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Enhancing International Law Enforcement Co-operation, including Extradition Measures

Proceedings of the workshop held at the Eleventh United Nations Congress on Crime Prevention
and Criminal Justice

Bangkok, Thailand, 18-25 April 2005

Edited by Kauko Aromaa and Terhi Viljanen

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FOREWORD

The workshop “Enhancing International Law Enforcement Co-operation, including Extradition Measures” was held at the Eleventh United Nations Congress on Crime Prevention and Criminal Justice in Bangkok, Thailand (18-25 April 2005) as one of the six workshops of the Congress. One day was allocated for this event which brought together both practitioners and academics from all around the world to share both problems and good practice. This publication includes the prepared presentations, as received from the authors, given during the workshop as well as a short evaluation report regarding the workshops and the Congress.

The suggestion to hold the six workshops was made by the United Nations Commission on Crime Prevention and Criminal Justice at its twelfth session in 2003. The workshop items were: Enhancing International Law Enforcement Co-operation, including Extradition Measures; Enhancing Criminal Justice Reform, including Restorative Justice; Strategies and Best Practices for Crime Prevention, in particular in relation to Urban Crime and Youth at Risk; Measures to Combat Terrorism, with reference to the Relevant International Conventions and Protocols; Measures to Combat Economic Crime, including Money-Laundering ; and Measures to Combat Computer-related Crime. The General Assembly of the United Nations approved the agenda for the Eleventh Congress and decided upon the workshop issues in its resolution 58/138 of 22 December 2003.

The responsibility of organizing the workshops was again placed on the Institutes comprising the United Nations Crime Prevention and Criminal Justice Programme Network (PNI), in close co-operation with the Member States and the Office for Drugs and Crime of the United Nations. - Workshop 1 on enhancing international law enforcement co-operation including extradition measures was organized by the European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI), assisted by the International Institute of Higher Studies in Criminal Sciences (ISISC). A preparatory meeting was held in Helsinki on 21-22 October 2004.

For practical reasons, the workshop was divided into two segments, one dealing with law enforcement co-operation and the other with extradition measures. Both were well attended and the presentations were followed by vivid discussion.

HEUNI wishes to thank all the speakers as well as colleagues from the PNI who contributed to the success of the workshop. We wish to express our special appreciation to the overall moderator of the workshop, Mr Klas Bergenstrand of Sweden and to the Chairman of Committee I, Dr Matti Joutsen of Finland for their eloquent guidance of the proceedings and discussions. Our sincere thanks also go to Mr Kaarle J. Lehmus of the Finnish Ministry of the Interior for his assistance in the preparations of the workshop and finally to Ms Aili Pääkkönen and Mr Sami Nevala of their efforts related to the finalization of the publication. – We also gratefully acknowledge the financial contribution of the Finnish Ministry for Foreign Affairs.

Helsinki 30 August 2005

Kauko Aromaa
Director

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Senior Programme Officer

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Report from the Rapporteur

International Law Enforcement Co-operation: Past Experience, Present Practices, and Future Directions

Jay Albanese
Chief, International Center
National Institute of Justice
United States

Eleven presenters from five continents presented their experiences, current practices, and recommendations for international law enforcement cooperation, including extradition, at the Eleventh United Nations Congress on Crime Prevention and Criminal Justice in Bangkok, Thailand.¹ The presentations were supported by a background paper for the workshop and a number of interventions from the floor from participating Member States of the United Nations. This document organizes these multiple perspectives and experiences in order to summarize their content and point to useful directions for the future.

Topics and their importance

Many methods of international cooperation were discussed, including information exchange, memoranda of understanding, mutual legal assistance, and extradition, transfer of proceedings and disposition of the proceeds of crime. Each of these criminal justice procedures has grown in importance, corresponding to the development of new democracies, growth of international travel, communication, migration, and technology. Criminals have been shown to exploit these global changes to pursue illegal ends. The workshop's keynote speaker, Kunihiro Horiuchi, Director and Secretary-General of the Asia Crime Prevention Foundation, noted that criminals have historically ignored international borders both in committing crimes and in fleeing from authorities. Exploitation of new sources of human victims and illegal property often result in evidence, profits, witnesses, and victims located in different countries, portending a growing problem that will require greater international cooperation in order to respond effectively.

Figure 1 illustrates the connections among transnational crime, international agreements, and the need for cooperative efforts in their enforcement. Over the years, Member States of the United Nations have recognized the growth of transnational crime problems, especially involving drugs, organized crime, corruption, and terrorism.

¹ United Nations. *Eleventh United Nations Congress on Crime Prevention and Criminal Justice*. http://www.unodc.org/unodc/en/crime_congress_11/index.html (April 2005).

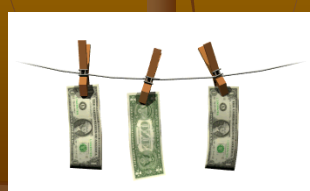
Figure 1



Figure 2

Many successes identified

- Many countries have entered into bi-lateral and regional cooperation agreements—superior to informal agreements.
- Negotiating these agreements deepen each country's understanding of the other's legal practices.
- Economic associations can be used as an effective platform for crime-related agreements (ex: EU, ASEAN, SADC, MERCOSUL)
- Ongoing face-to-face meetings, training and technical assistance breeds trust and cooperation among individuals, agencies, and governments.

3

Mutual concern and discussion has resulted in a number of formal international agreements, including conventions, treaties, memoranda of understanding, mutual legal assistance and related efforts. It is clear, however, that these agreements are not self-enforcing. Without law enforcement and judicial cooperation that results in investigation, prosecutions, and crime prevention, international agreements lack meaning in practice. Therefore, it is the implementation of the agreements that is the real measure of success of international cooperation. The representative of the United States indicated that criminals operating transnationally can only be controlled when there are no safe havens. Bilateral and multilateral agreements must be ratified and translated into effective cooperation in order to control transnational crime.

Successes identified

The participants identified many successes in the effort toward international law enforcement cooperation. Four major areas of success were highlighted:

- Formal versus informal agreements
- Multilateral versus bilateral agreements
- Ongoing face-to-face meetings, training and technical assistance
- Using economic and development associations as a platform for crime-related agreements

These successes are summarized in Figure 2.

Successful prosecutions involving two or more States require information sharing, appropriate legal framework, and resources to act on these. Formal agreements were found to be superior to informal arrangements because they offer consistency over time, and make obligations and responsibilities clear to all parties. Many countries offered interventions pointing to their successful efforts to negotiate formal agreements within their various regions in the areas of mutual legal assistance and extradition. Negotiating these agreements can also deepen each country's understanding and appreciation of the other's legal practices.² Agreements must be kept updated to keep pace with changes in law and legal procedures in all parties to the agreement, a process facilitated by the understandings promoted during the negotiation process.³

Most extradition agreements to date have been of a bilateral by nature. This can be a limitation in cases involving three or more States. Increasingly, there have been multilateral conventions, often under the auspices of the United Nations.⁴ Multilateral conventions are superior in that they offer common definitions of

2 Mark K. Gyandoh, "Foreign Evidence-Gathering: What Obstacles Stand in the Way of Justice?," *Temple International and Comparative Law Journal*, vol. 15 (Spring 2001), p. 81.

3 Juan Pablo Glasinovic, "International Criminal Cooperation or Mutual Assistance," Eleventh United Nations Congress on Crime Prevention and Criminal Justice. Bangkok, Thailand, April 21, 2005.

4 Andreas Schloenhardt, "Extradition Measures," Workshop 1: Enhancing International Law Enforcement Cooperation, including Extradition. Eleventh United Nations Congress on Crime Prevention and Criminal Justice. Bangkok, Thailand, April 21, 2005.

offenses and procedures for States that often have different legal traditions and procedures.⁵ The recent development of a draft model law on extradition should speed the development of national legislation around the world.⁶ Interventions by China, Egypt, and Indonesia also saw a need to strengthen cooperation in the area of recovery of proceeds from crime, which would both be a cause and a result of increased international law enforcement cooperation.

