The United Nations study on fraud and the criminal misuse and falsification of identity
Facts and figures

✓ Total volume of fraud losses for the UK in 2005 was US$ 27.4 billion (ACPO study).

✓ Online banking fraud losses totalled £ 33.5 million in the UK in 2006 - indicates an increase of 44% year-on-year (driven by an increase in phishing incidents which went up from 1,713 in 2005 to 14,156 in 2006 (APACS – UK payments industry);

✓ Total one year fraud amount in U.S.A. rose from US$53.2 billion in 2003 and US$54.4 billion in 2005 to US$56.6 billion in 2006 (Javelin Strategy and Research-2006 Identity Fraud Survey Report).

✓ The fraud amount per victim rose from $5,249 in 2003 and $5,885 in 2005 to $6,383 in 2006(Javelin Strategy and Research-2006 Identity Fraud Survey Report).
Mandate-legal basis for the elaboration of the study:

Economic and Social Council resolution 2004/26 of 21 July 2004 on “International cooperation in the prevention, investigation, prosecution and punishment of fraud, the criminal misuse and falsification of identity and related crimes”

- Request the Secretary-General to convene an open-ended intergovernmental expert group for the preparation of a study on the relevant subject, taking into account the work of the United Nations Commission on International Trade Law (UNCITRAL) and other bodies, where relevant and appropriate.
- Report the results, conclusions and recommendations of the study to the Commission on Crime Prevention and Criminal Justice.
- Request the use of the information gained by the study for the purpose of developing useful practices, guidelines or other materials.
Intergovernmental Expert Group

Two meetings: March 2005 and January 2007

First meeting:

✓ Consideration of the scope of the study, adoption of methodology, information-gathering through the use of a questionnaire.
✓ Information and input received from 46 Member States and a number of private sector entities → draft report of main findings and supporting evidentiary material.

Second Meeting:

✓ Consideration and finalization of the draft report containing the results of the study.
✓ Submission of the report to the Commission on Crime Prevention and Criminal Justice at its 16th session (23-27 April 2007).
Results and findings of the study on fraud
Use of terminology in the study: Fraud

- Legislative definition of fraud: mostly **economic** entailing economic loss to victims.

- Fraud also describes conduct involving the use of deception, but not necessarily any financial or other material benefit.

- “Commercial fraud” addressed by non-criminal measures (controls on advertising) also reported (consistency with UNCITRAL work)

- Study context: use of the term “economic fraud” when referring to the conduct in its established economic sense and to distinguish from general uses of the term “fraud” and “identity fraud”.
Assessing the scope and extent of fraud

Fraud is under-reported and therefore it is difficult to obtain accurate and reliable data.

Reasons:

- Victims are embarrassed to admit their deception
- Others tend to blame the victims
- Fear of self-incrimination or loss of proceeds
- Victims feel that their case will not be given attention
- Victims more concerned about recovery through reporting losses to banks and credit cards issuers than prosecution
- Companies fear loss of confidence
Types of fraud encountered by reporting States / private sector entities

Wide range of different types of fraud reported by States → no single typological framework

- Frauds defined by method ("advance fee" fraud, pyramid schemes, computer fraud)
- Frauds defined by the system or the interests affected (commercial fraud, insurance fraud, stock market fraud)
- Frauds defined by the large number of victims (telemarketing and telecommunication fraud)
- Frauds against government or public interests (fraud against procurement system, tax system, public benefit system)

Corruption → fraud against government / element of larger fraud schemes.

Private sector entities → bank, insurance and credit card fraud
Types of fraud criminalized by reporting States

- Some States reported a small number of general offences, others had large number of specific offences.

- Expansion of existing offences or development of new offences to deal with recent innovations (computer fraud: see art. 8 of the Council of Europe Cybercrime Convention).

- Some forms of tax evasion and counterfeiting criminalized as types of fraud.

- Some States reported treatment of smuggling offences as frauds (where the purpose is to avoid taxes on commodities).

