and Commonwealth police forces for the training of officers in specialist matters.

Terms of Reference

In January 1979 I was commissioned by the Commonwealth Secretariat to prepare a report for submission to the 1980 Commonwealth Law Ministers' Conference in Barbados containing proposals for the facilitation of international co-operation within the Commonwealth in regard to the regulation of "white collar" crime. In their Communiqué, Commonwealth Law Ministers at their Meeting in Winnipeg in 1977 considered that this was a matter of serious concern and had asked the Secretary-General to examine the subject and make proposals for enlarged mutual assistance and co-operation between Commonwealth countries in combating this class of criminal activity.

Given the constraints of time, I have not been able to examine every aspect of "white collar" crime and I have given special attention to commercial crime which has an "international element". During the last six months I have visited a number of Commonwealth and non-Commonwealth countries and discussed the subject with Ministers, senior law and police officers and the various professions. I would record my gratitude and my indebtedness to them for their unstinted assistance. As a practising lawyer and investigator, too, I have had some considerable practical experience in a number of jurisdictions, including several developing countries.

I have also limited my attention to those economic crimes which are regarded as criminal offences in all

or most Commonwealth countries. This approach was also suggested by the desirability of creating a scheme which would complement the Commonwealth scheme for the Rendition of Fugitive Offenders.

Furthermore, if greater co-operation is to be developed at Commonwealth level with ICPO-Interpol, it is important that the proposed scheme should relate to ordinary criminal law offences.

It would of course be unrealistic for the Commonwealth to view the problems it now faces with regard to "white collar" crime in isolation from those of the rest of the world. The particular difficulties facing many countries are the same, whether or not they are members of the Commonwealth. Given the scope and dimension of international commercial crime it would be inadequate to propose a scheme which only had relevance to the Commonwealth and could not develop relationships with non-Commonwealth governments and other international organisations. Therefore it is desirable that any initiative within the Commonwealth be such as is capable of being extended, as necessary, beyond the Commonwealth. This consideration is of special significance in regard to developing a closer working relationship with ICPO-Interpol. This particular matter is discussed in the separate supplementary report contained in the Appendix.

Commonwealth Law Ministers do not stand alone in their recognition of the seriousness of the problems facing effective policing in the field of international commercial crime. Discussions with countries outside the Commonwealth reveal that a number of foreign governments, including the U.S.A., Thailand, the Philippines, France, Japan and the Netherlands, await with interest to see what developments take place as a result of Commonwealth initiatives. Of course, it is not suggested that the scheme I proposed in this report should be other than a Commonwealth scheme drawing heavily on the common legal heritage that binds Commonwealth legal systems together.

"White Collar" Crime

At their last Meeting the terms "economic crime", "white collar crime" and "illegal commercial activities" were used interchangeably. A good deal could be written on each term. However, like the traveller who knew what an elephant was when he saw one yet had difficulty in describing it in abstract terms, I am confident that the pertinent area of concern needs no exact definition. A discussion of the concepts associated with this particular category of criminal activity, is included in the Appendices. For the sake of clarity I have set out below a number of crimes which would or could in certain circumstances fall within the terms economic, commercial or "white collar" crime. Of course, this list is not intended to be exhaustive and certain crimes substantially overlap with others:

- (i) corporate fraud (managerial and employee),
- (ii) securities frauds (e.g. the issuance of worthless stock, bond washing and market manipulation, insider trading),

- (iii) market and trading abuses (e.g. illegal restrictive practices and monopolies),
- (iv) manipulation of markets (i.e. securities and commodity),
- (v) smuggling,
- (vi) exchange control violations and illegal currency smuggling,
- (vii) counterfeiting of currency and valuable negotiable documents,
- (viii) forgery,
- (ix) franchise frauds,
- (x) loan sharking and illegal moneylending,
- (xi) fraudulently obtaining government subsidies,
- (xii) social security and welfare frauds,
- (xiii) fraudulent insurance claims,
- (xiv) shipping frauds (e.g. cube-cutting, wrecking, sale of non-existent cargo),
- (xv) credit frauds (e.g. long firm frauds, carbon paper and stationery frauds),
- (xvi) credit card frauds,
- (xvii) economic and industrial espionage,
- (xviii) bribery and corruption,
- (xix) tax evasion,
- (xx) pirating of records, films, publications etc. (including copyright and trade mark violations),
- (xxi) advance fee frauds,
- (xxii) fraudulent factoring,
- (xxiii) criminal banking,
- (xxiv) frauds associated with bankruptcy and insolvency (including fraudulent trading, trading whilst an undischarged bankrupt, fraudulent preference etc.), and
- (xxv) false accounting.

A good many of these crimes overlap with each other. In practice the most usual charges would be those of theft, obtaining by deception or cheating, forgery and (where more than one individual is involved) conspiracy to defraud. Of course, many of these crimes would be covered by specific provisions, but not all. It is not uncommon to find that the commission of these crimes is associated with some form of other criminal activity. For example arson may well be involved in fraudulent insurance claims, and violence or threats of violence may well be associated with loan sharking operations. There are certain crimes, listed above, which would not usually have an international element. For instance, most company based frauds by employees would not have an international aspect. However, many are almost by definition international crimes. Shipping frauds, counterfeiting of currency and a good many factoring frauds are almost certainly likely to have an international element. It is also important to appreciate that there is a growing amount of evidence that organised criminals are increasingly moving into non-violent criminal activity and therefore a crime which might at first appear as wholly a matter for domestic concern could well have international implications. Another significant factor that is increasingly

coming into play in such crimes is the use of foreign nominees or front men to obscure the commission of the crime and thereby avoid detection or if perchance detected greatly hamper investigation. Nominees both of the domestic and international variety are in practice exceedingly difficult to detect and penetrate.

A number of the crimes listed above are not generally extraditable and would not necessarily be regarded as ordinary criminal law offences by ICPO-Interpol. Indeed, certain of them would not be regarded as criminal in all Commonwealth jurisdictions. An obvious example would be exchange control violation. Furthermore, a number of these crimes might well be regarded as political offences or at least as having political implications. This is a significant inhibition on international co-operation. For example, ICPO-Interpol is expressly forbidden by Article 3 of its Constitution to intervene or give any assistance whatsoever where the offence is political. As already pointed out, this report concentrates on ordinary criminal law offences that are widely regarded as criminal. Essentially, this confines the scope of discussion to cases of commercial and corporate fraud, and associated activities of a criminal nature.

Dr. William Clifford in his Paper on "white collar" crime which he submitted to the last Commonwealth Law Ministers' Meeting correctly pointed out that a common thread throughout this category of criminal activity is economic exploitation. He commented that a characteristic of the "white collar" criminal is his ability to "unscrupulously manipulate the system so as to amass wealth at the expense of the consumer, small shareholder or those persons without economic power". Therefore, we are concerned with parasitical crimes of an insidious nature.

It would be a serious mistake to consider that "white collar" crime is solely a problem for countries with a "free market" economy. It is not merely the "unacceptable face of capitalism" it has often been represented to be. While it is true that certain offences are dependent to a greater or lesser degree on the exploitation of certain capitalist models, in practice economic and commercial crime is not confined to capitalist countries. Managerial and market frauds are equally prevalent in socialist and even communist countries. Indeed, the Government of the Chinese People's Republic has recently indicated its determination to reduce the abuses that have been occurring in its timber and extraction industries.

There is very little empirical evidence available as to the extent of economic and commercial crime—even in the more developed countries. The statistics that are available are generally regarded as unreliable and likely to significantly underestimate the problem. This is particularly true with regard to managerial and employee frauds. Sadly, managerial malpractice only comes to light once the corporation has become insolvent and gone into liquidation. Employee frauds are rarely detected and the vast majority of those that are, are dealt with as wholly an internal matter. In other words there is wide agreement that the vast

bulk of such frauds are not publicised, and their perpetrators come nowhere near the criminal courts. In recent years a good deal of attention has been focused on computer-assisted and related frauds. It is appreciated that this is a matter of concern mainly to the more developed Commonwealth countries, however, this matter is illustrative of the increasing sophistication in international fraud, and has therefore wider relevance. Furthermore, at the Third International Symposium on Fraud organised by ICPO-Interpol in December 1979 the delegates from such countries as Malaysia and Nigeria expressed great interest in this aspect of commercial crime. The danger with computer-related and assisted crime is simply its potential. By and large the elements of the offence are the same as in non-computer assisted or related cases. The potential, however, is staggering. A computer need be instructed by only one criminal so as to have the capacity of many thousands of criminals. Furthermore, the opportunities for preventing discovery and subsequent investigation are so much greater. On the other hand, there would appear to be little empirical evidence of computer-assisted or related crimes taking place within the Commonwealth. The 30 or so cases that have come to light in the United Kingdom have surprisingly only involved £750,000. Nevertheless, both in the industry and, I understand, in the police it is widely acknowledged that the incidence of abuse is infinitely greater than these reported instances would suggest. Research in the U.S.A. and in some European countries supports this pessimistic view.

Apart from a disturbing inability to detect and locate crime of a commercial or economic nature, most countries seem to suffer from difficulties in getting cases before the criminal courts and attaining satisfactory results. In the absence of a judicial determination it is extremely difficult to discuss a particular instance of suspected fraud. The laws relating to defamation and confidentiality serve as a major brake on this kind of analysis. It would be dangerous and short-sighted for any government to reject or ignore the need for a major initiative in the area of economic and commercial crime on the assumption that the few cases that have come to light are anything but the tip of an iceberg. The statistics of criminal prosecutions in this category of criminal activity are fundamentally misleading.

There would also appear to be agreement that the sums of money involved in commercial and economic crime are vast. Dr. Clifford in his Paper observes that the amounts involved are "rarely below the astronomical". Certain examples will be found in the Appendix. The Attorney General for New South Wales has estimated that from 1966 to 1977 crime by corporate officials in the state of New South Wales alone cost creditors and investors in excess of \$430,000,000 (See *The Bulletin* 12 March 1977). An analysis of the commercial and economic cases held by the Metropolitan and City of London Police Company Fraud Department in July 1978 shows that the 473 cases involved some £196,227,000 cash at risk. This means that each case under investigation involved on average £414,855, (See Annex III, *Work-*

ing Party on the Investigation and Prosecution of Company Fraud, Director of Public Prosecutions, 1979). I mention these sensational amounts, not because they hold any relevance in themselves, but to emphasise the importance and the implications of the sort of crime we are discussing. Apart from cash or property at risk, the amounts that may well be involved in appropriations are invariably exceedingly large. It is clear that the Commonwealth Law Ministers considered that both the likely incidence and magnitude of "white collar" crime was a most serious and pressing problem, and therefore there is little point in attempting to chronicle the numerous *causes célèbres* already on Law Ministers' minds.

A Worldwide Problem

As observed, Commonwealth Law Ministers do not stand alone in recognising the need for urgent action in this field of criminal activity. A number of international and national agencies are concerned with the proliferation of economic and commercial crime. However, despite widespread concern, so far little has been achieved at the international or in most cases the national level.

ICPO-Interpol has recognised the importance of facilitating international co-operation with regard to commercial and economic crime for some time. The question was raised at the ICPO-Interpol General Assembly in Koto, Japan, in 1967. The Sri Lanka delegation called for increased co-operation and mutual assistance generally with regard to economic crime and specifically with regard to exchange control violations and currency smuggling. The then-Director of Criminal Investigations in Sri Lanka, in a joint seminar on the role of police in national development held in November 1976, commented that "it rather frightens me to think that we had the audacity to raise this subject which does not normally come within the scope of Interpol as its Constitution restricts its activities to the prevention and suppression of ordinary law crimes".

This underlines one of the greatest problems in advancing international co-operation with regard to economic and financial crime. The concern expressed in Koto about the implications of commercial and economic crime was followed up the next year at the ICPO-Interpol General Assembly in Tehran. The General Assembly adopted a resolution calling for voluntary co-operation between member countries in the investigation of economic crimes (See Appendix I). In 1972, at Frankfurt, the General Assembly adopted another resolution calling for greater co-operation in the supply of information relevant to economic and commercial crime and the ramifications and implications of such (See Appendix II). This resolution was a direct result of a report tabled by the Indian delegation. At the 43rd General Assembly, at Cannes in 1973, a number of delegations and in particular those of India and Sri Lanka, expressed dissatisfaction with the existing state of affairs and emphasised the plight of develop-

ing countries when faced with exchange control and currency offences.

In November 1974, the ICPO-Interpol General Secretariat circulated a memorandum to the National Central Bureaux (NCBs) drawing their attention to the relevant resolutions of the General Assembly and underlining the need for more co-operation and mutual assistance. The Secretary General recognised that "co-operation in economic crimes can occasionally be impeded by differences between laws in various countries since certain actions are punishable by law in some countries but not in others". However, the Secretary General added "very often... receiving information that is relatively easy to obtain (e.g. the price of certain merchandise, whether or not a form actually exists etc.) can be of great assistance to requesting countries". Therefore, the General Secretariat emphasised NCBs should do everything "in their power to supply such information on request". The Secretary General also pointed out that "it is often imperative for requesting authorities to know as quickly as possible whether or not their requests for information can be acted upon by the receivers of those requests".

It is not unknown for such requests to be buried at the bottom of a stack of documents and either completely forgotten or ignored as a non priority matter. It is perhaps worth setting out the procedure that the General Secretariat recommended should be followed by NCBs on receipt of such request:

(a) upon receipt of a request for information in connection with economic offences, each NCB will indicate to the requesting NCB whether or not the request can be acted upon,

(b) whenever the requested NCB is unable to provide information to the requesting NCB it will indicate the legal basis for such a decision and also, where appropriate, the government or administrative service which might be able to provide information and the channels (judicial or diplomatic) through which the information could be officially obtained.

Despite the efforts of the General Assembly and General Secretariat there was still a feeling within the ICPO-Interpol organisation, particularly among the developing countries, that co-operation in this field of law enforcement was deficient. Certain countries invariably refused to co-operate, either on the basis that they were inhibited or because of apathy. The matter was raised yet again at the General Assembly at Buenos Aires, in 1975. A resolution was adopted which set out both a short and a long term programme. In the short term the need for increased co-operation and understanding was reiterated and specific attention drawn to the serious implications of economic and commercial crime. In the longer term a committee of experts was set up to look at international commercial crime and make recommendations for promoting co-operation. The committee of experts had delegates from Canada, the Federal Republic of Germany, Guatemala, India, Israel, Pakistan, the U.S.A., the United Kingdom, Senegal, Sudan and Sri Lanka. The ICPO-Interpol

General Secretariat sent out comprehensive questionnaires to the NCBs and a report was prepared. The committee of experts studied this report and draft resolution which was adopted by the General Assembly in Ghana in 1976 (See Appendix III).

Apart from the now-numerous resolutions of the ICPO-Interpol General Assembly and various circulars sent out by the General Secretariat, three Symposia on International Fraud have been held at the ICPO-Interpol Headquarters in Paris, (i.e. April 1968, September 1974, and December 1979). It should be noted that the Commonwealth Secretariat was invited to send an Observer to the most recent symposium, which it did. How effective ICPO-Interpol's efforts have been in promoting more international co-operation with regard to economic and commercial crime is open to question. A more detailed account of ICPO-Interpol's role in this area of law enforcement is given in the supplementary report, in the Appendix, specifically dealing with this organisation. In my judgment, it would be the consensus of opinion that to date ICPO-Interpol has been able to make minimal headway, and its major achievement has been to draw attention to the need for more co-operation and mutual assistance without necessarily developing either significantly. Here it is sufficient to point out that ICPO-Interpol is well aware of the need for urgent action, and has repeatedly sought support from national governments and law enforcement agencies for a more effective programme of international co-operation. So far this has not been forthcoming.

Several organs of the United Nations have also addressed the problem of developing international co-operation in this field. For example, the United Nations Committee on Crime Prevention and Control, meeting in 1974 at Geneva, underlined the harm which could be caused by rampant economic crime and recommended that studies be undertaken to investigate "the possibility of arranging for the collection and dissemination of information at the national and international levels with a view to reducing the damage to economic, political and cultural development through such crimes". Unfortunately, very little has come of this of practical value. The United Nations Centre for the Study of Transnational Corporations has also examined certain aspects of the problem. The Economic and Social Council of the United Nations has concerned itself with certain regulatory problems connected with multinational enterprises and international trading abuses. The United Nations Drug Abuse Programme and the various Regional Sub-Committees on Illicit Drug Trafficking have increasingly become interested in the relationship between commercial and economic crime and the illicit narcotics industry. Very recently the United Nations maritime agency—the Inter-Governmental Maritime Consultative Organisation has set up a special committee to examine maritime fraud.

There is a host of other international organisations, both inter-governmental and private which to a greater or lesser extent are concerned with international co-operation in this area of criminal

activity. The important contribution of the OECD in regard to multinational corporations and such matters as bribery and corruption and international restrictive practices is widely known. The European Committee on Crime Problems of the Council of Europe, too, has undertaken a good deal of important research in this area. The Customs Co-operation Council is a particularly important agency with regard to customs offences. A number of non-governmental organisations such as the International Air Transport Association (IATA) have increasingly had to come to terms with international fraudulent operations in recent years. Indeed, during the last decade some of the most important advances in international co-operation have been industry based. This is particularly true in such areas as credit cards, travellers cheques and, of course, airline tickets. It is to be hoped that the insurance, computer and shipping industries will make similar efforts during the next decade.

Organisations such as the International Chamber of Commerce have also contributed to the setting of world-wide standards of probity through the drawing up and publication of international codes of conduct on such matters as bribery and commission payments. Whilst this concern throughout the international community to advance co-operation is commendable and to be supported, it has to be admitted that to date it has made little impact on the problems that still in practice substantially impede international co-operation.

The concern evident at the international level is equally visible at national level. Over the last decade more and more attention has been given to such regulatory matters as corporate securities abuses throughout the world. It would be quite impossible to survey the vast quantity of material that has been produced on matters relating to commercial and economic crime during the last decade, even just within the Commonwealth. A number of Commonwealth countries have various "expert committees" examining law enforcement with regard to commercial crime, sitting whilst this report is being drafted. For example, in 1978 such a committee was convened in the United Kingdom "to consider the arrangements for investigating the prosecuting fraud and particularly company fraud and to examine the role and co-ordination between each of the authorities with responsibilities in this field". The committee reported in 1979. Even more recently, the Attorney General is understood to have set up another expert committee to examine matters relevant to this area. The press, too, has carried a report that the United Kingdom Government is considering setting up a "flying squad" of experienced fraud squad detectives to help Commonwealth countries (*Daily Telegraph* 27 December 1979). This particular development is discussed later in this report. However, this illustrates a high degree of concern at national level. Beyond the Commonwealth, the Federal Republic of Germany has set up an expert panel to examine necessary legislative and administrative changes required to facilitate the prosecution of commercial crime, in 1978. The

Japanese Government has had a similar committee sitting since 1976. The Philippine Government, too, set up a special task force to make recommendations on dealing with organised commercial crime in September 1978. Judge William Webster, Director of the U.S. Federal Bureau of Investigation (FBI) has recently re-affirmed the decision of his predecessor to make commercial and economic crime a matter of top priority within the Bureau. In April 1979, Mr. Benjamin Civiletti, Deputy Attorney General of the U.S.A. announced a major new offensive against commercial crime involving the establishment of some 27 new officers staffed by 150 specialist prosecutors throughout the U.S.A.

Having regard specifically to corporate securities frauds, the establishment of some kind of securities and exchange commission would appear to have become almost a status symbol. Sadly, these authorities are often ill-equipped to perform a regulatory function, and in some cases their ability to provide enforcement is severely restricted by combining in its role too many responsibilities. Certainly, it is important for governments, and in particular for governments of developing countries, to realise that the setting up of a new authority to police a particular area of activity as complex and important as corporate securities trading is no universal panacea. It may, however, be a significant first step to catching criminals.

The need to regulate economic and commercial crime

(a) The effect on national economies

Reference has already been made to the vast sums of money that can be involved either directly through misappropriation or placed at risk by economic and commercial crime. The ICPO-Interpol General Assembly has repeatedly emphasised the harm that can be caused to the economies of countries by this type of criminal activity. This recognition is implicit in the resolutions passed at the General Assemblies meeting in Tehran, Frankfurt and Lagos. The Minister of Justice and Attorney General of Jamaica stated at the Winnipeg Law Ministers' Meeting that this type of crime was having "a devastating effect in Jamaica". The Minister of Justice of Sri Lanka also pointed out that "the developing world has been particularly vulnerable to crimes affecting the national economy such as smuggling, foreign exchange violations, the illegal outflow of capital, illicit trafficking in currency, narcotics offences and bribery and corruption". Other Ministers expressed similar views. It is not without significance that, in the main, it has been the developing countries that have brought to ICPO-Interpol's attention at the General Assembly the inadequate state of international co-operation in this field of criminal activity.

There is some evidence that the commission of commercial and economic crimes can directly and adversely affect the national economy of a state. Dr. William Clifford in his Paper referred to several

instances of this occurring. Some Law Ministers will no doubt know of others. In the present context it would be invidious to select a single country for the purpose of illustration. A number of countries, including several Commonwealth countries, have elevated law enforcement in this area to almost that of national security. Where the state's economy and currency are at stake this is understandable. The psychological identification of certain economic crimes with those directly affecting the nation's security and well-being is occasionally reflected in the law enforcement agency designated to deal with such cases. This is mentioned merely to illustrate the feeling, not confined wholly to the developing world, that certain economic crimes are little short of treason. Although, it is not necessary to labour this point, it does have an obvious bearing on the question of international co-operation, and in particular to the surrender of fugitive offenders. ICPO-Interpol have been confronted with this problem on a number of occasions. It should also be mentioned, that the designation of specialised agencies to police specific crimes inevitably creates problems of demarcation, communication and co-ordination at both the domestic and the international level. This particular problem is developed in the supplementary report in Appendix VI dealing with ICPO-Interpol.

To a very real extent the way in which a state will view attacks on its economy through economic and financial crime will be influenced by its dominant political philosophy. The relationship between certain economic crimes and their political, social and moral justification is often confused. The political connection may, however, be the most significant. A failure to appreciate that certain economic and financial crimes are merely reflections of a state's political and economic values has engendered a good deal of misunderstanding. Certain countries have long felt frustration with the international community, and in particular with the developed world, over the inability or reluctance of other countries to provide meaningful assistance in combatting certain economic crimes. A classic example of this is the controversy that still surrounds exchange control regulation. A number of developing countries understandably consider that a measure of exchange control regulation is vital to their national economy and security, but this view may perhaps occasionally be overstated.

ICPO-Interpol has long been confronted with this particular problem. Deputy Inspector General Tyrrell Goonatilleke, of Sri Lanka Police Force, spoke out against the reluctance of certain countries to co-operate in investigations relating to exchange control violations at the ICPO-Interpol General Assembly at Vienna, Austria in 1973. His impassioned speech referred to his country being "cheated, defrauded—virtually robbed of its national wealth that is so essential for any form of development". He stated that "staggering sums of astronomical proportions" were involved. The Indian, Pakistan and Philippine delegations strongly supported this call from the heart.

This concern among the developing world for more meaningful assistance was followed up at the ICPO-Interpol Asian Regional Conference in Manila, in 1975. The reluctance of some countries to co-operate in these investigations is often because they themselves do not have exchange control regulations.

As mentioned, the General Secretariat of ICPO-Interpol prepared a report on international fraud (Report No. 5, ICPO-Interpol General Secretariat) which was endorsed by the special committee of experts and by the General Assembly at Buenos Aires. This report gave considerable attention to the degree of international co-operation countries could expect in the investigation of exchange control and currency related offences. The General Secretariat was concerned to ascertain those countries which required double criminality or reciprocity, and or, a required minimum standard of seriousness before co-operation would be given in such investigations. Although the results obtained were less than impressive, and the report itself is now somewhat dated, the relevant table appears as Appendix IV.

Perhaps an even more sensitive area for international co-operation is that of "foreign payments", or in less euphemistic language, international bribery and corruption. That this is a serious international problem for both the developed and developing world cannot be denied. Bribery and corruption cannot be countenanced in the giving or the receiving country. The implications of bribery and corruption in developing countries where scarce resources must be employed to the best advantage are obvious. Whilst a number of international organisations have examined this issue, there may still be room for a Commonwealth initiative.

The diversion of scarce capital resources into the hands of criminals, or at best non-priority investment sectors, is of concern to the governments of all countries. However, for a developing country the consequence are potentially far more grave. The sums of money may be the same in both cases, but the implications for the national economy of a developing country are significantly more serious than those for a developed economy. Added to this is the fact that developing countries, on the whole, constitute far easier targets for organised and syndicated crime. In such states the law enforcement machinery for combatting criminal penetration of domestic business or foreign enterprises operating locally, where they exist, are almost certain to be inadequate. Furthermore, it is probable that given the lower level of capitalisation in such countries the capital that needs to be employed to capture or manipulate an enterprise or industrial sector is far less than would be required in a more developed country. It should also be borne in mind that there is far more opportunity for the infiltration of the political and financial infrastructure in a smaller developing country. Whilst this could be disastrous for the country concerned there would be inevitable wider consequences for the international community.

(b) Political stability

It would seem that a very high proportion of commercial and economic crime is organised crime. The statistics available indicate that increasingly criminals are moving into "white collar" crime. For example, in the United Kingdom a growing number of "white collar" criminals coming before the courts are not first-time offenders and have records involving the commission of non-commercial and economic crime. It would seem that the ordinary criminal is becoming more aware of the advantages of this sort of crime. Given the potential rewards, the far lower rate of detection, the miniscule proportion of successful prosecutions, the absence of personal physical danger, and the social esteem that can surround a "white collar" criminal, the attractions are obvious and compelling. Furthermore, it is a mistake to regard all commercial and economic crime as necessarily complex or sophisticated, and as requiring a degree of training and intelligence unlikely to exist within the traditional criminal fraternity. Even those commercial crimes which do require a degree of specialist knowledge can be perpetrated either by purchasing or in some other way acquiring the necessary expertise. Blackmail and threats of violence can be useful tools here, along with the traditional motivation of greed.

Many economic crimes require a degree of syndication either in the setting up or the execution. Known criminals and criminal groups have been identified in such operations. Some Law Ministers may be aware of instances in their own jurisdictions. Here it suffices to point out the significant involvement of organised crime in a number of recent international credit and cheque frauds, counterfeiting operations, and the manipulation of world commodity prices.

In the United Kingdom and to a lesser extent in countries such as Singapore, Malaysia and Australia, there is evidence that organised crime is involved in "long firm frauds". The recognition that organised crime was already heavily involved in this category of criminal activity was implicit in the observations of certain Commonwealth Law Ministers at Winnipeg. Perhaps a word of warning should be added for those who are not at present aware of this dimension to economic and commercial crime. The Intelligence Manual prepared by the U.S. Department of Justice for use by law enforcement agencies concerned with the fight against organised crime states (at p. 9), "there can be little comfort for the law enforcement agency head who has felt himself fortunate over the years that no 'family members' have been located in his jurisdiction. The presence of industrial or commercial wealth may be as sure an indication that organised crime is at least viewing his city with interest as the visit of a notorious 'capo'. 'White collar' crime is on the rise. On the other hand, large concentrations of disadvantaged poor in a defined and compact sector of the city may attract those always ready to exploit the defenceless and uneducated". Whilst this was prepared with *La Cosa Nostra* in mind, its warning is of general application. I would also add that it is the view of virtually every

law enforcement officer consulted during this project that organised crime on the international level as well as the domestic level is heavily involved in commercial and economic crime.

Once organised criminal cells become established in a country, particularly a developing country, there is a strong incentive for them to seek to infiltrate the political structure. Indeed, in the long term for organised crime to survive and prosper it must do so. Apart from protecting its investment it will enable greater opportunities for the economic exploitation to be realised. The "political" activities of organised crime especially in the U.S.A., but also in certain Commonwealth countries, are well known and constitute a most insidious domestic and international peril. Once a degree of infiltration has taken place it is extremely difficult for a government to remove the cancer. Corruption breeds corruption. Increasingly, it is becoming obvious that this is not wholly a problem for developing countries. There have been examples recently where organised crime has infiltrated and operated in highly respected institutions and law enforcement agencies in developed Commonwealth countries. The problems that Scotland Yard has had to face during the last decade amply testify to this. It is both extremely difficult and costly both in manpower and money to adequately stamp out this kind of cancer once it has been allowed to establish itself.

Another matter for grave concern should be the criminal's desire to "legitimise" his operation. In the present context this desire is very strong. The social, moral and cultural pressures which underlie this desire are of no immediate interest here. However, it is important to note that by going legitimate the criminal places the product of his years of crime almost invariably beyond the practical reach of the law. This wealth can be used to generate more wealth, either legally or illegally. Through the exploitation of criminal and underworld contacts and relationships it is possible for this legitimisation to take place on grossly unfair terms to the disadvantage of the state, investors, creditors, consumers and employees. Examples are legion in the U.S.A., where the whole question has come increasingly to the attention of law enforcement agencies and law officers. In the recent past there have been indications that organised criminal cells have sought to make the transition into the world of legitimate business in the Commonwealth. Very little work has been done on this issue. The author is not aware of any academic or criminological research and detects a disturbing level of ignorance, and in one or two instances of unconcern, in relevant law enforcement agencies. Although this topic must await further investigation, several instances were found and it would be appropriate to give an example. In Hong Kong, the San Yee On Triad Society of the Chiu Chau have invested large sums of money obtained from various street offences, illicit gambling, and possibly loan sharking, in a hotel, two expensive and prestigious night clubs and three restaurants. It would appear that the businesses are now run as more or less legitimate operations, and despite

almost continuous police surveillance and even undercover infiltration there appears little likelihood of evidence being obtained such as would enable a criminal prosecution to be brought. The proprietors of the businesses are known and convicted criminals. This is not an isolated instance and other groups of organised criminals have become involved with similar operations in many Asian countries and to a lesser extent in Europe. Within the Commonwealth, this is understood to be a problem in Australia, Malaysia, Singapore and to a lesser extent Canada and the United Kingdom. Whilst it is true that most of these operations are relatively small, the danger is obvious.