Once agreements are in place, ongoing face-to-face meetings, training and technical assistance among States breeds trust and cooperation among individuals, agencies, and governments. Numerous examples offered by UNAFEI, Australia, the United States, and other participants demonstrated practical, ongoing efforts to enhance training and provide technical assistance. These examples include Australia's Joint People Smuggling Investigation Team with the Royal Thai Police, Interpol's DNA database which recorded its first "hits" linking a DNA profile to known suspects in other countries, and the International Law Enforcement Academies, sponsored by the U.S. State Department on three continents.⁷

Differences in legal systems, law enforcement, and judicial practice can be a barrier to law enforcement cooperation, but good results have been achieved using economic and development associations as a platform for crime-related agreements (ex: EU, ASEAN, SADC, MERCOSUL). MERCOSUL, an association of seven countries in South America since 1991, provides mutual assistance to promote political and economic cooperation. Workshop speaker Edmundo Oliveira (Brazil) made specific recommendations for how MERCOSUL's scope should be expanded to include cooperation on problems of organized crime and corruption shared by participating nations.⁸ Existing relationships are used to address crime issues that affect economic development. The Australian Institute of Criminology presentation noted that "effective law enforcement also requires the solution of long-term, often endemic, economic, social, and governance issues. Only by addressing such issues will consolidation of the initial law enforcement efforts be realized."⁹

5 M. Cherif Bassiouni, "Reforming International Extradition: Lessons of the Past for a Radical New Approach," *Loyola of Los Angeles International & Comparative Law Review*, vol. 25 (Summer 2003), p. 389.

6 United Nations Commission on Crime Prevention and Criminal Justice, "Draft Model Law on Extradition," E/CN.15/2004/CRP.10 May 10, 2004.

7 See Australian Institute of Criminology, "Law Enforcement Cooperation and Judicial Assistance in the Asia-Pacific Region," 11th UN Congress on Crime Prevention and Criminal Justice. Bangkok, April 21, 2005; Leslie E. King and Judson M. Ray, "Developing Transnational Law Enforcement Cooperation," *Journal of Contemporary Criminal Justice*, vol. 16 (November 2000), pp. 386-408.

8 Edmundo Oliveira, Cooperation and Law Enforcement to Counter Organized Crime in the Common Market Countries of South America – Mercosul. "11th UN Congress on Crime Prevention and Criminal Justice. Bangkok, April 21, 2005".

9 Australian Institute of Criminology, "Law Enforcement Cooperation and Judicial Assistance in the Asia-Pacific Region," 11th UN Congress on Crime Prevention and Criminal Justice. Bangkok, April 21, 2005.

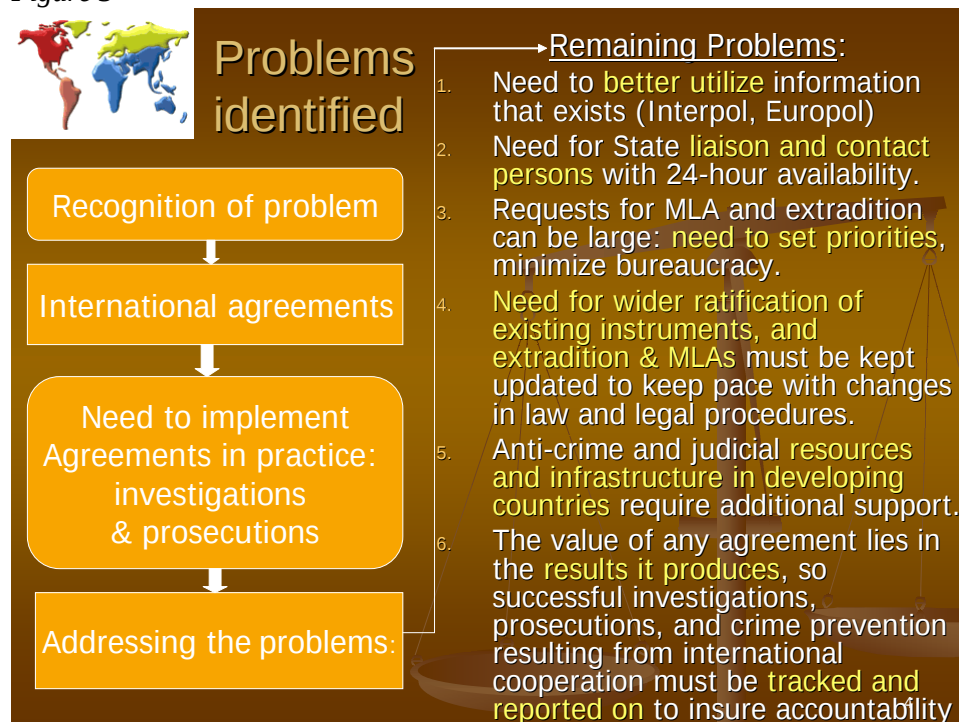
Areas requiring improvement

The workshop participants also reported on matters of international law enforcement cooperation that require improvement. Six major needed improvements included:

- Need to better utilize available information and databases.
- Methods to make the extradition process more efficient.
- Support to developing countries needed to improve their capacity for law enforcement cooperation.
- Tracking and reporting instances of international cooperation is essential to measure progress.
- Wider ratification of existing instruments is required to facilitate the pace of international law enforcement cooperation.

The areas that require attention are summarized in Figure 3.

Figure 3



In some cases multinational cooperation exists that has resulted in databases and analysis capacity (e.g., Interpol, Europol). For example, Interpol offers a global police communications system, several comprehensive databases, and operational support to all of its 182 members. As their workshop presentation indicated, “the Organization’s (Interpol’s) databases are today under-used by the international community.”¹⁰ There is a clear need to better utilize information that exists. State

¹⁰ Interpol, “Enhancing International Law Enforcement Cooperation: A Global Overview by Interpol,” 11th UN Congress on Crime Prevention and Criminal Justice. Bangkok, April 21, 2005.

liaisons and contact persons in each country with 24-hour availability is one mechanism to maximize usage of existing resources by increasing the number of timely information exchanges.

Requests for MLA and extradition can be large. Delays can occur. For example, representatives from Algeria and Turkey noted that arrest warrants issued from their countries often not are acted upon by recipient countries in timely fashion.¹¹ Bureaucratic procedures should be minimized to the extent possible, and law enforcement and crime priorities need to be set, so that countries receiving large numbers of requests can respond in predictable ways. New software developed by UNODC for drafting extradition requests in uniform fashion should also help in standardizing requests, thereby making responses easier.¹²

Anti-crime and judicial resources and infrastructure in developing countries requires additional support in order to support requests for assistance. Developing nations are often called upon in the pursuit of crime suspects and criminal evidence. Additional infrastructure support, training, and technical assistance are required in order to make cooperation possible and timely.¹³ Several examples were reported at the workshop of concrete financial and training assistance to build counter-terrorism, forensic, and intelligence sharing capacity, especially in the Asia-Pacific region.¹⁴ The importance of these efforts cannot be understated, “A key challenge in the short to medium term is the capacity of law and order institutions to maintain their impartiality and effectiveness, particularly during periods of crisis and unrest. Over the longer term, strong police, legal and judicial systems in large part determine the capacity of countries to combat corruption, achieve growth, and attract foreign investment.”¹⁵

The ultimate value of any agreement lies in the results it produces. Successful investigations, prosecutions, and crime prevention that results from international cooperation should be tracked and reported on to insure accountability.

Joint investigation units may become more common in the future as it is likely that more crimes will be investigated simultaneously in multiple countries as they involve the illegal manufacture and transport of persons and goods by criminal

11 “Workshop Identifies Challenges to International Law Enforcement Cooperation in Countering Organized Crime,” 11th UN Congress on Crime Prevention and Criminal Justice. Bangkok, April 21, 2005. BKK/CP/15, p. 2.

12 Andrew Wells, Activities of the UN in the field of extradition “Enhancing Law Enforcement Cooperation, including Extradition,” Eleventh United Nations Congress on Crime Prevention and Criminal Justice. Bangkok, Thailand, April 21, 2005.

13 N. Masamba Sita, Global Crime Report on Crime and Justice,” 11th UN Congress on Crime Prevention and Criminal Justice. Bangkok, April 21, 2005.

14 Takafumi Sato, (UNAFEI) “Extradition and Mutual Legal Assistance in the Asian and Pacific Region,” 11th UN Congress on Crime Prevention and Criminal Justice. Bangkok, April 21, 2005; Australian Institute of Criminology, “Law Enforcement Cooperation and Judicial Assistance in the Asia-Pacific Region,” 11th UN Congress on Crime Prevention and Criminal Justice. Bangkok, April 21, 2005.

