



FOREWORD by Ian Pearson
Security Minister and Chair of The Organised Crime Task Force

In March 2002 the Government appointed Professor Ronald Goldstock to provide an international perspective on the problem of organised crime in Northern Ireland. In particular he was asked to report on the effect that this activity has in hindering the transition to a responsible civic society. Professor Goldstock reported to the Secretary of State, in January 2004 with recommendations for tackling the problem.

I am pleased to publish Professor Goldstock's report, in full, and the Government's response to the recommendations that he has made.

Among the areas which Professor Goldstock, drawing on his international experience has addressed, are the requirements for achieving cross-community support for the fight against organised crime and investigative and legislative developments which may be used against the criminals.

The Government has given very careful and detailed consideration to Professor Goldstock's conclusions and recommendations. The vast majority of these are either already in place or are being taken forward locally by Law Enforcement Agencies and Government Departments. A number are being advanced through national considerations with proposals contained in the Home Office White Paper "One Step Ahead – A 21st Century Strategy to Defeat Organised Crime" published by the Home Secretary in March 2004 and the proposed Serious Organised Crime and Police Bill. A few are still undergoing analysis and the Government has rejected two as not being workable alternatives.

Professor Goldstock has made an important contribution to the fight against organised crime in Northern Ireland and I congratulate him on the thorough way in which he has undertaken this project. Tackling organised crime is a priority area for this Government and the expert advice and analysis of Professor Goldstock will no doubt allow us to be much better equipped to adequately address the problem.

There are, however, no quick-fix solutions from the challenges posed by organised crime. It requires a resource intensive and long-term commitment. The contribution of Professor Goldstock is an important element in our continuing campaign to rid this evil from our streets.

**ORGANISED CRIME IN NORTHERN IRELAND
A REPORT FOR THE SECRETARY OF STATE AND GOVERNMENT RESPONSE**

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Professor Ronald Goldstock

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ORGANISED CRIME IN NORTHERN IRELAND

1. Critical Requirements for Achieving Cross-Community Support

- 1.1 I have not, except in passing, attempted to describe the organised crime activities that present a problem for Northern Ireland. The reports of the Organised Crime Task Force have done so in a comprehensive and thoughtful manner, and I have not presumed to revisit its work. What follows instead is a wide range of approaches that may be taken to deal with those problems, from legislative reform to innovative investigative techniques to the application of non-traditional remedies. Many are technical in nature, that is, they can be achieved once there is the political will or bureaucratic impetus to do so.¹ The implementation of others is a matter more of art than science and requires the development of new skills, cultural change in law enforcement, practice and refinement.²
- 1.2 But I believe that the development of cross-community support for any or all of them requires more -- nothing less than a fundamental change in how law enforcement and other governmental agencies are viewed by all of the citizenry and whether the programs in which they engage are seen to be fair, neutral and effective by the population as a whole. Cross-community support requires a rejection by both traditions of the paramilitaries as having any legitimacy or as those groups serving as the default vehicle for the delivery of governmental or non-governmental goods and services.³

1 An example might be the adoption of the Independent Private Sector Inspector General Program that is discussed below.

2 A single prosecution of individuals who have banded together for criminal purposes might, for example, require not only the use of sophisticated means of investigation, but a new and different approach in the presentation of evidence to a jury that would not only need to be authorised by lawmakers but used by prosecutors and accepted by judges.

3 Note that "delegitimation" of such groups by depriving them of the ability to perform quasi-governmental functions (i.e., dispute resolution) is seen as critical in other countries faced with an endemic organised crime problem. See, for example, Letizia Paoli, *Mafia Brotherhoods of Organised Crime, Italian Style* (2003).

- 1.3 That analysis is hardly lost on the various organised crime paramilitary groups; they clearly recognise that they benefit when sectarian violence continues, and they stand to benefit even more when it escalates. In the most basic sense, violence drains police resources that could otherwise be used to investigate or control organised criminal activity. But, perhaps more importantly, such resources could be used to provide police protection and services within the communities, services that now, in the absence of a sufficient police presence, are frequently performed by the ideological arm of the criminal groups.⁴ And, as sectarian violence increases, with people fearing the possibility of a return to the time of the troubles, they will tend to see those same groups as their future protectors and be hesitant to work with legitimate authorities to speed their demise.
- 1.4 Thus, cross-community support depends in large measure on the reduction of sectarian animosity and violence, the reduction of any legitimacy claimed by the paramilitary organisations, and the increased ability by the government to provide services in an effective and neutral manner. It is difficult to believe that this can be done in the context of a continuation of the symbols that on a daily basis work to reinforce the ideas of separateness, proprietorship of turf, and the authority of the sectarian organisations. As long as groups have the defacto privilege to colour communal rights of way, paint or maintain aggressive or sectarian murals on walls, fly provocative flags over thoroughfares, place symbols at the entrance to housing estates, and notoriously and consistently assume the right to establish similar indicia of ownership over public property, legitimate governmental power will be seen as merely secondary. Just as criminals cannot be seen by the citizenry as flaunting their ill-gotten gains in the face of law enforcement inaction, governmental inaction in the face of conduct that would be unacceptable in any other part of the UK, can only lead to an acceptance of the power of paramilitaries and the perceived inevitability of their continued existence.

4 In my letter of September 15, 2002, I noted: Frustration occurs when the police cannot, or do not, immediately respond to calls for assistance from the public. In most places, since the police have monopoly power, there is little that the citizenry can do other than complain to their elected officials. In many Northern Ireland communities, there are, in fact, competitive enterprises having the capacity and will to provide immediate assistance and to resolve problems. And given that paramilitary groups have no qualms about using force, and are not constrained by due process or the ECHR, their assistance is particularly effective. Each time the police fail to immediately respond, and the paramilitaries do, another debt of gratitude is owed to them. The phenomenon is hardly novel; the opening wedding scene in *The Godfather* recognised similar advantages enuring to criminal groups with that capacity.

2. Premises of Analysis

The analysis of the problem and the adoption of the recommendations that follow flow from relatively few premises:

- control of organised crime requires governmental intervention in both the activities in which organised criminals engage and the organisations to which they belong;
- in Northern Ireland, the most consequential of those organisations are those which grew out of the sectarian paramilitary traditions and whose membership and structure are similar to them. Paramilitary organised criminal groups are structured so as to protect the hierarchy of the organisation from direct involvement in criminal activities, thus insulating them from traditional techniques of law enforcement. Such organisations are particularly effective in intimidation because of the atrocities in which paramilitary groups engaged during the time of the troubles. Those terrorist activities also resulted in connections with criminals and criminal organisations outside the province and country;
- organised criminals engage in purely predatory crimes and/or they otherwise provide illicit goods or services. In short, they run businesses – businesses that need to operate, more or less, on a timetable, that need to procure, process, and distribute commodities, that require communication and record keeping, and that utilise the services of professionals or professional institutions; and
- a war of attrition that seeks to prosecute and incarcerate one member of a group at a time is doomed to fail; what is required is the design and implementation of comprehensive strategies by law enforcement together with others possessing the additional requisite skills. Integral to such an effort is the availability of appropriate investigative and prosecution tools, the ability to engage in institutional and structural reforms, and the legal acceptance of other desirable remedial actions.