The legitimisation of criminal activity has another important attraction—it allows criminals to “launder” the proceeds of the crimes with which they are still associated. It is probable that many of the clubs, massage parlours, gambling rooms and the like which are known to have criminal connections are used for this purpose in Commonwealth countries. There is a good deal of evidence of this taking place in the Far East, and to a lesser extent in Australia. Again an example may suffice. A criminal syndicate operating in the Philippines with connections in Indonesia and Malaysia, and probably also Thailand, regularly sends couriers to Hong Kong and Macoa with large sums of money which have been obtained in the trafficking of both narcotics and arms, and a number of associated street offences. There it is “laundered” in a chain of night clubs, two firms of stockbrokers, an insurance company and a small private bank. Smaller scale operations are commonplace.

Infiltration of either the political or business infrastructure can easily lead to destabilisation within that country. Domestic and international confidence in the ability of that country to preserve a particular set of social, moral and economic values will be weakened leading ultimately to a serious undermining of national institutions.

(c) Investor and market confidence

Closely related with the earlier considerations is the risk of a significant loss in investor confidence, both domestically and internationally, should economic and commercial crime be allowed to continue and develop unchecked. Governments, and in particular Commonwealth governments, are mindful of the need to promote and foster investor confidence in the integrity of their financial and social institutions. For example, section 3 of the recent Off Shore Banking Act 1979 of Barbados specifically states that it is in the purpose of the Act to encourage the development of Barbados as a *responsible* off shore financial centre.

Numerous other examples could be cited but are unnecessary to support such an obvious assertion. The state has a right to protect and encourage the investor, and for that matter all consumers and participators, in its institutions and its economy. This is a matter of survival. Therefore, if it is established that a practice, such as, for example, insider trading,

significantly weakens investor confidence in the integrity of a state’s capital markets, then it is beyond argument that the state has the right, perhaps even the duty, to act positively against that abuse. It matters not, according to this view, that criminologists and jurists might debate and doubt whether in fact any one individual is legally harmed by the abuse. Nor does it matter that a widespread feeling that a particular abuse is unfair may be judged by legal analysis to be illogical. Investor confidence can be injured just as much by an illogical reaction, and in the final analysis it matters little whether a loss of confidence is a logical reaction to the given facts or not. There is still a loss of vital confidence and respect. Therefore, governments should be prepared to act against such abuses giving, perhaps, more attention to cause and effect. The prophylactic argument is a strong one in regard to commercial and economic crime.

On this basis, even cosmetic regulation may be justified. Whilst some scepticism has been expressed about the growth of securities and exchange commission-type organisations, it is suggested that the exercise may well be valid if the result is to heighten investor confidence. It is reassuring to know that there is a policeman on the beat, even if very few burglars are successfully prosecuted in the courts. By the same token it must be appreciated that by creating a greater degree of awareness in the field of “white collar” crime and market frauds in particular there is a danger of a weakening in public confidence in the ability of the legal system to cope. This is not to say that frauds and malpractices should be concealed from the public and media. Awareness is a two-edged sword.

The presence of an authority charged officially and publicly with the responsibility of dealing with such cases is a step in the right direction.

(d) Effect on social structure

Traditionally, “white collar” crime has been largely confined to the more educated and monied sections of the community. “White collar” crime depends so much on opportunity. Whilst this is true, to a certain extent, of all crimes, it is especially true of this category of criminal activity. However, there is some evidence in more developed jurisdictions that the social barriers are beginning to break down, and increasingly there is little difference between the “white collar” criminal and any other criminal. It is true that a number of economic and commercial crimes require a degree of training and possibly intelligence that would not ordinarily be found in criminal groupings, but it is equally true that this factor has been over-emphasised. As already pointed out, economic and commercial crime, like general property offences, are essentially matters of opportunity balanced with temptation and/or pressure. It is perfectly true to say that only individuals having specific qualifications or a particular social position might be in a position to exploit such an opportunity.

Generalisation is dangerous, but it is a fact that in the vast majority of economic and commercial crimes

there is some element of exploitation of trust or confidence. Therefore, the criminal must either be in such a relationship or apparently in such. Having regard to those crimes involving a breach of trust in the legal and lay sense, it is arguable that the effect of the breach is to bring into question the system which enables that trust to be reposed in such an individual. This is merely an application of the "stewardship principle" which is so vital to many aspects of the commercial world today. Many "white collar" criminals blame the system they are "forced" to exploit. "White Collar" criminals seek to justify their actions by referring to the inherent unfairness or degree of mutual exploitation within the system, to a much greater degree than the ordinary criminal. Invariably a person accused of an employee fraud will point to real or supposed violations by his peers, or better still, by his superiors. The smaller "white collar" criminal will almost certainly assert he is "small fry", and the bigger offenders are allowed, by the system which has "forced" him into crime, to escape and prosper. The ability of more successful "white collar" criminals to legitimise their activities and acquire an aura of respectability no doubt accentuates this feeling.

The implications of all this will be obvious to Law Ministers. Widespread abuse of the system will undermine it, and this is equally true whether it be at the micro level in a particular company or with regard to a nation's institutions and economy. If exploitation is allowed to continue largely unchecked in any structure, the structure will become tainted and social and political alienation will follow. A state that is apathetic or is not prepared to be seen to be making a determined stand against such abuse must be prepared to accept the social, economic and political consequences. Again the danger for the developing world is so much greater.

(e) The funding of other crimes

ICPO-Interpol has long recognised that a connection often exists between the perpetration of economic and commercial crime and other forms of criminal activity. The Frankfurt General Assembly in 1972 stated in a resolution that "the profits made by those committing such offences may be used to finance illicit drug trafficking or other forms of organised crime". That a good deal of economic and commercial crime is associated with organised crime has already been pointed out. On a number of other occasions the ICPO-Interpol General Assembly, the General Secretariat and individual officers have stressed the relationship between economic crime and other types of organised crime. For example, Deputy Inspector General Tyrrell Goonatilleke of the Sri Lanka Police has raised this issue on several occasions. He chaired the committee of experts set up pursuant to the resolution of the ICPO-Interpol General Assembly at Buenos Aires. In presenting General Secretariat Report No. 5 on international fraud to the General Assembly at Accra in October 1976, Mr. Goonatilleke made the following comment:

"I have to emphasise that the secret accumulation of funds which are the proceeds of these offences (i.e. commercial and economic crimes) are used for criminal purposes such as the trafficking in narcotics, smuggling of firearms and political assassinations..."

Many senior police officers now accept that access to accountable funds is a very important element in a number of organised crimes, particularly where trafficking is involved. Funds derived from criminal operations or taken out of a country in violation of exchange control regulations are, to all intents and purposes, unaccountable. These funds may be laundered en route, but in most cases this is not essential. The important connection between the accumulation of unaccountable funds and exchange control violation was underlined by Deputy Inspector General Goonatilleke at the ICPO-Interpol General Assembly at Vienna in 1973. He stated:

"almost all developing countries have always looked at fiscal offences with great concern because it was found that unscrupulous groups of persons systematically syphoned the revenue out of the country either for their individual gain or for the purpose of accumulating unaccountable funds which are utilised to finance smuggling of drugs, arms etc., counterfeiting, the white slave trade and insurrection."

Mr. Goonatilleke then gave a number of examples where he had investigated such cases. In August 1979 I discussed this matter with him, and also with the Director of Criminal Investigations in Colombo. Both considered that the problems today were more serious than they were in 1976. Indeed, there is evidence that smuggling operations continue to a disturbing extent in Sri Lanka, despite the Government's recent relaxation of the regulations relating to the importation of foreign goods, and are being utilised to obtain unaccountable funds for other nefarious activities in Sri Lanka and its neighbours. Of course, an important element in this "pipeline" of unaccountable criminal funds in Sri Lanka is the smuggling of gems and precious stones. It is not without interest that the view of the Sri Lanka police is shared by many senior law enforcement officers in the Commonwealth.

The relationship between economic crime and illegal trafficking operations was highlighted in the symposia on international fraud that the ICPO-Interpol General Secretariat organised in September 1974 and December 1979. At the 1979 symposium, the French delegation stated that the French police and customs service were aware of this relationship and violations of exchange control regulations could provide a useful starting point for investigating other non-economic crimes. The Canadian delegation also accepted that this relationship existed in Canada, and referred to a recent initiative by the Canadian Solicitor General whereby a closer working relationship is to be developed between a special projects section of the Commercial Crime Division of the RMCP and the Department of Finance. It was thought that a closer relationship between the police and revenue services would be useful in tracking down large accumulations of untaxed income—possibly the product of organised crime—in the pos-

session of criminals and their associates. The Canadian delegation thought that these investigations would uncover a relationship with narcotics offences. The delegations from Spain, Italy and Australia also gave support to the "pipeline" theory.

There is certainly a desire within the ICPO-Interpol General Secretariat to expand the present facilities for intelligence analysis and money-flow targeting in regard to the illegal narcotics trade. The General Assembly at Nairobi in 1979 adopted a resolution calling upon member countries to pay greater attention to large capital movements and the facilities within their territory for "laundering" of money as important factors in combatting illegal trafficking in narcotics. The General Secretariat is about to send out a questionnaire to the NCBs asking what action can be taken at national level to monitor large capital movements and whether there are legal provision for the freezing of money and property associated with illegal narcotics trafficking.

The U.S. Drug Enforcement Administration is probably in the forefront of this kind of intelligence operation. The former U.S. Bureau of Narcotics and Dangerous Drugs (BNDD) was aware of the relationship between organised economic crime and the illegal drug market. In its submission to the ICPO-Interpol General Secretariat's study on international fraud in 1975, the connection between exchange control violations, market frauds and organised loan sharking and narcotics trafficking was pointed out. In early 1976 the Drug Enforcement Administration (DEA) set up Central Tactical Unit (CENTAC) 12 to investigate so called linked conspiracy cases. Attention to moneyflow between major criminal organisations has proved of vital importance in the development of targets and in the obtaining of documentary evidence establishing participation in the illegal trafficking of drugs. Of course, in the U.S.A. there are a number of special statutes creating offences particularly relevant to this type of enforcement programme: for example, the Continuing Criminal Enterprises Statute, the Racketeer Influenced and Corrupt Organisations Statute and the Foreign Corrupt Practices Act. The Financial Intelligence Programme of the DEA has now attained a significant interface with the enforcement programmes of other Federal law enforcement agencies, such as the Securities and Exchange Commission; the Department of Justice's Strike Force 18; the Department of Treasury's Office of Law Enforcement; the U.S. Customs Service; the Secret Service and perhaps most importantly the International Revenue Service (Narcotics Trafficker Tax Programme). For the information of Ministers I have attached a memorandum prepared by the DEA on the exchange of financial information relevant to narcotics trafficking to this submission, as Appendix V.

As has already been pointed out, a number of other countries are paying increasing attention to the relationship that might exist between economic crime and serious organised crimes such as narcotics and arms trafficking. One or two major successes with regard to narcotics enforcement have been in part the

result of this approach in the United Kingdom and Canada. The Commonwealth Police in Australia are also actively considering ways of improving their intelligence programme in this regard. Perhaps rather surprisingly a number of Commonwealth countries that do have problems with organised crime and in particular illicit trafficking have made little headway in developing viable intelligence. Only comparatively recently was the Commercial Crimes Bureau of the Royal Hong Kong Police Force asked to assist in a narcotics investigation, and this was evidently only because the officers investigating a narcotics case had seized a quantity of documents and accounts which they could not interpret.

Of course, in practice it is extremely difficult to operate an effective moneyflow intelligence programme if there is no exchange control regulation. This probably accounts for the little attention that this sort of programme has been given in Commonwealth jurisdictions such as Singapore and Hong Kong. In the U.S.A. the Financial Recordkeeping and Foreign Transactions Reporting Act 1970 which is intended by Congress "to require certain reports or records having a high degree of usefulness in criminal, tax or regulatory proceedings" plays a crucial role. For instance, the Act requires a Currency and Monetary Instrument Report—Form 47900—to be sent to the Customs where there is an international movement of currency or a monetary instrument in excess of \$5,000. A similar report has to be made to the Internal Revenue Service where a domestic transfer involves more than \$10,000. It is understood similar requirements operate in Canada. In practice criminals engaged in illicit trafficking operations tend to use cash rather than letters of credit because of the absence of records and thus a trail.

Even where there is no exchange control regime to assist the development of financial criminal intelligence, it is still possible to monitor other sources of relevant information. In recent years, ICPO-Interpol and in particular the U.S. law enforcement agencies have been concerned about the use international criminals have made of international financial havens. It would seem that on numerous occasions such havens have unwittingly provided economic criminals with shelter and allowed them to transfer their ill-gotten gains around the world with impunity so as to finance other serious criminal activity. It is disturbing to note that in a recent report prepared by a senior Financial Intelligence Program Officer in the DEA a number of Commonwealth countries were mentioned as affording off-shore financial services which had been exploited by known narcotics traffickers.

The views of policemen differ considerably as to the extent that syndicated and organised crime exists in various jurisdictions. It is, however, generally agreed that organised international crime is increasing both in its dimension and scope of operations. Within the Commonwealth there are few international criminal cells or "families" which operate in more than a couple of countries at the same time.

Perhaps the nearest Commonwealth equivalent to the mafia cells operating in North America and Europe are the so called secret societies in the Far East. "Secret Societies" are active in a number of Asian countries both within and outside the Commonwealth. The general consensus of opinion is that the Secret Societies are small, essentially domestic, cells almost exclusively concerned with street offences. Certainly it is true that the vast majority of ethnic criminal cells operating under the assumed banner of a Secret Society are of this order. However, there are those both inside and outside the relevant police forces who consider that there is a significant coming together of hitherto disparate criminal factions. For example, in October 1978 the notorious 14K Triad Society made a determined effort to regroup and consolidate the various 14K factions in Kowloon, the New Territories and Hong Kong Island. Fortunately, the selfish desires of the leaders of two cells operating on the Island and the reluctance of the senior officers of the "Headquarters Branch" in Taiwan to enter the Crown Colony without some guarantee as to the success of the initiative, frustrated this potentially ominous development. There is also a growing amount of evidence that certain gangs and individuals associated with particular societies are becoming more involved with international crime. This is not surprising given the availability of low cost air travel, efficient international telecommunications and the presence in most countries, particularly Commonwealth jurisdictions, of a sizeable ethnic group which could be either sympathetic or at least susceptible to persuasion. There is some evidence that these groups have expanded the scope of their criminal activities to include crimes such as shipping, insurance, travel and employment frauds as well as the traditional trafficking and street offences. I do not wish to create the impression that the numerous little gangs of petty thugs which operate at street level throughout the Far East and in certain other countries are moving into "white collar" crime. Such a notion would be absurd. However, it is true that certain groups and individuals associated with local societies have turned their attention to crimes of a more complex nature. It has long been known that particular individuals holding positions in secret societies also operate on an international level as individuals or in association with some other syndicate.

It is also clear that local gangs have been involved with laundering operations both on the national and international level. In Hong Kong there is a belief, even among senior officers in the Securities Commission, that major laundering operations take place in the financial infrastructure and in particular in the securities markets. During the last six months there have been several incidents where "couriers" carrying large amounts of money (Taiwan Dollars and Phillipine Pesos) were robbed in Hong Kong. It is clear that this money was being brought into the Colony for laundering. There is some evidence that a group of Singapore criminals, who used the name of one of the traditional secret societies, were engaged in illegal drug trafficking in three European countries and remitted the proceeds of their crime back to

Singapore for laundering. Local criminals evidently supported and facilitated this. This is almost certainly not an isolated instance and Singapore can not be alone in facing such problems. Securities frauds have been perpetrated to launder money obtained through some other form of criminal activity. The DEA have discovered several instances of this in the U.S.A. and the Philippine Securities and Exchange Commission with the assistance of the Department of Defence and National Security is currently investigating such a case in Manila. The syndicate there was operating, inter alia, from two Commonwealth jurisdictions.

At the Third Symposium on International Fraud organised by ICPO-Interpol in December 1979, the Nigerian delegation called for governments to pay more attention to the freezing and seizing of funds that are the product of illegal activities. In fact, this is a most effective weapon against international criminals. However, seizure creates a great number of legal problems which it is outside the terms of my brief to raise here. Suffice it to say that a number of countries, particularly developing countries, are not only concerned to develop international co-operation with regard to the prosecution of offenders, but are also concerned to see effective restitution.

Even if it is accepted that the few cases where such criminal groups as the Chinese secret societies have been positively identified as being involved in economic crime are wholly exceptional and do not indicate a disturbing new trend, it has to be admitted that such cells have co-operated and provided ancillary service to international commercial criminals. Throughout the Far East, and even in the United Kingdom, there is evidence that these local thugs have been retained by other organised groups of criminals, as enforcement agents for illegal and unenforceable loans and debts. Several triad gangs in Hong Kong hire themselves out to loan sharks and the proprietors of illegal gambling and vice dens for this purpose. Similarly, such cells have been used to put pressure on suppliers, creditors, employees etc. to facilitate a variety of commercial crimes. Long firm frauds and the theft of valuable paper are two areas where this has occurred to a disturbing level. Indeed, in one or two cases these criminal cells have actually infiltrated banks, securities houses, factories, and even law firms. There is also a good deal of fronting taking place either through the local gang or with its support.

Finally, it should perhaps be added that occasionally the commission of an economic crime will be the payment for some other criminal service. Extensive discussion has already taken place as to the utilisation of the product of a commercial or economic crime for some other criminal venture and the laundering of such. However, several cases have come to light where fraudulently obtained commodities, securities or the documents of entitlement to such have been given in payment. In the U.S.A. the DEA have uncovered two cases where the criminal payment was insider information and a deliberate manipulation of a national securities exchange.

(f) The mushroom effect

A good deal of what has already been said in regard to the use of funds obtained through the commission of economic and commercial crime is applicable to this consideration. The mushroom effect of economic and commercial crime, however, involves considerably more than the utilisation of such funds in the commission of other criminal activity. It concerns the tendency that has been widely recognised for “white collar” crime to lead the perpetrators into other areas of criminal activity. Reference has already been made above to the relationship that exists in many countries between organised crime and commercial and economic crime. “White collar” criminals in at least three Commonwealth countries—the United Kingdom, Australia and Canada would seem to be increasingly working with ordinary criminals. There are clear advantages for the “white collar” criminal in having the participation of ordinary criminals. Firstly, this gives him ready access to the criminal infrastructure and this could be important in a number of ways. For example, the recruitment of specialist criminals, the obtaining of false documents, special tools and information and in certain cases access to “fences”. Secondly, a good many commercial and economic crimes require the commission of related ordinary criminal offences. For instance, theft of documents, breaking and entering, the use of “persuasion”. In such cases of criminality the “white collar” criminal may well be inexpert. Therefore it would be wise for him to use the services of another criminal. Thirdly, expendable criminal services might be employed for the more visible elements of the crime. Thus, it is not unusual to find ordinary criminals involved in the transportation and collection of materials, possession of the stolen property etc. Fourthly, the statistics would seem to show, at least in the United Kingdom, that where a first time offender is involved in the commission of a “white collar” crime with a convicted criminal, the courts invariably focus their attention on the man with a record allowing the first time offender neatly to shift a good deal of the responsibility for the crime on to his shoulders. Therefore, it is not unusual for a “white collar” criminal to surround himself with one or two ex-convicts who can, should the need arise, be used as scapegoats. Obviously, these are not absolute factors and much will depend on the circumstances. It would be stupid for a first time offender with no support in the underworld to entrust valuable documents which can be easily negotiated to hardened criminals—for safe-keeping. By the same token a “white collar” criminal who openly mixes with convicted criminals obviously increases the chances of his being implicated in the criminal activity. Where organised crime is involved in the commission of “white collar” crime the financial commitment might be such as to make it prudent for expendable participants to be recruited who can be assigned specific functions in ignorance of the main perpetrators and primary objective. Given the access that such groups invariably have to relatively vast resources, it is feasible for complete outsiders to be recruited for the commission of a specific criminal act—such as the destruction of

incriminating evidence through arson of an office, or even the elimination of potential competitors. This may sound rather fanciful, but it should be stressed that there is already evidence of this having occurred within the Commonwealth. It is not an uncommon occurrence in the U.S.A., nor in several European countries. The author is also aware of the use of outside thugs to put competitors of a brewing company in the Far East out of business and even to eliminate an investigator appointed to examine the company’s financial dealings. This did not directly involve a Commonwealth jurisdiction, although it is true to say that at least four thugs were hired in a Commonwealth territory and subsequently the company is now operating in two Commonwealth jurisdictions. There is also evidence that the use of criminals to frustrate investigation into certain international commercial crimes is not as uncommon as might be supposed. Of course, the destruction of documentary evidence is a very real problem in this type of criminal case. A number of potentially very important investigations have been frustrated in this way. The implications for prevention and detection that all this has should be obvious.

The preceding section on the funding of criminal operations has dealt, at some length, with the rather sensational issue of the triad societies. It is appreciated that in a report of this nature the raising of such an issue could cause doubt as to whether the recommendations made are appropriate for adoption by the Commonwealth. I would, however, emphasise that it is already established that ethnic criminal cells are providing criminal services certainly at the national level and possibly at the international level to “white collar” criminals. Reference has already been made to the use of certain quasi-triad gangs in Hong Kong as “enforcers” in loan sharking and illegal gambling operations. Thugs claiming, probably falsely, membership of the secret societies have acted in a similar capacity recently in London and three other major cities in the United Kingdom. This has also become a problem in certain Canadian cities and is an acknowledged problem in a number of Commonwealth jurisdictions in the Far East. I refer to the secret societies merely to illustrate the relationship that exists and can develop between criminals engaged in economic and commercial crime and those concerned traditionally with ordinary crimes of vice, violence and property. There are other criminal groupings, not of Chinese ethnic origin, which are also a serious threat. I have, however, concentrated here solely on the Chinese criminal groups because they are active in several Commonwealth jurisdictions and there is already a degree of awareness of their supportive activities in regard to the illegal narcotics trade.

Once a successful illicit operation has been set up in a country there is a strong incentive for the organisers to diversify and spread risk by moving into other forms of illegal and perhaps legal activity. Diversification is just as important in the world of crime as it is business. As has already been pointed out, there is some evidence that those engaged in the illicit trafficking of drugs do not put their money

through a financial institution or market solely for the purpose of laundering, but also to benefit through investment. Reference has already been made to the two cases of market manipulation and insider trading where the U.S. Securities and Exchange Commission alerted the DEA. It is most unlikely that this kind of activity is confined to North America.

Ministers and their advisers will no doubt be aware of a number of other grounds for regarding international economic and commercial crime as a serious matter requiring urgent and effective action. The above considerations are not in any way intended to provide an exhaustive analysis of all the reasons why action is needed. Instead, they are intended merely to justify the importance of the present project and indicate the areas of grave concern to which Ministers and their respective governments might like to direct their attention when considering the proposals and recommendations made in this submission.

Practical difficulties impeding law enforcement and international co-operation

It is not intended that this section should fully and exhaustively catalogue all the practical problems and difficulties confronting law enforcement agencies and the legal systems of the Commonwealth with regard to commercial and economic crime. The poor record that all Commonwealth jurisdictions have in the successful prosecution of certain types of economic and commercial crime amply testifies to these problems. Although, a great deal is said and written about the law and administration of specific offences intended to outlaw certain abusive activities in this area, only rarely do people sit back and look at the appalling lack of success, judged solely in terms of convictions, that these provisions have had. Certain Commonwealth models are almost slavishly adopted in other jurisdictions. However, in truth these countries even with their highly developed offences, and in some cases great expenditure of law enforcement resources in their administration, have only a minimal number of convictions. The point sought to be made, by way of introduction to this section, was aptly stated by P.D. Connolly, QC, in his report on Queensland Syndication Management Pty. Ltd. and Ors in 1974:

“It is fashionable in modern times when substantial amounts of public money are lost in questionable corporate affairs to produce a sheaf of amendments of the Companies Act. Doubtless the ingenuity of the confidence trickster does from time to time reveal deficiencies in the legislation. One cannot help feeling, however, that in most cases the Act and the general law are quite adequate and it is at the point of enforcement that the system breaks down.”

The learned inspector continues that it is necessary to make a fundamental reappraisal of our traditional approach to the criminal law in this area. With respect I wholly agree with this observation. I would submit that attention solely on the attainment of a

successful criminal prosecution in the case of a good many commercial and economic crimes is misplaced and wasteful of the scarce resources that are available for law enforcement, whether the country be a developed one or not. If a particular economic or commercial activity is considered sufficiently abusive so as to justify rendering it a criminal offence, then surely what is intended is to discourage and minimise the occurrence of this abuse. In my view, the criminal law standing alone and as traditionally administered cannot be an effective tool.

(a) The problem of definition and drafting

Inevitably problems of definition enter into the framing of all criminal offences. However, the problems likely to be encountered when defining economic and commercial crimes will be almost certainly greater. The concepts are both complex and involved. Initially, regulators and law enforcement agencies are faced with the serious problem of deciding at what point exploitation becomes unacceptable in the legal sense. Probably, to a much greater extent than in other areas of criminal activity, the determination of what should constitute an offence in the context of abusive economic and commercial activity calls for a series of “value judgments”. The determination of these “value judgments” will properly involve a host of extra-legal considerations. The issues involved in deciding whether indecent assault or rape should constitute criminal offences are more or less well defined and precise. This is not the case with regard to, say, insider dealing and the pirating of films, records and books. Occasionally the balance will be influenced wholly by *a priori* political or economic considerations. An excellent example is exchange control regulation. Lawyers and policemen are generally ill-equipped to make these value judgments. This is reflected in the reluctance of the Courts to intervene in certain areas of the law where business judgment is primarily a matter of informed expediency. Therefore, judges have been, on the whole, unwilling to involve themselves with such issues as shareholder oppression, the determination of consideration and dividends, insider dealing, capital maintenance and professional negligence. What is regarded as unfair by one section of the community might not necessarily be considered so by another. Take, for example, insider dealing. Many Commonwealth countries have enacted legislation outlawing insider dealing. However, others have not, and until recently insider trading was not considered particularly objectionable in the United Kingdom. The Solicitor to the United Kingdom Department of Trade stated in July 1974 that insider trading was not dishonest and therefore section 13 of the Prevention of Frauds (Investment) Act 1958 was of no application, (see Rider, “The Crime of Insider Trading” (1978) *Journal of Business Law* 19). Insider trading is now considered a serious abuse in the United Kingdom and a Bill is presently before Parliament which will, inter alia, render insider trading in certain circumstances a criminal offence. It should be noted, however, that even those Commonwealth jurisdictions which have outlawed insider trading have not always sought to impose criminal sanctions. Indeed, at least one jurisdiction

has attempted to inhibit insider trading through the setting up of an Insider Dealing Tribunal which is given wide ranging statutory powers of investigation. Consider also the "fairness" of market cornering, certain restrictive practices and executive fringe benefits. If it is criminal for a director to disclose inside information to his wife to enable her to deal on it, why should it not also be a crime for the director to run a luxury car at his company's expense and have an inflated expense account? Of course, everything is a matter of degree and in certain extreme cases milking a company could amount to theft or criminal breach of trust. However, suffice it here to point out the moral ambiguity of certain offences. Perhaps, it should also be noted that it is possible to justify almost any abusive dealing on the basis that it is merely the operation of ordinary market forces. For example, some have argued that insider trading is a legitimate executive "perk" and in fact assists the market by smoothing out market movements.

Given the moral ambivalence and technicality of many of these offences, it is hardly surprising that many do not evoke strong public support. In an attempt to justify the enactment of specific crimes it is not unusual to find governments resorting to constructed moral arguments which may or may not be convincing. For instance, it is difficult to base the regulation of insider trading on a moral distinction between the insider's abuse of information that comes to him because of his insider position and the abuse of that very position itself. It is, however, possible to justify the state's right to decide that insider trading in corporate securities is an abuse sufficient to warrant the imposition of criminal sanctions. Reference has already been made to the right that the state has to protect and foster investor confidence, whether the threat is a logical result of a given situation or not. In practice, it is common to find governments, when enacting this kind of law, emphasising the unfairness of the practice and the "fact" that it is immoral. As this issue has important implications for the regulation of commercial and economic crime perhaps one further illustration will be acceptable. In an understandable attempt to give a particular law some moral content and support, governments occasionally obscure the purpose of the enactment and thereby contribute to the problems of the authority entrusted with its administration. Again let me use the example of insider trading. What is at stake is the private exploitation of privileged information. Confidence in the integrity and efficiency of the market and securities industry might suffer if it is realised the system allows informational imbalances to be privately exploited by persons in a privileged position. In other words investors might consider that they have been unfairly treated. Therefore, it is submitted that the primary regulatory objective of anti-insider trading legislation should be to ensure that informational imbalances do not occur and, if in fact they do, to ensure that they are incapable of being exploited by insiders. The question of timely disclosure of material corporate information is thus of central significance. Although this is implicit in most statutory provisions it is rarely explicit. This is unfortunate as it would be preferable

merely to place an obligation on corporate issuers and their directors to disclose publicly material developments immediately, subject to some kind of protection against the untimely release of information which could damage a legitimate corporate interest. It would be far easier to enforce such a rule than the largely unenforceable provisions attempting to penalise insider trading. This matter is raised here solely to illustrate the confusion of purpose that can and does arise with regard to commercial and economic crime.

