



Corruption

Western Hypocrisy and the Never Changing Face of Financial Secrecy Jurisdictions: Burying the 1975 UN Agenda

By MARY ALICE YOUNG

Forty-one years after the 1975 Fifth Congress on Crime, the UK remains immersed in obfuscation. As long as Britain's Overseas Territories and Crown Dependencies maintain a culture of secrecy, potential tax avoiders and evaders, as well as organised criminals seeking to manage their money, will continue to use these countries to hide their illicit wealth.

Commencing on 1 September 1975, the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders was hosted in Geneva, Switzerland. On the table for discussion at the Fifth Congress on Crime, was the issue of “Crime as Business” which incorporated sub-discussions on “Organized Crime, White Collar Crime and Corruption”.¹ Principally, the overall focus of the Fifth Congress on Crime was to address new forms of criminality including organised crime as a business and the monetary costs and wider economic impacts of such crimes.² Compiled by the Secretariat, the final summary report of the Congress pertinently stated that in the context of organised crime as business, such criminal activities were characterised by, “either the use or misuse of legitimate techniques in business and industry”.³ Furthermore, those involved in committing these crimes “had high social status and/or political power”.⁴ The Secretariat’s concluding paper further elaborated that, “such crimes tend to involve a high degree of planning, secrecy and sophistication” enabling them to remain invisible

and thus difficult to detect and investigate.⁵ It can be concluded that in 1975, the above characteristics of new and emerging forms of organised crime aptly described those ingredients which in the present day, are directly attributable as enabling criminal money management,⁶ in Britain’s Overseas Territories and Crown Dependencies.

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The mushrooming of secrecy jurisdictions is generally associated with the frenzy of tax haven emergence during the 1960s-1990s.⁷ It is noteworthy that in 1975, the Fifth Crime Congress coincided with the emergence of some of the world’s most renowned offshore financial centres (including Bahrain, followed by Dubai),⁸ which continue to operate as both tax havens and secrecy jurisdictions in the 21st Century. 1975 is also significant for the reason that the Committee on Banking Regulations and Supervisory Practices (the Cooke Committee), which was formed by the Bank for International Settlements in 1974, initiated the beginnings of a supervisory system to promote cooperation between “home” and “host” supervisors. Indeed, the regulatory supervision of banks operating outside their home country formed the essence of the Basel Concordat of 1975.⁹

It is evident the Seventies was a pivotal

decade in terms of the offshore movement as it witnessed both the formation of functioning offshore financial centres – and also the beginnings of a supervisory and regulatory regime. Secrecy havens located in the Commonwealth Caribbean were created when jurisdictions established their financial services sectors to fill the voids left by collapsed local industries which relied on natural – yet rapidly depleting – resources. For example, in the 1960s the Cayman Islands established a financial services sector to substitute for the Green Turtle fishing industry. By the late 1970s, the Caymans had three pieces of legislation which helped to cement its position as an international financial centre. These were the Banks and Trust Companies Regulation Law 1966, the Confidential Relationships Preservation Law 1976 and the Insurance Law 1979,¹⁰ and as such they were unequivocally attractive to both legitimate and criminal clients seeking to exploit the jurisdiction’s tax free status and its strict secrecy laws. By the 1980s, and under the continuing guidance of the Cayman Islands’ Financial Secretary, Vassel Johnson, this previously underdeveloped yet paradisiacal archipelago was no longer peddling a dwindling fishing industry; rather, it had become the Caribbean’s leading financial haven. In 2016 it continues to remain the top offshore financial destination in Latin America and the Caribbean according to the twentieth Global Financial Centres Index.¹¹ Discordantly, it also remains at the top of the list as a “country of primary concern for money laundering and financial crime activity” in the annual

Analysis



These financial hot spots are criminogenic in nature because they offer financial secrecy protection and therefore, by proxy, escape routes from financial regulation and criminal laws in other countries. From top left clockwise: Cayman Islands; British Virgin Islands; Jersey; Isle of Man; Guernsey. Photo courtesy, Eltoma, Healy Consultants PLC, marketplaceguernsey.co, Alamy, and EurActiv

International Narcotics Control Strategy Report released by the US Department of State's Bureau of International Narcotics and Law Enforcement Affairs (2016),¹² along with other British Territories and Dependencies including the British Virgin Islands, Guernsey, Isle of Man and Jersey. These financial hot spots are criminogenic in nature because they offer financial secrecy protection and therefore, by proxy, escape routes from financial regulation and criminal laws in other countries.

