

Editorial: Not your ordinary conference!

As a longtime attendee of the Cambridge International Symposium on Economic Crime (Symposium), I'm often asked if it ever accomplishes anything. The answer is an emphatic "yes" but, to appreciate its contributions and their value, one must take the long view [1].

Over the past 40 years, topics and ideas discussed at various Symposia often have served as a catalyst for changes in domestic law. However, when these changes take the form of regulations or statutes, they generally are subject to relevant political, legislative and executive processes. As a former financial services regulator in the USA advocating for change, I perhaps more than most, appreciate that it takes time, often years, to create and educate sufficient coalitions of support to make the changes a political priority and the change a statutory reality.

I posit that the Symposium has two objectives. First, the Symposium is an informal, nonpolitical assembly of individuals from various cultures, systems of government and professions who seek like-minded individuals who are concerned about the corrosive effects of financial crime on national economies and civic institutions. Often, these individuals are responsible for the "heavy lifting" in their respective agencies tasked with combatting financial crime.

In this regard, the Symposium has served as an important venue whereby former Eastern European Communist regimes could be exposed to democratic legal and judicial systems. Developing countries can discuss how to prevent financial crime, particularly in the form of corruption, from undermining civil institutions that are key for continued development and prosperity. To my thinking, the Symposium is a prime example of what the British like to boast as their diplomatic "soft power."

The second objective is facilitating discussion of mutual concerns and development of methods to address the ever changing nature of, and actors involved in, financial crime. The discussion and critical analysis that occurred over successive Symposia became the foundation of what are now widely accepted methods used by governments to detect, deter and combat financial crime.

In my opinion, one of the more important concepts incubated by the Symposium is the now widespread use of various forms of the civil law to address financial crime. Whilst criminal prosecutions are dependent on the discretion of prosecutors and meeting a high burden of proof, the civil law can be tailored to address specific problems, demands a lower burden of proof of a preponderance of the evidence and can be exercised by a variety of government actors. Also, civil law remedies of administrative and civil forfeiture and disgorgement are better suited to a more expeditious recovery of the proceeds of crime.

The civil law also has been useful to give specialized government agencies powers to impose meaningful sanctions outside the criminal justice system, particularly with respect to errant participants in financial markets. In this regard, Symposia participants have advocated use of the civil law to impose monetary fines in civil and administrative proceedings [2], bar individuals who have committed financial crimes or misconduct from serving as officers or directors of public companies [3] and preventing individuals subject to professional misconduct in financial services in one jurisdiction from being licensed in another [4]. In the USA, the civil law now addresses all these situations and US laws have been amended to permit US government agencies to pursue civil enforcement of securities anti-fraud laws on an extraterritorial basis [5].



The need for international cooperation among civil and criminal agencies (at both a formal and, more importantly, informal level) has been a topic at all Symposia and, in response, US securities laws were changed to allow the US Securities and Exchange Commission (SEC), at the request of a foreign financial regulator, to issue subpoenas for documents and testimony even if the request did not indicate that a violation of US securities law had occurred [6]. Furthermore, the request and the documents and testimony received would not be subject to disclosure by the SEC under the US Freedom of Information Act if the requesting jurisdiction represented that they would be deemed confidential under its laws [7].

Many Symposia featured debates on whether use of secrecy statutes or merely the lack of mandated disclosure of beneficial ownership hindered governments in combatting financial crime as it may be difficult or even impossible to ascertain who actually is responsible for the illegal conduct. I think it fair to say that, as a result of this healthy debate, governments have moved toward reducing the scope of secrecy laws or eliminating them altogether. Furthermore, governments appear to more keen on mandating public registers of beneficial ownership although there is continuing debate as to how much information should be required and the types of enterprises to which it should apply.

Due to constitutional arrangements in the USA where state law is primary with respect to setting legal prerequisites for enterprise organization, the USA has been hesitant to adopt a requirement that persons forming an enterprise must disclose beneficial ownership, a hesitancy for which it has been criticized. That will change on January 1, 2024 when, *subject to enumerated exceptions*, the beneficial ownership provisions of the US Anti-Money Laundering Act of 2020 come into effect for enterprises formed on or after that date and on January 1, 2025 for enterprises which were formed prior to January 1, 2024 [8].

In the brief space permitted, I have tried to convey, admittedly in a very selective fashion, the importance of the Symposia as a laboratory of invention where concepts are offered and debated by eminent persons representing various professions from across the world which ultimately become a useful and beneficial part of the global toolbox for combatting financial crime. May the Symposium and its vital mission benefitting all societies continue well into the future.

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Notes

1. The Symposium operates on a nonprofit basis and, as it receives no government funding, relies solely on registration fees and sponsorships.
2. 15 USC s 78u(d)(3), 78u-1 and 78u-2.
3. 15 USC s 78u(d).
4. 15 USC s 78o(b)(4)(G); s 80b-3(e).
5. 15 USC s 78aa(b).
6. 15 USC s 78u(a)(2).
7. 15 USC s 78x(d).
8. 87 Fed. Reg. 59498 (30 September 2022).