It has already been pointed out that few economic and commercial crimes involve strong moral issues, and most are of an excessively technical nature. It has also been said that persons convicted or accused of such crimes invariably attempt to shift moral responsibility for the violation on to the system, or claim that they have only acted as any other businessman would in the circumstances. Controversy has arisen where a widespread practice has suddenly been declared unlawful by a court or regulatory authority. For example, the decision of the English Courts in *R. v. Greenstein* [1976] 1 All E.R. 1, that staging securities issues might in certain circumstances amount to a criminal deception, caused a great deal of concern in the British securities industry. The technicality of the offences and invariably small penalties that are in fact imposed by the courts both tend to undermine enforcement. For instance, the Guildhall Magistrates' imposition of an exceedingly small fine on Mr. Jim Slater in October 1979 for offences under the 1948 Companies Act involving over £4,200,000 was described by Mr. Slater as amounting to little more than a traffic fine. Even where the offence does provide for strong penalties the courts, and in particular the lower courts, seem reluctant to exact adequate punishment in regard to economic and commercial crime. Of course, in many cases the legislation itself allows only ludicrously small penalties. This has been a serious problem with regard to copyright infringements and the general crime of pirating. In the circumstances, it is perhaps not surprising that law enforcement officers are less than enthusiastic about bringing offenders before the courts. There is a need for greater awareness throughout the legal system as to the dangers and serious implications of "white collar" crime.

The courts are traditionally cautious when called upon to evaluate a commercial practice. As has already been pointed out, they are hardly equipped to make such value judgments. Judges, perhaps with justification, are concerned not to impose too high a standard which would operate to the disadvantage of accepted business. This concern is legitimate, provided it is kept within reasonable bounds.

In certain areas of "white collar" crime it is very necessary for governments and business leaders to take a clear stand against an abusive practice. Education and explanation is in the long term the most potent tool. Invariably, there is misunderstanding both among the regulators and the regulated about what a particular law is supposed to be aimed at. This has already been mentioned in the context of anti-insider trading regulation. It is in the interests of all

that there should be a proper appreciation why a particular course of conduct is undesirable and why it should be prevented. In certain situations it may be counter-productive to seek to prevent the conduct taking place through resort to criminal sanctions and civil or administrative sanctions may be preferable. In not a few instances effective self-regulation by the profession, trade or market is likely to be more effective. However, in this context it is important to realise that foreign systems are not always exportable.

Because self-regulation works reasonably well in the City of London (and even there it has its critics) it does not mean that this should be the model for other countries, or for that matter for other markets even within the United Kingdom.

Once a Government has decided that a specific activity or course of conduct should be unlawful, the problem of drafting a statutory provision will arise. Drafting of laws in this area is notoriously difficult and requires a degree of understanding which is not generally required in the preparation of legislation. It is not enough merely to be a good draftsman. Many economic and commercial crimes involve a series of acts, perhaps all save one of which are perfectly lawful. Without thorough research and competent drafting the provision can very easily prove worse than useless. Ministers will be aware of a number of examples from their own jurisdictions. Given the possibly large sums of money involved and the moral ambiguity of many of the offences, there is a very real danger that an evasion industry might develop. Professional advisers in the field of tax avoidance are accepted, but what about a similar service for directors who wish to avoid corporate securities regulations and similar anti-fraud provisions? The implications of this are obviously undesirable. The perpetrators of these "crimes" will be able to buy the best advice, hire the best defence lawyers and provide the most expert defence witnesses. The prosecution services of some countries are not likely to stand much of a chance. The balance is significantly weighted in favour of the professional "white collar" criminal.

As has been suggested certain countries have been far too prepared to adopt, with few modifications, the laws of other countries. Law is a product of its society and to borrow provisions from other countries with entirely different social, political and economic characteristics is asking for trouble. For example, in the field of corporate securities regulation it is meaningless to have regard solely to the few statutory provisions that exist in the United Kingdom. What is of critical importance in Britain is the role played by self-regulation. This system is a historic and social phenomenon and certainly not always exportable. There are numerous examples where Commonwealth countries have adopted provisions borrowed from other jurisdictions. In the main, in the field of commercial and economic crime, the result has rarely been happy, and in one or two instances disastrous. This is not to say that specific provisions might not be used as models or at least as indications of the matters for consideration. Associated with this is the

undue reliance sometimes placed on external advisers. The obvious danger is that a foreign expert will merely advise adoption of the laws from his own country, for this is often his only source of expertise. Indeed, even more unsatisfactory has been the experience of one or two countries where novel legal provisions have been drafted as a test for some other jurisdiction. This has occurred in at least three Commonwealth jurisdictions in the area of commercial crime. Governments should be far more prepared to consult their own experts. Local problems may well be unique and if ignored or not properly appreciated frustrate the entire exercise. Of course, it is recognised that certain smaller countries may well lack relevant expertise and the necessary resources for developing their own law in this field. Outside assistance is not objectionable provided it is placed in its proper perspective.

(b) The international dimension

Today many criminals, particularly those associated with organised crime, operate at an international level. Developments in communication allow almost instantaneous direct communication with anywhere in the world. International travel is now, in most cases, as available as is domestic travel. Furthermore, the relaxation of trade and currency barriers, and the creation of free trade or preferential trade zones, all work in favour of the international operator, whether legitimate or illegitimate. Certain countries, even within the Commonwealth, depend on unrestricted international trade for their national survival. It also has to be accepted that certain organised criminal groups have an international capability and infrastructure which allows them to function with ease in a number of countries at the same time. The regulatory problems associated with legitimate international operators, and in particular transnational corporations, must also be emphasised. Today, law enforcement in the area of commercial and economic crime must have an international capability if it is to make any real impact on this form of criminal activity.

Perhaps it would be useful to illustrate at the outset the practical and legal problems faced by Commonwealth law enforcement agencies when required or asked by another policing agency for assistance in an investigation of a criminal offence. The case of *A.G. for Hong Kong v. Ocean Timber Transportation Ltd.* (1978) No. 86 is of particular significance and warrants discussion here. The Commercial Crimes Bureau (CCB) of the Royal Hong Kong Police received information from the Royal Fiji Police on 12th June 1978. As a direct consequence the CCB suspected that the directors of the respondent corporation had committed several criminal offences: namely (a) conspiracy to defraud the respondent corporation of payments made to the respondent's account at a bank in Hong Kong by Flour Mills of Fiji Ltd., and (b) dishonest appropriation of such payments with intention to permanently deprive the respondent of them. The crimes involved, were therefore theft and conspiracy—ordinary law crimes. An inspector from the CCB swore out a search warrant from the Central Magistracy, which was expressed to

be issued under section 50(7) of the Police Force Ordinance. On the same day the inspector seized a number of private and confidential documents belonging to the respondent company. Additional confidential documents were seized at a later date under the warrant. The Royal Fiji Police Force asked to be supplied with copies of the documents to assist in their investigation of possible crimes of dishonesty under the laws of Fiji. These offences were also ordinary criminal law offences. The CCB did not in fact accede to this request, but they did feel that they might wish to do so in due course, or at least allow inspection of the originals. The corporation sought two declarations; that the documents or copies of such, should not be permitted to be sent out of the Colony without the express consent of the corporation, and it should not be permitted for the documents to be examined by or delivered to any person other than a person directly concerned with the investigation of the crime set out in the information leading to the issue of the relevant search warrant.

Before the court of first instance the Attorney General claimed that the Crown was entitled to retain the documents pending completion of the investigations into the offences alleged to have been committed within the Colony. This was not disputed. However, the Attorney General also claimed that the police could disclose the documents either directly or by way of photocopies to any person that they thought fit, or if they could not go that far, they could at least disclose them to the police force of a friendly state within the Commonwealth for the purpose of assisting in a criminal investigation of a matter properly within the jurisdiction of that state. The Judge considered that the proposition that the police could disclose the documents to anyone they considered fit was far too wide:

“The power to enter, search and take possession is given to the police to assist them in their duty to investigate crime or suspected crime. In the course of that duty it may well be proper to show documents seized to others who are not in the police force, for example witnesses or persons who may be particularly expert in some scientific or specialist field. It may well be that the police would be justified in making one or several copies of the documents seized for purposes of that kind or even merely to make the investigation within themselves more efficient... There could be no complaint against dealings of that nature for they are all proper to the object for which the legislature granted the power. It is that object which marks out the boundaries of the power.”

The Court rightly pointed out that the fact that the search warrant had been issued by a Magistrate did not effect this, and could not authorise the misuse of a privileged power to obtain evidence. The Court expressed doubt as to whether the Attorney General's argument that there could not be a conversion in the photocopying of documents was correct, but thought that the question was irrelevant where an injunction or declaration was sought in relation to a future unlawful act; “the precise juridical nature of the wrong contemplated is immaterial. The court will, if satisfied that it is a wrong of some kind, prevent the commission of that wrong so far as it is able”. With regard to the more restricted argument of the Crown,

that there was power to show the documents to the law enforcement agency of a friendly Commonwealth jurisdiction, the Judge stated: “it is said that the condition in which the world finds itself today the public interest justifies the co-operation of the various police forces throughout the world for the purpose of reducing crime internationally and within the jurisdiction of other states as well as within their own”. Whilst the Judge considered this an attractive notion he rejected it on two grounds. Firstly, he considered that jurisdiction in criminal matters was generally territorial and any Ordinance of the legislature of Hong Kong could apply only to transactions within the Colony. Secondly, “once documents or copies thereof leave the jurisdiction, this Court is deprived of effective control”. Whilst there was no suggestion that the Royal Fiji Police Force would abuse any confidence reposed in it, the Court thought that this was a matter of principle and “a balance must be struck between competing aspects of public interest. For it seems to me as much in the public interest that the courts should uphold the rights of the individual if these rights are threatened or assailed outside the Colony”. Finally, it is interesting that the Judge did not give any weight to the respondents argument that the documents were protected by a duty of confidentiality as such a duty could not justify “the non-disclosure of material which would indicate that the directors of a limited company were defrauding its shareholders”. The Court of Appeal unanimously affirmed the decision of the trial Judge. It is important to note that Huggins J. A. emphasised:

“that nothing I am about to say should be construed as discouraging the police from extending to their counterparts in other states, directly or through Interpol, every assistance they can, provided only that they do not thereby put themselves outside the law of Hong Kong... As criminals seek to take more advantage of international boundaries so the need for international co-operation in fighting crime increases. Nevertheless, the proviso that the police should not put themselves outside the law of Hong Kong is important, for law enforcement authorities must never regard themselves as above the law which they seek to enforce. There lies chaos. The Court of Appeal agreed with the trial Court that both submissions of the Attorney General must fail on the ground that where a statute authorises an official to do an act which necessarily interferes with the general rights of one of the Queen's subjects such interference must not exceed what is reasonably necessary to attain the object of the act authorised. The present statutory provision allowing the issue and enforcement of search warrants was to enable the police to obtain evidence which may assist in the conviction of a person for an offence with which he is charged or of which he is reasonably suspected to be guilty. This must, however, be an offence triable in Hong Kong, it is untenable to contend that the police of Hong Kong have the power to apprehend persons for offences committed abroad—“no warrant could have been issued to search for documents which would merely throw light on the character or activities of a person liable to apprehension in Fiji but not in Hong Kong”. So far as the question of police policy was concerned Huggins J. A. stated “what matters is that an abuse of authority by the Royal Hong Kong Police threatens the respondents possessory right in the documents. The overwhelming public interest demands that

the courts should prevent it and not refuse the relief sought". The court accepted that time may have come "when it is desirable to extend the powers of the Royal Hong Kong Police so that they can lawfully give greater assistance to other police forces in investigating crimes suspected to have been committed outside Hong Kong. If so, it is a matter for the Legislature..."

This decision underlines the very real legal and practical problems facing police officers when requested by another country's police force to provide assistance and information. Of course, in practice a good deal of information is passed "under the table", and the persons to whom it relates never get to hear about it. Whether this is desirable remains to be seen. Furthermore, the "old boys" network is not necessarily efficient as too much depends upon the presence of a personal relationship between the relevant investigating officers. The Court of Appeal did point out that under sections 75 to 77B of the Evidence Ordinance evidence can be communicated once criminal proceedings have already been initiated in the foreign jurisdiction. It is understood that amendments to the Evidence Ordinance are planned which would allow the Hong Kong Police to pass on information where proceedings are merely contemplated. With respect this is desirable and should be emulated in other Commonwealth jurisdictions.

At this juncture it is pertinent to mention the existence of various international agreements for the communication of relevant information. It is, perhaps, true to say that few, if any, specifically bear upon economic and commercial crime. It should be noted, however, that the Single Convention on Narcotic Drugs 1961 in articles 35 and 36 does enable foreign governments to exchange financial information relevant to investigations into illegal drug trafficking. The importance of the Treaty between the United States of America and the Swiss Confederation on Mutual Assistance in Criminal Matters, which came into force in 1977 should be underlined. This greatly facilitates co-operation between the two countries and allows the exchange of information on certain economic crimes such as anti-trust violations and tax evasion where such is relevant to an investigation involving organised crime.

In recent years increasing attention has been given to the freezing or seizing of assets or money that is the product of illegal activity, and in particular the illegal trafficking in narcotics. For example, in the Alberto-Sicilia-Falcon investigation in the U.S.A. the Swiss authorities froze assets in a Swiss bank account on the basis of a letter rogatory prepared by the U.S. Drug Enforcement Administration and Department of Justice (Criminal Division). Seizures have also taken place in several Central and Latin American countries, Thailand, the Philippines and South Africa. Of course, as a matter of domestic jurisdiction the U.S. authorities have a number of statutory powers allowing the seizure and confiscation of such sums. (Reference should be made to Appendix IV with regard to those provisions of special relevance to narcotics enforcement). The desire of some delegates to the Third Symposium on International Fraud organised by ICPO-Interpol in December 1979, to

extend this procedure and allow the seizure of property and funds in another country has already been noted above. Whilst this would be a useful weapon against organised crime it would require specific legislation in the relevant states. As I have confined my attention to areas where co-operation could be developed immediately without the need for the enactment of possibly controversial legislation, perhaps I may be permitted to raise the matter without necessarily elaborating on it further. I would, however, like to mention one or two instances where the question of seizure has arisen in neighbouring Commonwealth jurisdictions.

The Government of Sri Lanka has on several occasions felt that certain neighbouring jurisdictions have been less than co-operative in assisting in the enforcement of Sri Lanka laws—in particular those relating to the illegal trafficking in gems and precious stones and violations of exchange control regulation. In the case of *Gulam Hamid s/o Gulam Mohideed v. Government of Singapore* (Suit No. 1894 of 1973) this matter was brought before the courts of Singapore. A quantity of gem stones were found on board an Air France UTA aircraft by its cabin crew. The plane was flying from Colombo via Bangkok to Singapore. On arrival in Singapore the gem stones were handed to the Customs and Excise Department of Singapore for restitution of the gems or their value in damages. Subsequently, the Attorney General of Singapore was informed by the Government of Sri Lanka that it wished to claim the gems. The issue came before the High Court. The Sri Lanka Government claimed the Singapore courts lacked jurisdiction to determine the issue as an act of state was involved, in that the subject matter concerned the rights of a foreign sovereign Government. It was asserted that the Sri Lanka Government was not bound as a condition of establishing immunity to prove its title to the interest claimed, although it had to produce evidence that its claim was not merely illusory or founded on a manifestly defective ground. The Singapore High Court considered that there was no evidence upon which it could be established the Government of Sri Lanka had a possessory or proprietary interest in the gem stones and, on the authorities, when the sovereign is not a party to the action his possessory or proprietary interest in the subject matter of the litigation must be either admitted or proved to the satisfaction of the court before sovereign immunity will be recognised, and the action stayed. Here, the Government of Sri Lanka was attempting to intervene in an action between the Government of Singapore and the individual claimant and obtain a stay of action on the basis that it possessed an interest in the property. It was clear that the Sri Lanka Government nor any of its agents had never been in possession or control of the gems. Possession could not merely be asserted, it had to be proved. The certificate of deposit was not made out to the Government of Sri Lanka and would not in any case alone entitle the person named therein to delivery. The Sri Lanka Government contended that by virtue of section 44 of the Sri Lanka Customs Ordinance any person exporting or attempting to export or take out of Sri Lanka precious stones in

contravention of the prohibitions and regulations will by virtue of that provision forfeit the precious stones to the Government. The Singapore High Court considered that this statutory right of forfeiture "is limited—limited to the extent that the goods which are subject to forfeiture must be within the territorial jurisdiction of Sri Lanka". There was no evidence that the penal laws of Sri Lanka had extra-territorial effect, and therefore the Singapore High Court concluded that "the claimant's claim has all the ingredients of an illusory claim—in fact, the claim is misconceived. . ." The Court also rejected the claim of the individual plaintiff as it was not established that he had any right whatsoever to the gems. In the result the Court ordered that the gem stones should be disposed of as unclaimed goods. This decision was affirmed on appeal (Civil Appeal No. 34 of 1975). It is perhaps disturbing that many law enforcement officers seem unable to appreciate the clear legal position. No matter what a country's domestic laws might provide as to the seizure of goods and assets outside that state, save in wholly exceptional circumstances unless possession can be asserted within the jurisdiction, the provision is unenforceable. At the Third Symposium on International Fraud organised by ICPO-Interpol at least two delegations from developing Commonwealth countries trenchantly condemned other states for not assisting them in the enforcement of such provisions. Indeed, in one instance it is plain that the laws of the country in question do not even allow the confiscation of such assets within the jurisdiction.

One other example of the confusion that can result in this area of law enforcement may be given. Recently, officers from the Singapore Customs and Excise Department discovered several gold bars and wrist-watches hidden on the deck of a coaster bound for Sri Lanka. Evidently, when the Sri Lanka Government heard about this, it claimed that these articles were the product of illegal trafficking in gem stones. Therefore, it claimed restitution of the articles in question. It is understood that the Singapore Government have felt unable to hand over these articles on the basis that there is absolutely no evidence that they are the product of illegal smuggling and in any case it is almost certain that no offence has been committed in Singapore. I should perhaps emphasise that the above comments should in no way be construed as implying criticism of the Government concerned; I am sure that this type of problem is not confined to the countries mentioned. Indeed, I am aware of similar instances where other Commonwealth and, of course, non-Commonwealth jurisdictions have been involved.

Domestic legislation may be stretched by the courts to give it some degree of extraterritoriality. For example, considerable controversy has been caused by the extraterritorial enforcement by the U.S.A. of its anti-trust laws, securities regulations and more recently its commodity trading regulations. However, unless the law enforcement agencies can obtain evidence which is legally acceptable to the courts of that country, enforcement will be impossible. Where commercial and economic crime is con-

cerned it is probable that much of the relevant evidence will be out of the jurisdiction, and thus beyond the reach of the domestic legal system. There are, of course, ways of obtaining evidence from abroad legally, however, there is general agreement that on the whole they are expensive, time consuming and rarely effective. Thus, occasionally resort has been made to underhand methods of obtaining evidence. Various U.S. Federal agencies are known to have used "under-cover" agents and informants to penetrate foreign financial institutions both in Europe and in the Caribbean. It is almost certain that the relatively few cases which have come to light are but the tip of the ice-berg. While evidence obtained in this manner may not be suitable to adduce in Court, it may be used to obtain additional evidence which is more susceptible to production in Court. This underlines one of the main problems facing enforcement both at the national and international level. Apart from lacking resources, law enforcement agencies invariably feel inhibited through what they consider unnecessarily technical restrictions on the exercise of their powers. Whilst police powers must be subject to legal restraints if the rule of law is to have any real meaning, policemen rightly feel they are expected collectively and individually to adhere strictly to a set of rules which their adversaries deliberately exploit for their own criminal ends. Of course, there is no obvious solution to this problem, and all that can be hoped is that governments continually keep the balance under review.

At the Winnipeg Meeting there was broad agreement that co-operation in police matters was reasonably forthcoming within the Commonwealth. It is probably true that Commonwealth law enforcement agencies through personal contacts have managed to create a climate of good will and mutual co-operation which does not generally exist outside the Commonwealth. However, the degree of co-operation and awareness of problems between Commonwealth countries does in practice leave something to be desired. As so much depends upon personal contacts there is not a general principle of mutual co-operation and assistance within the Commonwealth. Certain Commonwealth law enforcement agencies have developed strong bonds of co-operation with the agencies of non-Commonwealth countries and have no real relationship with other Commonwealth policing agencies. Given the geographical and economic facts of life this is not surprising and perhaps not unwelcome. Suffice it here to say that there have been numerous instances where one Commonwealth country did not in fact give meaningful co-operation to another Commonwealth jurisdiction, and few of these instances involved questions of legal inhibitions. Certainly, many police officers and persons concerned with enforcement in the area of commercial and economic crime considered that there was considerable room for improvement and development. The Minister of Justice of Sri Lanka at the last Law Ministers' Meeting stated that many developed countries were reluctant to co-operate in the conduct of investigations relating to economic crimes on the basis that the acts complained of would not constitute criminal offences according to their

law. This has also been the experience of ICPO-Interpol. It would not perhaps be unfair to say that the connection between economic crime and the illegal trafficking of drugs has perhaps been over-emphasised on occasions as a means of obtaining greater co-operation from the developed world. It is certainly true that countries such as Switzerland, which have been traditionally most reluctant to provide financial information to other police forces, do co-operate fully where a drugs offence is suspected. International terrorism is also an area of successful international co-operation, and there is evidence of a drawing together on issues associated with organised crime generally.

Many of the most disturbing recent international frauds have involved a break down in international co-operation or an absence of co-operation altogether. It would be invidious to point to specific examples. However, it seems clear that the most serious cause of this break down was a fundamental misunderstanding as to the degree of co-operation that could properly be expected from the relevant law enforcement agencies and self-regulatory bodies. What is important to recognise here is that within the Commonwealth everything should be done to foster awareness and mutual respect of each state's limitations whether they be of competence in a regulatory field, or a matter of law.

It might be desirable to refer by way of example to a specific instance where there has been a serious break down in co-operation between a Commonwealth country and a non-Commonwealth country. A number of abuses associated with commodity trading have come to light in recent years in Hong Kong. The forms of abuse are manifold, but invariably involve the following features. Firstly, uneducated trading agents will be recruited by a trading house on the basis of highly misleading press advertisements. Trading agents will invariably be expected to pay for a short training course. After which they will be sent out on "cold call" to sign up customers. Customers will be required to enter into an exceedingly onerous contract which in effect deprives them of all their legal rights and expectations. Trading discretion will invariably be vested in the trading house. The customer may then be allowed to make a few small profits, after which he will be financially wiped-out by a course of dealing which has gone bad. Invariably the customer has traded on margin and now he can be required to pay exorbitant rates of interest on the outstanding loan. There is some evidence that certain of these operations are completely fraudulent, in that the transactions are wholly fictitious. Other operations involve the manipulation and washing of orders. Not a few of these commodity houses have Japanese connections and therefore before appropriate action can be taken by the Hong Kong authorities it is necessary to secure the co-operation of the Japanese Government. Although repeated requests for assistance were made by both the Hong Kong Securities (and Commodities) Commission and the Commercial Crimes Bureau to the Japanese Ministry of Finance no meaningful assistance had been given at the time this

report was being prepared. I might add that the Government of the Philippines has experienced similar problems with Japanese commodities dealers. On the other hand it is interesting that the Commercial and Companies Division of the Singapore Police was able to discourage a Japanese commodities and securities trading syndicate operating in Singapore on the basis of information supplied by the Japanese authorities.

In the past there have been instances where the more developed countries have seemingly countenanced abuses taking place in other parts of the world on condition that the fraudster did not operate within their own territory. For example, the settlement that the U.S. Government reached with the controllers of I.O.S. (Sec. Ex. Act Rel. No. 8083) typifies this attitude. The U.S. Government was not alone in taking this approach, however. In more recent years there have been several indications that the more powerful countries are becoming more aware of their international responsibilities in this regard.

(c) Detection

Without the ability to detect "white collar" crime any discussion of regulation and enforcement becomes academic. The question of detection has received far too little attention.

Many economic and commercial crimes are not readily identifiable in the sense that are crimes of violence or property offences. Determination that the actus reus of such a crime has occurred is far easier than the identification of fraudulent market manipulation or window dressed accounts. The police are trained and accustomed to deal with the more obvious crimes. Policemen have little or no experience of crimes such as manipulation, market cornering, currency smuggling and the like. As a general rule there will be no permanent machinery in being for the detection of such offences and thus the vast majority will escape, undetected, uninvestigated and unprosecuted. Perhaps the most disturbing feature of the cases involving more sophisticated modus operandi which do come to light is the length of time the fraud has continued unsuspected and the fact that almost invariably it is discovered by chance. Those cases which are not detected by chance in the main are only identified, if they are identified at all, once the abuse has reached such a stage as to bring the solvency of the victim into doubt. Discovering frauds during a liquidation or bankruptcy proceeding is of little use to anyone.

It is a matter of great concern to find apparently efficient mechanisms for investigation and prosecution founded on inadequate procedures for detection. Such resemble the house built on sand. Let me illustrate this point with reference to securities trading frauds. In recent years a great deal of attention has been given to insider trading regulation in Hong Kong. In 1978 the Securities (Amendment) Ordinance of that year set up an Insider Dealing Tribunal with powers to investigate and report on suspected instances of insider dealing. This is a most interesting albeit novel approach to this problem.

Since the setting up of this apparently efficient machinery for dealing with insider trading in Hong Kong, the two suspected cases which have come to light have not even reached the Tribunal for investigation. In the first place, the suspicious circumstances must be brought to the attention of the Securities Commission. When such a case is brought to the Commission the Senior Securities Officer in charge of investigations will make certain preliminary inquiries, and then if he considers there is a case worth pursuing pass it on to the Commissioner. Only if the Commission is satisfied that the matter warrants further action will the case be referred to the Financial Secretary who then has a discretion to forward it to the Insider Trading Tribunal. To date no case has gone further than consideration by the Commission. Whilst the ability and dedication of the officers concerned is impressive, the mechanism has proved itself deficient in operation and is in any case based on a false premise. It is understood that the Commission takes the view that it is for the stock exchange authorities to alert the Commission as to possible instances of market abuse. Given the absence of any system of insider trading disclosure in the Colony it is hard to see what other alternative the Commission has. However, unless the stock exchanges in Hong Kong perform their role with regard to insider trading and manipulation the mechanism that the 1978 Ordinance envisages is ineffective.

Another example might be in order. The Investigations Division of the New South Wales Corporate Affairs Commission is probably one of the best equipped and staffed regulatory agency of this nature in the Commonwealth. It certainly has access to more resources and professional services than any other authority of which the author is aware outside North America. Given this it is surprising to learn of the lack of success in regard to securities trading frauds, an area which is one of priority regulatory concern. It seems that most investigations into alleged instances of insider trading and manipulation fail to establish an insider relationship with the relevant corporate issuer. No attempt is apparently made to establish this relationship starting from the issuer. This simple expedient of sending a list of suspected insiders to the relevant company and asking for comments, has proved effective in the U.S.A., but more especially in Canada, where the procedure has been refined by the Stock Watch Section of the Toronto Stock Exchange.

I must emphasise that these instances of a possible break-down in effective regulation are but illustrations, and should in no way be considered as implying criticism of the governments concerned. It says a great deal for them that they have recognised the serious problem facing their markets and have been willing to invest so much legislative time, and scarce enforcement resources in attempting to deal with the problem. Unfortunately, this level of awareness and concern is rare.

It is not possible in a report of this nature to enter into a discussion as to how detective ability generally into economic and commercial crime might be

improved at the national level. I would, however, venture to make the following points. Firstly, it is important for those concerned with the official investigation and prosecution of such crimes to develop a close working relationship, and certainly gain the respect, of the various relevant professions. Auditors are a particularly important source of information. Possibly, governments should consider placing a specific obligation on auditing accountants to look for irregularities and possible crimes and report accordingly. At present, it is probable that the common law does not require auditors to actively pursue fraud in this way. Of course, there are arguments against placing such a burden on accountants, and in certain developing countries this profession will already be under considerable strain. However, suffice here to emphasise that police officers and official investigators must realise their own limitations and be prepared to actively enlist the support of various professional persons more directly concerned with the activity in question. Secondly, far greater attention should be given to intelligence. Few police forces have any real criminal intelligence capability in this area. Thirdly, once a viable intelligence capability has been developed it should be possible to target certain areas of activity or, indeed, particular individuals or groups. Fourthly, surveillance procedures can be developed in certain circumstances at relatively little cost. The classic illustration is the stock watch programmes developed to detect and highlight trading irregularities on securities markets. These programmes can be computer based or manual. Certain Commonwealth jurisdictions may consider that their markets are not susceptible to this kind of programme. However, having discussed the matter with specialists in the relevant fields I am convinced that a viable programme could be worked out for almost every Commonwealth jurisdiction. The use of computers greatly increases the surveillance abilities of regulatory agencies, but only if there is a proper appreciation as to the objective and capabilities of the particular programme. Merely installing a computer does not necessarily improve intelligence or provide a surveillance programme. I should perhaps add that some surveillance programmes developed for securities and commodity markets also have the advantage of providing governments with very valuable economic and financial data. Fifthly, official investigators must be trained to become more efficient in detecting abuses in the first place. I am sure it will not surprise Ministers that in a good many regulatory agencies there is a disturbing lack of knowledge and information as to what these crimes involve and how they should be dealt with. In other words there is a need for the police concerned to become far more professional.

