

THE CHALLENGE OF INTERNATIONAL WHITE COLLAR CRIME: THE NEED FOR IMMEDIATE CONCRETE COUNTER-MEASURES

Memorandum by the Government of Zambia

We find ourselves again discussing international crime and, in particular, the cancer of illicit trafficking in drugs and all the hardship and harm that this evil causes. Law Ministers have discussed these issues before and, I dare say, will have occasion to do so again. Let us hope, however, today that our words will not be 'chaff in the wind' but will see some result.

The Commonwealth has set its hand against economic crime and now recognises that today most economic crimes are simply a manifestation of or part of some other serious crime or abuse. The relationship between economic crime and certain types of organised crime are well known and well documented. Commonwealth Heads of Government meeting last November in Nassau emphasised the relationship between drug trafficking, economic crime and destabilisation. The vast amounts of money that are generated by serious crime are laundered and this very process often involves economic crime. This leads to the undermining and destabilising of the economic and social institutions of a state. Criminals also resort to economic crime to generate funds and investments necessary for the perpetration of other forms of crime such as drug trafficking and even terrorism.

The Commonwealth's initiative against economic crime is an important and indeed unique recognition of the problems and the responsibility of states in an interdependent world to stand together against a common evil. Sadly, our best intentions in taking the initiative and recognising the evil have not resulted in appropriate action to combat the situation.

Various Commonwealth Governments draw attention to the destabilising effects of economic crime in papers presented to the Law Ministers Meeting in Winnipeg, Canada in 1977. Ministers expressed grave concern about the extent and implications of serious international and organised commercial crime and the apparent inability of traditional law enforcement agencies and ICPO Interpol to satisfactorily combat these problems. They called upon the Commonwealth Secretary-General to initiate a Commonwealth programme. The common traditions, administrations, legislations etc. enjoyed by Commonwealth nations, which characterise this unusual Association, make the Commonwealth uniquely able to respond to the challenge. Out of diversity of experience comes strength! Law Ministers, receiving two reports on economic crime from the Chief Commonwealth Fraud Officer, Dr. Rider, at their meeting in Barbados in 1981, resolved that the Commonwealth Secretariat should take positive action as a matter of priority and urgency. Ministers specifically recognised the inadequacy of existing legal and investigatory procedures and called for the setting up of a commercial crime unit within the Secretariat to co-ordinate and assist Commonwealth efforts in the fight against these insidious criminals. The unique facet of this initiative is the clear recognition that prevention is better, more effective, and cheaper than cure.

As Law Ministers at Sri Lanka in 1983 we reviewed the working of this Unit - which had only consisted of a single officer. Impressed with the very positive results we stressed to the Secretariat - again as a matter of urgency and priority - that this facility should be strengthened and expanded, especially by allowing it to develop an effective loss prevention role through the creation and maintenance of a viable intelligence base. Again we recognised the threat facing all our nations and the need for urgent and effective preventative action.

Law Ministers outside our regular triannual meetings have also entreated the Secretariat to respond to our political concern. Law Ministers of the smaller Commonwealth states meeting in the Isle of Man in 1983 and more recently in Vanuatu in 1985 have asked the Secretariat to take a more meaningful stand and to properly resource the Unit. It was recognised that often the smaller jurisdictions are most susceptible to international criminals as transit points for contraband and to wash their dirty money. Ministers called upon the Secretariat to develop an effective intelligence base to monitor 'doubtful' off-shore and shell banking operations. No such development is yet apparent.

The plight of Small States and developing economies was noted in a report prepared by a special expert working party of the Secretariat on small States. Other Commonwealth forums have voiced the same concern. (For example, Commonwealth Ministers of Finance and participants of the Seventh Commonwealth Law Conference in Hong Kong). Outside the Commonwealth at meetings such as the General Assembly of ICPO - Interpol, the International Chambers of Commerce and UNCTAD, the Commonwealth's initiative in establishing the Commercial Crime Unit has been endorsed and commended.

Our Heads of Government have cast a heavy responsibility on us. In Nassau, recognising the serious dangers facing all of our countries, both developed and developing, from drug trafficking and the resultant vast profits, Law Ministers were instructed to devise a suitable strategy. We must not evade or avoid this as time is running out.

We must now examine the outcome of our concern in the past. We have spoken in terms of 'utmost priority' and 'grave concern' but what has been the response? Today the Commonwealth Crime Unit still only consists of two professional officers, an executive officer and a secretary. It operates on a very small budget which must substantially impede the services it can offer. It cannot possibly undertake to perform the obligations that we have thrust upon it. If we are serious we must see that our resolutions and recommendations are effectively implemented. The Secretariat must be financially enabled and then required to respond to the charges and obligations we place upon it.

It is said that money is finite and resources will never be sufficient. Of course this is true - we in Zambia know this as well as anyone in the third world. We have heard the same arguments rehearsed in the context of economic sanctions against racist regimes. However, there must come a time when priorities reflect the essential moral and social issues which bind us together as a Commonwealth - with a common heritage. The Secretariat has been told by us, and our Heads of Government, on several occasions, that we do regard these matters as warranting priority. Priority means what it says! If there are constraints to our resolutions - let us examine them to enable an effective response.

Perhaps we must contemplate institutional changes within the Secretariat. We wonder if it is appropriate for the Commercial Crime Unit to function as a 'fly caught in amber' within the Legal Division. Perhaps there could be a new Criminal Justice Division subsuming the functions of the Commercial Crime Unit, mutual assistance in criminal matters programme, forfeiture of property associated with serious crime and whatever initiative we take in regard to drugs. We would like to see this done - as a matter of urgency. We all know that in many organisations the problems are often ones of institutions rather than initiative. Let us provide a proper vehicle before we criticise the drivers.