3. Strategic Thinking

3.1 Seventy-five years ago, a sociologist named John Landesco explained that:

“One reason for the failure of crusades against crime and vice is they ... are seldom or never based on a study of the problem. What is needed is a program that will deal with the crime problem in detail and consecutively, that is, by analysing the crime situation into its different elements by taking up each crime situation separately and one by one working out a constructive solution”.⁵

3.2 While few in law enforcement around the world have understood or acted on that insight, it is a central feature of the philosophy and operations of the Organised Crime Task Force. For this Northern Ireland ought to be justly proud. Yet because the operational entities that compose the Task Force tend to be police agencies (including Customs and Inland Revenue), the range and implementation of strategic thinking, in relation to the development and of control strategies, tends to be limited.

3.3 The most obvious component missing from the development of control strategies in Northern Ireland is the participation of the legal community – both prosecutors and civil attorneys. In NI government the DPP and CSO represent the two respectively.

3.4 Perhaps, nowhere in the UK, or even throughout the world is the NI prosecutor as independent of the police in the investigative stage of the criminal process. This may be one more result of the troubles where the DPP feels a particular need to demonstrate publicly that that office is completely objective in determining whether to bring a prosecution. But no matter what the reason, strategic thinking proceeds without prosecutorial input. The DPP’s decision to participate in LOAG does, however, provide reason to believe, that that Office might consider participation in strategic planning to be different than participation in individual investigations. The reason the CSO has not been a part of the process (although recent efforts have been made to change that), is that traditionally, the use of legal remedies outside of prosecution have not been viewed as legally viable or potentially rewarding. That view, although widely held, is almost certainly wrong.

5 Organised Crime in Chicago, University of Chicago Press, 1929.

- 3.5 For example, in recent years, civil forfeiture has been seen to be a highly effective remedy. Government regulation including the imposition of anti-money laundering provisions is also widely accepted. But other lesser known approaches may prove equally beneficial including private civil litigation.⁶ As an example, when the government is the victim of fraudulent, criminal, or corrupt activities, it can generally seek monetary compensation for its injury or loss, like any other victim. Thus, a business that houses illegal gambling machines may be sued for illegally competing against legitimate institutions. The mere costs of defending such a suit may be a greater deterrent than more traditional approaches of control. Other potential remedies are discussed below.
- 3.6 Organised criminals engage in particular types of criminal activity because they are able to do so and because, by doing so, they can extract profits, and other racketeering advantages. The ability to carry out the crime relates to the activities' "racketeering susceptibility," the ability to make money and otherwise take advantage of the conduct is a function of its "racketeering potential." Examples of each are set forth in succeeding paragraphs. Organised criminals may not undertake the analysis of racketeering susceptibility and potential – they may find themselves, by default, operating successfully only in those areas where both are high. Law enforcement, on the other hand, must do so in order to determine how to best reduce the likelihood of successful criminal activity.
- 3.7 Perhaps Northern Ireland, being the only part of the U.K. with a land border, provides one of the best examples of this phenomenon. "Racketeering susceptibility" is high because of the relative ease in which organised criminals can move fuel from the Republic into the North. Porous borders, the movement of large numbers of trucks increase this "racketeering susceptibility", and the conflicting demands placed on law enforcement. "Racketeering potential" is high because of the differential in the cost of fuel as a result of the different taxing policies of the two countries, availability of unregulated stations willing to purchase untaxed fuel, the ability of wholesalers and retailers to pay for the fuel through front corporations and businesses, and a public that seeks lower prices. Clearly, "racketeering potential" will be decreased in direct proportion to the reduction in the difference between the two tax rates. It may be that only negotiations with the Republic can effect that

6 Note in this regard the action of a number of victims of the Omagh bombing who have sued the individuals believed to be responsible "because of slow progress by the police who have brought only one successful prosecution connected to that attack. The civil case the victims are pursuing requires a lower standard of proof..." The Sunday Times -- Britain, July 28, 2002. Indeed, the attorney for the plaintiffs suggests that such a suit could be brought against paramilitary members and their organisations "on behalf of people who have been victims of punishment shootings or beatings." The RICO act in the United States encourages such civil suits by rewarding successful plaintiffs with treble damages when it has been shown that the defendants engaged in a pattern of criminality. Indeed, the concepts of multiple damages for certain kinds of unlawful practices and of giving the public an interest in seeing statutes are enforced has deep roots in English law. See, 4 William Holdsworth, A History of English Law 335 (3rd ed. 1945).

change, but clearly that should be considered. This is particularly the case when the differential in the tax rate for heating oil results in reverse smuggling and where compromise on the two taxes would benefit both sides.

- 3.8 Another, related, example is the laundering of red dye fuel – fuel that is designed for agricultural use at a reduced cost. Here potential is dependant upon the cost reduction – one that could be eliminated by utilising tax rebates on the amount of fuel used for a statutory purpose rather than on the artificial creation of a second type of fuel. The same analysis could be used to determine a range of appropriate responses to the number of cash-in-transit robberies resulting from the practice of individual banks in Northern Ireland issuing, collecting, and redistributing their own bank notes.
- 3.9 But to seriously consider such ideas, or to even formulate them in the first place, the participation of the regulators or other governmental officials with expertise and oversight in those areas may be necessary. Indeed, specialised skills normally found outside law enforcement agencies, frequently in academia, will also be required including consultation with economists, sociologists, loss prevention specialists, historians, political scientists, labor relations experts, and others with expertise in particular industries.
- 3.10 The Organised Crime Task Force should be expanded to include such a diverse group in order to “analyse [e] the crime situation into its different elements by taking up each crime situation separately and one by one working out a constructive solution.”

4. Investigative Planning

4.1 PSNI, in pursuing its investigative role in the context of OCTF's racketeering susceptibility and potential analyses, must think strategically as well. That can best be done by a multi-disciplinary team composed of individuals with investigative, analytic, forensic accounting and legal skills, who would design and implement (with others) an investigative plan. Interestingly, PSNI is one of the few organisations that have such individuals in-house. It has also adopted the UK National Intelligence Model, adopted by other UK Law Enforcement Agencies, should greatly assist with its strategic planning capability.

4.2 The investigative plan would likely be formulated in a four-step process.

- **Investigative Predicate.** The team initially would conduct a broad-based assessment of the factual context in which the proposed investigation was initiated. This process may require the review of information from a number of sources, including law enforcement (intelligence and evidentiary), public records, databases, etc. The analyst would be particularly helpful in gathering such information and putting into a useful form;
- **Statement of Goals.** The goals of the investigation should be articulated and appropriate potential remedies identified. This may include prosecution, but also, asset recovery, civil remedies, etc;
- **Review of Investigative Alternatives.** This is perhaps the most difficult part of the process, flowing, as it must, from the first two steps. Individualised procedures should be employed given differing circumstances and modified as new information is obtained.; and
- **Identification of Legal Issues.** A proper assessment of investigative alternatives will normally require a concomitant evaluation of legal issues likely to arise during the investigation. Accordingly, the team must make an effort to anticipate and resolve any legal issues that might jeopardise a successful investigation, prosecution, or other remedial action.