(d) Investigation

Of course, a good deal of what has already been said with regard to detection applies equally to investigation. National police forces are generally understaffed and over-worked. There is invariably strong pressure on officers to clear up as a matter of priority the more sensational cases involving violence. Thus,

it is hardly surprising that many cases involving economic and commercial crimes are inadequately investigated. Apart from requiring different police procedures, many “white collar” crimes are far from sensational. Law enforcement agencies generally lack the trained personnel to adequately deal with such crimes. Indeed, in most cases the criminal will be a good deal more sophisticated and better connected than the average policeman. In drawing attention to this imbalance, I am not in any way seeking to denigrate the police service. However, I do feel that the time has come for a more forceful attempt to persuade police forces to overcome their traditional prejudice against the specially trained policemen. This is a matter dealt with at greater length in due course.

A very great problem with investigating commercial and economic crimes is the importance of documentary evidence and the difficulties of obtaining and possibly interpreting such. Furthermore, there is a much greater risk of destruction of evidence—and this is a very real problem in this area of investigation. The Companies Acts of most Commonwealth, and for that matter non-Commonwealth, countries recognise these problems and provide for the appointment of official inspectors or special investigators. These inspectors are entrusted with far-ranging inquisitorial powers. There are many problems associated with this particular approach and this is a matter which will be discussed again in regard to my proposals for greater international co-operation. Suffice it here to emphasise that virtually all governments have already recognised the need for special procedures and powers in regard to this kind of criminal activity.

Perhaps one of the most serious problems in practice facing a government wishing to institute a criminal or civil action against an individual where there has been some international element is the very great difficulties involved in obtaining evidence, particularly oral testimony from overseas. The cost of securing attendance in Court of a witness resident abroad is invariably high. Apart from expenses and travel costs it is not always possible to persuade the person concerned to spare the time and suffer the inconvenience. This is not only a problem for developing countries, although obviously the costs tend to hit them harder. The Director of Public Prosecutions of one of the smaller Commonwealth jurisdictions informs me that few prosecutions are brought for economic and commercial crimes where it is necessary to obtain evidence from abroad simply because of the cost involved. Of course, in such a country which happens to rely so much on the tourist industry a very high proportion of frauds and cheating offences will require the obtaining of testimony from persons normally resident outside the country. This is particularly the case where traveller’s cheque frauds are concerned. It is important to appreciate even if a police officer is sent to another country to interview a potential witness any statement that he takes would not normally be admissible in subsequent court proceedings. This is a matter that Law Ministers might like to consider

further. Of course, most Commonwealth countries do have provisions similar to section 3 of the British Evidence by Commission Act 1885, (see also Order 38 Rule 1, R.S.C.) which provides:

“Where in any criminal proceedings a mandamus or order for the examination of any witness or person is addressed to any court or to any judge of a court in India or the Colonies, or elsewhere in Her Majesty’s dominions, beyond the jurisdiction of the court ordering the examination, it shall be lawful for such court, or the chief judge thereof, or such judge, to nominate any judge of such court, or any judge of an inferior court, or magistrate within the jurisdiction of such first mentioned court, to take the examination so taken shall be admissible in evidence to the same extent as if it had been taken before the court or judge to whom the mandamus or order was addressed”.

Finally, delay in the detection of frauds and other commercial and economic crimes severely hampers effective and successful investigation. As has already been pointed out in the discussion on the problems of detection, a disturbing feature of many of the more sophisticated frauds is that they are only discovered by chance after some considerable period of time during which the fraud might or might not have continued to operate. Similarly, the great majority of corporate and trading frauds are discovered only at insolvency. With the effluxion of time witnesses’ memories become blurred, documents are lost or replaced, and evidence is destroyed. Furthermore, with the passing of time there is every chance that the “white collar” criminal will be able to legitimise his operation and acquire a semblance of respectability which in practical terms it might be difficult to impugn. An amount that appeared considerable in 1971 with inflation today might appear trivial—all this operates to the criminal’s advantage. Courts are often prepared to look with some tolerance on a person who has had to bear the moral cross for a crime that he committed many years ago.

There is little that can be done in the short term to enable investigations to be initiated and concluded earlier. Detection must be improved and it is only then, when cases are discovered earlier, that the forces of law and order can move in. It is common, however, to find investigations dragging on for several years. It is not unusual to find police investigations into commercial and economic crimes lasting anything up to five years. The reasons for this are generally, pressure of work, concentration on other priority areas of law enforcement, incompetence and lack of direction. A degree of improvement could be attained by allowing police officers and the lawyers responsible for the prosecution to work closer together. The prosecuting lawyer should be involved in giving advice as to what matters are of importance for the subsequent prosecution at a much earlier stage than is presently the case in most Commonwealth jurisdictions. In practice it is not uncommon to find that the police pass the relevant file to the prosecutor at the completion of their investigations. The file then will be given attention by the lawyers who will generally instruct the police to make further inquiries. A good deal of the material found in police files passed to the prosecutor is wholly irrelevant for

the purpose of the intended criminal prosecution. This is not necessarily the fault of the police as they are not lawyers and therefore might be inclined to pursue aspects of the case which would not stand up in court. Without lawyers being involved throughout the investigatory process it stands to reason that a lot of police time is wasted. However, attempts are being made in several Commonwealth jurisdictions to involve prosecuting attorneys at a much earlier stage in the investigation. If resources permit this should become standard practice.

I have already referred to undue delays both in detection and investigation being in part due to police incompetence. Obviously, this is related to the training that police officers receive and their general ability. I would, however, point out that delay and perhaps incompetence in the conduct of such investigations is not necessarily the preserve of the police. Inspections and special investigations under various companies laws have in the past taken an inordinate amount of time and in not a few cases produced almost worthless reports.

(e) Extradition

It is beyond the scope of this report to discuss the Commonwealth Scheme of Extradition and I understand that Professor Shearer of the University of New South Wales has prepared a review of the Scheme relating to the Rendition of Fugitive Offenders within the Commonwealth for Law Ministers. I have had the advantage of seeing Professor Shearer's review in draft and I would respectfully concur with his observations in so far as they relate to commercial and economic crime. I would, however, like to make the following points.

Returnable Offences: The 1966 Scheme provides that a fugitive will only be returned for a "returnable offence", and these offences are set out in annex 1 to the Scheme. Whilst a number of ordinary criminal law commercial and economic offences, such as theft and cheating are comprehended within this schedule many are omitted. Over the years a number of Commonwealth countries have unilaterally added additional offences to their legislation adopting the Scheme. This has been largely the result of various international Conventions. As Professor Shearer points out, although this is contrary to the wording of clause 2 of the Scheme, it is certainly within its spirit and it is unlikely that any objection could be raised.

There is a widespread feeling in the Commonwealth, particularly among law enforcement officers, that a number of offences that are presently not found in annex 1 should be added to the Scheme, or, at least, it should be possible for a given country unilaterally to extend its list of scheduled offences. It is not without interest that the Canadian Fugitive Offenders Bill of 1978 (which has now lapsed) would have, inter alia, added the following offences to the Canadian list of returnable offences:

"Obstruction of judicial proceedings or proceedings before governmental bodies or interference with an investigation of a violation of a criminal statute by

influencing, bribing, threatening or injuring by any means any officer of the court, juror, witness or duly authorised criminal investigator,

and

Income tax evasion"

Income tax evasion is usually regarded as falling outside the traditional operation of extradition agreements and is not an ordinary law crime. Fiscal offences and certain economic crimes were left for future decision by the European Convention on Extradition in 1957. Article 5 of the Convention provides that "extradition shall be granted...for offences in connection with taxes, duties, customs and exchange only if the contracting parties (i.e. states) have so decided in respect of any such offence or category of offences". Professor Shearer has suggested that a possible solution to the problem is to leave the matter to be resolved on the basis of reciprocity. He advocates the addition of the following clause to annex 1 of the Scheme:

"Offences not described in paragraphs A, B and C but which are returnable under the laws of both the requesting and requested parts of the Commonwealth".

This approach would allow a significant degree of flexibility and would solve the fundamental problem that in regard to many economic and fiscal offences it is unlikely there could be Commonwealth-wide agreement. I respectfully recommend this approach to Ministers. It is hoped that countries would as a matter of reciprocal agreement add such offences as securities trading frauds, manipulation and insider dealing to their schedules of returnable offences. Of course, this proposal would not necessarily satisfy those developing countries which attach a great deal of importance to offences such as exchange control violation, as the countries which would probably agree to including such a crime as a returnable offence would not normally be the countries to which "hot" money or the culprit went.

An even more controversial proposal should also be made here. It has been suggested by at least two Department of Trade inspectors in the United Kingdom that a failure to comply with a demand for information or evidence during an inspection into the affairs of a company or into beneficial ownership of securities should constitute an extraditable offence. Many inspections have been frustrated by persons who could have contributed much to the investigation leaving the jurisdiction and often taking important documentary evidence with them. There would appear to be some support for the proposal that such an offence should be extraditable in other Commonwealth jurisdictions.

Double Criminality: The strict requirement for double criminality underlined in *R. v. Brixton Prison ex parte Gardner*[1968] 2 Q.B. 399 is a major hurdle in cases of commercial crime. Indeed the facts of this case illustrate the problem aptly. The New Zealand Government asked for the surrender of a fugitive to face charges of obtaining property by false pretences. However, the misrepresentations related to future

events and did not constitute an offence under the similar provision in force at that time in Britain. As Professor Shearer points out, "the circumstances that the evidence tendered in support of the application contained facts which, if they had occurred in England would enable other extraditable offences to be charged in England was irrelevant; regard must be had only to the acts or omissions constituting the offences actually charged in the requesting state". Lord Wilberforce, made a similar point in *Tarling v. Government of Singapore* (House of Lords, 19 April 1978, Unreported). He also stated:

"the accepted view, and I do not dispute it on this occasion, is that for the purpose of becoming satisfied that the evidence would be sufficient to warrant trial it is necessary to translate the actual charge laid into terms of English law and to consider whether the evidence would be sufficient to warrant trial on that equivalent offence . . . this means that the courts have to attempt the task of fitting a most elaborate complex of facts, not into the legal framework which has been set up by the applicant government to deal with such facts, but into English legislation which may be, and in the case of the Theft Act 1968, is, largely inappropriate to deal with them".

In *Tarling's* case their Lordships considered this approach gave rise to considerable difficulty. Whilst the House of Lords could not consider the dismissal of the Singapore Government's case against Mr. Jim Slater it is not without interest that certain of their Lordships found it hard to reconcile with the Magistrate's decision to commit Mr. Tarling. Lord Salmon, observed that "I am wholly unable to understand how he (i.e. the Magistrate) could have come to such a curious decision. . . The evidence against each of them was virtually the same in respect of the conspiracy charges, yet one was committed and the other went free". Given the importance that the Magistrate erroneously attached to the fact that Mr. Slater was not a director of the relevant company it has been suggested he misdirected himself. This mistake was in part due to a misunderstanding of the relevant provision, and the confusion of two separate charges. I raise this point here not to imply criticism of the learned Magistrate but to underline the practical problems associated with double criminality in regard to commercial and economic crime. The comment of Professor Shearer that "the surprising result emerges that the double criminality rule is more exacting, under the United Kingdom law, in relation to Commonwealth extradition than it is in relation to extradition with foreign states" under section 26 of the 1870 Extradition Act has recently been borne out by the decision of the Divisional Court in *Re Budlong and Re Kember* (Times Law Report 6 December 1979). It was there decided that where the facts disclose a prima facie case of a crime according to the English law and the crime is substantially similar in concept in England and the country requesting extradition from England for the crime, the request cannot be refused on the ground that the definitions of the crime in both countries are not identical. Ministers might wish to consider the implications of this apparent anomaly.

Finally, I would like to underline Professor Shearer's comments with regard to the cost of extra-

dition proceedings. This can be, and I am sure is, a major factor in discouraging smaller countries from seeking the return of criminals for prosecution on charges relating to commercial and economic crime.

(f) Prosecution

Only a very small proportion of commercial and economic crimes that are detected finally come to the stage of prosecution. In this area of criminal activity the odds against a prosecution being brought except in a serious case are almost as high as the sums involved in commercial crime.

The prosecution services in many countries which are required to deal with these cases, are not adequately equipped. Traditionally the prosecution of commercial and economic crime has not been accorded a very high priority. Indeed, in the United Kingdom, until relatively recently, the Fraud and Criminal Bankruptcy Section of the Director of Public Prosecutions' Office numbered four lawyers. I understand that this figure is now seven. Given the complexity of the issues and the time that such cases take to satisfactorily prepare, it cannot be that many Commonwealth jurisdictions have the resources adequately to deal with more than the relatively small number of cases that do come before the Courts. Of course, in some Commonwealth jurisdictions a certain amount of reliance is rightly placed on the Bar, and counsel are briefed to bring prosecutions on behalf of the Crown. This may not be the best approach in the long term. Few will have either the experience or the time needed. It is also very costly. I am informed that it costs on average some £50,000 to bring a prosecution for long-firm fraud before the Central Criminal Court. Obviously, in certain instances it is wholly necessary to brief outside counsel where the prosecution service cannot be expected to possess the calibre of advocate with the requisite expertise. As has already been pointed out, defendants in criminal trials particularly in cases involving major commercial and economic crimes are likely to be represented by some of the best counsel available.

The main reason why it is suggested that an almost exclusive reliance on the private Bar is not the best approach in the long term is because great importance must be attached to the development of a special expertise within the prosecution service. I have already mentioned the problems that can and certainly do arise where police officers are inadequately supervised and directed by prosecutors during the conduct of their investigations. It is only in the most exceptional cases, like for example the Poulson case in the United Kingdom, that members of the private Bar will be actively involved in a case before the investigations are completed. Indeed, it might not be ethical for a practising member of the Bar to develop, as a matter of practice, a close working relationship with the investigatory services during these preliminary stages. Of course, specific opinions on the admissibility of evidence etc. are an entirely different matter. If the prosecution service is able to develop the relevant expertise in this particular field then its officers can provide a most important service

during the early stages of investigation. As I have already mentioned above when discussing this question in relation to police investigations, several Commonwealth jurisdictions have adopted such an approach. Indeed, I understand that the Attorney-General of Hong Kong has set up a special unit of public prosecutors within his chambers who will work closely with officers from the Commercial Crimes Bureau of the Royal Hong Kong Police. It should be emphasised that the police officer in charge of the CCB welcomes this move and considers it will greatly increase the efficiency of his officers. Of course, this approach has been standard practice in the U.S.A. and several European countries for some considerable time. Where the investigating authority actually has legal advisers working in it or attached to it, then this kind of relationship with the prosecution service is not so important. The in-house lawyers should be able to give the investigators the appropriate degree of direction. Again, in the U.S.A. many of the regulatory agencies have staff lawyers who provide this function. Within the Commonwealth it is exceptional to find lawyers not in the prosecution service fulfilling this role.

(g) Trial and punishment

Much has been written on both these questions with regard to “white collar” crime, and perhaps I will be excused from giving these important matters other than passing reference. Although they are important in the national context there are few if any international considerations involved. During the last two decades more and more people have come to the realisation that the traditional criminal process is unsuited to the more involved and complex commercial and economic crimes. In *R. v. James Edwards Jeffs et al*, (Court of Appeal, New Zealand, 28 April 1978, Unreported) the New Zealand Court of Appeal underlined the difficulties facing first instance, and in particular appellate courts, in complex financial fraud cases. Indeed, Richmond P. described the trial judge’s task as “almost impossible”. It is worth reproducing here the New Zealand Court of Appeal’s comment on this sort of case:

“This brings us to the end of a task which has demanded our exclusive attention for a period of three months. As a Court of three judges we have enjoyed many advantages which were not shared by the members of the jury who tried the case in the Supreme Court. Unlike the jury we have had constant access to the transcript of the evidence . . . which comprises nearly 1,800 pages. On hearing the appeals, in order to follow counsels’ arguments we had constantly to compare passages in the notes of evidence with material in the exhibits and to study these and ask for clarifying questions. These exhibits actually copied for the purpose of the appeal were contained in some eleven volumes each of about 500 pages. Even with the advantages of being able to peruse the notes of evidence and ask counsel questions and with easier access to the exhibits that was enjoyed by the jury, we found this process as difficult as it was time consuming. The jury’s problems would have been immeasurably greater and we are very conscious of that fact. We add that one of the matters currently under study by the Royal Commission on the Courts is whether trial by jury is an effective machinery for trying the sort of issues that arose in the

present case. Our own difficulties have left us in no doubt that this is a question deserving of full consideration. It may be that some way can be found of permitting trial by judge alone, either at the election of an accused person or by special order of the Court” (Transcript at page 100)

This is a matter which is not only receiving consideration in New Zealand. In the United Kingdom proposals are being examined by the Lord Chancellor’s Office which would allow defendants to opt for trial by a judge sitting with two lay magistrates. It is not yet clear how far these proposals extend and it is likely they would only apply to the less serious criminal offences. In Australia, and in particular New South Wales, serious consideration is being given to similar proposals and the introduction of a pre-trial procedure which would eliminate the vast quantities of documents that now have to be ploughed through at trial, [Reference should be made to the excellent discussion of this and other suggestions in “Regulating Corporate Misfeasance and Maintaining Honest Markets” 51 *Australian Law Journal* (1977) 541].

What is certain is that the traditional procedure for criminal trials is unsuited to the prosecution of many economic and commercial crimes. Of course, this is not to deny that some cases are disposed of quickly and efficiently, but before the superior courts this is the exception rather than the rule. The main problem is the complexity of the issues involved, which leads inevitably to the trial taking much longer than it should, thereby involving a great deal of cost and possible waste of valuable judicial time. Therefore, if law enforcement is to be made more effective and a greater number of prosecutions brought before the courts, attention will have to be given to reducing the complexity of the issues that have to be determined at trial. It is submitted that attention should be given to the development of pre-trial procedures which would allow non-controversial evidential matters to be agreed upon, and the identification of those matters in issue for trial. Greater attention should be given to the preparation of evidentiary abstracts and notes of evidence. An effective pre-trial procedure could be expected to reduce significantly the length of trial, and thereby the cost and demands on judicial resources. At trial, attention should be given to the optional replacement of the lay jury by assessors, either sitting as a “blue-ribbon” jury or with the judge to assist the court in the determination of facts, but, of course, not law. With the greatest respect, attention should also be given to the inadequacies of summary trial. With few exceptions Magistrates are not properly equipped to deal with complex frauds. Certainly, difficulties have arisen in those Commonwealth jurisdictions which have sought to bring criminal prosecutions for securities trading frauds before ordinary Magistrates. Nor may it be satisfactory to allow trial by a single judge without the benefit of assistance in the determination of facts. Few judges have had experience of the practical issues and in particular of matters of accountancy which are likely to arise in such cases. Whilst it is perfectly true that the judge should primarily determine the issues on the evidence presented to him, and

thus the burden of explaining these matters is properly on counsel, this can be wasteful both in terms of money and time. By way of example the recent prosecution of Mr. Tarling in Singapore for offences under the Singapore Companies Act relating to accounting irregularities was significantly prolonged by the presentation of complicated evidence relating to accounting principles and techniques which had to be explained at length, in several instances several times, to the court. Certainly, the experience of those countries which have sought to bring complex fraud prosecutions before ordinary magistrates has been less than satisfactory. The inability of certain magistrates to grasp the basic issues must significantly inhibit the bringing of criminal prosecutions before the courts. The concern voiced recently in the House of Lords during the Tarling extradition case, about the apparently erroneous dismissal of the charge brought by the Singapore Government based on conspiracy to defraud, against Mr. Jim Slater, on the basis that at no time had he been a director of the relevant company, has already been noted.

It is suggested that the more complicated commercial frauds should not be brought for trial before an ordinary Magistrate or Judge who has not had recent experience of commercial cases.

Proposals for the promotion and facilitation of international co-operation within the Commonwealth

It is clear from the record of the Winnipeg Meeting that there is a need for urgent action against international commercial and economic crime. The Commonwealth Secretary-General was asked to explore the question of mutual assistance and make proposals to the next Commonwealth Law Ministers' Conference as to how international co-operation might be increased in regard to commercial and economic crime. This concern for effective and urgent action is still apparent in the many Commonwealth jurisdictions visited during the preparation of this report. Likewise it is a concern shared with ICPO-Interpol and a number of non-Commonwealth countries. Whilst there is obviously a need for caution and informed discussion, the present situation calls for prompt and positive action by Commonwealth governments.

In formulating the following proposals, recognition has been accorded to the limitations of the practicable, both in political and economic terms. It is important, however, to appreciate that these proposals are essentially only a first step, albeit a most important step, along the road to enhanced mutual co-operation and assistance in law enforcement within the Commonwealth.

Prompt adoption of these proposals would not seem to require amendment to or enactment of any law in any Commonwealth jurisdiction, so there is no

legal impediment. Implementation of the proposals, too, would not involve significant expense. Furthermore, the proposed scheme would seem to fit into the present structure and operations of the Commonwealth Secretariat's Legal Division, were it the view of Law Ministers that it might most appropriately be placed there.

The political, legal and territorial sovereignty and integrity of Commonwealth countries would in no way be impugned or affected by the proposed scheme, and it could be extended, should Commonwealth governments be so minded, to non-Commonwealth jurisdictions.

From the earlier sections of this submission, the following problem areas are identified as being of concern when considering the development of mutual assistance and co-operation in this field of law enforcement, and the adoption of the proposals contained in this report should significantly assist in obviating and reducing most of the following inhibitions:

- (i) failure to appreciate the size of the regulatory problem,
- (ii) lack of awareness as to the implications of rampant commercial and economic crime,
- (iii) inability to detect abuse, partly through a failure to appreciate what to look for,
- (iv) the complexity and sophistication in the nature and perpetration of these crimes and the limitations within law enforcement agencies both in regard to competence and resources,
- (v) unsuitable and outdated investigatory techniques,
- (vi) too little attention to technological developments, which facilitate commercial and economic crime, and in particular lack of expertise within law enforcement agencies in regard to computer crime,
- (vii) the commission of crimes involving an international element leading to problems relating to jurisdiction,
- (viii) lack of co-ordination between law enforcement agencies, domestically and internationally,
- (ix) too little attention to the development of criminal financial intelligence,
- (x) reluctance to exchange intelligence,
- (xi) destruction of evidence and depreciation of evidence due to inordinate delays in investigation and prosecution,
- (xii) difficulties in obtaining documentary and oral evidence from overseas,
- (xiii) restrictive and possibly defective extradition procedures,
- (xiv) inadequate resources for the prosecution of offenders,
- (xv) unsatisfactory nature of criminal trial procedure and lay jury,
- (xvi) political bias in certain economic crimes
- (xvii) Cost of detection, investigation and prosecution,
- (xviii) competing enforcement priorities,

(xix) technical nature of offences and moral ambiguity, and

(xx) lack of effective deterrent

This list is, of course, not intended to be exhaustive, and some factors may be more relevant in one country than in another.

Central to the proposals which are made in this report is the creation of a facility for liaison and co-ordination, perhaps within the Legal Division of the Commonwealth Secretariat. The facility would be responsible for developing and promoting mutual assistance and co-operation with regard to "white collar" crime and associated criminal activity within the Commonwealth and liaising with such international agencies as ICPO-Interpol. At present no such facility exists within the Commonwealth.

The Commonwealth Fraud Liaison Officer (CFLO)

At this stage the precise designation is not really important, but the title of the post should underline its liaison role. There can of course be no question of the officer becoming a one man fraud squad.

Having regard to the field of responsibility that this officer will have it is important that he should be a lawyer preferably with a police background, and if possible have some expertise in accountancy. The post will require secretarial support. It should be at a level which will reflect his high standing and which will command the respect and support of those with whom he must liaise.

(i) Criminal financial intelligence

This is one of the most important functions that the CFLO should be called upon to undertake. At present there is a dearth of relevant intelligence information on economic and commercial crime in the Commonwealth. The Commercial Crime Intelligence Bureau of the Metropolitan and City of London Company Fraud Department is probably the most important source of information in the Commonwealth, but this in practice is defective in a number of areas, especially in regard to economic crime. While the CFLO should not go out looking for this kind of intelligence information, he should be able to function as a repository of criminal intelligence within the Commonwealth in regard to certain types of activity, criminal and otherwise, of particular operators. He should also be able to develop a close working relationship with Sub-Division II of the Police Co-ordination Division of ICPO-Interpol, the Customs Co-operation Council, the Commercial Crime Intelligence Bureau of the Metropolitan and City of London Company Fraud Department, the Commercial Intelligence Section of the U.S. Federal Bureau of Investigation, and a number of other bodies. In specific areas the CFLO should take the responsibility of co-ordinating criminal intelligence between the relevant international agencies and the national authorities. This would allow a degree of centralisation and avoid a great deal of the present duplication of effort. It would also provide, in particular, the smaller Commonwealth jurisdictions with access to criminal intelligence sources which in prac-

tice today they do not have, or of which they are not aware.

Certain individual police officers enjoy excellent relationships with counterparts in different forces and authorities. This personal relationship enables them to exchange relevant information either openly or informally. However, it would be erroneous to suppose that this applies generally throughout the Commonwealth. Many Commonwealth police officers do not have this kind of relationship with officers outside their territory: they may never have been on an international training programme, or visited either Scotland Yard or the F.B.I. in Washington. There is an obvious danger that a small developing Commonwealth country will in practice, even if not in theory, be excluded from these critical sources of information.

Furthermore, the present "old boy network" is hardly adequate to combat the international criminal of today. Even ICPO-Interpol with its vast communications network has not been able to make any real impact in the field of economic and commercial crime. The very real practical difficulties which exist in obtaining information will not be underestimated by Law Ministers. This point was emphasised at the Third Symposium on International Fraud at the ICPO-Interpol Headquarters in Paris in December 1979, and has been repeatedly underlined in General Assembly resolutions since the Koto General Assembly in 1967. Indeed, the ICPO-Interpol General Secretariat has recently agreed to prepare a list of relevant authorities in its member countries which might be able to assist in the provision of criminal intelligence in regard to economic and commercial crime. This is likely to take sometime to prepare as much will depend upon the competence of NCBS to remit to Paris full lists of relevant sources in their jurisdiction. Furthermore, whilst a list of addresses will be very useful it remains no more than a list, and there is no express or implied undertaking that co-operation will in fact be given.

As has already been pointed out certain police forces are notoriously slow in acceding to a request from another state for information concerning this sort of criminal activity. It is accepted that certain countries simply ignore such requests. Another, serious practical problem is that law enforcement officers are understandably reluctant to disclose sensitive information to persons who might be less than careful in dealing with it. The police forces of some states are not generally entrusted with certain categories of information. Most law enforcement officers would be hesitant to disclose information to another officer, even within his own country, if he thought that particular officer or agency lacked sufficient discretion adequately to handle it. This lack of trust, has obvious implications for international co-operation in regard to commercial and economic crime. Hopefully, the CFLO could facilitate communication of such intelligence.

Another important feature of CFLO's criminal intelligence role would be to have a catalytic role in engendering an enhanced flow of information to

Commonwealth law enforcement agencies from unofficial sources, e.g. private institutions and non-official regulatory bodies. With regard to what transpires in the City of London, such bodies as the Bank of England, City Panel on Take-overs and Mergers, the Stock Exchange, and the financial press, are likely to be far more in the know than are the police or the Department of Trade. This is all the more important when one is concerned with abusive activity which does not actually amount to a crime. Police intelligence services, and this includes ICPO-Interpol, are only concerned with criminal offences, and intelligence is inevitably and rightly orientated to this. Of course, other activities which effect the economic and commercial wellbeing of states are likely to be of equal concern to Commonwealth governments.

As has already been pointed out, international co-operation even between police forces with regard to economic and commercial crime can leave a lot to be desired. Even more so is this the case when the authority requesting co-operation is not a conventional policing agency. For example, it is open to question how much co-operation a body such as the Ontario Securities Commission could expect from a national police force. Officers of the New South Wales Corporate Affairs Commission have said that co-operation is a very real problem, but has been made easier by having a small section of police officers attached to the Commission. Other Commissions, and in particular those such as the Hong Kong Securities Commission which do not in practice adopt the role of enforcement agency, encounter considerable difficulty. Indeed, even the U.S. Securities and Exchange Commission has not always received the degree of co-operation it might expect. A senior police officer in the commercial crimes bureau of one of the countries I visited informed me that his bureau has refused to provide the independent Anti-Corruption Commissions of at least two jurisdictions with information on the basis that the Commissions are not police agents. The degree of co-operation that is given to authorities which are not even constituted under statute and thus lack specific legal authority is, as one might expect, minimal. Whilst co-operation has on occasions been given to the City Panel on Take-overs and Mergers by Commonwealth governments this has been the exception rather than the rule.