15 Australian Institute of Criminology, “Law Enforcement Cooperation and Judicial Assistance in the Asia-Pacific Region,” 11th UN Congress on Crime Prevention and Criminal Justice. Bangkok, April 21, 2005.

networks.¹⁶ Joint investigations have occurred thus far on an ad hoc basis, but memoranda of understanding between law enforcement agencies can facilitate interagency communication and investigations on an ongoing basis. Several successful multinational investigations were reported among African nations, and also between Australia and other nations in that region. These investigations involved stolen motor vehicles, drugs, and stolen firearms.¹⁷

Wider ratification of existing instruments is needed, as are measures toward their implementation. There is also potential for more global application of existing regional measures (e.g., European arrest warrant), if differences in legal systems can be overcome and standardization achieved. It should be kept in mind, however, that too many global instruments might become burdensome or difficult to implement. Therefore, an approach to working agreements based on mutual interest by type of crime, or by region, appears to be the best approach.

Summary

Workshop 1 at the Eleventh United Nations Congress on Crime Prevention and Criminal Justice, *Enhancing International Law Enforcement Cooperation, including Extradition Measures*, pointed to the strengths and weaknesses of existing infrastructure, agreements, and activities among nations in the prevention of transnational crime and pursuit of justice on an international level. The negotiation of binding international Conventions in recent years, and many successful bilateral and multilateral agreements on extradition and related law enforcement matters, have shown us what is possible through patient and committed mutual support in confronting transnational crime.

Successes included the global trend toward formal versus informal cooperation agreements, and more multilateral versus bilateral agreements, which encourage wider participation in cooperation efforts (thereby shrinking the number of places for criminals and their assets to hide). Ongoing face-to-face meetings for training and technical assistance were shown to be a most valuable way to promote trust and post-training cooperation after the negotiation of agreements. The use of economic and development associations as a platform for crime-related agreements has been demonstrated to be an effective way to address shared crime-related issues in Europe, South America, and Asia.

Areas found to be in need of improvement included the need to better utilize available information and databases, development of procedures to make the extradition process more efficient, and greater support to developing countries to improve their capacity for law enforcement cooperation. Tracking and reporting instances of international cooperation is essential to measure progress. The

16 Mevyn Levitsky, "Transnational Criminal Networks and International Security," *Syracuse Journal of International Law and Commerce*, vol. 30 (Summer 2003), p. 227.

17 Mukelabai Mukelabai, "International Law Enforcement Cooperation: An Overview of Initiatives in Southern Africa," 11th UN Congress on Crime Prevention and Criminal Justice. Bangkok, April 21, 2005; Australian Institute of Criminology, "Law Enforcement Cooperation and Judicial Assistance in the Asia-Pacific Region," 11 UN Congress on Crime Prevention and Criminal Justice. Bangkok, April 21, 2005.

documentation by the Australian Institute of Criminology and UNAFEI (United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders) provide examples of ways to track changes in law, training efforts, and impacts in practice.¹⁸ As a representative from Ukraine stated during the interactive discussion, the effective fight against transnational organized crime is only possible with international cooperation among law enforcement agencies.¹⁹ Similar comments were made by representatives from Thailand, Finland, France, Sweden, China, Philippines, and the United States. Wider ratification of existing instruments, such as the United Nations Convention Against Transnational Organized Crime and the Convention Against Corruption, is needed to facilitate the pace of international law enforcement training, technical assistance, and cooperation in investigations.

18 Takafumi Sato, (UNAFEI) “Extradition and Mutual Legal Assistance in the Asian and Pacific Region,” 11th UN Congress on Crime Prevention and Criminal Justice. Bangkok, April 21, 2005; Australian Institute of Criminology, “Law Enforcement Cooperation and Judicial Assistance in the Asia-Pacific Region,” 11th UN Congress on Crime Prevention and Criminal Justice. Bangkok, April 21, 2005.

19 “Workshop Identifies Challenges to International Law Enforcement Cooperation in Countering Organized Crime,” 11th UN Congress on Crime Prevention and Criminal Justice. Bangkok, April 21, 2005. BKK/CP/15, p. 9.

Keynote Address

Kunihiro Horiuchi
Secretary General,
Asia Crime Prevention Foundation
Japan

It is a great honor for me to have the opportunity to make the keynote speech at this Workshop, "Enhancing International Law Enforcement Cooperation, including Extradition Measures".

As I was introduced, I hold the post of Secretary General of the Asia Crime Prevention Foundation (ACPF), one of the NGOs supporting the activities of the United Nations.

I served for about 29 years as a public prosecutor, and during those 29 years I was very fortunate to work at UNAFEI, the United Nations Far East Institute for the Prevention of Crime and the Treatment of Offenders, as the deputy director and the director for 5 and a half years in total.

I am now working as a lawyer in private practice, mainly engaged in the work of a court appointed defense counsel for poor defendants who cannot afford a lawyer, and at the same time, I am studying and teaching criminal law at a law school as a professor.

Reflecting on my career, so far, I have been studying and actively engaged in international law enforcement cooperation, including extradition measures, from various aspect.

When I was a public prosecutor at the Tokyo High Public Prosecutors Office, I was at the position of handling extradition cases for the government. And, recently I have been engaged in several extradition cases as a defense counsel for fugitives, including the first case between Japan and Korea which took place last year.

The background paper of this workshop takes the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna, 1988) and the United Nations Convention against Transnational Organized Crime (Palermo, 2000) as representative examples of multilateral instruments at the international level.

In fact, in Japan, after the ratification of the 1988 Convention, new methods of investigation, such as controlled delivery were introduced in the field of investigation of drug related crimes and they brought fruitful results.

Today, even ordinary citizens are required to identify themselves at the bank when they transfer a large amount of money or when they cash a high value cheque in order to prevent money laundering.

In the field of extradition, not only bilateral treaties but also multilateral conventions have been promoted in recent years. (Annex 2) This tendency is highly appreciated to facilitate effective extradition practice.

We, ACPF (the Asia Crime Prevention Foundation) are also much concerned in facilitating effective extradition practice. At the 6th ACPF World Conference in 1997, we discussed this matter and recommended simplified extradition procedures. In practice, some fugitives do not wish to have a formal judicial procedure such as an open court hearing, but wish to be sent to the requesting country to have a speedy trial. In such cases, a simplified procedure such as an abbreviated hearing can be recommended.

In fact, in the first extradition case from Japan to Korea, which I myself was engaged in as a court assigned attorney for the fugitive, the procedure of the hearing by the court was abbreviated. The fugitive (Korean with Chinese nationality) wished to be sent to Korea as soon as possible, and I wrote in my report that we did not contest extradition. He was soon extradited after the decision of the court based on my report.

In this context, we can appreciate the recent promotion of international law enforcement cooperation. However, there is still much to do and we should not be satisfied yet.

We must recognize that throughout history criminals do not regard the international borders as obstacles to commit crimes or to flee from law enforcement authorities. International borders are becoming easier to cross by criminals with expertly faked passports and other sophisticated measures.

For example, although Japan is an isolated country composed of four main islands apart from the peninsula and the continent, it is very easy for criminals to fly to Japan and commit serious crimes in the evening and fly back to their own countries the next morning with a large amount of profit.

On the other hand, international law enforcement cooperation is cooperation between countries, each of which has its own sovereignty.

We must re-examine the meaning of terms, such as, reciprocity, double criminality, one's own nationals, political offenses and prima facie evidence of guilt, not only in the context of extradition but also in international law enforcement cooperation in general, in the direction of the enhancement of timely and wide-ranging international cooperation.

I am very interested in the mutual recognition of arrest warrants such as European Arrest Warrants which have been utilized since 2004. (Annex 2) I wish to know how effectively those warrants are exploited in EU countries.

It seems that such instruments could be promoted not only in EU countries but also in other areas and all over the world.

Here, at this workshop, many of these issues will be discussed and I hope we will find some solutions on how to cope with those criminals who move from country to country committing crimes.

Global Crime Report on Crime and Justice

Masamba Sita
Director, UNAFRI (United Nations African Institute
for the Prevention of Crime and the Treatment of Offenders)
Uganda

Introduction

A presentation by UNICRI on crime trends revealed that the level of organized crime in a country is strongly and inversely related to:

- Performance of police;
- Quality of the rule of law;
- Level of human development.

It reveals that high perceived prevalence of organized crime is relative to:

1. Low performance of police;
2. Low quality of the rule of law;
3. Low human development.

This is characteristic of the majority of African countries.

Police statistics from the 3 selected countries – Botswana, South Africa and Uganda are reorganized in 3 categories:

- Offences against the person;
- Offences against the property; and
- Transnational organized related crimes.

