

CRIMEWATCH

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RECENT CONFERENCES/MEETINGS/DISCUSSIONS

OAS Anti-Drug Group meets and agrees to strengthen National Drug Control Commissions and convene experts group on anti-laundering - October 17-20 1995, Washington, D.C.

During October 17-20, 1995, the Inter-American Drug Abuse Control Commission (CICAD) met at its 18th regular session in Washington, D.C., where it decided to strengthen the National Drug Control Commissions (for example, through workshops, international co-ordination and centralisation of statistical data) and to take further action to combat money laundering (through policy seminars and training courses). Participants included the 31 OAS members, 8 Governments as observers and also representatives of various international and non-governmental organisations.

Asia Money Laundering Symposium, Tokyo, 12-14 December 1995.

Representatives of 31 jurisdictions attended this Symposium which was organised jointly by the Financial Action Task Force (FATF) and the Commonwealth Secretariat and supported by the UNDCP.

The Symposium heard reports from the various jurisdictions about progress on the enactment of anti-money laundering legislation since the last symposium and noted that a number of jurisdictions were in the process of enacting legislation. Interpol, IOSCO and the UNDCP also briefed the Symposium on their respective activities.

The Symposium gave general support to the creation of the Asia/Pacific Group on Money Laundering. The purpose of such a steering group would be to:

1. provide a focus for anti-money laundering efforts in the region;

2. provide a means by which regional issues can be discussed and experience can be shared, and in particular, facilitate, through exchange of information, the study and analysis of the problems caused by money laundering, taking into account the way in which illegal proceeds are handled and the criminal realities in the region;
3. encourage the adoption, throughout the region, of international anti-money laundering standards;
4. provide a means by which regional factors can be taken into account in the implementation of international anti-money laundering measures; and
5. co-ordinate or provide practical support, where possible, to countries in the region who request it.

The Symposium generally accepted the recommendations of the Hong Kong working group on money laundering methods which are outlined in the Report of the Disposal of Proceeds of Crime - Asian Money Laundering Methods Workshop, Hong Kong 17-18 October 1995 (see below).

Report of the Disposal of Proceeds of Crime - Asian Money Laundering Methods Workshop, Hong Kong 17-18 October 1995

The main aims of the workshop were to bring together knowledgeable law enforcement officers from the Asia region in order to identify the current ways in which proceeds of crime are used or laundered and to determine any emerging trends or patterns within or between jurisdictions in the region. Their recommendations on money laundering methods were as follows:

- all jurisdictions accept the need for an annual collection and collation of methods of money laundering occurring within their jurisdictions;
- all jurisdictions accept the need for regular periodical review of methods of money laundering occurring within the Asia/Pacific region as a whole;
- the FATF Asia Secretariat be tasked with ensuring that such regular periodical review does occur; and
- that all jurisdictions recognise the importance of the financial sector in identifying money laundering methods and trends and the need to actively involve the financial sector in this task.

The European Commission (January 1996)

Action plan to fight fraud:

An ambitious action plan to strengthen the fight against fraud was launched by the European Commission recently. It includes proposals for spot checks by EU and national inspectors, criminal liability for money launderers, help to establish national anti-fraud units and the screening of new and existing EU laws to ensure that they are fraud-proof.

Informal Justice and Home Affairs Council:

EU ministers discussed a draft declaration against organised international crime. The delegations approved the idea of such a declaration which outlines measures to improve intelligence work and co-operation between customs and police. Member States were asked to ratify the Europol convention as soon as possible. The informal Council took note of the growth in co-operation with third countries in the field of justice and home affairs.

Second World Police Congress - Santiago, Chile 3-6 October 1995.

The Second World Police Congress was held in Santiago, Chile from 3-6 October 1995. This event was attended by representatives and members of 33 police institutions from 27 countries.

The meeting was essentially a response to the world's urgent need for improved communications that can help combat organised crime more effectively and forge a common front against the dangers facing society today and tomorrow.