Investigators

4.3 The existence of syndicates that engage in a variety of ongoing conspiracies necessarily requires a law enforcement response against the organisation (or those that comprise and direct it), not merely against those who commit discrete crimes or even engage in a limited conspiracy. However obvious this may seem, it is rarely the approach used. Legal rules are often created, or interpreted, to limit the information that a jury may acquire so that the relationship of crime to crime or criminal to organisation is not only seen as irrelevant, but prejudicial. Police units have traditionally been structured in a manner designed to investigate the commission of a known offence so as to conform to that principle.

- 4.4 This may be best seen in the experience of the United States. After a half-century of law enforcement frustration in combating organised crime through an unsuccessful war of attrition, Congress passed the Racketeer Influenced and Corrupt Organisations (RICO) Act.⁷ In the thirty years since its enactment, RICO has been seen as the major prosecutorial tool that has led to the mob's dramatic decline.⁸ What has been rarely perceived, was the effect of the act on the police (including the FBI) in the investigative stage.
- 4.5 Among other provisions, the RICO Act makes it illegal for persons to conduct the affairs of a legal enterprise or criminal organisation through the commission of a series of already defined crimes. Thus, while RICO does not make it illegal to do anything that was not previously illegal, it shifted the investigative (and prosecutive) focus from the notion of conspiratorial agreement to the concept of the enterprise or organisation. Indeed, RICO required that the attention of law enforcement be placed on the organisation; investigators needed to acquire evidence to prove the existence of the enterprise, its structure, its composition, and the criminal activities that its members perpetrated or regulated. As a result, the internal organisation of law enforcement investigative units evolved to meet those demands.
- 4.6 It may make sense to consider a RICO-type act for the UK – or at least for Northern Ireland.⁹ Many states within the US followed the federal lead when the success that flowed from the use of RICO became apparent – passing what have been termed “baby RICO's.” I have little doubt that it would be a valuable tool here as well. But, even in the absence of RICO as a prosecutive statute, relying on existing conspiracy laws (including the UK's ability to prosecute multiple conspiracies in a single instrument), PSNI should seek a means to focus attention on syndicates in addition to individual acts of criminality.
- 4.7 Team investigators (and analysts, see below) should be selected for their expertise in the area of the teams' focus. That suggests two major areas of expertise – organisations and activities. This bifurcation is always a challenge in constructing a structure for the organisation and there is not necessarily an obvious or single, correct answer. The current state of the organised crime problem in Northern Ireland suggests, however, that teams directed at both organisations and activities might be prudent with an organised crime coordinator ensuring that the information obtained by one team that has significance for another is appropriately shared. Thus, an extortion team and narcotics team might well supply information to an “X gang” team that is engaging in both extortion and drug dealing.

7 18 U.S.C. 1961 et seq.

8 See e.g., President's Commission of Organised Crime: The Impact: Organised Crime Today, pp.133-4 (1986).

9 For the basic data on the implementation of RICO, see G. Robert Blakey and Kevin Roddy, Reflections on *Reves v. Ernst & Young*, 33 Am. Crim. L. Rev. 1345, Appendix C pp 1612 et seq. (1996).

Prosecuting Attorney

4.8 While, in theory, the legal advisor to the Chief Constable possesses the skills necessary to the success of this process, given his numerous other responsibilities, participation in other than a pilot project would appear problematic. Also problematic is the fact that in Northern Ireland, criminal cases are investigated by the police, who then make a referral to the DPP. Frequently after review by the DPP, instructions will flow back to the police, resulting in a second referral and then, potentially a third. If a complex case is ultimately accepted for prosecution, counsel would normally be instructed – requiring yet a new person to master the facts and law. With such inefficiencies built into the system, the length of time between arrest and trial is, thus, often substantial, a factor that is almost always beneficial to the defendant.

4.9 This issue has not been lost on others who have looked at the problem in other contexts. Perhaps, the most thorough analysis was undertaken in the Roskill [Fraud Trials Committee] Report which found that with respect to complex frauds;

“We consider it essential that the team of specialists involved in any substantial fraud investigation, including investigations by the Inland Revenue or Customs and Excise, is given expert direction by one or two highly skilled lawyers. Unless advice of high quality is available from the outset of investigations of this type, the inquiries will be slowed up and valuable time may be wasted pursuing the wrong lines of inquiry. It is undesirable that the investigation should take one course and for that course to be found not to be the right one by counsel who is brought in to prosecute only at a much later stage, perhaps after the case has been committed. Counsel who is appointed during the investigation stage should be the counsel who is to conduct the case at any subsequent trial so that the same person who has given the inquiry direction will be involved in the presentation of the prosecution. A considerable advantage of involving counsel from the beginning is that he will have had the opportunity of becoming familiar with the case and less of his time will be taken up at the stage when the case is being prepared for trial. It may be said that the police already receive adequate legal advice, when it is required, from the DPP. We do not believe, however, that there are sufficient members of the legal staff in the DPP's Department with the necessary ability to carry out the kind of directional work which is required in these cases. We are, of course, aware that counsel's time is more expensive than a departmental lawyer's time, but as it has been shown to be the case in the past, the result of employing counsel at an early stage is a speedier and better targeted investigation, any additional expense would therefore be money well spent. For these reasons, in appropriate cases of substance and complexity, we attach considerable importance to the appointment of competent counsel on the initiative of the Case Controller soon after the suspected fraud comes to light. Since the police can only go to counsel through the DPP (or other prosecuting solicitor), it is all the more necessary that the police consult with

the DPP as quickly as possible after the initial discovery of fraud, so that a decision whether or not to bring in counsel can be made quickly.” [2.68]

- 4.10 To the extent that the DPP believes that it is inappropriate to have members of that office participate in the investigative stage and then prosecute any resulting indictment; the recommendation of the Roskill Committee makes eminent sense and should be followed.¹⁰

Civil Attorney

- 4.11 While no such concerns appear to exist within the Crown Solicitor’s Office (CSO), the issue of whether an attorney may be assigned to the police without compensation to the CSO should be resolved. Civil attorneys may prove critical to achieving success because of the unique advantages that the civil process has when compared to the criminal. A verdict in civil cases is determined on a balance of probabilities rather than the “beyond reasonable doubt” standard in criminal cases; rules of evidence tend to be less archaic and onerous in civil proceedings than in criminal trials;¹¹ and unanimity (or super-majority) of the jury is not a requirement in a judge-tried civil matter. Perhaps more importantly, the range of remedies in civil remedies is broad and may be specifically designed to achieve a particular purpose.¹²

10 In my earlier letter, I noted that, in many ways, the factors that led to the creation of the Serious Fraud Office would equally justify the creation of an “Organised Crime Control Office.” “They include: complexity, conspiracy, secrecy, the volume of evidence involved in proving a case and the means by which it need be obtained, the need for special skills including forensic accounting, and the necessity for advise and participation of prosecuting counsel during the investigative phase.” Having an Organised Crime Control Office in Northern Ireland would also provide some degree of competition within a law enforcement community that is largely monopolistic. While the current structure does clearly produce some efficiencies, as in the marketplace, the long-term result may well be complacency, lack of innovation, and decreased responsiveness to “consumers.” Nevertheless, it is my opinion, at least for the time being, that a proposal for Organised Crime Control Office should not be made in this report. A recommendation urging the creation of such an office would face a significant degree of opposition and, I believe, the advantages of such an office might well be achieved by acceptance of the other recommendations made in this report. It is also possible that PSNI can, through the design of internal organisational structures, create constructive competition within the service and with other U.K.-wide agencies. The notion of an Organised Crime Control Office in Northern Ireland can always be revisited in the future.