The author's own experience as an investigator shows that there have been instances in which private regulatory bodies have not gone out of their way to explain to a foreign government that they are not an official body with legal powers. This is an area where the CFLO could perform a most valuable function.

There is another area in which reliable intelligence is essential to governments, namely when an off-shore financial facility is developed. Once an off-shore financial institution has been set up and allowed to operate it is notoriously difficult to exercise close supervision over its activities. Perhaps the main attraction of such an off-shore facility is the absence of close regulatory scrutiny and the preservation of confidentiality. Obviously, a balance has to

be struck between ensuring responsible behaviour and imposing a degree of supervision which would be counterproductive. Several governments subject applicants for off-shore banking licences to careful scrutiny at the time of application. This is both sensible and commendable. However, at present it is hard to see how this can be as effective as it should be. Local officers may lack the capacity or expertise adequately to process applications. Furthermore, it is exceedingly difficult for the officers charged with the processing of applications to obtain relevant information on the applicants and their associates from foreign authorities. Officers in several diplomatic missions have informed the author that it would be extremely unlikely that any information relating to an applicant would or could be provided to, e.g. a Central Bank, although one officer suggested that he might be able to indicate whether an applicant had been convicted of a criminal offence in his home jurisdiction. Time is also a factor, as often the Minister responsible must make his decision whether to grant a licence or not within perhaps three months of an application—and there may be no power to extend this period.

At present, too, ICPO-Interpol lacks a viable financial criminal intelligence programme and its records would only cover persons wanted or convicted of a specific crime. It is possible that the police forces of specific countries could be consulted, but here again it remains to be seen whether they will possess the sort of information that is required. The sort of information that supervising department will need is most likely to be obtained from the private institutions and self-regulatory authorities.

The CFLO will be in an almost unique position to identify trends and put together pieces of general information. ICPO-Interpol has not yet attained this capability with regard to international economic and commercial crime. It should be noted that the ICPO-Interpol narcotics intelligence programme is co-ordinated by a single officer, and there is no reason why the CFLO could not perform a similar function within the Commonwealth in regard to international commercial crime.

It is, of course, important and desirable that close co-operation should be maintained with the General Secretariat of ICPO-Interpol. In the supplementary report on ICPO-Interpol (Appendix VI) it is pointed out that the General Secretariat can only operate through the various National Central Bureaux (NCBs). Thus, even if ICPO-Interpol is able to develop a capability in financial criminal intelligence it will depend largely on the input of NCBs. The resources and calibre of NCBs differ considerably and it is likely that some will prove inadequate conduits for the receipt and communication of this kind of information. In particular, it is unlikely that information generated through this programme will pass beyond the police to other regulatory agencies such as Securities Commissions and Registrars of Companies. Therefore, the CFLO could play an important role in directing intelligence to agencies and authorities practically outside the ICPO-Interpol network within the Commonwealth.

The CFLO might also be able to give some attention to the relationship that financial criminal intelligence has to other areas of criminal activity. Of course, reference has already been made to the use of financial intelligence in combatting narcotics trafficking and certain other forms of organised criminal activity.

(ii) Liaison with ICPO-Interpol

In the near future ICPO-Interpol intends to develop a programme similar to that successfully employed with regard to narcotics for economic and commercial crime. The programme will combine both an intelligence and liaison function. Specific details of the proposed programme are given in Appendix VI. It suffices here to point out that the intelligence function will involve targeting exercises, and the liaison scheme will provide a facility for the co-ordination of international investigations. There are several ways in which the Commonwealth and ICPO-Interpol could be of mutual assistance to each other in the operation of these intelligence and liaison programmes. In addition to the more general recommendations made in Appendix VI, it is suggested that the CFLO should work closely with the relevant ICPO-Interpol liaison officers concerned with international commercial and economic crime. The Executive Committee of ICPO-Interpol has already invited the Commonwealth Secretariat to send an observer to its Third Symposium on International Fraud, this should ensure to the mutual benefit of both organisations. It is vitally important that the CFLO as an individual develops close ties with the officers working within ICPO-Interpol. It is only on a basis of mutual trust and confidence that the full potential of this initiative can be realised.

The CFLO should also explore the possibilities of developing similar links, both formal and informal, with other international organisations such as the Customs Co-operation Council and the Crime Prevention Office of IATA. Having spoken to representatives of both organisations I am confident that there would be support for such a proposal.

The CFLO could also develop useful relationships with agencies in non-Commonwealth jurisdictions. It is now an established feature of Commonwealth activity to allow, wherever possible, non-Commonwealth participation. International fraud knows no boundaries, so the CFLO should be able to provide co-ordination and liaison in appropriate instances, and to be able to do so he must have a working relationship with relevant non-Commonwealth agencies. ICPO-Interpol can provide a measure of assistance here, but in practice it would probably be best for the CFLO to establish a co-operative bond with relevant agencies as a representative of Commonwealth law enforcement in this area of criminal activity. This matter has been discussed with senior law officers in several non-Commonwealth jurisdictions and has received an enthusiastic response.

(iii) Dissemination of information and targeting exercises

Targeting exercises on the basis of criminal intelligence could be of considerable assistance in the pro-

motion of Commonwealth law enforcement in regard to international "white collar" crime. During the last two years the narcotics intelligence programme co-ordinator at ICPO-Interpol has given a good deal of attention to this sort of intelligence procedure and has achieved major successes. Of course, targeting has been considerably refined in the U.S.A. where the procedures now adopted by the DEA in regard to organised crime have perhaps become rather too theoretical.

Within the Commonwealth, this sort of exercise is most employed in the more developed countries, and in particular the United Kingdom, Canada and Australia. As in the U.S.A., it tends to be employed more in regard to narcotics offences and certain forms of organised crime than economic and commercial crime. In Britain, for example, attention is being given to the setting up of a regional crime intelligence network which would be able to identify patterns of criminality and monitor specific criminal groups. A similar programme is understood recently to have been initiated by the RCMP in Canada. In so far as targeting allows the concentration of law enforcement resources on specific areas of criminal activity it is perhaps surprising that it has not been more widely employed in developing countries. The author is aware of only a few instances in developing Commonwealth countries where any real attention has been given to this kind of exercise. However, in a few non-Commonwealth countries in the developing world this sort of procedure has been adopted and has resulted in a certain amount of success. For example, the National Bureau of Investigation in the Philippines has developed specific intelligence programme allowing a high degree of targeting in regard to illegal trafficking offences and gang crime.

Targeting can also take the form of focusing attention on specific individuals, corporations, operations or locations. The effectiveness and accuracy of the operation depends to a considerable extent on the accuracy and quantity of intelligence. However, it is possible to design intelligence areas of criminality or individuals. The process has important preventive implications. It is possible to use these procedures to identify weaknesses in law enforcement and regulation. On the basis of these revelations corrective action may be taken, or a trap sprung.

The CFLO should pay attention to this application of criminal intelligence and should co-operate with Commonwealth law enforcement agencies in operating such procedures. Reference has already been made to the financial intelligence programme that ICPO-Interpol is hoping to develop and the possibilities for targeting this will give. As in the case of the liaison officer scheme, the CFLO should be prepared to co-operate fully with ICPO-Interpol. Co-ordination of applied intelligence programmes and targeting exercises within the Commonwealth (and outside the Commonwealth provided such has implications for the Commonwealth) should also be a matter for the CFLO.

Associated with the dissemination of criminal intelligence and targeting exercises is the responsi-

bility to supply relevant Commonwealth law enforcement agencies with information that comes to the attention of the CFLO, and of which he considers they should be aware. For instance, where a particular modus operandi comes to his notice he should inform the appropriate Commonwealth agencies.

The General Secretariat of ICPO-Interpol already circulates modus operandi notices to the NCBs. However, very few of these notices have been sent out on matters pertaining to economic and commercial crime. The General Secretariat finds that the information which is relayed to it is insufficiently detailed in most cases to prepare a meaningful notice. It is important that if a notice is to have any practical value it must be sufficiently detailed to show the special aspects of the particular modus operandi. It is possible that the poor information that has been supplied to the General Secretariat reflects the relatively low level of expertise in regard to these kind of crimes in NCBs. Given the dependence that ICPO-Interpol has on these bureaux it remains to be seen whether the financial intelligence programme it hopes to develop will be any where near as successful as that developed in regard to narcotics. The CFLO might, in certain instances, be far better placed than ICPO-Interpol and its NCBs to obtain the kind of detailed information that would justify disseminating a modus operandi notice. In particular, the CFLO would have access to the non-police regulatory authorities which are generally in the forefront of the fight against economic and commercial crime. Apart from modus operandi notices, the CFLO should be at liberty to disseminate any information he considers useful in the fight against this type of criminal activity. In the preparation of some of this material he might consider it helpful to consult members of the Commonwealth Panel of Experts.

Another important aspect of the CFLO's responsibility to disseminate relevant information is his ability to communicate directly with the agency most concerned with the matter in question. ICPO-Interpol can only operate through its NCBs. Furthermore, before ICPO-Interpol circularises its NCBs with a certain item of information the General Secretariat must be decided that it is of interest to more than one country. In practice, it is unlikely the General Secretariat would send out a notice or memorandum unless it considered the item will be of interest to a majority or a significant minority of member states. Of course, information is on request (but rarely without one), supplied directly to a member country. The CFLO could be far more selective in providing this sort of information. Rarely would it be necessary for him to disseminate information to all Commonwealth jurisdictions, and items of information could be directed to specific agencies to which the matter would be of relevance. Therefore, this procedure would be far more flexible and less wasteful than that necessarily operated by the General Secretariat of ICPO-Interpol. Furthermore, the CFLO would be expected to take initiatives in informing relevant agencies within the Commonwealth on matters of special interest or significance.

(iv) Technical assistance

This could prove to be one of the most important responsibilities of the CFLO. At the last Commonwealth Law Ministers' Meeting it was implicit in several interventions that some domestic law enforcement agencies lacked the expertise and sophistication adequately to combat certain commercial and economic criminals. This raises the significant but controversial question as to whether the traditional reluctance of police forces to recruit specialist officers is now an appropriate approach. It is true that in recent years certain Commonwealth forces have done a great deal to attract graduates into the service: for example the RCMP places considerable emphasis on recruiting graduates with a technology based degree, preferably in the computer sciences. Most Commonwealth police forces now provide some form of basic training, and some have developed advanced and specialist courses at police colleges.

The Metropolitan and City of London Company Fraud Department sends police officers joining the Department for the first time on a three week course. During this course some attention is given to commercial law, accountancy and banking practice, etc. Few Commonwealth forces provide courses longer than this, and apparently many regard the position in the United Kingdom with envy. The RCMP in association with some of the Provincial and Metropolitan forces in Canada has instituted a one year degree-level commercial crime course. This is exceptional in the Commonwealth. What the average policeman can glean from a three week course covering law, accountancy, banking and a host of other technical subjects must be open to question. Most officers I have spoken to consider that at best this very basic course can only make them aware of the relevant areas of concern and indicate the appropriate sources of information. Traditionally, in the British police almost exclusive reliance is placed on in job experience. Given the pressure that policemen are under today and their lack of resources, this may be a luxury that cannot be afforded in the modern era of commercial and economic crime. Of course, by the same token one is entitled to be equally sceptical about the practical value of some of the expensive and exceedingly theoretical training devised in the U.S.A. for specialist law enforcement officers.

In the main, Commonwealth police forces have been reluctant to allow specialists into their ranks. This is especially a matter for concern in regard to economic and commercial crime. Policemen tend to raise a number of arguments against the recruitment of specialist officers. It is said, for example, that an ordinary police officer should be responsible for carrying out a fraud investigation no matter how complex, as in the final analysis lay members of the jury must be able to appreciate the facts. This is wholly misconceived, for it is the job of a highly-skilled advocate to present the facts to the jury in such a way as they can understand them. It is also said that the recruitment of specialists would upset the present career structure and cause discontent within the force. This is obviously a serious matter, but one that should not necessarily be allowed to

impair the efficiency of the police in a given area of responsibility. Of course, at present it would be extremely unlikely that many accountants of standing would be willing to join the police, given present career structures and rates of pay. The standard practice in most Commonwealth countries, where specialist assistance is required in an investigation is for the police force to retain an outside consultant. This practice has a number of disadvantages. It is usually very expensive and time consuming, and problems sometimes arise as to the confidentiality of information under investigation. Furthermore, once outside consultants have been brought in there may well be a lack of co-ordination in the investigation. Even if these factors are ignored, the present approach does not allow the police to exercise an efficient detective role. Once a case for investigation has come to the attention of the police, then it may be that resort to outside professional consultants is reasonably efficient and efficacious. However, this ignores the equally important responsibilities the police have in regard to detection and prevention. Without a specialist facility within the police, the ability of police officers to carry out these responsibilities must be doubted. Unless there are experts looking through accounts or operating computers the irregularity that might reveal a major abuse will not be detected. Of course it is not feasible or, for that matter proper, for police officers to be sent out at random to examine accounts or run computer programmes merely to see if everything is in order. However, certain likely areas for abuse can be selected through efficient targeting exercises. Following up and investigating "risk areas" is an entirely legitimate police function, and one which is largely ignored today in the field of commercial and economic crime.

Perhaps the most important problem that is likely to confront police officers investigating commercial crime during the 1980s, is their present absence of expertise in the computer sciences. Computer assisted and computer related fraud is a vast uncharted sea in the Commonwealth. Even the law enforcement agencies in the U.S.A. have not been able to make significant inroads into this area of criminal activity. Indeed, although several major computer frauds have come to light in the U.S.A. it is disturbing to find a lack of priority in coming to terms with the problems facing investigators. For example, although there is an expensive computer facility for training at the FBI's college, the FBI's budget has not allowed a programmer and operator to be employed to run it.

Within the Commonwealth, the Canadian police forces are at the forefront in recognising the need for the development within the police of the technological skills vitally necessary to deal with this new dimension to criminal activity. Reference has already been made to the bias that the RCMP has in favour of graduates with a technology based degree. Furthermore, the RCMP is prepared to sponsor individuals to attend university and acquire a computer science qualification. In Britain there is no capability to tackle even the most simplistic computer

fraud within the police. The Commander of the Metropolitan and City of London Company Fraud Department has informed the author that if a case came to light it would be necessary for the Department to retain an outside consultant. He felt concern about the inability of the police to operate in this field. Indeed, problems have arisen in at least two Commonwealth jurisdictions where a warrant has been issued for the seizure of computer records. Police officers executing warrants have arrived at premises where records are kept and been totally unable to determine what records are the relevant ones. In fact, in two recent instances in the United Kingdom the police and investigators from the Inland Revenue seized every record they could find.

The time has perhaps come for policemen to accept that there are certain areas of criminal activity where they cannot operate efficiently without expert guidance, preferably from within the service. Certain law enforcement agencies have long recognised this fact. The FBI, for example, has 1,000 qualified accountants in a staff of 8,000 investigators, and the Philippine National Investigation Bureau has a very high proportion of lawyers and accountants among its 1,500 investigators. Surprisingly, it is some of the less developed countries which have made most headway in this regard. What is of critical importance is that expert advice should be freely and immediately available during all the stages of police detection and investigation. As one American lawyer said, "experts should be kept on tap, but not on top". It might be said, for example in the United Kingdom, that in practice this expertise is available from the relevant sections of the Department of Trade. It is perfectly true that a good many accountants and lawyers are employed in the Investigations Branch, Insolvency Service and Solicitors office. However, in practice the sort of expertise that is required during all stages of police work is not readily available.

Some smaller developing countries might experience difficulty in recruiting the kind of expertise that is required. This has been a serious problem in several Caribbean jurisdictions. There is no immediate answer, but if governments accord this area of law enforcement the priority it should have, this difficulty would be reduced. For instance expatriates with the required skills may well be willing to return to their country of origin. In the short term, non-citizens might be recruited. Nonetheless, as already pointed out, to date it is the smaller jurisdictions which have made the greater progress in recognising the need for expertise within the police. The example of the Singapore Police Force is particularly in point.

The CFLO might in appropriate circumstances be able to arrange for technical assistance to be given to a Commonwealth agency. Possibly the Commonwealth Fund for Technical Co-operation could assist in the funding of these services, in appropriate instances. Certainly, the CFLO should be in a position to identify particular expertise and be able to recommend individual experts. It should also be possible for him to arrange and co-ordinate exchange programmes and short-term secondments for law

enforcement officers from Commonwealth jurisdictions, to agencies within the Commonwealth and possibly outside the Commonwealth.

Within the Commonwealth Secretariat's Legal Division the CFLO should build up a small and highly-specialised reference library of relevant legislation and regulations throughout the world. This would be available to Commonwealth governments and agencies.

(v) Facilitating international investigations

This responsibility has obvious connections with the proposed liaison scheme that ICPO-Interpol hopes to introduce in the near future in regard to economic and commercial crime. A number of investigations in recent years have been frustrated or substantially impeded by a failure on the part of a government or agency to take a wider perspective. This is not to imply criticism, as it must be acknowledged it is the first responsibility of a government to have regard to its own national interest. Commonwealth co-ordination in such international investigations could provide a most useful mechanism. The CFLO would be able to liaise between Commonwealth, and possibly non-Commonwealth, countries at inter-governmental level. He would operate at a higher, and in this context more effective level, than a police officer from ICPO-Interpol could expect to.

As has already been pointed out, certain matters which are of concern to the Commonwealth are not necessarily given high priority within ICPO-Interpol. Indeed, in certain circumstances the activity in question might not even be regarded an ordinary criminal law offence and would thus be outside ICPO-Interpol's jurisdiction. In such cases the CFLO could obviously play a most important role. Again, he would not be restricted to dealing with exclusively policing agencies and the NCBs as an ICPO-Interpol officer would. The great advantage that the CFLO would have is flexibility. He would be able to liaise with any appropriate agency within the Commonwealth that would contribute to the degree of co-operation and mutual assistance that Law Ministers seek to achieve.

Effective co-ordination of international investigations would also save countries money and resources. Inevitably, where there is no co-ordination, duplication of effort will occur that is obviously wasteful. Thus, apart from being more effective and efficient, an international investigation co-ordinated by the CFLO would in general be cheaper.

(vi) Training

The importance of training has already been stressed. It is not without interest that at the last Commonwealth Law Ministers' Meeting the Minister of Justice of Western Samoa stated that the problem of dealing adequately with "white collar" crime was affecting his small country and he wondered if the Secretary-General's office could organise some kind of training scheme whereby selected police officers from small developing countries could receive training designed to assist them in combatting this form of criminal activity. It is important to appreciate that

training in this context should not simply be a matter for police officers, but also for customs officers, prosecutors and other individuals concerned with the regulation of specific economic activities. This is recognised in the U.S.A., with the FBI and the Department of Justice running special courses on economic and commercial crime for both agents and prosecuting attorneys. Similar integrated courses are being introduced in the Philippines, Thailand and Mexico. Certain Commonwealth jurisdictions have also recognised the need for similar, albeit less ambitious, programmes.

ICPO-Interpol is active in the field of police training, as shown in Appendix VI. In the context of commercial and economic crime, the short courses on counterfeiting organised by the General Secretariat have been most helpful. However, in other areas the General Secretariat does not always possess the expertise required for organising such programmes. Occasionally, outside consultants are allowed to participate in such proceedings, and the CFLO could provide a degree of assistance here. Assistance might also be given to police officers from small developing countries to enable them to attend these proceedings. Specific proposals are made in Appendix VI as to how the Commonwealth could assist ICPO-Interpol training.

The CFLO could arrange symposia and courses for officers from Commonwealth law enforcement agencies. This could be done either alone or in association with ICPO-Interpol and other international organisations. Attention should also be given to regional courses in certain parts of the Commonwealth. Apart from reducing expense, it would allow specific regional problems to be examined in greater depth. The CFLO should also be prepared to participate in and support the training programmes in Commonwealth jurisdictions.

Officers from Commonwealth jurisdictions are permitted to spend short periods with the Metropolitan and City of London Company Fraud Department. Officers from such agencies as the New South Wales Corporate Affairs Commission have also been able to spend short periods of secondment with the British Department of Trade and Director of Public Prosecutions. Similarly, officers from other Commonwealth jurisdictions are occasionally seconded for short periods to the various agencies in such countries as Canada, Australia and New Zealand. This is most useful, as it broadens an officer's perspective and allows the development of useful personal contacts. Speaking to a good many officers who have served short periods on secondments of this kind, it emerges that some at least did not acquire much in the way of new police knowledge. Given the concentration on in-job experience this is predictable, as these officers would not always have been exposed to the kind of experiences that would have given them additional relevant knowledge. There is also the problem that officers, usually in the middle ranks, who have been seconded to overseas police forces are often promoted on their return, and thus any experience they might have acquired becomes of little practical relevance.

It must also be noted that in most Commonwealth countries the commercial crime section of a police force does not have its own career structure. Thus officers are posted to this section for relatively short tours of duty. In the United Kingdom these tours would average three years. Should an officer seek promotion there is no guarantee that he will remain in the commercial crime section. Indeed, there is a widespread feeling in Commonwealth countries that senior police officers should have served in as many police roles as possible. This inevitably tends to weaken specialist sections as the better officers are constantly being creamed off. One or two Commonwealth jurisdictions have managed to create a separate career structure within certain specialist services, but these are the exceptions rather than the rule.

Thus, whilst a period of secondment with another Commonwealth policing agency does have some mutual benefits, the advantages are more in the nature of developing closer personal links than with heightening the officer's expertise. Hopefully the CFLO could co-ordinate and facilitate these arrangements, and possibly inject into them a greater opportunity for training.

None of the above functions of the CFLO are exclusive, and there would in practice be a good deal of overlap. No doubt, a number of other responsibilities and functions would be given to the CFLO once the scheme was put into operation. Law Ministers might, at the inception of the scheme or at a later date, sanction the extension of the CFLO's responsibilities to other related areas of criminal activity, or specific unrelated international crimes.

(vii) The role of the Metropolitan and City of London Company Fraud Department

As this report was being finalised it was announced that the United Kingdom Government is considering setting up a special section of experienced fraud squad officers, in London, which would be able to go to the assistance of any other Commonwealth jurisdiction where a major fraud was under investigation, and the local force was unable to cope. ("New 'Flying Squad' plan to fight overseas frauds" *Daily Telegraph* 27 December 1979). The press report states that in certain cases detectives from other jurisdictions (the article mentions Hong Kong and America) might be asked to participate in these investigations. If the press report is correct, the United Kingdom delegation to the Commonwealth Law Ministers' Conference would no doubt wish to describe the plan in detail. It might, however, be desirable that brief mention be made here of the implications that this British plan might have for the proposals contained in this report.

To the extent that the proposal would involve the provision of assistance to small developing countries it is to be warmly welcomed. However, it is not clear how far it is intended the scheme should extend. Already in certain instances the British Government has arranged for British police officers to spend a short period of time assisting Commonwealth forces with a particular project or investigation. It would seem that the present proposal seeks to expand and

formalise this facility. There is no doubt that officers from the Metropolitan and City of London Company Fraud Department could give very real assistance to the forces of some Commonwealth jurisdictions in certain fields of criminal activity. However, it must be said that the degree to which expertise would be available for sharing with the Commonwealth in such areas as securities trading frauds, complex company frauds and computer assisted and related crime seems likely to be limited. The Metropolitan and City of London Company Fraud Department has a staff of 210 officers, and all have a very large and pressing case load. This establishment is small when compared with a number of other Commonwealth forces. For example, the Commonwealth Police in Australia have in excess of 600 investigating officers, a third of whom are engaged in fraud work. This is, of course, in addition to the fraud squads of the states and the various special regulatory commissions, such as the New South Wales Corporate Affairs Commission. In Canada, the RCMP is believed to have in excess of 525 officers involved in fraud investigations, and again this is in addition to the Provincial and Municipal forces. In Hong Kong, the Commercial Crime Bureau has 70 serving police officers, and in Singapore, the Commercial and Companies Division has 40 officers. Admittedly some other Commonwealth countries do have extremely small fraud squads. Of course, apart from the Metropolitan and City of London Company Fraud Department, there are a number of fraud squads in the other police forces. Some, such as the Manchester and Birmingham squads are both well staffed and efficient. Others, however, seem less well equipped. There is thus some obvious limitations to the degree to which the British police will be able to offer this form of assistance.

Were such a squad to come into existence, and one very much hopes it will, it would be concerned with actually investigating cases or providing active advice in the conduct of such. Therefore, the CFLO would still have an important role in facilitating international investigations. Furthermore, as has already been pointed out with regard to the ICPO-Interpol liaison scheme, the police will only be concerned with ordinary law crimes and not other disruptive economic and commercial activity which would also be of legitimate concern to Commonwealth governments. The CFLO could assist here, where the police could not. The CFLO would operate at an inter-governmental level, whereas it seems that the proposed international police squad would operate at a lower police level. Much of what has already been said in regard to the ICPO-Interpol liaison scheme on this point would apply here.

Furthermore, there is still the question of liaison between non-police Commonwealth agencies. This is a particularly important point. There has been instances of a lack of communication and understanding even just within the City of London. The degree of co-operation and co-ordination that exists between the police and self-regulatory authorities is in practice not as great as it should be. Some bodies

are anxious about the legal implications of handing over confidential information or of making statements which might prove to be defamatory.

Certainly, there would be great advantage in the CFLO developing a close working relationship with such an international police squad. This co-operation should work to the advantage of both services. It has already been pointed out, the CFLO should in any case develop a close relationship with the Commercial Crime Intelligence Bureau of the Metropolitan and City of London Company Fraud Department. This Bureau already plays an important role in Commonwealth enforcement and receives a great number of requests for information from certain Commonwealth jurisdictions.

Finally, the setting up of an international police squad such as that proposed would not effect the various intelligence, informational, reference, advisory and training functions that the CFLO would be expected to perform.

The Commonwealth Panel of Experts (CPE)

The Commonwealth Panel of Experts would be a standing committee of persons nominated by Commonwealth governments, and appointed by the Commonwealth Secretary-General. Members of the Panel would be persons with acknowledged expertise in one or more of the following areas:

- (i) law (International, Criminal, Commercial and/or Corporate),
- (ii) accountancy,
- (iii) commerce,
- (iv) any other discipline which has a direct bearing on the subject of international economic and commercial crime.

It is important that members of the Panel have practical experience, although this should not necessarily rule out academics. It is also assumed that nominees will be persons of standing in their respective profession, and should enjoy the full confidence of his government regarding personal integrity and ability.

It is important to appreciate that membership of the CPE would not of itself impose any great burdens on the time of any member. He would be entitled and expected to continue full time in his profession or business. However, as a member of the CPE, he might be asked to undertake a particular assignment within his competence for the Commonwealth. This might involve sitting on a special sub-committee of the CPE, or giving his view on a matter as an expert in that area, or possibly acting as an inspector. There would be no obligation on him to accept any such commission although it would be understood by his nomination that he had indicated a desire to serve the Commonwealth and place himself and his expertise at its disposal. Should a particular member accept a commission or assignment, where appropriate, fees and expenses might be paid.

The CFLO should be a member of the CPE and act as its Secretary. Secretarial assistance might

appropriately be provided by the Legal Division of the Commonwealth Secretariat.

It might not be necessary for the CPE to meet as a single committee, although it might be desirable for special sub-committees to be formed to carry out specific functions. Organisational considerations could be worked out in the light of developments.

(i) Provision of expert advice

Special sub-committees and, indeed, individual members of the CPE could be asked to prepare reports on matters of general interest to the Commonwealth or matters of a more specific and limited interest. Studies could be commissioned from members of the CPE with or without participation from persons and bodies outside the CPE. It may not be necessary to make payment to the persons concerned in most of these cases. For people of this standing the honour of being able to serve the Commonwealth would in my experience be enough. Of course, there will be situations where some kind of fee will have to be offered. The CFLO would be responsible for co-ordinating these studies and reports and should be able to commission a project without a specific request from a Commonwealth government. Of course, it is contemplated there would be close consultation with the Legal Division.

Members of the CPE would be available to provide any Commonwealth government or agency with expert advice or assistance. Of course, some Commonwealth countries have no need for outside assistance. However, others do, and it is the smaller developing countries which would probably have most to gain from this facility. At present a certain amount of expert advice and assistance is provided through the Commonwealth Fund for Technical Co-operation. However, attention should be given to the development of other sources of finance. Certain Commonwealth countries are prepared to fund technical assistance as part of their aid and development programme. The CFLO should be responsible for collecting and co-ordinating data as to possible sources of funds.

Whilst the calibre of experts and advisers provided under these various governmental schemes and the Commonwealth Fund for Technical Co-operation is usually very high, the CPE could help assess the ability and experience of a candidate before a recommendation is made to a requesting government or its agencies.

The CPE would also be available to give expert advice and guidance to the CFLO and the Legal Division of the Commonwealth Secretariat. This could be extremely valuable, as it is unlikely the CFLO will have expertise in all the matters he will be required to deal with. Possibly, a special sub-committee of the CPE could be established specifically to provide the CFLO with prompt advice and assistance.