Emphasis is focused more on the third category – Transnational Organized Related Crimes, as we are very concerned with organized crime. We have selected the following:

- Immigration Act;
- Theft of motor vehicles;
- Firearms Act
- Terrorism
- Murder (in the case of trafficking in human organs)

This led us to consider policy development purposely to acknowledge that there is “national” and “transnational” organized crime, and to show how the 2 categories are related. This is in order to put in place effective measures to combat organized crime both at National and Transnational levels.

When we speak of law enforcement cooperation, we should look, inter-alia at:

- Exchange of good practices that lead member States to do so; i.e decrease in respective countries as indicated in Tables 1, 2 and 3.
- Incorporation of international instruments in the local legislation; and
- UNAFRI’s role in assisting its member States to do so.

Criminal Statistics

NB: Comparisons are somehow biased due, inter-alia, to differences of definitions of offences and years (periods) under consideration.

UNAFRI appeals to African countries to harmonize their legislations with the international Instruments in order to solve, among others, the problem of definition.

A. NATIONAL LEVEL

1. General Trends

1. A general progressive increase in crimes against the person and property in:
 - Botswana;
 - South Africa; and
 - Uganda
2. But violent social fabric and property related crimes considered separately are in general on the decrease in South Africa.

Table 1: BOTSWANA

	TYPE OF CRIME/YEAR	2001	2002	DECREASE/ INCREASE
	A. AGAINST THE PERSON			
1	Threat to kill	136	101	-25%
2	Murder	212	254	19%
3	Assault common	10515	11008	4%
4	A.O.A. bodily harm	5648	6220	10%
	B. AGAINST PROPERTY			
5	Burglary & theft	5050	5585	10%
6	Housebreaking & theft	6043	6306	4%
7	Store breaking & theft	5626	5120	-8%
8	Robbery	1465	2046	39%
9	Theft common	13075	13485	3%
10	Stock theft	1103	1168	5%
	C. TRANSNATIONAL ORGANISED RELATED CRIME			
11	Immigration act	6839	12192	78%
12	Motor vehicle theft act	738	657	-10%
13	Drugs & related substances	948	825	-12%
14	Arms & ammunition act	1002	433	-56%
15	Terrorism	-	-	-

Table 2: SOUTH AFRICA

	TYPE OF CRIME/YEAR	2000-2001	2001-2002	DECREASE/ INCREASE
	A. AGAINST THE PERSON			
1	Threat to kill	63.7	69.3	8%
2	Murder	49.3	47.4	-3%
3	Assault common	564.0	580.0	2%
4	Assault gbh (serious)	623.9	584.9	-6%
5	A.O.A. bodily harm	5648	6220	10%
	B. AGAINST THE PROPERTY			
6	Burglary & theft			
7	Housebreaking & theft (Residential)	687.0	670.3	-2%
8	Store breaking & theft (Business)	207.2	258.5	-6%
9	Robbery(with aggravating circumstances)	257.7	258.5	0.08%
10	Theft common			
11	Stock theft	94.1	92.2	-0.31%
	C. TRANSNATIONAL ORGANISED RELATED CRIME			
12	Immigration act	226.7	214.5	-5%
13	Motor vehicle theft act	454.4	441.3	-2%
14	Drug & related substances	101.8	117.2	12%
15	Arms & ammunition act	33.5	34.3	2%
16	Terrorism	-	-	-

Table 3: UGANDA

	TYPE OF CRIME/YEAR	2003	2004	DECREASE/ INCREASE
	A. AGAINST THE PERSON			
1	Murder other than shooting	1951	1856	-4%
2	Att. murder other than shooting	276	304	10%
3	Murder by shooting	303	348	14%
4	Att. of murdr by shooting	104	135	29%
5	Aggravated assaults	4226	5664	34%
6	Common assaults	13211	16635	25%
7	Assaults gbh (serious)	4532	4593	1%
	B. AGAINST THE PROPERTY			
8	Burglary & theft	2612	3368	28%
9	Housebreaking & theft	1082	1397	29%
10	Shop breaking & theft	820	824	-0.5%
	C. TRANSNATIONAL ORGANISED RELATED CRIME			
11	Immigration act	146	151	3%
12	Theft of vehicles	874	1099	25%
13	National drugs policy & authority	1043	1219	16%
14	Firearms act	226	186	-18%
15	Terrorism	38	186	389%

B. INTERNATIONAL COOPERATION

We consider that National Organized Crime (N.O.C) forms tentacles of Transnational Organized Crime (TOC) and any of the selected crimes may be only a tip of the iceberg in the transnational organized crime scenario.

Diagram 1:

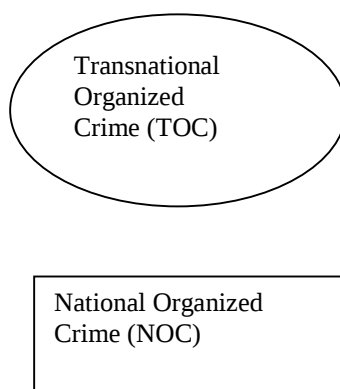
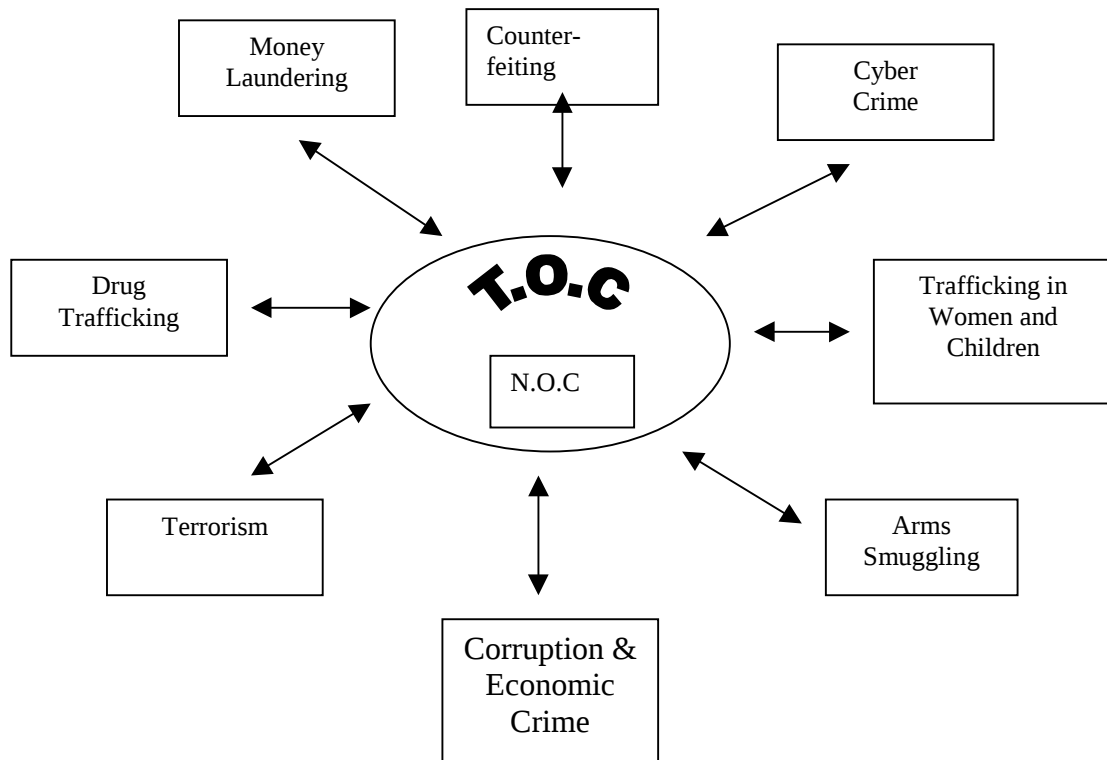


Diagram 2:



Some Initiatives

The following initiatives aiming at reducing transnational organized crime have been undertaken. The 2nd AU Ministerial Meeting on Drug Control and Crime (Port Louis, Mauritius, 2004) committed itself to:

- Individually and collectively, among other things, formulate time-bound, measurable programmes of action and targets in order to reduce the incidents and impact of organized crime;
- Develop and strengthen international cooperation and law enforcement including extradition and Mutual Legal Assistance measures.

a) Regional Initiatives:

- AU Convention on Prevention and Combating Corruption;
- Nairobi Declaration on Firearms Management Programme 2002;
- UN Regional Centre for Peace and Disarmament in Africa (Togo, Lome);

b) Sub-regional Initiatives:

- ECOWAS Moratorium, 1998

c) UNAFRI Initiatives:

- UNAFRI Survey on Trafficking in Firearms in Africa, 2001;
- UNAFRI Project on Extradition and Mutual Legal Assistance;

d) International Initiatives:

- UN Convention on Corruption
- UN Convention on Transnational Organized Crime and Protocols thereto;

Patterns of cooperation have started to emerge in the region:

- Bilateral
- Multilateral arrangements between countries
- Among SARPCO for Southern Africa countries
- Among EAPCO for Eastern Africa countries.
- Among WAPCCO for Western African countries
- Among African States of Interpol Sub-regional Bureau, Abidjan, Cote d'Ivoire.