11 As concluded by the Roskill Commission in recommending changes to limitations on the introduction of evidence in criminal cases. (5.7, p.65)

12 It has been pointed out that some benefits of the civil process may not always be available in seeking civil remedies. For example, in *Clingham v. Kesington & Chelsea LBC*, 2003 1 AC 787, the court suggested that magistrates proceeding under s1 of the Crime and Disorder Act 1998, should evaluate evidence of past misbehaviour using the criminal standard. Legislation might be considered to reverse that decision if it were thought that injunctions against future criminality should issue on a balance of probabilities that the defendant had done so in the past.

- 4.12 For example, organised crime groups have been able to dominate, influence, or monopolise particular industries as a result of control over an essential good or service. The state's ability to purchase a critical piece of property through eminent domain or its power to revoke a critical license could deprive a syndicate of the instrument by which it extracts monopolistic profits. Similarly, if illicit control is achieved through the supply of essential labor or materials, the establishment of an alternative source may break the monopoly's power. Industries which have historically been the subject of cartels, bid-rigging, territorial allocation schemes or other anti-competitive practices may be affected by the use of public benefit corporations that disrupt such illegal agreements by competing against those who engage in them. And if union leadership is corrupt, the imposition of a trusteeship might serve to restore democratic processes and integrity to the organisation.

Forensic Accountants and Analysts

- 4.13 Unlike many other law enforcement agencies, PSNI has some (although, still, an insufficient number of) civilian financial investigators, and one of the largest contingent of analysts (and one of the most advanced training programs for them). For several reasons, however, the potential value that each of the disciplines can bring to the agency has not, as yet, been achieved.
- 4.14 In the first instance, because the civilian financial investigators and analysts are not sworn officers with law enforcement status, they tend to be treated by the police as lesser beings, who like other support staff, are called to contribute in a secondary role, and who take orders rather than having the status to make meaningful suggestions as full partners.
- 4.15 Secondly, each tends to be called in to an investigation when the police investigators recognise a need for their particular skills. However, like attorneys who may recognise legal issues that need to be resolved before they would become apparent to police, forensic accountants and analyst/researchers, because of their training, might well view opportunities for them to act in circumstances that would be meaningless to the sworn officer.
- 4.16 Creating teams with the full panoply of skills resolves the second problem and may have some impact on the first. That is particularly true if the teams evolve to reach decisions based on consensus in which the team members tend to defer to each other in their area of expertise. But only a cultural change will ultimately solve the status issue. A commitment from supervisors, more comparable pay scales, inclusion, cross-training, and ultimately successful investigations based on the recognised contributions of the non-sworn personnel would work to speed that process.

Assets Recovery

- 4.17 The current state of the assets recovery laws create a clear preference (indeed, requirement) for the use of criminal remedies prior to the initiation of civil suits and makes an equally clear distinction between evidence gathered for purposes of prosecution as opposed to assets recovery. It is not apparent why such a policy is necessary or even desirable.
- 4.18 In the first instance, prior to action by the Assets Recovery Agency (ARA), a declination of prosecution (generally based upon insufficient admissible evidence to prove guilt to the criminal conviction standard) must be had. But as the ARA undertakes its investigation, it might well uncover additional evidence that should be referred to the police or prosecution authorities for additional consideration. In such a situation, at least theoretically, the ARA would suspend its activities while waiting for a new declination decision. This process could be repeated indefinitely.
- 4.19 Instead, assets recovery should be seen as another remedy possessed by government to deal with a particular problem. The choice of remedy, or the use of a combination of remedies, should be based on the likelihood of a beneficial outcome, not on how the information supporting the use was acquired. Consider, for example, the way in which the medical profession would determine how to treat an ill individual without regard to whether the information was procured, or to be used, by the cardiologist, nephrologist, neurologist, physical therapist, or family doctor.
- 4.20 In short, the ARA legislation should be modified so as to allow the Agency to become part of the investigative team and to use its powers in support of a comprehensive remedial approach to the organised crime problem.

Information Sharing

- 4.21 Much of the advantage of combining a variety of skills and disciplines, considering a variety of remedies, and utilising the operational advantages possessed by different enforcement and regulatory agencies would be lost if the information and intelligence that each had could not be shared for either legal or institutional reasons. Clearly, there are some situations in which security concerns or public policy must limit disclosure, but all too often such reasons are used as the excuse, not the motivation, for maintaining ownership and control over such knowledge.¹³ Where valid sharing issues do exist, reasonable compromises are often possible; the Inland Revenue gateway provisions are an excellent example.¹⁴

13 Indeed, it is hardly unknown for an agency to resist responding to a request for information, not because it does not want to disclose what it has, but because it does not want to disclose what it has, but because it wants to hide what it does not have.

14 See, ATCSA 2001 (ch.24, Pt.3. Sec. 19 - 20). On the other hand, distinctions that artificially restrict the use of evidence gathered pursuant to either civil or criminal process with no apparent policy reason (other than history) should be eliminated.

- 4.22 Clearly the movement of information within PSNI, and particularly from the Special Branch to Criminal Investigation Department has been a matter of some controversy. PSNI has moved forcefully to resolve the issue through the creation of a Crime Department headed by a single Assistant Chief Constable responsible for both security and crime functions. Nevertheless, the problem of when security considerations should preclude the disclosure and use of certain information will necessarily continue to exist. What is important is that this new structure provides a functioning gateway so that all information possessed by PSNI, whether obtained through normal criminal procedures or those specifically granted to intelligence services, be located, that a decision not to disclose and use for routine criminal purposes be based on a realistic assessment of needs, and that the reasons for a final decision not to disclose be auditable.¹⁵

Post-action Analyses – Lesson Learned

- 4.23 At the conclusion of the process, the team, and members of peer and supervisory and staff should participate in an analysis of the investigation and prosecution to illuminate the parts of the operation that worked well as well as those that proved deficient. This practice, routinely undertaken in the military¹⁶ guarantees that investigations not only serve the purpose of achieving specific goals in the particular case, but aid in the planning and success of future efforts. This need is especially acute in an agency like PSNI, which has lost much of its institutional memory through Patten-encouraged retirements and which had devoted so much of its time and efforts in the past thirty years to anti-terrorist work.

15 This would be consistent with the recommendation of the Patten Commission that the two units be “linked” with a common Assistant Chief Constable.