I feel somewhat qualified to speak so bluntly with my brothers from Hong Kong, Singapore, Bermuda, Zimbabwe, Kenya and others. We have been the staunchest supporters of the Commonwealth's initiative against economic crime. Zambia has been one of the main clients of the Commercial Crime Unit and indeed has seconded a senior officer of its Special Investigation Team (Economy and Trade) to Marlborough House. This has resulted in our awareness of both sides of the problem. Furthermore, our recent experience in Zambia has convinced us of the size and seriousness of the problem.

In Zambia we have been fortunate in that we do not have a drug problem. The country has, however, been used for the transit of huge amounts of Methaqualone (Mandrax) in tablet form emanating in Europe and India for ultimate sale in South Africa. Recently Zambia has played a preventative and effective role in cutting this supply line but we have been severely hampered by the inability to identify and confiscate the very large sums of money accumulated overseas from the sales of these drugs. It has to be recognised by us all that drug traffickers must not continue to benefit from their nefarious activities. The President of Zambia, His Excellency Dr Kenneth Kaunda has a deep hatred for the evils that stem from drugs. It is within the capabilities and resolve of the Commonwealth to take positive and resolute action by the enactment of suitable legislation and it is at this meeting that I hope the first real steps will be taken.

Since our independence in Zambia there have been fifty seven separate attempts by spurious lending houses, banks and individuals offering large sums and aid for projects within Zambia. Again, we have been fortunate in preventing many of them from coming to fruition. This has been achieved through the actions of our combined Customs Officers, the Police Force and Special Investigation Team (Economy and Trade) with very great support from the Commercial Crime Unit.

It must be recognised that countries which enjoy a free economy can take the time to bring the economic offender to justice. In Zambia, however, and I am sure in order developing countries, the situation is immediate. We cannot afford to allow even one of these individuals to succeed. Therefore, we must be more diligent in so far as the prevention role is concerned as this, for us, is much more desirable than protracted investigation and prosecution.

Offences against the economic order of a developing country are sometimes viewed by countries enjoying free economy as no more than contraventions of domestic regulations. They are certainly not viewed in the same light as international crime but if, in Zambia for instance, we were to allow the uncontrolled outflow of hard currency from our country the results would be disastrous. It must be recognised that economic crime in the ultimate has a much more damaging and far reaching effect on a country like Zambia than the readily identifiable crimes of robbery, thefts, etc. Once again, prevention is better than cure.

In all the circumstances what are we to do? We have a new scheme for mutual assistance in criminal matters and we are in agreement that attacking the assets of organised and serious crime is an important weapon. We are also dedicated to strengthening the initiative against commercial crime. But we are also bound to initiate action against drug traffickers.. Let us build upon our successes. I propose three inter-related programmes orientated to the long, medium and short term.

LONG TERM

We must immediately consider developing within our own domestic jurisdictions laws and procedures for effectively combatting serious organised crime and especially illegal trafficking in drugs. These laws should provide for the tracing, identification and seizure of property which is directly or indirectly derived from such crime. Such legislation should also specifically be able to accommodate requests for assistance from other jurisdictions - this is an international problem and we need to maintain an international perspective.

MEDIUM TERM

We should immediately explore the ways in which existing procedures both domestically and internationally can be refined and improved. Of course, many Commonwealth countries are already doing this but this is a process which needs to be encouraged at a Commonwealth level. The Commonwealth Secretariat could play a vital role in co-ordinating information and providing advice in this regard.

SHORT TERM

The mandate of the Commercial Crime Unit should be specifically extended to the co-ordination of inquiries relating to the assets of organised crime. The Unit - more adequately resourced - could provide a vital and unique role in collating data and co-ordinating inquiries into the laundering of illicit funds. It has a special and proven expertise in the area and stands in a unique position to be able to do this. It cannot be left entirely to Police Agencies as such inquiries are often beyond the jurisdiction and competence of the Police (as we have clearly recognised before and stated in our communiques). Building on experience in other areas the Unit could, in appropriate cases, convene a 'task force' of officers from different relevant Commonwealth agencies on an ad hoc basis to pursue a particular operation. The Unit would provide an essential Secretariat and liaison function ensuring continuity and expertise. This has already been done in the field of economic crime and to apply the same approach to drug traffickers would be an immediate and positive step. The Unit could co-ordinate action against such assets using, when appropriate, whatever resources a particular jurisdiction has available - both in the civil and criminal law. In many cases it is possible to seize and forfeit such property through civil rather than criminal procedures.

Although perhaps contraversially, I would also raise the impending need for the Commonwealth to develop urgently a facility for monitoring any economic sanctions to be imposed against South Africa. We need to be ready for such a development. The Secretariat may be the obvious place to make a start through the Commercial Crime Unit.

Perhaps I have spoken too long - but what could be more important than the security and peace of our own nations. We are discussing matters which directly challenge the very institutions and ideals we as lawyers must stand and protect. We must not allow our words and resolutions to carry on unheeded. We are not alone in our resolve. Commonwealth Ministers of Finance meeting last year have similarly recognised the need for co-ordinated and effective Commonwealth action. We have now been bidden in clear terms by our Heads of Government. Let us not be found wanting.

If we are agreed that we fight these evils - let us today give specific instructions to the Secretariat for our resolutions to be implemented without delay.