- Related or preparatory offences include identity-related crime, corruption, arson and other forms of property damage in support of fraudulent insurance claims, document forgery, conspiracy.
Sanctions for economic fraud

Two options:

- Fraud offences of escalating seriousness
- Single offences with lists of aggravating circumstances

**Aggravating factors**: repeat-offending, mass frauds, breach of trust or other abuse of power or inequality between offenders and victims, involvement of organized criminal groups, money-laundering, targeting government or public interests.

Some or all fraud offences within the meaning of “serious crime” prescribed in art. 2(b) of the United Nations Convention against Transnational Organized Crime.

Criminal / administrative liability of legal persons
Links between fraud and other crimes

- **Organized crime**: most States reported frauds committed by or on behalf of organized criminal groups.

- **Terrorism**: concerns about using economic fraud as a means of financing terrorist organizations

Particular concern about the use of charity fraud to finance terrorism:

- Creation of sham charities to finance terrorism directly
- Infiltration of legitimate charities to divert donations to terrorism
- Diversion of proceeds of charitable organizations that address specific religious, ethnic or cultural communities.
Links between fraud and other crimes

- **Money-laundering**: conceptual differences but similarities in practice
  Fraud as a predicate offence

- **Corruption**: factual links or joint treatment in criminal legislation
  Possible application of the United Nations Convention against Corruption
Transnationality of fraud and jurisdictional claims

- Transnational fraud appears to be increasing through the use of information, communication and commercial technologies.
- Frauds inherently transnational in nature: immigration, passport and visa frauds, Internet frauds.
- Multiple jurisdictions → ensuring that there is adequate territorial jurisdiction.
- Consultations among States that raise jurisdictional claims are important and involve legal, diplomatic and practical issues.
International cooperation

- General need to afford the widest possible mutual legal assistance and facilitate extradition of offenders

- Transfer of criminal proceedings where several possible States can prosecute

- Most reporting States consider the United Nations Convention against Transnational Organized Crime as sufficient legal basis, supported by bilateral and regional treaties, agreements or arrangements (where transnational fraud offences are committed by individuals and not by organized criminal groups)

- International cooperation provisions of the Council of Europe Cybercrime Convention also applicable where the crimes of fraud and forgery involve the use of computers, computer systems or data
Prevention of economic fraud

Major means of prevention reported include:

- Information campaigns to educate potential victims
- Improvement of technology and training of competent officials for early detection
- Fast and accurate information-sharing
- Training and education of employees of banks and financial institutions
- Technical security measures to protect information, communications and commercial systems
- Potential for collaboration between public and private sectors
Results and findings of the study on identity-related crime
Use of terminology in the study: identity-related crime

✓ Initial concept: “criminal misuse and falsification of identity”

✓ “Identity theft”: Taking identification or personal information in a manner analogous to theft, including theft of tangible documents and intangible information and deceptively persuading individuals to surrender documents or information voluntarily.

✓ “Identity fraud”: The subsequent use of identification or identity information to deceive others.

✓ “Identity-related crime”: more generic form to cover all forms of illicit conduct involving identity.
Nature and concept of identity

- Both public and private sector infrastructure for identification

- Some States have centralized national identification schemes, but most use subject-specific ID for multiple purposes, both public and private (e.g. passports, credit cards)

- Private sector identification: specific commercial purposes (banking or credit purposes)

- Concept of identification information: novel for most States. Most States do not distinguish it from other personal or private information

- Most common forms of ID information: names, place of residence/business, digital passwords, PIN numbers, digital signatures

- Future: biometrics, DNA profiles
Nature of identity-related crime

- Identity-related crime represents a new criminal justice perspective on an old problem which emphasizes abuse of identity itself rather than other crimes supported by identity abuse.

- New approach: criminalization of abuses of identity or identification information as such, as opposed to the traditional approach of criminalizing other activities committed using false identities.

Protection of two groups of victims:

- Those whose identities are misused; and
- Those who may be the victims of other offences committed using false identities.
Rates, patterns and trends in identity-related crime

- Most reporting States expressed the view that ID-related crime poses serious problems and is rapidly expanding for the same reasons as fraud, but there is little concrete data.

- The concept is too new to allow trends analysis – Lack of legislative definitions precludes statistics.