LEGISLATION

Organised and Serious Crime Ordinance (Hong Kong - Ord. No. 90 of 1995)

This Ordinance creates new powers of investigation into organised crimes and certain other offences and into proceeds of crime of certain offenders; it provides for the confiscation of proceeds of crime; makes provision in respect of the sentencing of certain offenders and creates an offence of assisting a person to retain proceeds of crime.

RECENT PUBLICATIONS

Narcotics Interdiction at sea. The 1995 Council of Europe Agreement (William C Gilmore - Marine Policy, Vol 20, No. 1 pp 3-14, 1996).

Dr Gilmore's article considers the legal implications of a recent Council of Europe Multilateral Agreement on the interdiction of vessels engaged in drug trafficking activities in international waters. The article examines the close connection between the European Agreement and the 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Special attention is paid to developments relating to action against stateless vessels, measures taken at the request of the Flag State and the concept of preferential jurisdiction where law enforcement activities are initiated by one party with the prior consent of the Flag State. Issues relating to the matter of compensation are also discussed.

Anti-Money Laundering Laws and the Quasi Banker: A Report on Alternative Banking in Australia - Stephen Carroll, research assistant for the Director of the Australian Transaction Reports and Analysis Centre (AUSTRAC), June 1995.

Alternative banking systems around the world have increased in importance as governments make efforts to implement anti-money laundering legislation as recommended by the FATF.

This publication examines the use of alternative banking in the context of a competing service of overseas funds remittance and also contains accounts of the experiences of law enforcement, revenue and regulatory agencies, both in Australia and in Hong Kong. It considers alternative banking in a historical context (Hawala, Hundi Ho-Hui etc.), the Australian experience, investigative problems and certain relevant case studies.

BOOK REVIEW

Title: A Practical Guide to Identifying Advance Fee and Prime Bank Instrument Fraud

Author: Alistair Walters

Publisher: Sweet & Maxwell, (published in 1995)

Recent years have seen a serious increase in the occurrence of sophisticated fraudulent schemes based upon advance fee and prime bank instrument transactions. The use of offshore entities, together with the ease with which fraudsters are able to transfer funds across international boundaries and the inability of the authorities to act fast enough once the stolen funds have started moving, have made it all the more difficult to trace the fraudsters.

Alistair Walters' book therefore, is welcomed as a valuable contribution to the task of identifying and preventing frauds based on advance fee and prime bank instrument schemes. The book introduces its subject matter by defining with clarity what is meant by "Advance Fee" Fraud and "Prime Bank Instrument" Fraud. It discusses the civil rights and remedies available under English law (including recovery of funds and practical steps) and the criminal offences under English law (for example money laundering, fraud and conspiracy to defraud and the relevant legislation). In addition, jurisdictional problems are considered in outline. The book also contains some useful case studies and fraud checklists. It is intended to be a practical guide and by setting out how such frauds may be detected and prevented, hopefully the fraudsters' work will be made much more difficult and the number of fraudulent transactions will be reduced.

Lawyers and those involved in business, finance and crime prevention will find this guide both clear and informative.

CASE NOTES

Importation of drugs - use of undercover officer and customs officer as courier - enticement of defendants to United Kingdom - admissibility of evidence of undercover officer - whether abuse of process.

S.170(2) of the Customs and Excise Management Act 1979 (the 1979 Act) provides: "..... if any person is, in relation to goods in any way knowingly concerned in any fraudulent evasion (b) of any prohibition for the time being in force with respect to the goods, he shall be guilty of an offence."

An informer, H, employed in Pakistan by the United States Drugs Enforcement Agency, came to know suppliers of heroin. He was then introduced to the second appellant S who asked H to arrange for a quantity of heroin to be carried to London where either S or someone on his behalf would then collect the drugs. The drugs were carried to England

by B, a British Customs and Excise Officer, who was apparently acting with the knowledge and approval of his superiors. H came to England and was installed in a hotel by the Customs and Excise Department.

H then tried to persuade S to come to England to take delivery of the heroin. Eventually S and L came to England. Both were arrested when a customs officer delivered bags to them apparently containing heroin. They were convicted.

Their appeal was dismissed by the Court of Appeal.