16 Within MOD, the Directorate of Operational Capability (DOC) provides independent operational audit and assurance.

5. Investigative Tools

Electronic Surveillance

- 5.1 Northern Ireland (and the UK at large) have historically been hostile to the use of intercepted conversations both oral (probe) and telephonic (intercept) as evidence. While RIPA permits the introduction of probe evidence in Court, the authority to do so is rarely utilised. RIPA not only precludes the use of telephone intercepts in court proceedings, it bars mention of its very existence in individual cases.
- 5.2 In determining whether to support a change in the current legislative scheme, there appear to be two distinct areas of inquiry and analysis. In the first instance, whether the use of electronic surveillance in evidence is necessary (or desirable) and, if so, whether legitimate concerns about its use override such need.
- 5.3 Continuous conspiratorial or business-like criminal activity in even its simplest forms requires regular ongoing communication. Where the organisation that carries out, or regulates, such activity, is hierarchical in structure, the desire of leadership is to be insulated from actual involvement in substantive criminal acts, and thereby avoid detection and prosecution. The resultant need for multiple layers to command and report necessitates increased communication. Clearly, as the criminal groups and activities become more sophisticated and geographically dispersed, the need for consultation increases and the practicality of in-person meetings decreases. Conversations over drinks in secure areas inevitably give way to cell phones, faxes, and e-mails, and the involvement of additional persons in the conspiracy, multiplies.
- 5.4 Proof of such conversations may be had in three ways only. An individual who infiltrates the organisation may be present to hear (and record) them; a coconspirator who was there may decide to cooperate and testify (without a recording) as to what was said; and finally, an intercept or probe might be used to surreptitiously record a telephone call or oral communication. Evidence of electronic communications can be had, of course, through a variety of additional means, dependant upon the nature of the transfer and the form in which it is maintained.
- 5.5 Clearly the most definitive type of evidence of a conversation is a recording that is proven tamper-proof (or tamper-free). A recording is not subject to cross-examination, its credibility cannot normally be put in doubt, and it cannot be deterred from providing its content as a result of intimidation. Moreover, it is the fairest type of evidence – to all parties, including the defendant -- not subject to perjury, false memory, or mistaken interpretation.
- 5.6 Recordings, when maintained, are also a continuing source of evidence and intelligence that may often be useful even beyond the immediate investigation in which it was obtained. Targets who decide to cooperate and who have access to the conversations may have their memory refreshed, can explain the meaning of coded

or cryptic conversation, or identify unknown participants. Evidence of association may provide proof of conspiracy or material for cross-examination in future cases.

- 5.7 For law enforcement to voluntarily relinquish such a tool, one so useful (and perhaps, indispensable) in proving the guilt of organised criminals and disrupting their organisations and activities, there must be serious downsides in its use. The most common reason given for such opposition is the fear that electronic surveillance as a source of intelligence would be compromised by the inevitable disclosure of means and methods (and limitations thereof) in court proceedings. Secondary reasons include the cost of intercepting conversations and preparing transcripts in a manner acceptable to a Court and the fear that lay jurors would not understand the coded conversations used by criminals or that the voices overheard could not be proven to be those of individual defendants.¹⁷
- 5.8 Such fears must be taken seriously because, at a minimum, serious people often voice them. Yet, other countries have had similar concerns and have recognised the need to maintain the secrecy of capabilities and methods unknown by criminals (or spies or terrorists). They also have taken into account the fairness to those charged with offences, the resource limitations of law enforcement, and capabilities of the fact-finders. And in virtually each case where there exists a serious organised crime problem, the answer has been the same: A scheme that permits evidentiary use involving less technological advanced means of interception with a limitation on the disclosure of means and methods and sensible requirements regarding the demands on police and prosecutor. It would seem that, unless the Courts of the UK are uniquely out-of-sync with the rest of Western Democracies, would fail to follow a carefully constructed legislative scheme, or would otherwise create defendants' rights not yet announced by the ECHR, or that UK criminals are smarter, and jurors less intelligent, than their counterparts elsewhere, such a scheme would work within the UK.
- 5.9 In short, I am convinced that an appreciably enhanced anti-organised crime effort in Northern Ireland requires the evidential use of electronic surveillance; that its use in the UK will eventually be compelled by reciprocity concerns with EU sister states; that a statute can be drafted allowing for such use without the disclosure of information injurious to law enforcement and of no benefit to the defence; and that surveillance, using sophisticated devices unavailable to normal law enforcement agencies, can continue to be used by intelligence services.

¹⁷ Such concern may stem from the discussion in the O'Doherty case regarding the sufficiency of proof of identity based upon a comparison of the defendant's voice (by the jury and a Detective Sergeant) with the voice on an extremely short recording of poor quality in a room that was acoustically deficient. Suffice it to say that if anything, the case clearly allows for non-scientific identification albeit with appropriate cautionary instructions. Of course, in most organised crime cases, the conversations are likely to be of greater length, the quality tends to be quite good, the jurors would have the advantage of headsets, and the content often provides clues as to the identity of the speakers (e.g., use of names, other personal characteristics, or confirmable details).

Cooperation, Immunity, and Sentencing

- 5.10 Obtaining the testimony of coconspirators, those who were at crucial meetings, or were otherwise privy to, or in possession of, relevant and admissible evidence, is always difficult. In general, unless the potential witness has a personal reason for turning on his erstwhile friends, the decision to give evidence is based on a cost-benefit analysis – to what extent is there a reward for testifying or penalty for not doing so.
- 5.11 A reward is most frequently seen in a reduction in the term of imprisonment that the witness would otherwise face. For someone to testify against colleagues, and to thereby put himself (or his family) in harm's way, requires that that reduction be meaningful. Inherent in that notion, are the requirements that, in the absence of cooperation, the sentence would be significant and that there exists a procedure permitting credit to be given for testimony or other substantial help.
- 5.12 A penalty would exist if, after a legal requirement that the witness disgorge the truth, there were the likelihood of a meaningful term of imprisonment for failure to do so. Inherent in that notion, are the ability to compel testimony in the investigative stage through the grant of immunity (not permitting the witness's statements to be used in evidence against him) and an enactment or process that made it a crime or contempt of court to disobey the compulsion requirement. While there is provision for such powers to be given to financial investigators in proceeds cases,¹⁸ compulsion authority is required in virtually all organised crime cases.

Dealing with Witness Intimidation

- 5.13 A problem throughout the UK, but particularly in Northern Ireland with its limited population, extended families, and close-knit communities is the problem of witness fear. Strong penalties may be threatened for intimidating a witness, but that would hardly discourage any organised crime figure (or his colleagues) from doing so. Indeed, the fact that intimidation is virtually implicit in any prosecution involving paramilitaries and is explicitly acknowledged through the use of Diplock Courts. It would appear that the only mechanism for dealing with that problem is an enhanced ability to relocate amenable witnesses (and their families) and have the ability to continue to exist outside Northern Ireland, within the UK, EU, or, potentially, the U.S.

¹⁸ The proceeds of Crime (NI) Order 1996, Part IV

Dealing with Juror Intimidation

- 5.14 For the same reasons, juror intimidation in Northern Ireland is particularly problematic. In order to engender cross-community support for the organised crime program, however, it would seem necessary to disassociate the investigation and prosecution of crime figures from the techniques and institutions used to deal with terrorism. In that sense, paramilitary as ideologue should be seen to be treated differently than paramilitary as self-serving criminal.
- 5.15 It might be possible to create a structure that allows for the participation of citizens in the process while minimising the likelihood of juror intimidation. For example, a judge could try a case accompanied by two “jurors” who would have the responsibility of advising the judge as to questions of fact. However, if the judge found the jurors’ decision to be clearly erroneous, the judge could make an independent and inconsistent determination. No official report of the deliberations would be made, jurors who had been approached could say that they had found in favor of the defendant (even if they hadn’t), and presumably there would be no adverse consequence to them. Indeed, defendants, recognising this possibility, would have little incentive to approach the jurors in the first place.¹⁹