It is curious then, as to why the aforementioned emerging forms of organised crime – including financial frauds and fiscal criminal activities involving the proceeds of organised crime – identified at the 1975 Fifth Crime Congress, and which subsequently generated calls for policies on “exchange of information” and “the provision of more [publicly available] information about economic criminality”,¹³ continue to remain a topic

for debate in the context of Britain's criminogenic secrecy jurisdictions more than four decades later. Simply put, why does the issue of criminal money management in Britain's secrecy jurisdictions persist, when the problem of financial crime enabled by secrecy laws was internationally recognised forty-one years ago by the United Nations? What has changed since the 1975 Fifth Crime Congress? The answer, unfortunately, is not a lot. However, one thing is certain and that is the issues of crime as business, and the identification of tax evasion as an emerging form of organised crime, have disappeared from the variety of international fora which purport to lead the way in trying to combat organised crime problems. As outlined below, there have been minor steps in the UK towards pushing for increased transparency and watering down of secrecy laws; but so far only lip service has been paid to such pledges and

at best, the efforts on the whole seem phony when they occur at the same time as political spin doctors jump on the tax dodging bandwagon before an election.

First, in 2014, under the direction of former Conservative leader and Prime Minister, David Cameron, the UK's HM Revenue & Customs introduced offshore disclosure facilities, whereby UK tax dodgers were offered the chance to disclose of all undeclared offshore liabilities, therefore limiting the risk of a future investigation (and subsequent heavy penalty) from occurring. Indeed, the pursuit of the proceeds of crime hidden in offshore financial centres operating as secrecy jurisdictions was to become a central feature of the law enforcement agenda of David Cameron's Conservative Party in 2015, with Cameron accusing British overseas territories and crown dependencies of failing to crack down on financial crimes including tax evasion and

laundering the proceeds of organised crime.¹⁴ A second significant acknowledgement of the criminality breeding in the UK's secrecy jurisdictions, was brought to the fore in March 2015, when Transparency International published "Corruption on your Doorstep – How corrupt capital is being used to buy property in the UK".¹⁵ The report established that 75% of UK properties under criminal investigation use offshore corporate secrecy jurisdictions. In response to, and following, the Transparency International report, on 18 June 2015, Lord Rooker appropriately stated to the House of Lords Grand Committee that:


"More than £180 million-worth of property in the UK has been brought under criminal investigation as the suspected proceeds of crime since 2004... Moreover, 89.2% of these are incorporated in a secrecy jurisdiction – some 36,342 properties. Of these, 38% were registered in the Virgin Islands and 16% in Jersey. In 2011 alone, £3.8 billion-worth of UK property was bought by British Virgin Islands-registered companies. It is crystal clear that UK Crown dependencies and British Overseas Territories are the preferred option for concealment for those under investigation."¹⁶

Forty-one years after the 1975 Fifth Congress on Crime, the UK remains immersed in obfuscation; with little or no explanation offered by the UK Government concerning the lip service it pays to increasing transparency and watering down the secrecy laws of its overseas jurisdictions. The environments fostered in Britain's offshore secrecy jurisdictions are criminogenic in nature and it is the myriad of secrecy laws which are used to prop up the economy – they are, if you like, pillars of the economy to enable criminal money management. Secrecy laws contribute to the formation of predatory and criminal morals, thinking and behaviour; whether this is on the part of professionals employed by criminals, the general acceptance of criminal behaviour or in terms of attracting criminals to the vicinity. This is certainly the case in Britain's offshore financial centres where it is part of the job description to ask no questions and to accept the money – no matter what its origins. The strong belief in the legitimacy of financial secrecy laws, by those working in the offshore financial sector, is normalised by the social circumstances peculiar to small islands which are isolated by the ocean, protected by secrecy legislation and boast

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economies swollen with criminal monies. Indeed, the secrecy legislation is vociferously defended by those who peddle it and by those who benefit from its existence. This in turn undermines belief in laws designed to introduce transparency.

As Britain prepares to exit the European Union, the adoption by the UK of the EU's strengthened measures to combat money laundering could have a substantial impact on the opaque surroundings of Britain's secrecy havens; effectively watering down financial secrecy so that jurisdictions like the Caymans and Jersey are unable to operate as they currently do.

Therefore, leaving the EU would create a *cordon sanitaire* whereby nobody questions the financial secrecy structures of Britain's offshore territories, simply because the UK will exist outside of the EU anti-money laundering framework and will no longer be answerable to the Commission. As long as Britain's Overseas Territories and Crown Dependencies maintain a culture of secrecy, potential tax avoiders and evaders, as well as organised criminals seeking to manage their money, will continue to use these countries to hide their illicit wealth. 

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