There is need to encourage and reinforce these initiatives with relevant substantive technical assistance from UNODC and other stakeholders.

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Law Enforcement Co-operation and Judicial Assistance in the Asia and Pacific Region

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Overview

The level of law enforcement cooperation within the Asia-Pacific region, and especially that which exists between Australia and its immediate neighbours, is high. Cooperation between regional organizations, and between Australian Government agencies and departments with their regional counterparts, is evidenced strongly by the range and combination of dedicated regional meetings, consultations, exchanges of intelligence and information, memoranda of understanding, treaties, and the provision of funding and personnel. In essence, law enforcement cooperation between law enforcement agencies is facilitated and enhanced by the activities of non-law enforcement agencies.

A number of Australian Government Departments and agencies, and regional bodies, are involved in addressing transnational crimes in general, and terrorism in particular, within the Asia-Pacific region, and this report details their respective contributions to law enforcement cooperation in that region. For the most part, the report details activities and achievements reported by those departments and agencies in 2003-2004.

There will clearly be differences in terms of capacity by countries within the region to deal with such issues, caused in part by relative economic disparity, but such is also likely to be the case in other regional contexts. However, in terms of counter-terrorism, South-East Asian governments have made great efforts to address this problem¹. Thus, the key achievements in mutual cooperation, which are summarised in this report, could act as a generic model for those regions in which real difficulties are experienced.

¹ For example, the efforts of Indonesia, Malaysia, the Philippines, Singapore, Thailand and Cambodia in counter-terrorism activities have been noted by the Australian Government in 'Transnational Terrorism: The Threat to Australia', www.dfat.gov.au/publications/terrorism

Law Enforcement Co-operation in the Asia-Pacific region by Department, Agency or regional body

Attorney-General's Department (A-G's)

The Attorney-General's Department serves the people of Australia by providing essential expert support to the Government in the maintenance and improvement of Australia's system of law and justice.

The Attorney-General's (A-Gs) Department established a Pacific Transnational Criminal Intelligence Network.

A-G's introduced:

i) A South Pacific section to provide advice and assistance on strategic, governance and legislative issues in the region to combat terrorism and transnational organised crime and will assist Pacific Island countries to implement the Honiara and Nasonini Declarations.

The South Pacific section will also support non-police Australian officials operating in Papua New Guinea (PNG) within the law and justice sector under the Enhanced Cooperation Program (ECP). Signed on 30 June 2004, the ECP will operate as a five-year package of assistance supporting, *inter alia*, the areas of policing and law and justice.

ii) The Financial Intelligence Support Team (FIST) to provide legal and strategic policy advice to Pacific Islands countries to implement international money laundering obligations and to ensure that existing and proposed Financial Intelligence Units (FIUs) are provided with the skills necessary to tackle emerging financial crimes.

Australian Federal Police (AFP)

The Australian Federal Police (AFP) enforces Commonwealth criminal law, and protects Commonwealth and national interests from crime in Australia and overseas. The AFP is Australia's international law enforcement and policing representative, and the chief source of advice to the Australian Government on policing issues.

In April, 2004 the AFP signed a protocol with Philippines law enforcement authorities to launch a \$3.65 million project to help build the country's counter-terrorism capacity through improving Philippines law enforcement agencies in intelligence sharing, bomb investigation techniques and forensics.

To date 208 Australian Federal Police (AFP) officers, along with 94 personnel from eight regional countries, make up the 302-member Participating Police Force (PPF) currently operating in Solomon Islands under the auspices of the Regional Assistance Mission to Solomon Islands (RAMSI). The PPF has 302 members from Australia, New Zealand, Fiji, Tonga, Samoa, Vanuatu, Kiribati, Nauru and the Cook Islands.

As a result of cooperative efforts between the Royal Solomon Islands Police (RSIP) and the PPF:

- 3,730 illegal weapons and 306,851 rounds of ammunition have been seized or surrendered.
- 3,316 people have been arrested and charged with 4,788 offences.
- Internal investigations into the professional standards of the Royal Solomon Islands Police (RSIP) have resulted in 71 arrests, 375 criminal charges being laid and the removal of over 400 people from the RSIP.
- 17 outposts have been established in the provinces in a concerted effort to prevent crime across Solomon Islands and prosecute criminal activities.
- Security & guarding has provided personal protection to key political figures as well as essential security around government infrastructure, the temporary court, remand facilities and Rove Prison.

Achievements of RAMSI to date include:

- The establishment of the RSIP Protection Unit.
- Development of management training for senior police officers.
- Placement of advisors throughout the justice system to strengthen the country's ability to deal with the high volume of arrests being made.
- Completion of a new high security prison in Honiara and a strengthened prison service.
- The development of crime prevention initiatives in schools and within the wider community.

The AFP has been allocated \$766.3 million over five years (from 2003-04) to support a comprehensive cooperative program with the Royal PNG Constabulary (RPNGC) to enhance the capacity of the RPNGC to combat serious crime and bring perpetrators to justice.

AFP has been allocated \$20.3 million over four years (together with \$1.1 million for ASIO) to continue a presence in the Pacific region in general and to contribute to enhancing good governance through the strengthening of law enforcement capacities within the region.

The AFP has been allocated \$29.6 million over four years (as part of a \$38.3 million initiative over five years) to consolidate the Jakarta Centre for Law Enforcement Cooperation (JCLEC). The Centre will be developed as a resource for the entire Asia-Pacific region in the fight against transnational crime, with a focus on counter-terrorism. The Centre will strengthen regional cooperation and skills with the AFP providing active training and close operational assistance in areas including the management of serious crime (including terrorist offences), financial investigations and close personal protection.

The JCLEC will develop complementary relations with other relevant regional bodies working in the areas of law enforcement and counter-terrorism, such as the South-East Asian Regional Centre for Counter Terrorism in Kuala Lumpur and the International Law Enforcement Academy in Bangkok. In addition, the AFP's Joint Counter Terrorism Teams (JCTT) were deployed to Indonesia to assist the Indonesian National Police on terrorism-related matters under the auspices of the Jakarta Operations Centre (JOC).

The Pacific Transnational Crime Coordination Centre (PTCCC) has been opened in Suva which will become the hub of the Pacific Transnational Crime Unit Network and will manage and coordinate law enforcement intelligence provided by the Network and regional law enforcement agencies.

The AFP has assisted in the establishment of a Joint People Smuggling Investigation Team within the Immigration Bureau of the Royal Thai Police which also has a transnational crime coordination role.

An AFP/Cambodian Joint Transnational Crime Investigation Team provides the AFP with a framework to facilitate its fight against transnational crime, including slavery and sexual servitude.

A Transnational Sexual Exploitation and Trafficking Team (TSETT) has been established, comprising specially trained investigators and analysts, which is coordinated by the AFP's Transnational Crime Co-ordination Centre.

Australian Transaction Reports and Analysis Centre (AUSTRAC)

The Australian Transaction Reports and Analysis Centre (AUSTRAC) is Australia's anti-money laundering regulator and specialist financial intelligence unit.

AUSTRAC's additional funding (amounting to \$10 million over the next four years) will finance the following initiatives:

- AUSTRAC will provide expert staff to assist regional Financial Intelligence Units (FIUs) to enhance their capabilities.
- AUSTRAC will also develop and host training programs for staff and analysts in FIUs to facilitate analysis, information exchange and compliance with global AML and counter terrorist financing (CTF) requirements.
- AUSTRAC will develop typologies relating particularly to terrorist financing in South-East Asia.

AUSTRAC has signed Memoranda of Understanding (MOUs) with 37 FIUs including, within the Asia-Pacific region, the Cook Islands, Indonesia, Singapore, Thailand and Vanuatu.

In the 2003/04 financial year, a project designed to provide long-term technical assistance to Indonesia's FIU (PPATK) in developing its capabilities in the receipt, analysis and dissemination of financial transaction report information, was enhanced by the allocation of two AUSTRAC officers to PPATK on a full-time basis.