The House of Lords in dismissing the appeal, held:

1. That the luring of a defendant from Pakistan into the United Kingdom, by an informer and customs officers, involving the commission by a customs officer of a statutory offence, had not been an abuse of process, amounting to such an affront to the public conscience that criminal proceedings should be stayed.
2. That as a result of the intervention of a customs officer, the defendants had not been guilty of the offence of fraudulent evasion of the prohibition on the importation of controlled drugs, but they had been guilty of acts that were more than merely preparatory to the commission of the offence and the court had jurisdiction over such criminal attempts.

R v Latif & Shahzad, House of Lords, The Times January 23 1996.

(N.B. The Court of Appeal decision in this case was reported in Crimewatch, Issue 6, April 1995).

Confiscation order - restraint order application to vary restraint order to pay legal fees - whether monies should be released.

B was convicted of certain offences under the Drug Trafficking Offences Act 1986 and a confiscation order in the sum of £189,895 and restraint order were also made. An application was made by B to vary the restraint order to pay for legal fees and in fact give unlimited access to his property.

It was held:

1. That some monies should be released as it was a matter of principle that an applicant should spend his own monies in litigation proceedings rather than be legally aided.
2. That B's legal expenses needed to be properly planned and controlled and a plan must be produced to indicate this. However, B must not be artificially limited by the restrictions placed on expenditure under the Legal Aid Scheme.

Barham (Edward John Fredrick). (In the matter of the Drug Trafficking Offences Act 1986), (Re DTOA/12/95) March 22 1995, Owen J. Unreported.

Sentencing guidelines - Ecstasy drug - criteria.

W had pleaded guilty to two counts of being knowingly concerned in the fraudulent evasion of the prohibition on importation of 1,011 Ecstasy tablets. B also pleaded guilty to one count of illegal importation of 1,588 Ecstasy tablets.

It was held:

That the same criteria which applied to heroin and cocaine should also apply to Ecstasy, that is, consideration must be given to the weight of the drug rather than its street value (street value should not be the sole determining criteria in deciding the level of sentencing, since the lower the value, the lower would be the level of sentence).

Their lordships emphasised that the criteria used were only intended to be used as guidance and that the quantity or weight of the constituent drug was only one factor in determining the appropriate sentence. Other factors such as the role of the alleged offender, his plea etc. were also to be taken into account.

R v Warren & R v Beeley Court of Appeal, The Times July 4 1995.

Drug trafficking - illegal importation - confiscation orders - court entitled in later proceedings to order confiscation.

Between 1970 - 1979 T had dealt extensively in cannabis importations. He had been arrested in 1979 but managed to abscond and was re-arrested in 1986 when he was sentenced to six years imprisonment and fined the amount he had in his possession on re-arrest.

The 1986 conviction preceded the Drug Trafficking Offences Act 1986 and no assessment of the benefits from his drug trafficking between 1970 and 1979 had been made in respect of the 1986 sentence.

For his own purposes, he on oath, admitted that he had benefitted between 1970-1979 to the extent of more than £11.5m from drug trafficking. In 1994 he was convicted of conspiracy to evade fraudulently the prohibition on importing cannabis and was sentenced to ten years imprisonment with a confiscation order of over £15m, which included the 1970-1979 benefits.

In this case the main issue was whether the trial judge in 1994 was entitled when making his confiscation order to take into account the earlier benefits.

S.38(1) of the 1986 Act provides that "drug trafficking" meant doing or being concerned in doing various specified acts in relation to controlled drugs.

T appealed against the £11.5m part of the confiscation order on the ground that the order was retrospective and excluded by S38(4) of the Act, because it related to proceedings against a person for drug trafficking offences instituted before the commencement of the section.

In dismissing that argument, it was held:

That S.38(1) distinctly differentiated between drug trafficking and drug trafficking offences and that the court was entitled (under S.2(5)) to make a further confiscation order in respect of benefits not covered by the earlier order and that S38(4) did not operate to prohibit the order made in the present case.

R v Taylor (Ronald) Court of Appeal. The Times December 7 1995.