(ii) Inspections and special investigations

As far as I have been able to ascertain every Commonwealth country has some kind of legislation which empowers the government to appoint or seek

the appointment of special investigators or inspectors to enquire, inter alia, into a matter of corporate fraud. Commonly these provisions are found in the Companies Act and or the Securities Act. Usually the power to appoint inspectors is vested in a minister or senior officer, such as the Commissioner of Securities or Registrar of Companies. Occasionally, the power of appointment is vested in the courts, but application is to be made by the appropriate minister or senior officer. These special investigators or inspectors are generally as a matter of practice, but in one or two instances as a matter of law, persons of some eminence in the legal and accountancy professions. In most countries there is no provision forbidding the appointment of a civil servant, but in practice this is rarely done. In addition to the power to appoint inspectors, most jurisdictions also have powers enabling the minister or some other appropriate regulatory authority to conduct an investigation into the records of a company without appointment of an inspector. Special inspections and investigations in most countries are confined to an examination into the affairs of a specific company or group of companies and or the beneficial ownership of certain securities. Certain Commonwealth countries have legislative provisions which enable the appointment of special investigators to inquire into a wider range of matters, but this is unusual and need not detain us here. Suffice it to say that most Commonwealth jurisdictions have provisions which enable them to appoint inspectors to investigate the affairs of one or more companies where it appears a commercial crime has been committed in relation to or by that company or companies or the controllers thereof. Under the relevant legislation special investigators and inspectors enjoy far-reaching powers to obtain evidence and demand testimony on oath. They are not fettered by procedural requirements and have a privileged position under the relevant law. In short they function more or less as an inquisition. In most cases they can apply to the minister or court for an order freezing assets and shares under investigation and a failure to comply with their demands for evidence and testimony generally constitute contempt. It is not necessary here to enter into an extended discussion of the relevant laws relating to inspection and the criticisms that have been made of the procedure in various states. What is important here, is that there is already a common provision in the laws of Commonwealth countries providing for this form of investigation into the affairs of companies, individuals connected with such and the beneficial ownership of securities.

In appropriate cases where two or more Commonwealth jurisdictions are involved with a common or closely related investigation into corporate fraud or abuse, it would be a simple expedient to simultaneously appoint the same individual or individuals as inspectors in both those countries. Appointments could be made from members of the CPE or after seeking their advice. Perhaps it would assist Law Ministers if I was to give an example:

Suppose a holding company in Singapore has subsidiaries in Malaysia, Sri Lanka and Hong Kong. It

has an associated group of companies in New Zealand. There is evidence that the holding company and its subsidiaries have engaged in a number of illegal activities involving commodity speculation, misappropriation of corporate assets, fraudulent issue of securities to the public and insider trading. These matters might well be of concern to the governments of Singapore, Malaysia, Sri Lanka, Hong Kong and New Zealand. Individual governments might well consider launching an investigation under their special statutory provisions leading to the appointment of inspectors. Given the likelihood that in each case material evidence will be outside their own jurisdiction it will be a brave government which goes ahead and appoints inspectors. Under this proposal after due consultation, possibly through the offices of the CFLO, all five countries might resolve to appoint the same individual from the CPE as inspector under their own national legislation.

Of course, in practice it is unlikely so many countries would be involved, and even today a certain amount of informal consultation would take place between the respective governments. However, at present each state's investigation is legally and practically insulated from that in a neighbouring territory. It is probable in the above example that no state would risk the cost of initiating an inspection which would almost certainly end in frustration. Even if two or more states did appoint inspectors there would be no co-ordination and legally each investigation would be insulated from the other. This kind of situation can have serious implications for international co-operation.

The present proposal is not as radical as it might at first appear. On several occasions two or more state governments in Australia have appointed an individual as an inspector to conduct an investigation into a matter of common interest. In one case, although initially separate, inspectors had been appointed by the Commonwealth and New South Wales Governments. During the conduct of the investigation it was found expedient to appoint each others inspector in addition to their own. Furthermore, it is understood that officers from the Australian Attorney-General's Department have been appointed inspectors to such territories as Norfolk Island. In Canada, there have also been several inter-provincial investigations. Of course, there have been instances in the Commonwealth where a senior lawyer from one country, usually the United Kingdom, has been appointed to conduct an investigation or inquiry in another jurisdiction. Perhaps I should enumerate some of the advantages I contemplate this proposal would have if adopted by Ministers:

(a) Facilitating international co-operation and minimising misunderstanding and mistrust between Commonwealth nations: There have been several cases in the recent past where a degree of dissatisfaction has been caused by the failure on the part of one Commonwealth country to live up to the expectations so far as international co-operation is concerned of another Commonwealth state. A good deal of this is due to a lack of appreciation on the part of

many Commonwealth governments as to the legal and practical fetters which restrict the quantity and quality of co-operation that another state may be able to give. As has been pointed out in a circular sent out by the General Secretary of ICPO-Interpol, this misunderstanding and feeling of frustration is in many cases the fault of the country concerned by failing to explain to other governments the legal and practical constraints within which it is forced to operate. There have been instances where a government has refused point blank to give any assistance in the investigation of an admitted crime without giving any explanation as to its reasons. This must be disruptive of international co-operation and leads to mistrust and suspicion. It is intolerable that the goodwill that exists within the Commonwealth should be undermined in this way. The CFLO would help ensure that such misunderstandings did not arise, or if they did, were quickly rectified. The appointment of a common inspector in the relevant countries would go a long way to ensuring that such misunderstandings did not occur.

(b) Evidence: The proposed appointment of common inspectors would minimise the problems that now exist with regard to the obtaining of evidence, both documentary and oral, in a foreign jurisdiction. A common inspector would have complete access to all relevant evidence within any jurisdiction to which his appointment applies. It is possible that difficulties could arise in practice as to which government is to be allowed to retain within its jurisdiction original documents which might be required for the purpose of tending evidence in court. This has been a problem in Australia in at least two cases where common inspectors were appointed. However, it would not be beyond the ability of the governments concerned to come to some agreement as to this, and the CFLO should seek as a matter of priority to develop a common understanding within the Commonwealth, as to this and such other practical problems that might arise. Evidence taken by a common inspector under oath would probably be admissible in evidence in another jurisdiction, of which he has also been appointed an inspector, under the equivalent provisions to section 3 of the British Evidence by Commission Act 1885, which has already been discussed.

That Commonwealth countries can work together in an investigation of a matter of common concern to them, and by agreement resolve the various practical issues, is demonstrated by the co-operation that Singapore, Malaysia, Australia and Hong Kong have recently given to each other in dealing with the collapse of a group of companies operating within their territories. The governments of Singapore, Malaysia and Australia have agreed that the Official Receiver in Hong Kong should take the lead in dealing with this matter, and to provide him with all necessary assistance. This is an admirable solution and should be a model for further co-operation. It should not matter in which Commonwealth jurisdiction an international fraudster is eventually brought to justice, provided justice is in fact seen to be done and his schemes are terminated. Indeed, the

cost of prosecution, and in particular extradition, can be a very great burden for a developing country. Perhaps, Commonwealth countries should be more prepared to allow another jurisdiction to deal with a common criminal and thereby save itself a great deal of expense. Of course, it is appreciated that a number of significant political issues are involved in such a determination, and it might well be the case that economic factors are of secondary importance.

(c) Impartiality: The appointment of a member of the CPE as an inspector would have the advantage that there could be no allegations of partiality or bias. This would apply to common appointments or where a single Commonwealth government decided to appoint an inspector from outside the country. The obvious impartiality of an inspector appointed from among the members of the CPE, or appointed on the recommendation of the CFLO, could be particularly attractive to the governments of certain smaller developing countries. The inspector's impartiality could also have a bearing on extradition as the evidence provided by such a person would in practice be far more difficult to impugn on the basis of bias—political or otherwise. Where a matter of great national or international significance is involved and controversy is likely to surround any investigation of the facts the appointment of an impartial inspector from the CPE could be very attractive. Ministers will be aware of instances within their own jurisdictions where it would have been expedient politically and otherwise to appoint a person of standing outside the country to conduct the investigation who is obviously impartial and not bound up with local affairs or interests.

(d) Expertise: The present proposal would provide Commonwealth countries with an almost inexhaustible supply of expert investigators. In many developing countries governments are faced with a very serious problem in finding a person of suitable stature and expertise to appoint as an inspector who is wholly independent of the matters it is likely he will be inquiring into. Apart from requiring ability and professional competence it is of critical significance that the inspector is wholly independent. In some Commonwealth countries the number of persons who would have the requisite degree of competence and training, and also have the confidence and respect of the government, is likely to be very small. In such societies persons with ability and professional skills are at a premium and will almost inevitably be deeply involved with the local business community. Therefore, it is extremely difficult to find a person of the required ability who is independent. This is not only a problem for the smaller developing countries. For example, the Government of Singapore had a great deal of difficulty in finding a suitable independent person to conduct the inspection into the affairs of *Haw Par*. Australian states and Canadian provinces have experienced similar problems. Therefore, in appropriate cases a Commonwealth government might wish to appoint a member of the CPE as an inspector under their relevant legislation. Of course, where several smaller developing countries are involved and wish to make a common

appointment then the problems associated with finding a suitable independent appointee from within their own territories would be so much greater, and resort to the CPE would be a most practical solution. The main advantage with appointing an inspector from the CPE is the "guarantee" that the appointing state or states have in his ability and integrity. Instances are not unknown where local or overseas practitioners of some standing have been appointed inspectors in Commonwealth countries usually at some considerable cost to the government or governments concerned, and the result of the exercise has been the preparation of a document that is of no practical value to anyone, let alone a prosecutor.

(e) Cost: Inspections and special investigations can be exceedingly expensive. Furthermore, as has been pointed out, not all inspections produce satisfactory results. It would be misguided in evaluating the cost to ignore the admittedly few inspections that have been conducted ineptly and inexpertly. The consequence of such is a serious waste of public money. The present proposal for the appointment of common inspectors where two or more countries wish to investigate a common matter would reduce the overall cost of investigation. Countries would be able to share the cost of inspection and hopefully the more developed countries would agree to bear a greater financial responsibility where they are involved in such an appointment. Duplication of expensive effort in each country would be eliminated and it would not be necessary to expend large sums of money on trying to recover evidence from another territory or interview witnesses out of jurisdiction. Furthermore, appropriate fee scales and expenses for inspectors who are members of the CPE could be determined by the CFLO in consultation with interested parties. This would have the advantage that less attractive jurisdictions would not have to pay over the odds to get the kind of expertise they require to conduct an investigation. There would be obvious advantages in the appointment of an inspector, whether it be a single or common appointment, from the members of the CPE. Obviously those members of the CPE who are practitioners of standing in the legal or accountancy profession would be the most likely appointees. However, much of what has been said above would equally apply to the appointment of a person who is not a member of the CPE, yet is from outside the relevant jurisdiction. If the inspection involves a matter of interest to more than one Commonwealth country it is likely the CFLO would be involved at an initial stage with co-ordination. If this is the case he should be able to advise the relevant government as to appointments.

I should point out that the appointment of inspectors is not a panacea. The procedure is essentially a fact finding exercise and is not necessarily well suited in all cases to producing evidence that would be useful in a criminal prosecution. However, having said this, in many instances of international commercial and economic crime it would be of major importance to have such a facility for finding out the relevant facts. Evidence such as would be required in a specific criminal prosecution can then be obtained

in a much more efficient and effective way. It should also be noted that once governments are in a position to know the relevant facts then corrective action can be taken and this may or may not involve criminal prosecution. As I have said elsewhere, in the context of economic and commercial crime it is not always productive to think only in terms of a criminal prosecution. What is important is putting international criminals out of business—putting them behind bars is an expensive secondary consideration.

(iii) Legislative drafting

The CPE could give valuable assistance to Commonwealth governments in regard both to the formulation of legislative policy and in drafting legislation. Perhaps it would be possible to arrive at an informal arrangement whereby relevant legislation would be submitted to the CFLO who could then pass it on to the relevant members of the CPE for comment. All countries would benefit by this facility and through it a common approach to certain problems might be developed.

(iv) Counsel and amicus curiae

It is not uncommon for smaller Commonwealth countries to instruct counsel from outside their local Bar in cases involving important or complex issues. This has occurred in a number of recent prosecutions involving commercial and economic crime. Although this might at first appear unduly lavish, in practice it is sometimes cheaper to instruct foreign counsel than brief an eminent member of the local Bar. For example, in Hong Kong and to a certain extent Singapore it is cheaper in most cases to brief a member of the English Bar than instruct local counsel of the equivalent calibre. Furthermore, it is possible that the accused might be represented by a foreign counsel and this is particularly likely where the accused is an expatriate. Unfortunately, a good many expatriates have been involved in economic and commercial crime. Where the defence is represented by a foreign counsel there is strong pressure on the prosecution to do no less. Whether this is always wise remains to be seen. Obviously, an eminent lawyer from another jurisdiction is able to bring a new perspective to the case and possibly a certain amount of expertise which might not be locally available. He is also seen to be obviously impartial, which can in certain prosecutions be particularly important. Commonwealth jurisdictions wishing to instruct foreign counsel might wish to consult the CFLO and resort to the CPE. As in the case of inspectors, the competence and integrity of members of the CPE would be beyond question. Although the amicus curiae is unusual in the Commonwealth, particularly in the present context, there might well be instances where such a brief would be of value. Again the CPE could provide invaluable assistance.

(v) Discussion and dissemination of relevant information

Sub-committees and working parties of the CPE, perhaps with additional members from outside the CPE, should be asked to examine and report on matters of common interest to Commonwealth

countries. In certain circumstances studies might be undertaken which are of relevance to specific countries only. Priority here should be given to the developing world. Where appropriate the study or report should be published by the Commonwealth Secretariat. The CFLO in consultation with the Director of the Legal Division should be responsible for co-ordinating the dissemination of such material.

There would be value in the establishment of permanent sub-committees to keep particular issues under continuous review. Academics could become involved in the work of these sub-committees, either as member of the Committee or consultants. There is a vast source of expertise and research capability within the academic world which could be usefully tapped for such a programme.

Reference has already been made to the desirability of facilitating training in regard to certain aspects of commercial and economic crime. The CFLO would have an important role here, both in the organisation and implementation of such schemes at the Commonwealth, regional and national level. The CPE should be able to give assistance to the CFLO in this regard, and members of the CPE could participate in these programmes. It might be possible to develop some kind of interface with the training schemes and courses organised by ICPO-Interpol.

As in the case of the CFLO it is probable that a number of other functions will develop in regard to the CPE once it has been set up and the scheme put into operation. Suffice it here to emphasise that it will provide an important source of relevant practical expertise for Commonwealth governments and law

enforcement agencies and could develop through its sub-committees into a useful forum for the discussion and dissemination of information and knowledge germane to this area of law enforcement.

Conclusions

In preparing this report and the various proposals contained in it I have tried to devise a scheme which would in practice facilitate international co-operation with regard to commercial and economic crime. The scheme is simplistic, flexible, and cheap. As already pointed out the scheme would operate without convention or any further act of the Commonwealth.

It is important that the Commonwealth does not allow its initiative in regard to commercial and economic crime to lapse. The time is certainly right for the development of closer international co-operation in this area, both inside and outside the Commonwealth. It would be a sad defeat if the Commonwealth missed this opportunity to cement in this one area the good will and mutual expectations that presently exist within it. It would equally be a significant weapon against crime if Commonwealth Law Ministers followed up their earlier initiatives.

Finally, I would like to acknowledge the assistance that I have received in the preparation of this report from a number of Commonwealth and non-Commonwealth governments and agencies and international organisations, first among such, being ICPO-Interpol.

APPENDIX I

INTERNATIONAL CRIMINAL POLICE ORGANISATION

— INTERPOL —

**37th General Assembly Session
Tehran, 1st to 8th October 1968**

RESOLUTION

IN VIEW of the importance which exchange control can have for the economy of a country and, in particular for the economy of a developing country; and

IN VIEW of the fact that serious violations of national exchange laws are occurring and that these violations often also involve other offences such as theft, counterfeiting or forgery, fraud, perjury, etc; and

CONSIDERING that material evidence for proving a violation of exchange control regulations is often located outside the territorial limits of the country whose laws have been violated;

The ICPO-INTERPOL General Assembly, meeting in Tehran from 1st to 8th October 1968 for its 37th session;

REQUESTS the General Secretariat, and the National Central Bureaus in affiliated countries, as permitted by their laws and as decided by the courts, to do everything to help countries which have been victims of offences of this kind and assist them in their efforts to discover and obtain possession of evidence for convicting offenders.

Adopted with 61 votes in favour,
2 against and
7 abstentions.

APPENDIX II

INTERNATIONAL CRIMINAL POLICE ORGANISATION

— INTERPOL —

41st General Assembly Session
Frankfurt, 19th to 26th September 1972

HAVING TAKEN NOTE of Report No. 18 submitted by the Indian Delegation;

BEARING IN MIND the fact that economic offences constitute a form of crime which seriously affects the economy of a large number of countries;

CONSIDERING that the profits made by those committing such offences may be used to finance illicit drug traffic or other forms of organised crime;

THE ICPO-Interpol General Assembly, meeting in Frankfurt from 19th to 26th September 1972 at its 41st session:

RECOMMENDS that NCBs in affiliated countries should assist, to the extent possible, those countries which are the victims of economic offences, with international ramifications, notably by supplying them with maximum information.

APPENDIX III

INTERNATIONAL FRAUDS AND COMMERCIAL CRIME

(INCLUDING ECONOMIC OFFENCES)

HAVING STUDIED Report No. 5, entitled "International frauds and commercial crime", submitted by the General Secretariat,

HAVING HEARD the report given by the Chairman of the Committee of Experts set up by the ICPO-INTERPOL General Assembly at its 44th session to study Report No. 5,

REITERATING that international frauds and commercial crime (including economic offences), having regard to their grave consequences and wide repercussions, are of great concern to all member countries as brought out in Resolution No AGN/44/RES/4 unanimously adopted by the General Assembly at its 44th session in Buenos Aires (1975),

CONVINCED that international police co-operation is an absolute necessity in the fight against this type of crime,

RECOGNISING that international police co-operation in this area takes place within a context of much wider international co-operation in which police action requires judicial and diplomatic co-operation, if satisfactory results are to be achieved,

NOTING that international and national legal instruments are often contradictory and inadequate to promote international co-operation regarding international frauds and commercial crime (including economic offences),

BELIEVING that international co-operation in this domain is essential and should be expanded and facilitated:

The ICPO-INTERPOL General Assembly, meeting in Accra, from 14th to 20th October 1976 at its 45th session:

ADOPTS the recommendations appended to this Resolution:

ASKS the ICPO-INTERPOL National Central Bureaus:

- a) to submit these recommendations to the appropriate authorities in their countries;
- b) to make every possible effort to implement those of the recommendations they are empowered to apply;
- c) to draw their Governments' attention to the criminal enforcement advantages which would result from:
 - i) the negotiation of improved and expanded channels of co-operation in the area of international frauds and commercial crime (including economic offences);
 - ii) the harmonisation of laws and regulations in this field.

Adopted with 87 votes in favour,
0 against
1 abstention.

RECOMMENDATIONS

- a) Inclusion of economic and appropriate fiscal offences in international treaties and agreements and also in national laws governing extradition and judicial co-operation on criminal matters, taking account of the problems raised by the difficulty of getting information about funds obtained by means of such offences committed in one country and secreted in another country.
- b) Study of the possible ways of improving international co-operation, particularly with regard to economic and appropriate fiscal offences, with a view to drawing up bilateral agreements which may also take into account the problems raised by banking secrecy.
- c) Study of national legislation to identify omissions and deficiencies with a view to giving sufficient legal authority to the agencies responsible for dealing with economic and fiscal offences; the police would then be able to deal with economic and fiscal offences with powers equal to those they have in connection with other criminal offences.
- d) Granting the competent authorities of requested countries the possibility of obtaining from banks and other financial institutions, under legal authority, evidence in their possession, insofar as the evidence is needed for the investigation of an offence committed in the requesting country.
- e) General acceptance of the principle that, where law enforcement with regard to economic offences is concerned, the ICPO-INTERPOL and its NCBs make available also to responsible law enforcement agencies other than the police the facilities offered by Interpol.
- f) Encouraging the Interpol NCBs, at their discretion, to co-operate with each other, even in cases where the offence giving rise to the request for assistance would not be punishable in the requested country had it been committed there, at least in cases where the assistance requested does not imply the use of compulsive measures.
- g) Highlighting, in requests for international assistance, the facts and details likely to induce the requested country to interpret the act committed in a way likely to facilitate international co-operation.
- h) Recognition of the need for expertise in the investigation of international frauds, commercial crime and economic offences; specialised agencies may be established for this purpose in countries in which it may be necessary.
- i) Recognition of the necessity to review on a continuing basis, the working of the bodies responsible for implementing the laws and regulations with respect to national economic and fiscal controls, and of the need to initiate appropriate measures to improve procedures and the efficiency of personnel, in order to make it more difficult to commit international frauds and commercial and economic offences.

APPENDIX IV

APPLICATION OF THE PRINCIPLES OF DOUBLE CRIMINALITY AND OF RECIPROCITY AND A REQUIRED MINIMUM STANDARD OF SERIOUSNESS OF OFFENCES IN CASES WHERE CO-OPERATION IS REQUESTED:

(Extracted from Report No. 5 submitted by the General Secretariat of ICPO-Interpol to the 45th General Assembly Session, Accra ICPO-Interpol, 1976, on *International Frauds and Commercial Crime*.)

(The following definitions were used in the questionnaire addressed to NCBs:

Double criminality:

According to this principle, assistance is only given in cases where the act committed is an offence punishable by the courts in the requesting country and would also be punishable by the courts in the requested country had it been committed there.

Reciprocity:

According to this principle, assistance is only given if the requesting country would grant the same or similar assistance if the positions were reversed.

Minimum standard of seriousness of an offence:

For example; legal distinction such as "crime" or "indictable offence" etc., a requirement that offences must be liable to a specified minimum sentence.)

The following analysis relates to Part One of Report No. 5 and therefore only to Foreign Exchange and Currency Offences (and closely related economic crimes). None of the responding NCBs made any distinction between the type of assistance requested, with the exception of Finland with regard to the minimum seriousness of the offence.

It should also be noted that this analysis was prepared in 1976 and is thus not entirely accurate today.

N.B. The table is in French alphabetical order.

COUNTRY	Application of the principle of double criminality (cf. definition under 7.2)	Application of the principle of reciprocity (cf. definition under 7.2)	Required minimum standard of seriousness of offences (cf. 7.2)
Netherlands Antilles	Yes	No	Yes (the offence should be of sufficient seriousness in Netherlands Antilles legislation).
Bahrain	Yes. However, see Bahrain's reply on police powers (7.3.1); the question on possibilities for co-operation (cf. 7.3.2) was considered "not applicable".	Yes, but it is not applied strictly (cf. preceding column).	No (cf. remark in first column).
Bermuda	No	Yes, the Bermuda authorities would expect total co-operation in return.	No
Burundi	No explicit reply, but apparently not.	No explicit reply, but apparently not.	No explicit reply, but apparently not.
Canada	No	No	No
Chile	No	Yes	No
Finland	Yes, but no account is taken of the value limits which are part of the offence committed.	Yes, but it is not applied very strictly (the requesting country does not have to give exactly the same service in return).	No. However, exercising of coercive powers relies upon certain minimum standards in Finnish legislation.
France	Yes	Yes, depending on the requesting country.	"There must be a criminal offence punishable under French legislation." (It is not clear whether this reply is merely a repetition of the principle of double criminality, or if it has a more far-reaching significance.)
Hong Kong	Yes, provided that the offence has been partly committed in Hong Kong and exists under Hong Kong law.	Yes	No
India	Yes	No	No
Ireland	The service which drafted the reply thinks not.	The service which drafted the reply thinks not.	The service which drafted the reply thinks not.
Japan	No	Yes (applied strictly)	—
Malaysia	No. However, see Malaysia's reply concerning police powers (7.3.1).	Yes (cf. remark in preceding column).	Yes ("on reciprocal basis and to the most extent possible as permitted by the legislation of our country". This is taken to mean that there are minimum requirements of seriousness in relation to Malaysian legislation) cf. remark in column 1.
Nigeria	Yes	Yes	—
Pakistan	Usually, yes (according to the NCB's reply; another service which assisted in replying to the questionnaire stated that this principle is not applied).	There is no strict rule (according to the NCB; another service stated that, in practice, this principle is not applied).	Usually, yes.

COUNTRY	Application of the principle of double criminality (cf. definition under 7.2)	Application of the principle of reciprocity (cf. definition under 7.2)	Required minimum standard of seriousness of offences (cf. 7.2)
Philippines	“The principle is applied only when the offence is likewise punishable by any of our penal laws.”	Yes, but it is not strictly applied.	No
Portugal	Yes	No reply given.	No
Singapore	No. However, see Singapore’s reply on police powers (7.3.1); the question on the possibilities of co-operation (cf. 7.3.2) was considered “not applicable”.	No	—
Sri Lanka	No	No	No
Sweden	Yes	No	No
Venezuela	Yes	Yes (the requesting country must be prepared to render a more or less similar service in exchange wherever possible).	Yes (the offence must be a “delito” punishable by a prison sentence).

APPENDIX V

PREPARED BY THE U.S. DRUG ENFORCEMENT ADMINISTRATION

EXCHANGE OF FINANCIAL INFORMATION

WITH FOREIGN COUNTRIES

The strengthening of laws and conclusion of treaties relating to the financial aspects of the narcotics traffic are long term objectives of our international narcotics control policy.

Essentially, there are several ways whereby the U.S. and foreign countries can exchange financial information relating to criminal matters, specifically narcotics activities.

1. SINGLE CONVENTION OF NARCOTIC DRUGS, 1961

The convention provides a mechanism for the international exchange of financial information. Articles 35 and 36 enable foreign governments to exchange the records of financial operations connected with illegal narcotics trafficking activity.

2. MUTUAL ASSISTANCE TREATIES

These treaties provide for broad co-operation between two countries in criminal matters and with respect to narcotics affairs provide an increased emphasis on the exchange of information authorised by the single convention. The treaties provide for assistance in obtaining banking and other records, locating and taking testimony from witnesses and the service of judicial and administrative documents.

The Judicial Assistance Treaty with Switzerland, effective January 1977, is a first, and can, with some modification, serve as a model for similar treaties to be concluded with other nations. One of the primary features of this type of treaty is that co-operation is to be provided at the investigative stages of a case, as well as during the judicial phases. Treaties have been proposed with the Bahamas and Mexico.

The Swiss Treaty does not create any new crimes in either country. It is limited to providing to each country additional evidence and information for use in investigating or prosecuting the crimes established by domestic law of that country. It is intended to allow each of the countries to overcome some of the problems presented in obtaining information or evidence concerning activities taking place outside of that country in furtherance of crimes committed in that country.

The exorbitant profits derived from the narcotics traffic are just as important targets of control for D.E.A. as the drugs themselves. History is not without precedents of economic instability and political turmoil due in large part to financial manipulations by individuals who have attained their position

through illegal activities. To place the financial rewards of the narcotics traffic in their proper perspective, one might compare the gross retail sales on an annual basis with highly visible and legitimate commercial enterprises and as IBM with D.E.A.'s conservative estimate of the retail narcotics and dangerous drug sales upwards of 20 billion. Narcotics is clearly a multi-billion dollar industry which explains the persistence with which traffickers can accept great losses of money, men, and material and still continue to function. This tremendous flow of currency within and among trafficking organisations, however, cannot be concealed as easily as the drugs themselves. At some time the illicit profits should be revealed in some aspect of the narcotic investigation.

The U.S. Government's approach to this problem, is currently directed toward:

1. Obtaining financial evidence of narcotics trafficking for enhanced prosecution, i.e. continuing criminal enterprises statute with life in prison penalty (New York trafficker Nicky Barnes was convicted on this charge) and other prosecutorial venues.
2. Seizing trafficker capital and operating funds; and
3. Assessing and collecting income tax on their undeclared assets and income.

The need for a specific attack against traffickers' financial resources stems from the realisation that conviction and incarceration do not necessarily disrupt trafficking organisations. The acquisition of vast capital permits regrouping and the incarcerated high-level trafficker can direct his organisation's resources toward the accumulation of further illegal narcotics profits. All too often, incarceration does not occur; large sums are easily posted for bail, and the trafficker flees, shrugging off the resources thus lost as an anticipated and acceptable cost of doing business.

Experience has clearly shown that trafficking organisations are not limited by any geographical boundaries or restricted to financial transactions within a specific country. The financiers behind the narcotics traffic have long been a primary target category, albeit difficult to pursue because of the layers of insulation between this class of trafficker and the actual commodity trafficked. Many of their financial transactions, however, can be more easily pursued through: (1) The careful scrutiny of financial reporting and record keeping; (2) The exchange of financial information among law enforcement agencies and foreign countries; and (3) The application of financial information for enhanced prosecutions.

The congress has passed a number of key legislative items in the last few days, including several initiatives proposed by the drug enforcement administration:

A. Forfeiture of proceeds of illegal drug transactions. Currently, section 511 of the controlled Substances Act (21 U.S.C. 881), provides for the forfeiture of certain types of property if such property is used or intended for use in the manufacture or distribution of illegal drugs, or used or intended to be used to facilitate certain violations of the Act. Property covered under the current law includes illicit abusable drugs, raw materials and equipment used in manufacturing such drugs, property used to contain or conceal such drugs, vehicles used to facilitate the transportation of such drugs, and any records, books or formulas used in violation of federal illicit drug laws. The new legislation expands section 511 to provide for the forfeiture of the following additional types of property:

1. All monies, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for illicit controlled substances.
2. All proceeds traceable to such an exchange for illicit controlled substances, and,
3. All monies, negotiable instruments and securities used or intended to be used to facilitate any controlled substance law violations.