Through the Pacific Islands Forum Secretariat, AUSTRAC provided desktop computers to FIUs in Fiji, Palau, Vanuatu, Samoa and Tonga, enhancing their capacity to participate in international AML activities.

AUSTRAC will also provide a dedicated officer to develop and deliver financial analysis training as part of the Jakarta Centre for Law Enforcement Cooperation.

AUSTRAC's focus on the South East Asian and Pacific regions in 2004-05 will include:

- Increasing the number of exchange instruments with international counterparts
- Responding to requests for information, hosting visits from international delegations and working with multilateral anti-money laundering and counter-terrorism fora
- Establishing a technical and information technology assistance program directed at developing FIUs in South East Asia.

Asia Pacific Economic Cooperation (APEC)

Asia-Pacific Economic Cooperation (APEC) is the premier forum for facilitating economic growth, cooperation, trade and investment in the Asia-Pacific region.

APEC dealt with terrorism issues in the main. The key priorities for APEC's Counter Terrorism Task Force (CTTF) established in February 2003 include:

- the Secure Trade in the APEC Region (STAR) initiative to secure and enhance the flow of goods and people through measures to protect cargo, ships, international aviation and people in transit;
- halting the financing of terrorism; promoting cyber security; and
- the energy security initiative.

The CTTF aims to cooperate more closely with international organisations such as the International Monetary Fund (IMF), the Asia Development Bank, the World Bank, the UN Counter Terrorism Committee, the Inter-American Committee against Terrorism and the Association of South East Asian Nations (ASEAN) in order, *inter alia*, to provide training and assistance and to exchange information.

In August 2003 all APEC Member Economies submitted their APEC Counter-Terrorism Action Plan (CTAP).

The CTTF continues to work closely with the Finance Ministers' Process to prevent the financing of terrorism. A seminar to provide legal policy assistance to strengthen AML/CTF frameworks was held in October 2003.

APEC has also responded to the need to reduce the impact of terrorist attacks on the region's tourism industry by funding a practical risk management study for governments and tourist operators.

At the second STAR conference (5-6 March 2004) representatives of all APEC Member Economies together with senior executives from major private-sector companies, and officials from international organisations such as the IMO, IMF, World Bank and Interpol discussed maritime security, air transportation security, the mobility of people and measures to prevent terrorist financing.

The development of a Regional Movement Alert System (RMAS) will hopefully allow APEC economies to safeguard their borders from unlawful activities related to terrorism as well as illegal commercial activities. To this end, the Informal Experts' Group on Business Mobility implemented a project which will organise training in

document examination and the detection of fraud, establish standards in the security of travel documents and develop standardised codes of conduct for immigration officers.

Association of South East Asian Nations (ASEAN)

The Association of South East Asian Nations (ASEAN) aims to accelerate the economic growth, social progress and cultural development in the region.

ASEAN (comprising, Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, Vietnam) has implemented several projects and initiatives in combating transnational crime such as the ASEAN Workshop on Anti-Money Laundering (July 2003), the ASEAN Workshop on Combating Arms Smuggling (June 2003) and an ASEAN-China Workshop on Law Enforcement Cooperation against Transnational Crime (September 2003).

Prospective projects include an ASEAN Workshop on Combating Sea Piracy and an ASEAN Workshop on Trafficking in Persons, Particularly in Women and Children. The mechanisms for ASEAN Plus Three (China, Japan and the Republic of Korea) cooperation in counter-terrorism have been initiated.

In July 2004 Australia and ASEAN signed a counter-terrorism declaration which provided for:

- Enhanced cooperation and liaison among law enforcement and security agencies in relation to counter-terrorism regimes.
- Continued and improved intelligence and information-sharing on, *inter alia*, terrorist financing.
- Strengthening capacity-building efforts through training, education and consultations.
- Providing assistance on transport security and border and immigration control challenges.
- Implementing the measures contained, *inter alia*, in the ARF's Statement on Cooperative Counter-Terrorism Action on Border Security and the ARF Statement on Cooperation Against Piracy and Other Threats to Maritime Security, respectively.
- Implementing the measures set out in the Co-Chairs' Statement on the Bali Regional Ministerial Meeting on Counter-Terrorism, and contributing to follow-up activities including the two officials' level ad hoc working groups on law enforcement and legal issues.
- Complying with all binding United Nations resolutions and declarations on international terrorism, and
- Exploring additional areas of mutual cooperation.

ASEAN police and law enforcement officials have agreed to establish national counter terrorism task forces to strengthen regional cooperation in counter terrorism in relation, *inter alia*, to the examination of witnesses and the searching and seizure of evidence.

The following capacity building activities were undertaken:

- Workshop on Combating International Terrorism 20-23 January 2003, Jakarta
- ASEAN Workshop on Counter-Terrorism, 18-20 August 2003, Kuala Lumpur
- Workshop on Counter-Terrorism – Managing Civil Aviation Security in Turbulent Times, 21-25 July 2003, Singapore
- ASEAN-China Workshop on Law Enforcement Cooperation Against Transnational Crime, 24-30 August 2003, Beijing
- ASEANAPOL Counter-Terrorism Workshop on Intelligence Analysis, 22-26 September 2003, Singapore
- Foundation Course for Senior Officials in the Theory of Counter Terrorism Recognition and Multilateral Collaboration, organised by ASEAN and AusAID, 12-13 February 2004, Jakarta
- ASEANAPOL Counter-Terrorism Workshop on Post-Blast Investigation, 16-20 February 2004, Singapore
- ASEANAPOL Counter-Terrorism Workshop on Countermeasures for Explosives and Suicide Bombers, 22-25 March 2004-11-22

The Second ASEAN Regional Forum (ARF) Inter-Sessional Meeting on Counter-Terrorism and Transnational Crime (ISM-CTTC) was held in Manila on 30-31 March 2004 and focused on enhancing transport security.

An ASEAN meeting in Putrajaya on 6 April 2004 discussed the implementation of the ASEAN-China Declaration on the Conduct of the Parties in the South China Sea (2002). The Parties agreed to explore, *inter alia*, combating transnational crime including, but not limited to, trafficking in illicit drugs, piracy and armed robbery at sea and illegal trafficking in arms.

The ASEAN Ministerial Meeting on Transnational Crime (AMMTC) and its subsidiary body, the Senior Officials Meeting on Transnational Crime (SOMTC), have been implementing the Terrorism Component of the Work Programme to Implement the ASEAN Plan of Action to Combat Transnational Crime (adopted in May 2002). The programme outlines six areas of cooperation:

1. information exchange
2. cooperation in legal matters
3. cooperation in law enforcement matters
4. institutional capacity building
5. training
6. extra-regional cooperation

ASEAN immigration authorities have agreed to assist and coordinate with the other ASEAN law enforcement authorities to prevent the movement of terrorists and deter cross-border terrorism by working towards the establishment of intelligence units in their respective agencies to tackle trafficking in persons, human smuggling and terrorism. They have also set up an ASEAN focal point directory for ASEAN immigration authorities to exchange information.

On 9-10 January 2004 the First ASEAN Plus Three Ministerial Meeting on Transnational Crime was held in Bangkok.

Implementation of the following joint undertakings continued:

- Joint Declaration of ASEAN and China on Cooperation in the Field of Non-Traditional Security Issues and Its Memorandum of Understanding adopted on 4 November 2002 and 10 January 2004, respectively.
- ASEAN-EU Joint Declaration for Cooperation to Combat Terrorism, adopted on 28 January 2003
- ASEAN-US Joint Declaration for Cooperation to Combat International Terrorism, signed on 1 August 2002
- ASEAN-India Joint Declaration on Cooperation to Combat Terrorism, adopted on 8 October 2003.
- 10th ASEAN Regional Forum held in Phnom Penh in June 2003 issued the ARF Statement on Cooperative Counter-Terrorist Action on Border Security.

Australian Customs Service

The Australian Customs Service (Customs) manages the security and integrity of Australia's borders.

Key achievements for Customs in regional cooperation in 2003-04 include:

- The signing of bilateral MOUs on customs cooperation with the customs administrations of Fiji (October 2003), Thailand (December 2003) and PRC (April 2004); and
- The hosting of formal bilateral talks with the customs administrations of Korea (October 2003), Japan (April 2004) and Indonesia (May 2004)

Customs also hosted other government delegations from, or sent representatives to visit, more than 20 countries including, within the Asia-Pacific region, the People's Republic of China, Hong Kong, Indonesia, Japan, the Republic of Korea, Malaysia, New Zealand, the Philippines and Thailand.