Guinness - no unfairness - trial evidence - arising out of interviews by inspectors from the Department of Trade and Industry.

The Appellants had each been convicted in 1990 on an indictment containing counts of conspiracy, false accounting and theft.

The main broad ground of appeal arose from the circumstances in which the Department of Trade and Industry (DTI) inspectors rather than the police were allowed to interview the Appellants a number of times and from the admissions in evidence of the transcripts of those interviews.

It was argued on behalf of the Appellants that since the inspectors were not obliged to conduct their interviews under caution or otherwise in accordance with the terms of the 1984 Police and Criminal Evidence Act, once it became apparent that a criminal offence had or might have been committed, the police should have been brought in and the interviews should have been then been conducted in accordance with the Police and Criminal Evidence Act 1984 (S.66) Codes of Practice. It was then argued that reliance by the prosecution on the transcripts amounted to an abuse of process.

Alternatively, it was argued that pursuant to S.78 of the 1984 Act, the trial judge ought not to have admitted the transcripts in evidence, since S.78 provides that: "In any proceedings the court may refuse to allow evidence on which the prosecution proposes to rely to be given if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it."

The Court held:

That there was no unfairness in allowing the use in a criminal trial of evidence arising out of interviews conducted and that there was no abuse of process.

R v Saunders; R v Parnes; R v Ronson; R v Lyons. Court of Appeal, The Times November 28 1995.

Republic of Vanuatu - international fraud - bogus shell companies - reputation as financial centre - sentencing.

The case concerned a well-planned and organised international fraud, with links in South America, Turks & Caicos Islands, Singapore, New Zealand, Australia and Canada. Large amounts of money had been invested in creating bogus companies around the world. A number of people lost considerable amounts of money by "investing" in the shares that

were on offer, through the defendants who acted as salesmen.

It was held:

That although the salesmen were not the initiators of the fraud, they were an essential part of it. (The judge, in passing the sentences, added that the offence could have serious effect on the economy of Vanuatu, undermining the confidence of foreign investors in the country, if it were thought that Vanuatu tolerated such blatant dishonesty and that Vanuatu must preserve its reputation as a safe and reputable place to invest.)

Public Prosecutor v Singh, Luftspring and Rhodes. Criminal Case No. 37 of 1994 (29.9.1994). (Vanuatu).

Hot Pursuit - 1958 Geneva Convention - 1982 United Nations Convention on the Law of the Sea - 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances

The M.V. Pacifico (flying the Cypriot flag) was seized and its crew arrested in international waters by the Canadian authorities.

The Prosecution argued that the Canadian authorities were in hot pursuit of the Pacifico and that under customary international law, it was authorised to board and seize the ship. It argued that it had satisfied itself at that time that the Pacifico had acted as a mother ship in the transportation of a large quantity of cocaine which was then off-loaded onto another smaller vessel just outside the 12-mile limit off the Canadian coast and that the drugs were then transported to shore by the smaller vessel.

Upon arrival at the port of Halifax, Nova Scotia, a consent was sought and obtained from the Government of Cyprus to board and search the Pacifico. Search warrants were obtained to search the vessel too. A number of items were seized aboard the vessel as well as from the person of the captain.

The accused argued that the Canadian authorities had no jurisdiction to stop and seize the Pacifico and that all items seized were therefore illegally seized.

The Court held:

1. That the seizure of the Pacifico on the high seas, outside the Canadian territorial waters of Canada was not an illegal act considering the circumstances which prevailed at the time.
2. That there was no abuse of process and that the Pacifico was properly arrested in international waters under the terms of the Geneva Convention and the UN Convention on the Law of the Sea.

The Court also referred to the case of *R v Mills* an unreported decision of the English Circuit Court. (See Crimewatch Issue No. 9, December 1995 which contains a reference to an article written on this case.)

Her Majesty The Queen v Jürgen Kirchoff in the Court of Queen's Bench of New Brunswick, Trial Division, Judicial District of Bathurst. Date of Oral Decision: October 16, 1995 (Canada).