Cooperation with the Private Sector and the Use of an IPSIG Program

- 5.16 OCTF and PSNI have had a commendable history of dealing with the private sector to partner in the resolution of common problems including cash-in-transit robberies, counterfeiting of intellectual property, smuggling, and extortion. This should be continued and expanded including the use of Independent Private Sector Inspector Generals (“IPSIGs”), particularly within the construction industry and for the regulation of charities.
- 5.17 By definition, an Independent Private Sector Inspector General (IPSIG) is:
- an independent, private sector firm with legal, auditing, investigative, research, analytic, management and loss prevention skills, employed by an organisation (voluntarily or by compulsory process) to ensure compliance with relevant law and regulations and to deter, prevent, uncover and report unethical and illegal conduct by, within and against the organisation. Where

19 Such an approach is not unknown within the EU, albeit for different reasons. For example, in Germany “(c)ases of serious crime are tried before mixed tribunals in which professional judges and laymen form a single panel that decide all issues of culpability and sentence... “In the Schoffengericht... laymen outnumber professional judges two-to-one. In the Grosse Strafkammer professional predominate three-to-two. StPO & 263(1) stipulates that for decisions that disadvantaged the accused (i.e., conviction and sentence), these courts must act with a two-thirds majority. hence, in the Schoffengericht. The laymen have the power to impose conviction over acquittal over the will of the professionals; in the Grosse Strafkammer and the current Schwurgericht they can force acquittal over the will of the professionals; in the Grosse Strafkammer and the current Schwurgericht they can force acquittal but no conviction” Langbein, Comparative Criminal Procedure: Germany (West Publishing Co. 1977). Because the recommendations made here is designed to deal with the use of intimidation, both the power to convict and acquit is ultimately given to the judge.

the culture of the organisation is primarily legitimate or amenable to reform, the IPSIG may, in addition to the prevention and control of illegal or unethical conduct, be a major participant with management in enhancing the economy, efficiency and effectiveness of the organisation. Where the culture is primarily illegitimate and hostile to change, the IPSIG's role may be essentially adversarial, limited to instituting internal controls and monitoring organisational activities.²⁰

- 5.18 The relationship between the IPSIG skill areas is symbiotic; the investigative, management and auditing functions generate information concerning actual or potential, waste, abuse and fraud and thus, provide information for loss prevention analysis. The information and analysis leads to the formulation and implementation of appropriate internal controls designed to prevent future illegalities, abuse and inefficiencies, the adherence to which are then monitored by the investigators, researchers and auditors. As with the IG program, the IPSIG must remain independent, autonomous and self-sufficient, and, although interactive with the organisation, unconstrained by organisational biases. Thus, to ensure the IPSIG's integrity and credibility as an independent agent, it must have dual reporting responsibility -- to the highest levels of the host organisation and to an independent body (generally, but not necessarily, a government agency) -- and be free to report violations of the law as appropriate.
- 5.19 Despite the inevitable tensions between the operational imperatives of an organisation and the IPSIG's cautionary tendencies, the IPSIG are often used by management to make a good organisation better, to prevent the corporation from being victimised by racketeers, or to change the ethical culture of an entity capable of such change. For this to happen, however, the IPSIG must institutionally and practically conduct its responsibilities in a manner that respects business reality and the predictably limited "Inspector General toleration" of the host organisation.
- 5.20 Because it is composed of individuals whose futures and career paths are not dependent on pleasing the corporate hierarchy, the IPSIG does not have an institutional bias which might result in the protection of the corporate reputation at the expense of exposing illegal or unethical behaviour. The IPSIG program is thus able to serve government interests and leverage government resources in a variety of ways.

²⁰ Report, International Association of Independent Private Sector Inspectors General. The inspiration for the Independent Private Sector Inspector General Program was the United States Inspector General Act of 1978 (PL 95-452), codified in 5 AP USC & 1 et. seq. The Act centralised audit and investigative activities in a single "independent and objective" office within each of the major federal departments and agencies; it gave to each Inspector General the responsibility of reporting to the agency head and to the Congress on the magnitude of waste, abuse and fraud within its jurisdiction, proposing remedial action, and deterring future transgressions. Significantly, Inspectors General were also charged in the Act with the promotion of economy, efficiency and effectiveness of the host department and its programs.

- The IPSIG program is an ideal vehicle for reducing waste, abuse and fraud in government contracting and privatisation. Where pre-qualification is impractical, IPSIGs can be used to verify qualification information supplied by the winning bidder -- at contractor expense. Since any false information supplied would disqualify the contractor and potentially lead to both civil and criminal consequences, such a procedure would vindicate the government's interest in the integrity of the application process. The IPSIG would guarantee that adequate internal controls and appropriate codes of conduct and ethics were developed and internalised so that there was no question of the contractor's obligations. And then, utilising forensic and compliance audits, inspections, investigations, integrity tests and anonymous hot lines, the IPSIG would ensure that the contractor was abiding by relevant laws and regulations as well as the terms of the contract.
- IPSIGs operating in particular industries have the expertise to evaluate the industry's racketeering susceptibility and potential, to be familiar with illicit schemes commonly practiced by the industry's business community or victimisers, to be aware of the most recent trends, and to help in the design of more effective laws and regulations.
- IPSIG reports often provide investigative predicates leading to law enforcement successes.
- The presence of an IPSIG allows for employment of other approaches designed to reduce illegality or to promote efficiency. For example, in the construction industry, ineffective government inspectors might be replaced by private contractors or through certification by licensed architects and engineers with IPSIG oversight.
- IPSIGs hold particular promise in the international arena. The internationalisation of sophisticated criminal activity is a problem that will become more serious and the increasingly familiar phenomenon of frontiers without borders means that countries and their citizenry, particularly within the EU, will be confronted with companies that they know nothing about seeking to do business with them. IPSIGs may be the perfect vehicle for protecting the host organisation from illegalities by their employees, other corporations, and racketeers, but also for assuring the government of the country in which it operates that the organisation is real, that it is free from organised crime ownership and influence, and that it has appropriate safeguards to ensure that its operation will be in conformity with local law and regulations.

- 5.21 IPSIGs have been used in a variety of jurisdictions, most notably in New York (the clean-up of the World Trade Center site was probably the most highly publicised instance), but also in other cities, states and countries. Their use is being considered in the Netherlands, Italy, and Australia among others.
- 5.22 The IPSIG program is ideally suited for organisations engaged in not-for-profit charitable and foundation activities particularly where there is a need to augment the normal government oversight and regulation functions. This has important ramifications in Northern Ireland where those functions are extremely limited²¹ and where there is no system of compulsory registration. A previous attempt to design a more comprehensive regulatory scheme²² was successfully resisted presumably because it was believed by the voluntary sector that, under such an approach, government access to private information would be too intrusive.
- 5.23 The use of an IPSIG would satisfy any legitimate concern in that regard. Because the IPSIG reports to both the charity, and to an appropriate government official only when the charity is non-compliant, the IPSIG program provides a mechanism that allows the government to fulfil its critical roles of protecting the public and the Exchequer with only minimal governmental intrusion into the affairs of the charity.
- 5.24 The IPSIG program is particularly helpful where the organisation is community-based and receives substantial contributions from a number of entities (including government or government-aided donors). Even if the various entities were each capable of undertaking an audit of their funding, a dishonest charity would be able to (and, indeed, many have) use a single expense to satisfy multiple donees that “their” funds were appropriately spent. An IPSIG, on the other hand, performing a single comprehensive audit, could not be deceived by such an artifice. IPSIGs could ensure that fund raising activities were appropriate, that statements made by the organisation were accurate, and that there was compliance with Inland Revenue regulations. Of course, charities that were mere shams, and served only to line the pockets of their operators, would be unable to survive even the most basic scrutiny of an IPSIG.
- 5.25 While an IPSIG is a dishonest charity’s worst nightmare, it is an enormous benefit to a legitimate charity – at a minimum, enhancing its credibility and thus aiding its fund raising activities. In addition, IPSIGs could be used to determine the bona fides of potential recipients of charitable assets, monitor funds distributed by the host organisation, protect the host organisation from unscrupulous or inappropriate vendors of goods and services, help protect the integrity of confidential information, and reduce inefficiencies in the host organisation’s operations.