In October 2003, the Australian Government donated a marine vessel to the Fiji Islands Revenue and Customs Authority and Customs provided training to Fiji Customs staff.

In conjunction with the Department of Transport and Regional Services Customs delivered training on the new maritime security regime in Indonesia, the Philippines, Papua New Guinea, Thailand and Vietnam.

One staff member has been based in Port Moresby since February 2004 working with Papua New Guinea (PNG) Customs to develop a long-term capacity building plan in areas such as border security and integrity.

Customs signed an MOU with Indonesian Customs on 5 March 2003 and signed a cooperative framework agreement with Japan on 27 June 2003.

The Oceania Customs Organisation conference was held in the Cook Islands in April 2003 and focussed on security and capacity building

Customs assisted other Customs administrations with integrity issues including:

Delivery of integrity-related technical assistance to PNG:

- Assisting PNG Customs service to draft a Code of Conduct and Ethics
- Organising an APEC operational risk management workshop in November 2002 at which 14 member economies increased skill levels in targeting, profiling, operational intelligence, operational risk management and change management
- Co-chairing a meeting of the WCO Regional Integrity Working Group in Malaysia. A key outcome included regional endorsement of an Integrity Development Guide that will be promoted by the WCO, APEC and the Oceania Customs Organisation.
- Contribution to the WCO revision of the Revised Arusha Declaration – a key integrity-related agreement.
- Participation in the customs workshop of the Third Global Forum on Fighting Corruption and Safeguarding Integrity in the Republic of Korea, in May 2003.

Customs attended the Project PRISM (Precursors Required in Synthetic Manufacture) Chemical Working Group meeting in the Hague in December 2002 and a similar meeting in Bangkok in June 2003 on the international trade in safflower-rich oils.

Customs participated in the use of the Customs Asia Pacific Enforcement Reporting System (CAPERS), a secure Internet site through which Customs administrations can pass intelligence and information and enhance capacity in areas such as counter-terrorism and people smuggling.

Intelligence Services

The Australian Security Intelligence Organisation (ASIO) gathers information and produces intelligence that will enable it to warn the government about activities or situations that might endanger Australia's national security.

The Australian Secret Intelligence Service (ASIS) is Australia's overseas intelligence collection agency whose mission it is to protect and promote Australia's vital interests through the provision of unique foreign intelligence services.

The Defence Signals Directorate (DSD) is Australia's national authority for signals intelligence and information security. The Defence Intelligence Organisation (DIO) provides **all-source intelligence assessment** at the national level to support Defence and Government decision-making and the planning and conduct of Australian Defence Force operations.

The Defence Imagery and Geospatial Organisation (DIGO) provides geospatial intelligence, from imagery and other sources, in support of Australia's defence and national interests

ASIO and ASIS have received significant new resources and have deepened existing links and forged new relationships in the Asia-Pacific region. This has led to a greater pooling of resources and a dramatic increase in the sharing of information. Australia is also providing counter-terrorism intelligence training and advice to countries in the Pacific.

DIO has increased counter-terrorism analytical resources while the DSD has enhanced its capability to collect signals intelligence against terrorists. DIGO also maintains a counter-terrorism capability.

Department of Foreign Affairs and Trade (DFAT)

The Department of Foreign Affairs and Trade (DFAT) has responsibility for advancing the interests of Australia and Australians internationally.

In March 2004 discussions were held with China on key security matters including counter-terrorism.

In August 2004, Australia hosted the first meeting for the Legal Issues Working Group established at the Bali Regional Ministerial Meeting on Counter-Terrorism at which the strengthening of anti-terrorism laws and enhancing cooperative arrangements in relation to evidence gathering and extradition were discussed.

In the same month, Australia and Thailand held a combined counter-terrorism exercise (Exercise Wyvern Sun) in Thailand.

In July 2004, the inaugural Regional Special Forces Counter Terrorism Conference held at Bowral brought together special forces and counter-terrorism experts from Indonesia, the Philippines, Malaysia, Singapore, PNG, New Zealand, China, India, Vietnam, Cambodia, Japan, Brunei, Thailand and the US.

A Joint Ministerial Committee meeting between Australia and Singapore was held in Singapore in July 2003 and focused on consolidating the cooperation with Singapore on counter-terrorism.

In August 2003, DFAT organised the second Australia-Indonesia-East Timor Trilateral Foreign Ministers' Meeting in Adelaide, an important outcome of which was the signing of a bilateral MOU with East Timor on counter-terrorism.

Australia has established a network of bilateral counter-terrorism arrangements:

India	MOU August 2003
Thailand	MOU October 2002
Philippines	MOU March 2003
PNG	MOU December 2003
Fiji	MOU March 2003
East Timor	MOU August 2003
Indonesia	MOU February 2002
Malaysia	MOU August 2002
Cambodia	MOU June 2003
Japan	Joint Statement on Cooperation to Combat International Terrorism July 2003

These MOUs set out a framework for bilateral cooperation between law enforcement, intelligence and defence officials as well as other relevant agencies, such as customs and immigration.

The Regional Ministerial Meeting on Counter-Terrorism in February 2004 resolved to enhance regional cooperation on counter-terrorism and identified steps to further strengthen and consolidate regional efforts in the areas of law enforcement, information sharing and legal frameworks.

The Ambassador for Counter-Terrorism chaired the International Counter-Terrorism Coordination Group which worked on a whole of government basis to ensure effective international counter-terrorism cooperation between Australian agencies across a full range of activities.

DFAT supported AusAID and AFP efforts to obtain East Timorese Government approval for a major bilateral policing project. The project will upgrade training and management capacity-building in East Timor's police force.

An MOU in February 2004 between Australia and Nauru facilitated the provision by the Australian Government of a Finance Secretary and Police Commissioner to Nauru with the requisite powers to improve finance and law and order management. A Treaty based on this MOU was concluded in May 2004.

In October 2003 a \$20 million package of new anti-trafficking in persons measures was announced and in June 2004 a Government Action Plan to Eradicate Trafficking in Persons was launched.

An MOU between Australia and Thailand covering the Asia Regional Cooperation to Combat People Trafficking Project was signed in December 2003. An Agreement on Bilateral Cooperation between Thailand and Australia was signed in July 2004 and covers issues relating to security and law enforcement.

Also in December 2003, an agreement was signed between Australia and Cambodia to provide assistance to Cambodia in its fight against people trafficking.

In June 2004, the Ambassador for People Smuggling Issues co-chaired, with her Indonesian counterpart, a Bali process senior officials' meeting in Brisbane at which delegates from 47 countries agreed on a future program of work including greater focus on trafficking in persons, child sex tourism, law enforcement and border controls, intelligence sharing on smugglers and traffickers and mutual assistance and extradition relationships.

Department of Immigration, Migration and Indigenous Affairs (DIMIA)

The Department of Immigration, Migration and Indigenous Affairs (DIMIA) has responsibility, *inter alia*, for immigration control, ethnic affairs and indigenous affairs.

DIMIA's work with governments, particularly in the Asia-Pacific and Middle East regions, and engagement with international organisations, led to:

- Action to detect and prevent people smuggling and trafficking, including the use of prosecution, the use of return and the strengthening of the management of borders and,

- Assistance in regional capacity building in relation, *inter alia*, to:
 - Information and intelligence sharing
 - Inter-agency cooperation
 - Verification of the identity and nationality of travellers
 - Enhanced understanding of the issues involved in returning illegal immigrants
 - Investment in over 20 Asia-Pacific and Middle Eastern countries including the establishment of document examination laboratories and the provision of technical assistance and equipment and training in, for example, the detection of document fraud.
 - Continued financial support in Indonesia as a transit country for persons engaged in illegal travel to Australia.

Extradition and Mutual Legal Assistance

Mutual Legal Assistance

Mutual assistance by Australia is provided under the Mutual Assistance in Criminal Matters Act 1987. In relation to the Asia-Pacific region, Australia has mutual assistance treaties and agreements with:

- Republic of Korea (Treaty Between Australia and the Republic of Korea on Mutual Assistance in Criminal Matters)
- Republic of the Philippines (Treaty Between Australia and the Republic of the Philippines on Mutual Assistance in Criminal Matters)
- Republic of Indonesia (Treaty Between Australia and the Republic of Indonesia on Mutual Assistance in Criminal Matters) and
- Hong Kong (Agreement Between the Government of Australia and the Government of Hong Kong concerning Mutual Legal Assistance in Criminal Matters).