This forfeiture bill is a key investigative and prosecutorial weapon that can, I believe, be used with great impact in our efforts to curb drug distribution.

B. Administrative forfeiture. This legislation increases from \$2,500.00 to \$10,000.00 the value of property which may be handled by administrative forfeiture procedures and became effective October 4, 1978. This legislation, which has been requested for the last 15 years, will enable vehicles and vessels in particular, to be processed for forfeiture in an administrative fashion rather than through a lengthy court procedure for a value of up to \$10,000.00. This will save the government time and money.

The Drug Enforcement Administration has established close working relations with other federal agencies responsible for financial investigations and audits. A separate section has been established in D.E.A.'s office of intelligence devoted solely to money flow financial intelligence. We look forward to working closely with the international law enforcement community on narcotic related financial investigations.

APPENDIX VI

SUPPLEMENTARY REPORT ON THE INTERNATIONAL CRIMINAL POLICE ORGANISATION (ICPO-INTERPOL)

INTRODUCTION

The role of the International Criminal Police Organisation (ICPO-Interpol) is of critical importance in any meaningful discussion of international co-operation in law enforcement. In addition to preparing a report on international co-operation in regard to economic crime for submission to the Commonwealth Law Ministers, the Director of the Legal Division of the Commonwealth Secretariat asked me to examine generally the role of ICPO-Interpol in international law enforcement and make proposals for the achievement of a greater degree of co-operation between the two organisations. I would like to acknowledge the assistance and co-operation that the Interpol General Secretariat has given me during the preparation of my submissions and during my visits to their Headquarters in Paris.

A good deal of mystique surrounds ICPO-Interpol and there is a surprising lack of knowledge as to its role and capabilities. Therefore, I have included in this part of my report a brief discussion of the structure, organisation and work of ICPO-Interpol. However, I have given special attention to those facilities concerned with commercial and economic crime, and an analysis of Groups E and F of the Police Co-ordination Division forms a separate section of this report. Finally, I have made a series of proposals which should if adopted by Commonwealth Law Ministers contribute greatly to international co-operation in law enforcement.

THE ORGANISATION AND OPERATION OF ICPO-INTERPOL

A. The basic principals of ICPO-Interpol

1. The purpose of the organisation

According to the terms of Article 2 of the Organisation's Constitution, the aims of the ICPO-Interpol are the following:

- "a) To ensure and promote the widest possible mutual assistance between all criminal police authorities, within the limits of the laws existing in the different countries and in the spirit of the Declaration of Human Rights.
- b) To establish and develop all institutions likely to contribute effectively to the prevention and suppression of ordinary law crimes."

The limits of its action are laid down in Article 3: "It is strictly forbidden for the Organisation to undertake any intervention or activities of a political, military, religious or racial character".

2. Members—applications for membership

According to Article 4:

"Any country may delegate as a Member to the Organisation any official police body whose functions come within the framework of activities of the Organisation. The request for membership shall be submitted to the Secretary General by the appropriate governmental authority. Membership shall be subject to approval by a two-thirds majority of the General Assembly".

3. Co-operation principles

International police co-operation within the ICPO-Interpol has always been governed by certain guiding principles:

Respect for national sovereignty

Co-operation is based on the actions of Interpol-affiliated police forces, operating in their own countries in accordance with their own national laws.

Enforcement of general criminal law (Article 3 of the Constitution)

The Organisation's field of activity is limited to crime prevention and law enforcement in connection with offences against general criminal law. This is the only level at which there can be agreement between all member countries.

Universality

Any member country may co-operate with any other and co-operation should not be impeded by political, geographical or linguistic factors.

Equality of all member countries

All the Organisation's member countries receive the same services, irrespective of their financial contributions to the Organisation.

Co-operation with other agencies

Co-operation is extended through the NCBs, to any government agency concerned with combating offences against general criminal law.

Flexibility of working methods

Although governed by principles designed to ensure regularity and continuity, working methods are flexible enough to take account of the wide variety of structures and situations in different countries.

A study of these principles make it clear that Interpol does not consist of teams of international detectives who travel around investigating cases in different countries. International police co-operation is in fact co-ordinated action on the part of the member countries' police forces, all of which may supply or request information or services on different occasions.

B. Structure and administration of ICPO-Interpol

The Organisation is administered and operated by:

- a) The General Assembly and the Executive Committee, two bodies which represent member countries and which hold regular meetings.
- b) The General Secretariat and the National Central Bureaus (NCBs), permanent institutions of a more technical nature which deal with day-to-day co-operation and implement the decisions of the two administrative bodies.

1. The General Assembly

Delegates from the governments of affiliated countries constitute of General Assembly which meets once a year. The General Assembly makes all the major decisions on the ICPO-Interpol's general policy, finances, working methods, instruments of co-operation, programme of activities, and elected officers—in fact on all the important aspects of the Organisation's life. When decisions—in the form of resolutions or recommendations—are voted on by the Assembly, each member country has one vote.

2. The Executive Committee

The Executive Committee is composed of thirteen members—elected by the General Assembly from among the member countries' delegates—as follows:

- a) The President of the Organisation, who is elected for a four-year term of office. He chairs General Assembly sessions and Executive Committee meetings, makes sure that the Organisation's activities are conducted in accordance with the provisions of the Constitution, and maintains direct contact with the Secretary General.
- b) Three Vice-Presidents and nine ordinary members, all of whom are elected for three-year terms of office.

The seats on the Executive Committee are proportionally assigned to the various continents.

The Executive Committee meets twice a year to ensure that the General Assembly decisions are implemented, to prepare the agenda for the General Assembly sessions, to approve the programme of activities and draft budget before they are submitted to the Assembly, and to supervise the Secretary General's management of the Organisation.

3. The General Secretariat

The General Secretariat is the permanent administrative and technical institution through which the Organisation operates. It is responsible for implementing the decisions taken by the General Assembly and the Executive Committee, it supervises and coordinates the fight against international crime, it centralises information on crime and criminals and it keeps up contacts with national and international authorities. The Head of the Secretariat is the Secretary General who is elected by the General Assembly for a five-year term of office. He is responsible for running the Organisation's permanent departments and, in the performance of his duties

and the management of the Organisation's budget, he is answerable to the General Assembly and the Executive Committee. The General Secretariat has Three Divisions, each responsible for specific tasks:

Division I: General administration

This Division is in charge of:

- a) Finance, accounts and preparation of the budget;
- b) Management of staff, equipment and general services (telecommunications, translations, printing, etc.);
- c) Preparation of General Assembly sessions and other meetings organised by the ICPO-Interpol.

Division II: Police co-ordination

This division is responsible for centralising information and for handling criminal cases requiring international police co-operation. It collects and processes information on crime and criminals. It drafts international notices and reports on criminal cases. In addition to the criminal records groups, this Division also comprises three Sub-divisions, each of which deals with one major sector of international crime:

- a) General crime (offences against persons and property);
- b) Economic and financial crime (fraud and currency counterfeiting);
- c) Illicit drug traffic.

Division III: Research and studies

This Division is responsible for:

- a) Collecting and classifying general documentation, on criminology, crime prevention, criminal law and procedure, techniques used by the police, etc.;
- b) Collecting and publishing international crime statistics;
- c) Preparing international symposia;
- d) Writing reports and working papers;
- e) Publication of *The International Criminal Police Review*.

4. The National Central Bureaux (NCBs)

Experience has shown that the main stumbling-blocks for international co-operation were:

- a) the different structures of various police forces which often make it difficult for outsiders to know which specific service is empowered to deal with a case or to supply information;
- b) language difficulties;
- c) the different legal systems prevailing throughout the world.

These problems have been solved by the decision that the government of each member country should appoint one permanent police department to serve as the country's ICPO-Interpol National Central Bureau and the focal point for international co-operation. In most cases, the department chosen is a high-level one, with wide powers, likely to be able to reply to any request from the General Secretariat or from another NCB and capable of launching large-

scale police action by the various other national services if this should be necessary. The NCBs are staffed by their own countries' police or government officers who always operate within the limits set by their own laws.

The NCBs' activities can be summarised as follows:

- a) From sources in their own countries they collect documentation and information relating to international law enforcement, and pass this on to the other NCBs and the General Secretariat;
- b) They ensure that police operations and actions requested by another country's NCB are carried out in their own countries;
- c) They receive requests for information, checks, etc., from other NCBs and answer them;
- d) They send NCBs in other countries requests for co-operation from abroad made by their courts or police services;
- e) Finally, the Heads of NCBs attend the ICPO-Interpol General Assembly sessions in their countries' delegations and subsequently ensure that the Assembly's resolutions are implemented.

The NCBs communicate directly among themselves. However, they are expected to send copies of their correspondence to the General Secretariat so that the latter can perform its task of centralising information and co-ordinating co-operation.

5. ICPO-Interpol's finances

The ICPO-Interpol obtains its resources from the annual contributions paid by the governments of its member countries. These annual contributions are expressed in "budget units" and countries can pay from 1 to 80 units annually. When a country joins the ICPO-Interpol, it indicates the number of budget units it wishes to pay every year by asking to be placed in one of the twelve groups of countries on the scale of contributions. The Secretary General is responsible for implementing the budget every year and is answerable to the Executive Committee and the General Assembly. The accounts are checked by two Auditors elected by the General Assembly and an accountant.

C. Instruments of international co-operation

1. The Interpol telecommunications network

To combat international crime effectively, a reliable, discreet and rapid communications system is essential. In addition to normal communications channels, the ICPO-Interpol has various facilities of its own:

The radio network: About sixty National Central Bureaus have set up Interpol radio stations and the totally independent network allows them to contact each other and the General Secretariat. The national stations in a particular geographical area are grouped round a regional station, and the regional stations have direct links with the central station in France.

The system allows a message to be broadcast to several NCBs Interpol radio stations, to all the stations in a particular zone or to all the NCBs on the network. A priority scale has been drawn up to determine the order in which messages are transmitted.

Phototelegraphy (Transmission of pictures using the normal telephone network): The Central Station and several NCBs now have the equipment needed to exchange photographs and fingerprints by this method.

2. Criminal records

All the information received concerning offences and offenders is analysed and filed by the two criminal records groups in the Police Co-ordination Division at the General Secretariat. This makes it possible to identify offenders and discover links between different cases.

The General Records Group which works on the basis of:

- a) An index file of names, classified both phonetically and alphabetically; the cards bear details of the real identities and the aliases of people connected with international police investigations.
- b) Records of offences with index files containing details of offences, places where they were committed, and descriptions of particularly interesting modus operandi.
- c) Records of missing documents and objects.

The Special Records Group which frequently identifies people from their fingerprints. Its records include:

- a) A ten-print file of the prints of all ten fingers of various international offenders. The Galton-Henry classification system is used.
- b) A single-print file of isolated, single fingerprints, classified by the Muller system.
- c) A photograph file.

3. International Notices

The purpose of international notices is to circulate items of information, through the NCBs, to the police forces of the member countries. The notices are prepared by the groups within the Police Co-ordination Division at the Secretariat and often contain information collected from several countries.

There are several types of international notices:

Individual notices

These notices give particulars of the identity of the person concerned, as well as physical descriptions, photographs and fingerprints.

Since the reasons for publishing individual notices vary, four different types are used:

- a) "Wanted" notices about people whose arrest is requested with a view to extradition. These notices contain full particulars of the arrest warrant and details of the offence committed.
- b) "Enquiry" notices published to collect additional information about the person concerned. These

notices can be used in an attempt to locate a missing person.

- c) "Warning" notices, giving information about offenders who operate in several countries.
- d) Notices about unidentified bodies. These notices contain a description of the body that has been found, together with fingerprints if available.

Stolen property notices

These notices give descriptions of valuable items—most often works of art—which have been stolen or discovered in suspicious circumstances. When possible, the notices also include photographs.

Modus operandi sheets

Details of new or particularly interesting modus operandi used by offenders are circulated to the NCBs by means of these special M.O. sheets.

Circular letters, summary reports, technical brochures, etc.

The General Secretariat also circulates a large amount of information in circular letters and brochures which give a summary of the facts available at a specific moment, about various types of crime and certain categories of offenders (pick-pockets, drug traffickers, swindlers, etc.).

4. Training of police personnel

The ICPO-Interpol helps in several ways with the training of police officers in its member countries. Several symposia have been held to enable Heads of Police Training Colleges to discuss training problems and methods.

Moreover, the General Secretariat organises training courses for police officers who specialise in combating currency counterfeiting and for National Central Bureau Officers.

5. Regional and continental meetings—international symposia

The ICPO-Interpol organises two types of meetings to give police officers from member countries opportunities to exchange views and information on different subjects and benefit from each others' experience:

- a) Continental Meetings and Regional Conferences which allow the Heads of NCBs and the heads of various police departments in a particular part of the world to discuss problems affecting their region.
- b) International Seminars and Symposia, which provide a platform for discussion of specific subjects by police officers and experts. Since 1959, four symposia have been held on police training, four on the scientific aspects of police work, three each on drugs, road traffic offences, and the use of EDP by the police, two on organised crime, and one on each of the following: crime prevention, international fraud, fingerprinting, hostage-taking and organised violence.

6. Technical co-operation

Every year, the Executive Committee awards a number of travel or maintenance grants to enable

representatives from member countries to attend international symposia or to spend a few weeks—individually or in groups—training at the General Secretariat. The purpose of such training is to help police officers become familiar with the procedures used in international police co-operation or acquire more information about a specific subject.

D. Research and studies

Co-operation between the police forces of INTERPOL-affiliated countries is not limited to an exchange of information about actual cases. Co-operation also has a role to play in the compiling of general information on all the phenomena and all the disciplines connected with the structure and duties of police forces, in the preparation of papers and reports to circulate such information and in the organisation of international symposia for thorough examination of subjects or problems which are of permanent or topical interest to the police forces of member countries. However, it must be remembered that all this information can only be collected with the assistance of the NCBs while, in return, the documentation stored at the Secretariat and the reports on studies and symposia benefit all member police forces. The department responsible for this important aspect of co-operation at the General Secretariat is Division III, the Research and Studies Division.

E. External relations

1. Relations with other International Institutions

United Nations

The ICPO-Interpol has always collaborated with the United Nations in certain specific areas and this collaboration, which has grown steadily closer and more wide-ranging, was formally recognised in 1971 when a "Special Co-operation Agreement" was signed between the two organisations.

Co-operation is closest with three United Nations Institutions, the Commission on Narcotic Drugs, the Division of Human Rights and the Social Defence Section.

United Nations specialised agencies

Of these specialised agencies, the ICPO-Interpol co-operates particularly closely with:

- a) the International Civil Aviation Organisation (ICAO), on air security and on preventing and combating unlawful interference with international civil aviation;
- b) the International Telecommunication Union (ITU), in connection with the Interpol telecommunications network;
- c) UNESCO, regarding the protection of national artistic and cultural property and the prevention of thefts of works of art.

Other intergovernmental organisations

The Customs Co-operation Council: The ICPO-Interpol keeps in close contact with the Customs Co-

operation Council in order to make sure that police and customs officers work together in spheres where such co-operation is essential, an example being illicit drug traffic.

The Council of Europe: An agreement on co-operation was signed by the two organisations in 1959 and the ICPO-Interpol works with the Council of Europe in studying crime problems and in preparing European conventions designed to combat crime. In fact, many of the European conventions concluded under the auspices of the Council of Europe contain provisions stating that the signatories may use Interpol channels to forward judicial documents.

2. Headquarters Agreement with the French Government

In 1972, a Headquarters Agreement was signed between the French Government and the ICPO-Interpol. The Agreement was approved by the French Parliament in the form of a law dated 23rd December 1972. The terms of the Agreement recognise the ICPO-Interpol as an international organisation located on French territory, and define the Organisation's legal status in France.

ICPO—INTERPOL AND COMMERCIAL AND ECONOMIC CRIME

It must be emphasised that ICPO-Interpol is primarily concerned with international commercial and economic crime. At the Third International Symposium on Fraud the General Secretariat defined this requisite international element in commercial and economic crimes as,

- i) When the actions involved in the commission of the offence(s) or in keeping the illegal advantage thus acquired have been perpetrated or have had effects in more than one country: or
- ii) When the modus operandi hinges on differences in the statutory provisions or regulations of various countries, or on loop-holes in international agreements.

Of course, there is no constitutional limitation on the ability of the General Secretariat to concern itself with criminal activity which lacks an international element.

Reference has already been made to the growing concern within ICPO-Interpol about the dimension and implications of international economic crime. Since the 1967 General Assembly meeting in Koto, Japan, almost every General Assembly has passed a resolution having some bearing on international co-operation in this field of criminal activity. The General Secretariat have prepared an extensive report on International Frauds and Commercial Crime, which was submitted to the General Assembly in Accra in 1976. Three International Symposia on Commercial Crime have been organised by the General Secretariat. The Research and Study

Division have produced a number of circulars and notices relevant to economic crime and is currently engaged on a project to ascertain the degree of co-operation that countries can give in regard to the provision of information without resorting to legal procedures. In the very near future a major programme will be initiated, modelled on that developed with regard to illicit drug trafficking, for economic crimes.

The Police Co-ordination Division (Division II) of the General Secretariat is divided into three Sub-Divisions and a number of specialist groups. Sub-Division II is concerned with commercial and economic crime. It is divided into Group E and Group F. Group E is concerned with economic and financial crime other than that involving counterfeiting of currency or valuable documents. Counterfeiting is the concern of Group F. Although it is likely the strength of Group E will be increased soon, as of the 1st April 1979 it had a staff of 7, and Group F a staff of 8. Inevitably there is a degree of overlap with other specialist groups and in particular Division III the Research and Study Division is responsible for the preparation of a number of notices and documents which have a bearing on the work of Groups E and F.

Police Co-ordination Division, Group E

Group E is concerned with crimes that involve trickery and fraud and do not involve violence to the person or property. Traditionally the General Secretariat has been reluctant to initiate requests for information from its NCBs let alone take the initiative in advising an NCB to commence a particular line of investigation. The most obvious reason for this disinclination to take a more offensive stance is the tremendous burden of work. However, it is likely that the traditional view of ICPO-Interpol as little more than a sophisticated police letterbox owes a great deal to its French domination. There is a certain amount of frustration in the General Secretariat and it is probable that the traditional approach will be significantly modified in the near future.

As with the other specialist groups in Division II Group E is concerned with the processing of all information relating to economic crime that is relayed to the General Secretariat in Paris from the NCBs. The processing of this information is almost entirely manual and is both time consuming and laborious. There is a feeling within the General Secretariat that a good deal of this work could be just as well handled by clerks under the supervision of police officers. Group E, like the Police Co-ordination Division as a whole, lacks secretarial and clerical support. The police officers in Group E have to type out the draft notices themselves. There is dissatisfaction in the General Secretariat about the time it takes to prepare a notice and then disseminate the information to the various NCBs. All circulars and wanted notices relating to commercial and economic crimes other than counterfeiting are prepared and sent out by Group E. After drafting and typing them out, they are checked by a superior, then sent for translation into the four official languages. The document is

then sent to the printers. This process can easily take more than a month. The circulars and notices are then generally sent out to the NCBs in the ordinary mail. To save postage costs there have been instances where documents have been accumulated for a couple of weeks and sent out in one parcel. Where speed of communication is essential resort can be made to the radio network, which does not extend to many Commonwealth countries, telex, or ordinary telegram. Given the speed at which many international frauds can be perpetrated the present machinery for communication is inadequate.

The officers in Group E are on the whole ordinary police officers without any special training in fraud work. There are, however, one or two notable exceptions. Given the traditional role of the General Secretariat there has been little opportunity for officers to show their initiative and specialist expertise. As has already been pointed out, this is likely to change in the near future.

The quality and quantity of information that is relayed to the General Secretariat from the NCBs varies enormously. Very much depends upon the resources and competence of the officers in the various NCBs and the kind of relationship they enjoy with their own national police force. Some NCBs are extremely well equipped and constitute a respected and integral part of the national police force. Others, unfortunately, exist only in name. Very few NCBs have officers trained to deal with commercial crime. NCBs do communicate directly missing out the General Secretariat. When this occurs they are expected to inform the General Secretariat and supply it with copies of the relevant correspondence. This is not always done. Indeed, some consider it rarely done. Given this and the reluctance of some NCBs to provide the General Secretariat with adequate information the officers in Group E at best only see half the picture. It is because the information coming into the General Secretariat has been so deficient in detail that so few modus operandi notices have been compiled and sent out. It would seem that the poor quality of information that is relayed to the General Secretariat is not solely due to ignorance and apathy. There is an understandable desire in certain police forces not to reveal all their information at once. Whilst the General Secretariat is widely respected, once sensitive information has been passed to the Secretariat there is no absolute guarantee that it will not fall into the hands of a police officer who uses it otherwise than the first police force would have wished. There can be little doubt that some police officers are selfish and will only bother about co-operation where it is directly in their own immediate interests to do so. On the other hand it is not unknown for a country to request assistance with regard to one offence when in actual fact it contemplates bringing charges under a number of offences. However, these other offences might not constitute crimes in other countries and therefore international co-operation might be less than enthusiastic. In some instances these other offences might even be considered political. Many cases of commercial and economic crime could have political conota-

tions. For example, the General Secretariat have received several requests for assistance from Iran in regard to alleged exchange control offences by supporters of the Shah. Corruption cases also create problems for the General Secretariat. For ICPO-Interpol to allow itself to be used in cases having a political character would be against its constitution and could easily destroy the international goodwill the organisation has developed because of its manifest impartiality.

Having regard to the sort of information that Group E receives it is very difficult for the officers to develop any viable programme for criminal intelligence. The information is usually far too piecemeal and invariably stale. There is little opportunity to build up profiles or any overall picture of a particular operation or series of related offences. I am told by one officer that it is unlikely that even the I.O.S. affair would have shown up as a co-ordinated operation involving possible criminal offences. The snippets of information coming into the General Secretariat would not have been put together to present a clear overall picture disclosing the scale of the operation. This is obviously a matter for concern and underlines the importance that the Secretariat attaches to the development of a viable intelligence programme. Another problem in this respect is the reluctance of the General Secretariat and NCBs to disseminate information on persons suspected of criminal offences, without there being a firm commitment from a state to seek extradition. It is also extremely difficult for the General Secretariat to disseminate information relating to known associates of such persons. In the area of commercial and economic crime this kind of information is particularly important. Of course, this is not to ignore the question of civil liberties and the right of an individual to protect his name.

Over the last five or so years the General Secretariat has built up a great deal of experience with regard to the co-ordination of intelligence on illicit narcotics trafficking. The General Secretariat intends to utilise this experience with regard to economic crime. The main features of the narcotics programme are the centralisation of intelligence with specific attention to limited targeting and the creation of a scheme of liaison officers. Sub-Division III of the Police Co-ordination Division is responsible for drug enforcement. This Sub-Division has almost the same number of officers as do the other two Sub-Divisions. Furthermore, the drugs problem is a relatively well defined regulatory problem. There is also a great deal of international co-operation and widespread agreement that the illicit activity must be stamped out. In my view these factors make it questionable whether the experience with regard to narcotics can be employed with regard to economic crime with any where near the same level of expectation in the success of the programme. Whilst Group E will be strengthened it will certainly not be given the same kind of resources and international support that Sub-Division III has received. Nevertheless, the development of an intelligence capability with regard to economic and commercial crime in ICPO-Interpol is

to be welcomed and deserves the support of the Commonwealth. It remains to be seen whether resources will enable the narcotics liaison officer scheme to be implemented with regard to commercial crime even at a far more modest level. However, it is understood that funds will be made available for officers in Sub-Division II to travel. Apart from making their expertise available they would also be available for co-ordination and intelligence work. It is probable that these developments will enable Group E to play a far more active role in relation to international fraud. Targeting should become a real possibility and greater attention will be given to the dissemination of information on modus operandi. It is contemplated that a closer working relationship will develop with certain officers in the Research and Study Division and those officers concerned with the narcotics intelligence programme in Sub-Division III. It is important to appreciate, however, that there is no question of Group E becoming an operational unit.

At present Group E is predominantly concerned with European cases. An analysis prepared of Group E cases in 1978 showed that out of 1,740 files some 1,247 concerned Europe and 180 the United States of America. Most of the European cases concerned France and Germany. Therefore, Group E would seem to be rarely concerned with a case involving a Commonwealth jurisdiction. The preponderance of cases that have come to the Group from Africa, Australasia and the Far East concern cheque frauds and the use of forged documents. Thus, at present ICPO-Interpol provides a minimal degree of assistance to Commonwealth countries in this area of criminal activity. This is not the fault of ICPO-Interpol, but rather underlines the lack of awareness in many Commonwealth jurisdictions and the inability of national police forces to detect the abuse which everyone would seem to agree exists. The General Secretariat can only deal with a case if it is brought to its attention by the appropriate NCB. There is a widespread feeling that law enforcement in this area of criminal activity has not received an adequate amount of attention in many developing countries and has not therefore become a matter of priority. It should also be pointed out that another reason for the lack of ICPO-Interpol involvement in the Commonwealth with regard to this kind of crime relates to the role that many governments regard ICPO-Interpol as playing. It would seem that there is a widespread feeling in the Commonwealth that ICPO-Interpol should only be used for serious crimes. Whereas the greater proportion of the 1740 files referred to Group E concern relatively minor cases. Certain European countries are inclined to relay virtually every commercial crime case to ICPO-Interpol that has any international element. This has obvious drawbacks. Firstly, it results in Group E being greatly overburdened. Secondly, on any cost benefit analysis it is wasteful of scarce and exceedingly expensive police resources. The ICPO-Interpol procedures are basically the same whether \$10 or \$1,000,000 is involved. It is important that Group E be allowed to concern itself primarily with those international economic crimes of importance judged

so because of the amount involved, the persons involved, the circumstances of the case or some other special factor.

Police Co-ordination Division, Group F

In recent years it is probably in the areas of narcotics abuse and counterfeiting that ICPO-Interpol has achieved most success. Counterfeiting of currency is by definition an international crime. The International Convention for the Suppression of Currency Counterfeiting (Geneva 20th April 1929) contains a number of articles designed to foster international co-operation in dealing with this type of criminal activity. In particular articles 12 to 15 provide that countries should have a central office concerned with the co-ordination of enforcement with regard to counterfeiting, and article 15 provides for the setting up of an international central office for co-ordination at the international level. ICPO-Interpol has taken this function and the various NCBs either operate as the relevant central office or work closely with the regulatory authority responsible for enforcement in this area. About 70 countries and 33 territories have ratified or acceded to the International Convention. It should be noted that a number of countries have not yet done so and this is to be very much regretted.

Within ICPO-Interpol Group F of Sub-Division II of the Police Co-ordination Division is responsible for all counterfeiting cases referred to the General Secretariat. The prompt communication of accurate and complete information to the General Secretariat by the relevant NCB is vital, and to facilitate accuracy and clarity Group F have devised a set of special notification forms. These forms contain a good deal of technical information which if accompanied by a specimen of the counterfeit currency allows the General Secretariat to categorise the forgery according to a known classification. In practice it is of great importance that the relevant NCB sends with the notification a specimen of the counterfeit currency seized. In some cases there are legal objections to this, although article 11 of the International Convention does place an obligation on the country where the counterfeit currency was seized to surrender it to the country of purported issue. The main legal problem here is where only one note or coin is seized and it is thus required as evidence for the purpose of prosecution.

All information relayed to Group F is carefully processed and whenever appropriate warning notices are sent out. Speed is of great importance. Once a forger has disposed of the plates and uttered the counterfeit currency detection and arrest are exceedingly difficult.

One of the most successful aspects of Group F's work has been the dissemination of technical information and modus operandi notices. At the Paris Headquarters Group F has established a laboratory and has a comprehensive library of forgeries. The group is also responsible for the publication of the authoritative *Counterfeits and Forgeries*. Until a couple of years ago international conferences and training courses were regularly organised by the

General Secretariat on counterfeiting. These were extremely valuable. However, they were expensive and time consuming, and have therefore been curtailed. The U.S. Secret Service does run courses which are open to law enforcement officers from other countries. However, these courses concentrate almost exclusively on the counterfeiting of U.S. currency, and might therefore be of little value to Commonwealth police forces.

It is vital that the NCBs if they are not in fact the appropriate central office for counterfeiting enforcement co-operate fully with the relevant authority—which will usually be within the central bank. One of the weaknesses of the dependence of the ICPO-Interpol system on the NCBs is the difficulty that this creates in communicating speedily with a non-police specialist enforcement agency outside the relevant, national police force. It is interesting in this regard that in the U.S.A. where specialist agencies abound the NCB has officers and agents from the Drug Enforcement Administration, Customs Service, Secret Service and Bureau of Alcohol, Tobacco and Firearms and the FBI on its staff. One of the problems in the Commonwealth, possibly with the exception of Canada, Australia and Singapore is the insularity of the police. This tends to isolate the NCB and therefore ICPO-Interpol from the specialist law enforcement agencies. The degree of co-operation that Group F receives from the NCBs and banking authorities varies a great deal. The problems that do occasionally arise are invariably the result of inadvertence rather than deliberate non-co-operation. For example, the Bank of England evidently forgot to send the General Secretariat a specimen of the new £1 bank note when it was first issued.