21 The Charities Act (NI) 1964 permits the Department of Social Development to apply to the Attorney General for consent to seek and examine the records only where there are reasonable grounds to believe that charitable property is being misapplied.

22 Consultation Document on Charity Law in Northern Ireland, 1995.

6. The Need for a Broader Perspective

- 6.1 Clearly, a principle theme of this report is the need to adopt a broader perspective in the investigation and prosecution of organised crime activity.
- 6.2 Thus, I have argued that, in order to be effective, police, prosecutors and others must join together in formal tactical planning in the context of broad strategic goals. They must consider and employ a variety of remedies for organised criminal activity, and not limit themselves to conventional criminal sanctions. They must encourage the involvement of other law enforcement, regulatory agencies and private sector companies. But, overcoming present difficulties will require broadening the perspectives of many others as well -- including the approach of the judicial system.
- 6.3 We have developed and honed the workings of a legal system for the adjudication of those charged with criminality based on crime problems that existed at the time of its development. Generally, courts established an approach that was based on exclusivity – the jury focussed on specific acts and all other factors were excluded from its consideration. This continued even as the 20th century saw the rise of criminal syndicates and the evolution of individual illicit acts to crime as a business. Even today, judges tend to view any mention of the relationship of crime to crime and criminal to syndicate as not only irrelevant, but prejudicial. Yet those relationships are precisely what has created the problem that Northern Ireland faces today. Legislative attempts to advance organised crime control by providing for appropriate joinder of defendants, multi-conspiracy charges, and the introduction of relevant evidence to prove them, may prove fruitless unless the courts recognise the validity of such initiatives and seek to implement them in practice.
- 6.4 Cross-community support will be critical in promoting an expansion of perspectives and providing police, prosecutors, and courts with a mandate for change and providing the relevant evidence and support with which to make those changes succeed. Given the best of circumstances, such support is often difficult to attain, and the history of the past 30 years provides a less than optimal environment for its development. Those who have lived through the troubles are more than aware of the power of the paramilitary organisations; many are convinced that the use of force by them to attain their goals is simply a reality.²³ This is particularly true within the commercial community that has routinely been required to pay such organisations as a result of explicit or implicit threats and has come to view such payments as just another cost of doing business. To those people the government must insist that the demand for money by paramilitaries is unacceptable, that those who now pay should be outraged, that extortion is not inevitable in Northern Ireland, and that law enforcement is capable of dealing with the problem. Whether

²³ Paul Higgins, writing in January 19, 2003's *The People*, for example, quotes a police source as saying "you just don't operate (in certain areas) without paying... people don't need to be threatened, they know."

there is a media campaign to that effect, or whether the relevant Ministers (and that probably means all of them) continue to chant that message, it is one that must be credibly iterated.

- 6.5 There is no question that Northern Ireland is beset with numerous problems; and, organised crime is clearly one of them. But after having worked with the NIO, the constituent agencies of the Organised Crime Task Force, and numerous other public and private entities, I am steadfastly optimistic that control can be achieved. Unlike other jurisdictions, the government of Northern Ireland recognised the existence of the organised crime threat early on and moved decisively to confront it. The civil servants and law enforcement agencies that were charged with that responsibility are overwhelmingly able and dedicated, legislation was enacted while additional bills are being seriously considered, new agencies that were created had immediate success, and even preliminary recommendations proffered during my consultancy were considered and frequently implemented. PSNI is open not only to new recruits but also to new ideas. The Organised Crime Task Force remains a strong, visible, and vocal symbol of strategic thinking, of fostering cooperative efforts among law enforcement agencies, and with the business sector, and of the commitment by government to steadfastly challenge any effort by criminals to operate successfully within the province.

Professor Ronald Goldstock
ORGANISED CRIME IN NORTHERN IRELAND
A REPORT FOR THE SECRETARY OF STATE

GOVERNMENT RESPONSE

GOVERNMENT RESPONSE

Recommendation 1: Cross community support depends on the reduction of sectarian animosity and violence, and the removal of emblems and flags traditionally used by paramilitary groups to mark out their turf.

Response: This is currently being tackled at a number of levels. Officials from OFM/DFM, to encourage the removal of flags and emblems, are supporting local communities and their representatives. Local accommodation has the best opportunity for success. However, in addition, the police have secured convictions in respect of display of paramilitary flags and will take further action as appropriate.

Recommendation 2: The Director of Public Prosecutions and the Crown Solicitor have a vital role to play in developing strategies to control organised crime. Membership of the OCTF ought to be expanded to include the legal community.

Response: The Director of Public Prosecution has been invited to send a representative from his office to join the OCTF Legal Sub Group. The Crown Solicitor will also join this forum.

Recommendation 3: Legal remedies including forfeiture ought to be considered.

Response: Government already makes use of the civil law in countering organised crime. Further discussions on the use of civil litigation to counter organised crime in Northern Ireland will take place within the OCTF Legal Sub Group.

Recommendation 4: Fuel duty in Northern Ireland should be aligned with tax rates in the Republic of Ireland to remove the financial incentive for smuggling fuel.

Response: Oils fraud in Northern Ireland involves both duty differentials but also other fraud types and products. It is highly likely that removing the incentive to smuggle would simply result in displacement into the greater use of other types of fraud.

The Government's strongly-held principle is that United Kingdom taxes should be applied at the same rates and with the same coverage throughout the United Kingdom. There are no plans to depart from this principle of unitary taxation in the case of fuel in Northern Ireland.

Even if there were any such plans, in order to put them in place the Government would - as the Northern Ireland Affairs Committee recognised - have to seek a derogation from the EU Mineral Oils Directives as there is no specific provision for a Member State to introduce a reduced rate for one part of its territory other than by derogation. It is highly unlikely that the EU would consider a proposal for a reduced rate in Northern Ireland as acceptable, and any such application would almost certainly be viewed as a State aid to Northern Ireland business and would not be approved by the European Commission.

Recommendation 5: Diesel should be taxed at full rate and legitimate end users allowed to utilise a tax rebate on the fuel purchased.

Response: There are several methods by which a rebate can be delivered. However, changing the method of delivering a rebate will not stop fraud but will merely change the method of the fraud as is demonstrated by the frauds which affect a wide range of different systems, including repayment systems.

Customs are constantly assessing the most effective ways to tackle fraud and to implement any measures that might improve their anti-fraud efforts. As a result of this and their new strategic approach, Customs have introduced the UK Oils Strategy which has put in place a series of regulatory and enforcement measures to tackle rebated fuels fraud, including the Registered Dealers in Controlled Oils (RDCO) Scheme. Customs believe the UK Oils Strategy will ensure that rebated fuels fraud is tackled and reduced.