Limited data available demonstrate real and substantial increases attributed to:

- Opportunities generated by expanding use of computer technologies
- Official and commercial corruption
- Difficulties in developing and deploying technical measures to verify identification

- Large economic losses reported, but not clear to what extent those were losses from economic fraud and other offences committed by using false ID.
Rates, patterns and trends in identity-related crime

✓ Developed countries: concerns about cybercrime offences, such as the copying of credit cards and taking of customer information by hackers from commercial web-sites

✓ Developing countries: concerns about use of new technologies to forge identification documents

✓ General concern of Governments: misuse of passports and other identity documents to enter countries illegally or conceal the true identities of travellers

✓ General concern of the private sector entities: falsification of identification information used in commercial activities
Types of identity-related crime encountered

Different crimes involving the criminal misuse and falsification of identity

- Illicit taking of ID documents or information (theft, “phishing” or “pharming”, skimming of credit cards)
- Stolen documents or information used to commit other crimes (fraud) or to obtain further ID and build false identity for later use
- Illicitly taken ID documents or identity information traded or sold as a form of illicit commodity
- Alteration of legitimate ID documents (forgery)
- Fabrication of ID documents (forgery)
- Tampering with underlying identity documents
- General offences of corruption and bribery related to the use of false or misleading information
Types of identity-related crime criminalized by reporting States

✓ Identity-based offences are **not yet common**: only six States reported relevant criminalization and only one criminalized identity theft per se.

✓ Offences committed using false ID are more common: fraud, illegal migration/entry, privacy offences, forgery, impersonation.

✓ ID crimes included within broader offences (forgery, theft, cybercrime offences).

✓ Reported offences relating to computer “phishing” and similar conduct.

✓ Reported offences of falsifying specific types of identification, most commonly passports.
Relationship between identity-related crime and fraud

Identity abuses are very common in fraud

- Used to avoid prevention, detection and tracing of proceeds
- Also an important part of deception in many fraud schemes

**ON THE OTHER HAND**, fraud is economic crime by definition, whereas ID crime is not necessarily economic in nature

**Identity-related crime with economic or financial elements** includes cases where ID abuses are used in support of other crimes for the purpose of a financial or other material benefit (**vast majority**) → application of the United Nations Convention against Transnational Organized Crime

**Non-economic identity-related crime** mainly includes cases of using false ID in support of terrorists groups

Investigation challenge: sometimes difficult to distinguish → ultimate motive may not be clear when identity-related crimes are committed
Links between identity-related crime and other offences

- **Organized crime:** A number of States reported substantial connections
  
  Two key scenarios:
  
  - ID crime as part of other organized crime activities (large-scale economic fraud, money-laundering, trafficking in persons, smuggling of migrants)
  
  - ID crime as a **distinct criminal operation**
    
    - Use of ID crime to protect from surveillance or facilitate travel across the borders
    
    - Specialization and sophisticated methods to treat identity documents and information as illicit commodity
    
    - Expertise and sophistication to use multistage identity schemes to elaborate fictitious identities
Links between identity-related crime and other offences

✓ **Money-laundering**: means used by offenders to launder proceeds of crime involve identity-related crime

    False ID enables remote transfers and offshore banking and supports concealment of laundered assets

✓ **Corruption**: ID crime as a means of avoiding:
    - detection or criminal liability for corruption offences
    - tracing and forfeiture of proceeds of corruption

    Use of corruption to support ID crime
Links between identity-related crime and other offences

✅ **Terrorism**: most concerns similar to organized crime links

Similar motives: to evade surveillance/arrest/detection both within countries and in international travel

Examples reported:

- Use of forged or altered documents
- Use of genuine documents obtained using false names
- Use of false or misleading applications for new documents
- Telecommunications fraud to obtain/secure anonymous communications

United Nations Counter Terrorism Implementation Task Force (CTITF) Working Group on countering the use of the Internet for terrorist purposes
Transnationality of identity-related crime and international cooperation

Reported cases of identity-related crime with transnational aspects
- Offences related to passports and other travel-related identification
- Cybercrime

Importance of international cooperation and speedy information-sharing
- Existing legal frameworks (UNTOC, UNCAC, Cybercrime Convention) seen sufficient
- Mechanisms for cooperation: Interpol, Europol

Identity abuse as a distinct form of crime: need to fall within the scope of “serious crime”, as defined in art. 2(b) of UNTOC
Cost of identity-related crime

Limited costs data

Most direct costs are linked to fraud and other secondary offences committed using false ID

Costs to two groups of victims

- Persons victimized by fraud and other offences
- Persons whose identities are misused (restoration of credit, reputation etc.)