Having regard to the vast amount of technical information that Group F is called upon to process and cross reference the development of electronic data processing for this function is imperative. At present Group F only has 8 officers and its operation is almost wholly manual. In 1975 some 3,516 cases of counterfeit currency being uttered were reported to the General Secretariat, in 1976 this figure rose to 4,434 and from 1978 to 1979 the figure is in excess of 7,000. On the other hand the number of countries whose currency is counterfeited remains static at around 30. It is not without interest that the Head of Group F considers that the regulatory authorities only see the tip of the iceberg. He also considers that the cases reported to ICPO-Interpol are probably only a relatively small proportion of the cases which come to the attention of the various regulatory authorities. Some Commonwealth countries have had their currency counterfeited and virtually all have had counterfeit currency uttered within their territory.

Surprisingly little research has taken place as to whether there is or may be any connection between known instances of counterfeiting and other forms of organised criminal activity. Certainly, counterfeiting has involved organised crime, particularly in regard to the uttering of the forged currency. There is little indication that counterfeit currency has been used to fund the illicit trafficking of arms or narcotics. A

senior officer in the Commercial Crimes Bureau of the Royal Hong Kong Police Force who has considered this question thinks it would be unlikely as the profits that are made from such trafficking are so large as to render counterfeiting unnecessary. A similar view is taken in Singapore and Malaysia. However, there have been instances in Thailand where the use of counterfeit currency and false negotiable instruments have related to the funding of narcotics trading. The Drug Enforcement Administration in the U.S.A. has also uncovered at least two similar instances. More recently agents of the National Bureau of Investigation in the Philippines uncovered a syndicate trafficking drugs, arms and counterfeit currency. This syndicate operated in at least two Commonwealth countries and some of the counterfeit currency purported to be the currency of a Commonwealth country. It is true that in the developing world counterfeit currency, even if it is known to be counterfeit, still has value on the black market.

There is possibly a need for a more integrated approach to this area of law enforcement and there is a feeling among some of the officers in the General Secretariat that Groups E and F should be merged. This could be particularly advantageous once the intelligence and liaison programme has been initiated in regard to commercial and economic crime.

Research and Study Division (Division III)

Until very recently there was a fourth Division responsible for the publication of The International Criminal Police Review. This has now become the sole responsibility of Division III. The Research and Study Division has been involved with a number of projects relating to commercial crime. It has prepared several general studies and is currently preparing information sheets describing what kind of information may be made immediately available by a country at the request of another for the purpose of an investigation. This particular project arose out of a proposal contained in a report submitted to the 1978 General Assembly by Canada. Similar projects have been conducted in the past. The Research and Study Division obtains all its information for these studies from the various NCBs. Not all NCBs are able or prepared to give to these projects the kind of attention and expertise they require if they are to be of any practical value. For example, the project to which I have just referred involving the ascertainment of what information can be promptly made available in each country has met with a certain amount of apathy. Although the questionnaires were sent out over a year ago only 30 countries have responded at the time of preparing this report. It should also be appreciated that this Division is very small, overworked and lacks resources.

THE COMMONWEALTH AND ICPO-INTERPOL

There is little doubt that all Commonwealth countries would accept and endorse the Constitutional aims of ICPO-Interpol as stated in article 2 of its Consti-

tution. Almost all the Commonwealth countries are members of ICPO-Interpol and the 4 or 5 smaller countries which have not sought formal membership in practice have co-operated with the Organisation. Of course, this is not to say that all Commonwealth countries equally value or support ICPO-Interpol.

Having regard to these factors and the desire of Commonwealth Law Ministers to further international co-operation in law enforcement I would propose that the Commonwealth, and in particular its main agency the Commonwealth Secretariat, should develop a closer relationship with ICPO-Interpol. In furtherance of this proposal I have made a number of specific proposals for consideration.

1. Co-operation between the Commonwealth Secretariat and the General Secretariat of ICPO-Interpol

It is strongly urged that Law Ministers and their respective government give their support to the development of a closer relationship between the Legal Division of the Commonwealth Secretariat and the General Secretariat of ICPO-Interpol. ICPO-Interpol has entered into a number of formal and informal agreements for co-operation with other official and unofficial international organisations. Article 41 of ICPO-Interpol's Constitution provides,

“Whenever it deems fit, having regard to the aims and objects provided in the Constitution, the Organisation shall establish relations and collaborate with other inter-governmental or non-governmental international organisations.

The general provisions concerning the relations with international intergovernmental and non-governmental organisations will only be valid after their approval by the General Assembly.

The Organisation may, in connection with all matters in which it is competent, take the advice of non-governmental international, governmental national or non-governmental national organisations.

With the approval of the General Assembly, the Executive Committee or, in urgent cases, the Secretary General may accept duties within the scope of its activities and competence either from other international institutions or organisations or in application of international conventions”.

During the preparation of my submissions I visited ICPO-Interpol Headquarters in Paris on two occasions. On both occasions I was warmly welcomed by the General Secretariat. Having raised the matter of closer co-operation and collaboration with senior members of the General Secretariat and a member of the Executive Committee I have confidence that ICPO-Interpol would be most receptive to suggestions for achieving this. I have also raised the matter with senior police officers in the NCBs in a number of Commonwealth countries. Again it was clear that a closer relationship with the Commonwealth Secretariat would be most welcome.

ICPO-Interpol is essentially an organisation for policemen run entirely by policemen. Until recently the structure and operation of the organisation has been largely dominated by French police officers. With, I think only two exceptions, the Secretary

General has been a senior French police officer, and by article 43 of the General Regulations of ICPO-Interpol, it is expressly provided “he should preferably be a national of the country in which the seat of the Organisation is situated”. The Headquarters are provided by the French Government and are situated in Paris. As of the 1st April 1979 out of a total General Secretariat staff of 190 some 142 were French citizens. Of course, many of these are technical and ancillary staff and thus it is not unlikely the bulk will be locally recruited. However, there are still some 40 French police officers in the General Secretariat, whereas there are only 26 police officers from the rest of the world. (See Appendix I). Whilst other governments, both of developed and developing countries, are reluctant to assume a proper degree of financial responsibility for the operation of ICPO-Interpol the strong French presence is both necessary and praiseworthy.

Contributions to the ICPO-Interpol general budget come on the whole from domestic national police budgets. National police forces are invariably short of resources and therefore it is not surprising that there is a tendency to give international co-operation a relatively low priority. Senior police officers are under great political and public pressure to get results at home. Unfortunately, governments have been slow to realise the implications of this. Whilst there is much appreciation throughout the world of the important role ICPO-Interpol performs this is rarely supported by the provision of funds. A good many member states are reluctant to assume a fair level of contribution and there are one or two countries who have not paid their dues or are significantly in arrears. This attitude is often apparent when one examines the position of the NCBs. Many lack resources and manpower. Some, even within the Commonwealth, exist only in name.

Among the 66 or so police officers detached or seconded to the General Secretariat there are few of very high rank. Most are commissioned officers in the middle to lower ranks. This observation is in no way intended to deprecate the work and competence of the organisation. Personally I would like to see many more junior officers seconded to the General Secretariat who would benefit at an early stage in their police career from the exposure to international co-operation. However, it does mean that the General Secretariat and therefore ICPO-Interpol lacks muscle both at intergovernmental level and perhaps more importantly at the national level in the respective domestic police forces. The operational heads of the various NCBs are generally not particularly highly placed in their national police forces either. Even within a national police force it would be exceptional, particularly within the Commonwealth, for even a senior policeman to have general access to the Law Minister and Law Officers. Invariably there is a serious communications problem at this national level. On the other hand, a diplomatic agency such as the Commonwealth Secretariat will have such access. Quite rightly, there is a fear within the ICPO-Interpol General Secretariat that its activities should not become susceptible to governmental pressures or

influence. However, there is a growing realisation of the advantages of communication directly to Law Ministers and Law Officers. This is particularly so with regard to matters of policy whether they relate to policing or legislation. The NCBs and even the national delegations that attend the General Assemblies do not provide this sort of access. There is little doubt that the Legal Division of the Commonwealth Secretariat, and hopefully a Commonwealth Fraud Liaison Officer, could provide a most useful service here. In appropriate circumstances the Legal Division should be prepared to raise matters on behalf of or in association with ICPO-Interpol either at Commonwealth level or with the government of a particular Commonwealth country.

ICPO-Interpol would clearly benefit from such a facility and so would, in my view, the Commonwealth. Apart from assisting international police cooperation, it would mean that Commonwealth countries had the impartial and possibly expert assistance of the Commonwealth Secretariat on matters upon which at present they would either be totally ignorant or at best entirely on their own. Of course, I appreciate that there is a danger that some will consider the Commonwealth Secretariat should not interfere in such matters. However, it is important to emphasise that the Commonwealth Secretariat would at most be acting in an advisory capacity and would only be making its good offices available to ICPO-Interpol to assist in the efficacy of communication.

If a closer relationship is to develop between the Legal Division of the Commonwealth Secretariat and the General Secretariat of ICPO-Interpol, it is desirable that a particular officer in the Legal Division should be responsible for dealing with ICPO-Interpol matters. It is important that a relationship of mutual trust and confidence be developed as quickly as possible. Obviously the appointment of a Commonwealth Fraud Liaison Officer would provide a ready and practical solution. Apart from liaising with Sub-Division II of the Police Co-ordination Division of the General Secretariat, the Commonwealth Fraud Liaison Officer should have general responsibility for developing closer cooperation with ICPO-Interpol in regard to all ordinary law crimes.

I would also propose that the Commonwealth Secretariat should explore as soon as possible with ICPO-Interpol the possibility of being given observer status at all ICPO-Interpol proceedings. The Secretary General of ICPO-Interpol has already allowed the Legal Division of the Commonwealth Secretariat to send an observer to ICPO-Interpol's Third International Symposium on Fraud in December 1979. I was honoured to serve in this capacity and I feel that it was of mutual benefit that the Commonwealth had such a presence. I was allowed to address the symposium on several occasions and was therefore able to put over points concerning the Commonwealth and Commonwealth countries that would otherwise have not been raised. In particular, it was possible to place on the record several issues of interest to several developing

countries in the Commonwealth. I feel that ICPO-Interpol would be receptive to such a proposal and I understand that the present Secretary General is keen to enter into general discussions with representatives of the Commonwealth Secretariat on this and other matters of possible common interest. The advantages that observer status would have for the Commonwealth are manifold. In particular, it would provide an effective channel for communication. Views could be exchanged at Commonwealth level on such matters as the surrender of fugitive offenders and pre-extradition procedure. Perhaps even more importantly it would allow certain Commonwealth countries a voice in such proceedings. Not all Commonwealth countries have the financial and manpower resources to be represented at all the proceedings of ICPO-Interpol in which they may have an interest. Indeed, certain Commonwealth countries are rarely if ever properly represented. A Commonwealth observer could make their presence felt and where appropriate speak on their behalf. This would be of benefit to both the country concerned and also ICPO-Interpol. The Commonwealth observer could also report back to the Law Ministers, and where relevant the appropriate Commonwealth government, on the proceedings. Whilst ICPO-Interpol generally sends out to delegates and NCBs a record of such proceedings this is not always an effective or efficient form of communication particularly on sensitive issues. The General Secretariat of ICPO-Interpol is grateful for this opportunity to raise certain issues through my submission before the Commonwealth Law Ministers meeting. It is sad that there is not a regular exchange of views and a greater awareness of each others problems.

2. Staffing

Apart from persons employed directly by the General Secretariat to carry out secretarial, technical and translational services all staff members are serving police officers either detached or seconded from national police forces. Virtually all these officers and those in the NCBs are paid solely by their respective police forces. Although the General Secretariat is able to provide limited financial assistance to officers detached or seconded to ICPO-Interpol through the payment of certain expenses the main financial burden is firmly on the country sending the officer to Paris. It is perhaps not surprising that the developing world and thus the Commonwealth is poorly represented in the General Secretariat. Even the more developed countries, possibly with the exception of France, Germany and the United Kingdom make only a marginally better showing. Indeed, there is a widespread feeling that the developed world does not pull its weight.

Most developing countries find it difficult to spare officers of the calibre that would justify them being temporarily seconded to ICPO-Interpol. Even if they can find a suitable officer there is still the expense. A number of officers that are sent to Paris from developing countries with relatively low standards of living find their ordinary police salaries totally inadequate and in some cases the General Secretariat has been forced to supplement their income. The cost

of living in Paris is significantly higher than that in most if not all Commonwealth countries.

At present there are very few Commonwealth citizens among the staff of the General Secretariat. I would estimate that out of a total staff of 190 there are 6 police officers and 9 ancillary employees from Commonwealth countries. This should be a cause for concern by Law Ministers. When one considers the inadequate state of many NCBs in Commonwealth countries the position is all the more disturbing. In my experience several major Commonwealth countries do not in practice operate permanent NCBs and supervisory responsibility is vested in a senior police officer who is burdened with a great deal of other administrative tasks. Some countries, even within the Commonwealth, are not prepared to increase their commitment to ICPO-Interpol because they consider that they get little return in practice. Obviously, this is something of a chicken and egg situation. The more a country invests in the organisation the more it can expect to get out of it. The situation in several federalist countries is also unsatisfactory because contact with ICPO-Interpol is invariably confined solely to the federal police. This is a problem faced by at least five Commonwealth jurisdictions.

There is at least one instance where a relatively senior police officer was seconded to ICPO-Interpol from the police force of a developing non-Commonwealth country. A good deal of resentment was caused by his being given basically a clerical assignment. This case, and there are probably others, has provided critics with the argument that officers from the less developed countries are assigned non-priority work affording them little opportunity to broaden their perspective. It is true that certain officers attached to the Administrative Division (Division I) and the Research and Study Division (Division III) feel frustrated about not being involved in traditional police work. Personally, I would have thought that a good many of these activities could have been equally well performed by non-police officers. However, it has to be admitted that some officers sent to Paris have proved to be unsatisfactory and not suited to a more demanding role in the organisation. The most likely cause for a lot of the frustration is a lack of appreciation as to what ICPO-Interpol does. Perhaps 90% of valuable intelligence work involves mundane clerical procedure.

In the past special arrangements have been entered into for the funding of specific ICPO-Interpol services. In most instances the General Secretariat has been able to assume full financial responsibility for the service at a later date. In regard to the communications network and the narcotics liaison scheme this has been achieved through differential budget contributions. In other words these member countries who wish to have the additional service must pay for it. In one of two cases the General Secretariat has taken the sole financial responsibility for a particular officer. Of course, the General Secretariat is responsible for all the ancillary, technical and secretarial staff.

ICPO-Interpol's operations would benefit by the provision of additional police officers of the right calibre from the developing world. There should be, at least, an equal benefit for the developing country concerned. The exposure of a career police officer to the work that the General Secretariat is presently engaged in and will in the near future be doing will give a depth and breadth of experience which would otherwise be unobtainable in the context of a national police force. The experience of living in a capital city such as Paris and being continuously subjected to international co-operation at this level again cannot but be advantageous. An astute officer seconded to the General Secretariat for two or three years should be able to develop enough practical experience of the ICPO-Interpol operation and in particular contacts for future reference to be of very real benefit to his country. Obviously, there is a real danger that an officer exposed to this kind of experience might on rejoining his police force be promoted to an administrative level where in practice the knowledge and understanding that he has acquired will be of only indirect utility. It is important that officers who are going to be involved directly in police work for a good many years should be the primary candidate for secondment to ICPO-Interpol. There is also the danger that policemen of this calibre are unlikely to remain in their respective police forces for any length of time. There are numerous examples of where officers from both developed and developing countries have been exposed to specialist training and in the result the officer leaves the public service and enters into some kind of private practice. Again great care has to be taken in the selection of the right officer. Resources are scarce and should not be wasted. Of course, this is not to underestimate the desirability of creating a greater degree of awareness and mutual understanding outside police forces. However, there are far cheaper and less wasteful methods for professional training and developing the desired relationship between police officers and the various professions. There is a constant danger that police training schemes if they attain the requisite degree of effectiveness will serve as little more than a stepping stone for ambitious officers into private practice. Frankly, I can see little opportunity for officers that have spent a few years at the ICPO-Interpol General Secretariat to make such a transition. As I have already pointed out ICPO-Interpol has been able to bear a major part of the cost of one or two officers from the developing world—particularly with regard to the narcotics liaison officer scheme. However, this is a burden that the General Secretariat is reluctant to assume given its limited financial resources. Special funding arrangements have been worked out in the past for a limited increase in staff for a specific service or programme. Given the growing concern with developing viable international co-operation with regard to certain categories of economic crime perhaps a similar approach might be feasible.

The following suggestions with regard to staffing at ICPO-Interpol are made:

(i) The attention of Commonwealth Law Ministers and their respective governments should be drawn to

the problems facing ICPO-Interpol in recruiting even a token representation from the developing world. The failure of most developed countries to adequately support the General Secretariat with regard to staffing should also be noted. The critical role played by NCBs in the ICPO-Interpol scheme should be emphasised. Commonwealth Law Ministers might like to consider what action would be appropriate in their own countries to increase the effectiveness of this facility. An effective and properly supported NCB is the first step in developing international co-operation through ICPO-Interpol.

(ii) Commonwealth Law Ministers might like to consider whether assistance could or should be given to police officers from Commonwealth countries to fund short periods of secondment at ICPO-Interpol. With respect such funding should be at Commonwealth level. It may be that the Education and Training Programme of the Commonwealth Fund for Technical Co-operation could be made available for this purpose.

3. Communications

The communications network that ICPO-Interpol has developed is of crucial significance to its operation. It is perhaps surprising that given the widespread concern for developing international co-operation in law enforcement that so many countries have not sought to take full advantage of the services that ICPO-Interpol offers. A disturbing number of countries, for a variety of reasons, have not joined the International Radio Network. This network covers NCBs that have access to one or more of the following; morse-code radio network, teletype network and protected communications. A report published by ICPO-Interpol in February 1977 contains a list of these NCBs. The Commonwealth makes a very poor showing. The only Commonwealth countries on the International Radio Network are Canada, Cyprus, India, Jamaica, Kenya, Malta, Mauritius, Nauru, Tanzania, Zambia and the United Kingdom. I understand that the situation has not changed significantly since the publication of this report. It would also seem that only the United Kingdom can receive and transmit phototelegraphic communications which are of major relevance in many areas of economic crime such as counterfeiting and forgery. A number of Commonwealth countries are on the telex network, but by no means all are. In the result, the only means of communication from ICPO-Interpol to the NCBs of a greater part of the Commonwealth is via the ordinary postal and telegram facilities. Personally, I find it surprising that a number of the more developed Commonwealth countries have not sought to develop radio communications with ICPO-Interpol. This is all the more surprising when one considers that several relatively small developing countries have done so. The cost of setting up a radio station is in the region of £15,000. Of course, added to this figure is the cost of servicing and operating it. This can be rather expensive and the Philippines gave up being the Regional Radio Centre for the Far East to Japan largely because of the cost of manning the station continuously. However, it is

only the few Regional Radio Centres that require continuous staffing and therefore this should not be an over important factor for most Commonwealth countries. Certainly, the vast majority of senior police officers to which I have spoken in those Commonwealth countries which are not on the International Radio Network would see great advantage in having this facility.

Membership of the International Radio Network is not only a benefit to the country in whose territory that station is situated, but is also a benefit to other countries in the same region and also to the whole network. Of course, it has to be appreciated that NCBs can and in fact invariably do communicate with each other through the network without passing through Paris. Furthermore, within each region something like 70% of communications are primarily of regional interest only. Perhaps certain governments in calculating the cost-benefit of membership of the International Radio Network have not given adequate weight to their international and regional responsibilities. Law enforcement on the international level requires consideration of other than wholly domestic priorities. In the context of economic crime and many forms of "white collar" crime involving international elements the ability of the various law enforcement agencies to communicate with each other quickly, effectively and in confidence is of great importance. Even more so when they are called upon to deal with international terrorism and narcotics and arms trafficking. The implications of an inadequate international communications system should be obvious. Commonwealth Law Ministers might like to consider whether some kind of financial and technical assistance could or should be provided at Commonwealth level for improving international police communications. This is particularly a matter of concern in the developing world. I should add that ICPO-Interpol considers that improvement in the scheme of communication is imperative, particularly with regard to Australasia and the Caribbean. Both regions should be of interest to the Commonwealth.

4. Fraud and Commercial Crime

ICPO-Interpol's concern with regard to commercial and financial crime has already been mentioned and the role that ICPO-Interpol plays in this area has been discussed above. There would appear to be close agreement between the Commonwealth and ICPO-Interpol as to the desirability of increasing the degree and efficiency of international co-operation in regard to economic crime. Elsewhere I have strongly urged Commonwealth Law Ministers to endorse the proposal that the Commonwealth and in particular the Legal Division of the Commonwealth Secretariat should assist and facilitate any programme which would result in ICPO-Interpol being more effective in regard to this category of criminal activity.

The planned development of an intelligence and possibly a liaison facility within Sub-division II of the Police Co-ordination Division of the General Secretariat should receive the support of the Commonwealth. I would like to raise the question as to whether it would be possible for the Commonwealth

to assist in the funding of this programme, either directly, or indirectly through giving assistance to Commonwealth countries who are willing to second specialist officers to assist in this project. This proposal is obviously linked to those I have already made with regard to staffing in the General Secretariat. I appreciate some may consider my proposal unrealistic because of the possible expense involved and the inevitable shortage of funds at Commonwealth level. However, I must emphasise that I am only suggesting secondment of a very limited number of individuals. Until recently the narcotics intelligence programme has been co-ordinated by a single officer. Even one additional officer would be welcomed by the General Secretariat. The narcotics liaison scheme when it was first introduced was funded largely by the U.S. Government. The General Secretariat is now able to provide this service through differential budgets. Essentially this means that those countries wanting the service are required to pay an additional contribution. Perhaps this approach could be followed with regard to commercial crime. If Commonwealth Law Ministers and their respective governments are prepared to accept my proposal with regard to the appointment of a Commonwealth Fraud Liaison Officer this officer could, and in my view should, develop a close working relationship with the relevant officers in the General Secretariat responsible for this programme.

5. Advisers and Experts

Article 36 of the ICPO-Interpol Constitution provides for the appointment by the Executive Committee of Advisers. It would seem that the Executive Committee only has power under the Constitution to consult scientific "advisers" although article 36 does state that "they (i.e. the Advisers) shall be chosen among those who have a world-wide reputation in some field of interest to the Organisation". In practice the General Secretariat are prepared to consult experts on a wide range of matters whether they have been formally appointed "advisers" by the Executive Committee or not.

This is an area where the Commonwealth and in particular the Legal Division of the Commonwealth Secretariat could develop a closer and mutually advantageous relationship with the General Secretariat of the ICPO-Interpol. If Commonwealth Law Ministers are prepared to support my proposal for the appointment of a Commonwealth Fraud Liaison Officer and the setting up of a Panel of Experts this proposal for greater co-operation and exchange of expertise would be all the more meaningful. The Commonwealth Fund for Technical Co-operation can be used to support certain activities of Divisions of the Commonwealth Secretariat and perhaps thought might be given to utilising this facility more in the context of the present discussion. Perhaps an example would best illustrate my point. Suppose a small Caribbean country wishes to develop an off shore banking and financial facility. The country has little technical expertise in the preparation and drafting of the relevant laws and none in the administration and policing of such operations. Assuming that the government of that country is

determined to keep out suspect enterprises and individuals and develop an off shore financial facility founded on respect and confidence it would be both in the interests of the Commonwealth and certainly ICPO-Interpol to provide the requisite degree of technical expertise and advice. Of course, this would be of limited duration and could be seen as merely providing technical assistance and advice until such time as appropriate local expertise had been developed. At present the Commonwealth Fund for Technical Co-operation would be prepared to consider an application to the Fund by that government for expert assistance in the drafting and preparation of legislation and also probably for training. Therefore, what I propose here is not essentially different from that which can and does already occur. However, I would see advantage in a more ordered and co-ordinated approach to such projects. As in other areas a Commonwealth Fraud Liaison Officer could provide a most useful service.

6. Studies

The Research and Studies Division of the ICPO-Interpol General Secretariat is responsible for carrying out general studies and surveys. Reference has already been made in this report to the work that Division III has done in regard to economic and commercial crime. It would be fair to say that this Division does not have a police function. Policemen seem to have an inbuilt suspicion of civilians, and there is a traditional reluctance to entrust to non-policemen anything which might bear upon police work no matter how remote and indirect that connection might be. There are signs that this attitude is changing and if police forces are going to stand any chance of combating the modern criminal, in particular the computer criminal, this attitude must change quickly. It is open to question how far the General Secretariat would go in being willing to work closely with non-policemen. There has been a reluctance in the past to deal with non-police organisations, although this has now almost disappeared. As I have stated several times the General Secretariat would welcome a closer relationship with the Commonwealth Secretariat. The only senior staff member at the General Secretariat who is not a policeman works in the Research and Study Division. He is a lawyer from Sri Lanka, whose official designation is legal attache. In fact, his work is largely concerned with the processing of information coming into the Research and Study Division and the preparation of information circulars and reports. Officers attached to the General Secretariat do not consider that Division III is a popular Division to work in. There is a good deal of frustration among the police officers that do work in it. They consider that their work is of no direct relevance to police activities. With respect, I would have thought that the work of Division III could with equal efficiency have been placed in the hands of civilians. Indeed, civilians would probably make a better job of some of the projects—there are few policemen who would feel at home preparing reports on the basis of information sent in by NCBs on such matters as what public information can be easily provided on the request of another country. At

present the Research and Study Division lacks the necessary resources and competence to play a more meaningful role.

There is an area of activity where the work of the Research and Study Division and the Legal Division of the Commonwealth Secretariat overlap. With respect, it would be beneficial to both organisations if there was a greater amount of exchange of information. Perhaps a degree of co-ordination could also be achieved. Apart from this, it is difficult to see what role the Commonwealth could play in directly improving the efficiency and capability of this Division. The use of outside consultants could be one solution for the General Secretariat. The Commonwealth's Panel of Experts, if such is set up, might be of relevance here. Furthermore, perhaps ICPO-Interpol could be encouraged to look more to academic and research institutions for assistance in the preparation of some of their material. Perhaps Commonwealth institutions could be encouraged to be more forthcoming in this regard. Hopefully, the appointment of a Commonwealth Fraud Liaison Officer within the Commonwealth Secretariat would provide a suitable channel for communication and contact with this Division.

7. Seminars and Conferences

ICPO-Interpol does hold seminars and conferences which might well be of interest to Commonwealth Law Ministers and their law officers. Perhaps the Commonwealth Secretariat's Legal Division could play a greater role in informing Commonwealth Law Ministers of these events. Possibly The Commonwealth Law Bulletin could be of assistance here. Certainly, the Commonwealth Secretariat should be willing to make available any expertise it or any of its consultants has to ICPO-Interpol. Of course, proposals have already been made with regard to the question of the Commonwealth sending observers to proceedings of the ICPO-Interpol institutions.

8. Training

A number of the activities organised by ICPO-Interpol do have educational and training value for police officers. The Commonwealth should encourage these and co-operate as fully as it is able. Reference has been made to the courses that ICPO-Interpol used to run with regard to currency counterfeiting. Within the context of the Commonwealth perhaps ICPO-Interpol with the support of the Commonwealth Secretariat could be persuaded to conduct similar courses. Commercial crime would lend itself well to this kind of treatment and immedi-

ate attention should be given to computer assisted and related crimes. Hopefully the proposed Commonwealth Fraud Liaison Officer and Panel of Experts could participate and assist in such programmes. Police training is a matter of great importance and is something that the Commonwealth Secretariat should promote and give assistance to.

CONCLUSIONS

No attempt has been made to present an exhaustive set of proposals aimed at developing a closer degree of co-operation between two such organisations as the Commonwealth and ICPO-Interpol. Rather, the proposals I made in this part of the report should be seen as signposts pointing to avenues for co-operation which might or might not be explored. It has to be appreciated that the Commonwealth and ICPO-Interpol are two entirely different types of organisations. Their function, structure, purpose and membership are not the same as each other, although in certain respects there is a similarity or overlap. For example, most Commonwealth countries are members of ICPO-Interpol, although the membership of ICPO-Interpol is twice as big as that of the Commonwealth. Although both organisations are so different, there is a common purpose with regard to international co-operation in law enforcement. This much was made clear at the Commonwealth Law Ministers' Meeting in Canada in 1977. Given this common purpose, with respect, it is my view that the two organisations can and should work together albeit in a strictly limited area. Each has much to offer the other and co-operation can only operate to their mutual benefit. The time is right for developing this relationship and it would be a great pity and a significant indictment of international co-operation if this opportunity was allowed to slip away. Once a closer working relationship has been created then other matters for consideration and mutual assistance will no doubt arise. These can be considered as and when they arise and there would be little point in entering into a detailed discussion as to all the implications of circumstances which might never develop. The creation of a climate for co-operation between the two organisations, perhaps with the setting up within the Commonwealth Secretariat of a facility for advancing this co-operation such as the proposed Commonwealth Liaison Officer, is the most important point, and the one to which I sincerely hope Law Ministers and their respective governments will direct their attention.