Recommendation 6: The practice of repatriating bank notes to the issuing Bank should be discontinued to reduce the risk of armed robbery.

Response: The Task Force is consulting with PSNI and the cash in transit industry in Northern Ireland, to evaluate the merits of this recommendation. PSNI analysis of armed robbery suggests that the vast majority of cash-in-transit robberies take place during delivery to cash machines and not during the transportation of repatriated bank notes.

Recommendation 7: The membership of the Organised Crime Task Force should be expanded to include academia, economists, sociologists, loss prevention specialists, historians, political scientists, labour relations experts, and others with expertise in particular industries.

Response: Given the role of the Task Force, it is currently considered inappropriate to widen the membership of the OCTF to academics and sociologists as recommended by Professor Goldstock. Nevertheless, the Task Force is committed to working with and consulting individuals and organisations, as appropriate, to ensure that the full range of responses are deployed against organised criminals. The Task Force Expert Group structure ensures the involvement of specialists and professionals with expertise in the various OCTF priority crime areas.

Recommendation 8: PSNI should seek to enhance their investigative capability by developing multi-disciplinary teams composed of individuals with investigative, analytic, forensic accounting and legal skills. At the conclusion of the process, the team, and members of peer and supervisory staff, should participate in an analysis of the investigation and prosecution to illuminate the parts of the operation that worked well as well as those that proved deficient.

Response: Over the course of his appointment, Professor Goldstock worked extensively with PSNI to demonstrate the merits of this particular concept. PSNI have embraced the benefits of adopting such an approach to tackle organised crime and have recently undertaken a study visit to law enforcement agencies within the USA to see the operation of this concept

in practice. The formation of the PSNI's Criminal Operations Department and the adoption of the National Intelligence Model have permitted the formation of multi-disciplinary teams to tackle organised criminal gangs. Post operational review is a standard feature of PSNI's investigative methodology.

Recommendation 9: It may make sense to reconsider a RICO type act for the UK – or at least for Northern Ireland.

Response: The case for RICO style legislation has been carefully considered at a national level and it has been concluded that it is not required within the UK at this stage. However, in Northern Ireland the Law Enforcement Agencies are working closely to ensure that the best use is made of current conspiracy legislation. The NIO is closely involved with national developments including the introduction of new legislation, under the proposed Serious Organised Crime and Police Bill, to ensure that the capability for tackling organised crime in Northern Ireland is enhanced in line with the remainder of the UK.

Recommendation 10: An organised crime co-ordinator should be appointed to ensure that information obtained by one team is appropriately shared.

Response: The introduction of a new Crime Operations Department within PSNI, together with the adoption by PSNI of the National Intelligence Model will ensure that information is appropriately shared between teams who target organised crime in Northern Ireland.

Recommendation 11: The involvement of a prosecutor at an early stage in the investigation is paramount.

Response: There are standing arrangements in place with PSNI, which provide for the provision by the DPP of prosecutorial advice at the earliest stages of a police investigation. These have been developed (particularly for the pilot scheme for the new Public Prosecution Service) following consideration of this recommendation.

Recommendation 12: The issue of whether an attorney may be assigned to the police without compensation should be resolved.

Response: This issue is currently being explored with the Crown Solicitor's Office, but the charging scheme is a Government funding requirement that ensures the Crown Solicitor recovers the full economic cost for services that are provided.

Recommendation 13: To obtain maximum benefit from multi- disciplinary teams, civilian staff within PSNI must be regarded as having similar status to investigators and be involved at the outset of an investigation.

Response: With developments flowing from recommendation 8, issues of status and involvement of team members will be resolved.

Recommendation 14: The Proceeds of Crime Act 2002 should be modified to allow the Assets Recovery Agency to become part of the investigative team.

Response: The Proceeds of Crime Act legislates for the ARA to undertake confiscation of assets through criminal or civil confiscation or to initiate taxation following investigations undertaken either by a law enforcement agency or the ARA itself. Clear lines of communication and protocols exist between the ARA and OCTF partner agencies to permit the passage of information. The Proceeds of Crime Act 2002 is kept under review and where appropriate amendments are required they will be laid before Parliament.

Recommendation 15: A functioning gateway to allow the movement of information between Special Branch and CID should be created to ensure that a decision not to disclose and use for routine criminal purposes, be based on a realistic assessment of needs, and that the reasons for a final decision not to disclose be auditable.

Response: This has been addressed by the formation of the PSNI's Criminal Operations Department and the adoption of the National Intelligence Model.

Recommendation 16: An appreciably enhanced anti-organised crime effort in Northern Ireland requires the evidential use of electronic surveillance.

Response: The Home Office is currently leading a review of the evidential use of electronic surveillance, which is due to report to Ministers in the Autumn.

Recommendation 17: Obtaining the testimony of conspirators is difficult and rewards, which usually take the form of reduction in sentences, must be meaningful. Inherent in that notion, are that in the absence of co-operation, the sentence must be significant and that credit can be given for testimony or other substantial help.

Response: This issue is being considered nationally within the proposals contained in the Home Office White Paper "One Step Ahead - A 21st Century Strategy to Defeat Organised Crime", published by the Home Secretary in March 2004, and proposed Serious Organised Crime and Police Bill. We will obviously seek to influence the debate on this issue in line with Professor Goldstock's recommendations.

Recommendation 18: Adequate measures to protect witnesses and the potential to relocate individuals within the UK, EU, or potentially the US is the only mechanism for dealing with the problem of witness fear.

Response: Measures to relocate witnesses in national security cases are currently provided by the PSNI Witness Protection Unit. NIO is participating in a Home Office led working party, due to report in October 2004, on a national witness protection scheme. Provisions to put the scheme on a statutory footing will be included in the Serious Organised Crime and Police Bill which may be extended to Northern Ireland.

Recommendation 19: Similarly measures to protect against juror intimidation such as trials by judge and 2 jurors who could advise as to questions of fact may resolve the problem.

Response: The Home Office led working party, due to report in October 2004, on a national witness protection scheme will also include arrangements for Jurors. Provisions to put the scheme on a statutory footing will be included in the Serious Organised Crime and Police Bill, which may be extended to Northern Ireland.

Recommendation 20: OCTF and PSNI have had a commendable history of dealing with the private sector to partner in the resolution of common problems. This should be continued and expanded including the use of Independent Private Sector Inspector Generals (IPSIG's), particularly within the construction industry.

Response: This recommendation has been accepted and is being taken forward by the Central Procurement Directorate of the Department of Finance and Personnel who are currently evaluating the IPSIG concept by undertaking a pilot IPSIG project within public sector construction contracts.

Recommendation 21: The IPSIG programme is ideally suited for organisations engaged in not-for-profit charitable and foundation activities particularly where there is a need to augment the normal government oversight and regulation functions, particularly in Northern Ireland where there is no system of compulsory registration.

Response: A review of the regulation of the charity sector in Northern Ireland is currently being undertaken by the Department of Social Development. Following the evaluation of the IPSIG pilot, being undertaken within public sector construction, consideration will be given to whether the IPSIG concept is a viable solution to augment the normal government oversight and regulation functions.

Notes