States providing data aggregated losses from all primary offences linked to ID crime

Difficult to quantify in monetary terms some forms of damage (loss of reputation)
Prevention controls and precautions:

- Technical measures focused on documents integrity (measures against forgery and counterfeiting, limits on period of validity)
- Protection of identity infrastructure (document validation and verification practices, secure and rapid telecommunications to validate identification information when used)
- Use of multiple identifiers (biometric elements)
Recommendations

Legislative measures against fraud and identity-related crime

- Ensuring that fraud is “serious crime” within the scope of UNTOC
- Modernizing fraud offences to keep up with new developments
- Criminalizing mass frauds and fraud schemes, thus simplifying jurisdiction
- Developing appropriate concepts, definitions and approaches to establish new identity-based criminal offences
- Common approaches to criminalization to facilitate international cooperation
Recommendations

International cooperation

- Ratification of, or accession to, United Nations crime conventions and Council of Europe Cybercrime Convention
- Ensuring that fraud offences and future identity-related crimes fall within the scope and definitions of the Conventions
- Enhancing mutual legal assistance and extradition mechanisms to combat economic fraud and identity-related crime
- Training for law enforcement and other relevant agencies in using the international instruments effectively
- Training for law enforcement and other relevant agencies in using international cooperation mechanisms to combat cybercrime
Jurisdiction

- Reviewing rules on **territorial jurisdiction** to keep pace with ongoing evolution of fraud and identity-related offences
- Establishing **extraterritorial jurisdiction** in lieu of extradition
- Consultations and collaboration among States in case of **concurrent jurisdictions** to ensure that offenders are prosecuted and cases are investigated in the most appropriate jurisdiction, taking into account location of offenders, victims and evidence and availability of resources and expertise
Recommendations

Cooperation between public and private sectors

Both economic fraud and identity-related crime have a substantial impact on public and private interests → effective cooperation between criminal justice authorities and commercial entities is recommended.

Cooperation in prevention:
- Developing and deploying security measures
- Educating and training staff in identifying and reporting related offences
- Sharing appropriate information to develop preventive materials

Cooperation in investigation/prosecution:
- Developing useful practices for reporting of crimes and investigative cooperation
- Supporting education and training of investigators
Recommendations

Prevention

➢ Dissemination of information about fraud and identity-related crime to potential victims

➢ Dissemination of information about fraud and identity-related crime to persons in a position to identify, report or prevent such offences

➢ Rapid and accurate gathering and analysis of information to support preventive measures

➢ Rapid sharing of information among law enforcement authorities and private sector entities, taking into account privacy and security considerations

➢ Developing and implementing measures to enhance technical means of prevention for both economic fraud and identity-related crime
Follow-up to the study

16th session of the Commission on Crime Prevention and Criminal Justice (23-27 April 2007) → Adoption of resolution on “International cooperation in the prevention, investigation, prosecution and punishment of economic fraud and identity-related crime”

✓ Need is reiterated to use the information gained by the study for developing useful practices, guidelines or other materials

✓ Member States are encouraged to consider the recommendations of the study when developing effective strategies for responding to related problems

✓ UNODC is requested to provide legislative and other technical assistance to Member States when reviewing or updating their laws

✓ In view of its crime-oriented agenda, UNODC is requested to facilitate the promotion of mutual understanding and cooperation between public and private sector entities.
Next steps

- Refinement and expansion of evidentiary material supporting the recommendations of the study and preparation of a publication

- Submission of the study to the competent implementation mechanisms of UNTOC and UNCAC (Conferences of States Parties) for further consideration

- Consideration of the results of the study in the context of the United Nations Working Group on countering the use of the Internet for terrorist purposes

- Consideration of “economic fraud and identity-related crime” as a potential thematic topic for discussion by the Commission on Crime Prevention and Criminal Justice at one of its future sessions
Thank you for your attention