Pursuant to these treaties and agreements, Australia also has the following regulations:

- Mutual Assistance in Criminal Matters (Hong Kong) Regulations 1999
- Mutual Assistance in Criminal Matters (Republic of Indonesia) Regulations 1999
- Mutual Assistance in Criminal Matters (Republic of Korea) Regulations 1993
- Mutual Assistance in Criminal Matters (Republic of the Philippines) Regulations 1993

Extradition

Australia's extradition arrangements are contained within the Extradition Act 1988 and its attendant Regulations. In terms of extradition arrangements with countries in the Asia-Pacific region the following Regulations apply:

- Extradition (Commonwealth Countries) Regulations 1998
- Extradition (Transnational Organised Crime) Regulations 2004
- Extradition (Traffic In Narcotic Drugs And Psychotropic Substances) Regulations 1998
- Extradition (Kingdom of Cambodia) Regulations 2003

- Extradition (Republic of Fiji) Regulations 1991
- Extradition (Japan) Regulations 1988
- Extradition (Republic of the Marshall Islands) Regulations 1993
- Extradition (Thailand) Regulations 1991
- Extradition (Republic of the Philippines) Regulations 1988
- Extradition (Republic of Indonesia) Regulations 1994
- Extradition (Republic of Korea) Regulations 1991
- Extradition (Hong Kong) Regulations 1997

Issues

The Asia-Pacific region contains a number of developing nation states, many of which share, to a greater or lesser degree, a range of economic, social and political problems. These include ongoing issues such as the need for economic reform, restructuring of state-owned enterprises and reform of the financial and judicial sector in terms both of its infrastructure and oversight. In addition, further work is required in the criminal justice sector including further law enforcement cooperation and the reduction and control of corrupt practices.

As evidenced in this report, the Australian Government continues to play a prominent and leading role in helping to achieve and maintain the changes necessary to ensure the increasing and long-term stability of the Asia-Pacific region of which it is a part. AusAID (2003) has noted that '[t]he causes of lawlessness in the Pacific are rooted in a complex interplay of factors, including social and political transformation, unemployment, ongoing demographic change and the breakdown of traditional structures'. Its assistance as part of a multi-lateral endeavour in the Solomon Islands, for example, is indicative of best practice in this regard. Prior to the introduction of RAMSI (Regional Assistance Mission to Solomon Islands) in July 2003, the Solomon Islands were beset with a range of problems including non-functioning hospitals, schools and public service, ethnic tension, corrupt politicians and rogue police officers. Since that moment of introduction, as noted above in this report, a secure environment in terms of basic law and order issues, a functioning government and economy have all been established. From this strong foundation, the Solomon Islanders will be best placed to deal with other long-standing issues such as corruption and institution rebuilding.

In a similar vein, Papua New Guinea faces a number of problems across a range of sectors including law and order (both policing and justice issues), budgetary management, border management and security, primary industry governance and public service management issues. In addition, levels of unemployment, crime (through the activities of armed criminals known as the "raskols") and HIV infection are high and the Economist Intelligence Unit has recently cast Port Moresby as the worst capital city (from a sample of 130 cities) for expatriates to inhabit. However, the Australian Government has responded to this situation through a considered and mutually accepted agreement (the Enhanced Cooperation Program – ECP) which will provide assistance in financial and public sector management, law and order including policing and border protection and maintenance of social and economic infrastructure such as roads, education and health.

Basic policing issues which might pertain in any country within the region will include, in relation to Australia's involvement, the logistics of integrating the Australian Federal Police (AFP) into the host country's law enforcement framework, legal issues, such as the nature and applicability of police powers in the local context and establishing whether the mode of policing should be more, or less, formal in structure and approach. It should be recognised, however, that law enforcement depends upon more than policing efforts. AusAID (2003) argues that '[a] key challenge in the short to medium term is the capacity of law and order institutions to maintain their impartiality and effectiveness, particularly during periods of crisis and unrest. Over the longer term, strong police, legal and judicial systems in large part determine the capacity of countries to combat corruption, achieve growth and attract foreign investment.' Effective law enforcement also requires the solution of long-term, often endemic, economic, social and governance issues. Only by addressing such issues will consolidation of the initial law enforcement efforts be realised.

In short, the disparate nature of the region and its resources will engender varying levels of dysfunction. What is important is that regional solutions to regional problems are understood and tackled through cooperative and well-funded processes.

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Co-operation and Law Enforcement to Counter Organised Crime in the Common Market Countries of South America (MERCOSUL¹)

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Identification of the Theme

The Common Market of South America (MERCOSUL) was founded in 1991 by the Treaty of Asuncion, comprising of Argentina, Brazil, Paraguay and Uruguay. Bolivia, Chile, Colombia, Ecuador, Peru and Venezuela have associate member status. The guiding principle behind MERCOSUL is to provide a strategic approach to address the demand for economic competitiveness in the MERCOSUL region after the decline of the Cold War. The end of the Cold War also established a new era in international relationships and these new global relationships were also a motivating factor behind the emergence of MERCOSUL.

MERCOSUL has developed, over the time, strong co-operative political relationships and integrated economically with the Central American Countries and North America. Recently it has developed a system of protocols and rules for communications with Asian and African Countries. The European Union is also viewed as a prominent partner as it has contributed significantly to the development of commercial arrangements and agreements for investment². However, these positive developments have come at a cost with some evidence of social unrest and a growing threat from organised crime that exploits a number of opportunities³.

Difficulties for the Administration of Strategies of Co-operation Against Organised Crime in MERCOSUL

There are a number of difficulties in relation to establishing co-operation within the MERCOSUL region in relation to organised crime. **First**; it is difficult to establish a consistent approach to the problems posed as there is no conceptual vision that allows for the development of appropriate judicial and legislative measures within

¹ Mercosul or Mercosur (Spanish: *Mercado Común del Sur*, Portuguese: *Mercado Comum do Sul*, English: *Southern Common Market*) is a trading zone among Brazil, Argentina, Uruguay and Paraguay, founded in 1991 by the Treaty of Asuncion, which was later amended and updated by the 1995 Treaty of Ouro Preto. Its purpose is to promote free trade and movement of goods and people, skills and money, between these countries.

² First Meeting of the Committee of Bi-regional Negotiations European Union - Mercosul. 6 and 7 April, 2001, Buenos Aires, Argentina. This meeting represented the first series of negotiations between the EU and Mercosul with the purpose of the conclusion of an Agreement of Inter-regional Association between the EU and Mercosul.

³ See Zaffaroni, Eugenio Raúl (1999). *La Globalización y las Actuales Orientaciones de la Política Criminal*. in *Direito e Cidadania*. Praia - Cabo Verde, Ano III, no. 8, 1999, pp. 72-76.

the MERCOSUL region⁴. **Second**; a co-ordination of a foreign policy has not yet been developed and so it is therefore unlikely that MERCOSUL can take advantage of established international co-operative links in relation to crime prevention and organised crime⁵. **Third**; the increasing challenge of the *infiltration* and *contamination* of the state system by criminal networks and organisations is apparent⁶. **Fourth**; there are no agreements within the MERCOSUL region in relation to the United Nations Convention on Transnational Organised Crime⁷ that establish the appropriate punishments for transnational criminal activities and organised criminal activity within member states. **Fifthly**; the vulnerability to the activities of organised crime that include homicides, kidnappings, assaults, corruption and drug trafficking that results in the flow of inward foreign investment being less than if the crime situation was not so threatening⁸. The crime situation also has adverse effects on tourism. **Finally**, the living conditions of many people result in areas of high deprivation where criminal networks demand protection in order for people to have some level of anti-crime insurance. This creates places where there is an absence of protection by the state and increased fear for residents of high levels of crime and violence. Denise Frossard, Judge of the State of Rio de Janeiro, commented:

*".....inequality walks hand in hand with violence: everyone throws stones at it, but nobody solves the problem"*⁹.

Forms of Expression of Organised Crime in the MERCOSUL Countries

There are five distinct typologies of organised crime in the MERCOSUL region. The **first** type is made up of groups that have clear lines of authority and discipline that conform to a set of agreed norms. These groups are significantly involved in: "*grilagem de terra*" (illegal public property occupation through document forging), trafficking in drugs, weapons, cigarettes, and human beings. They are also involved in prostitution, sexual tourism, smuggling, illegal immigration, illicit transactions through the internet, computer hacking, pornography, piracy, insurance frauds and falsification of credit cards. A number of these organised groups are involved in trading core materials for the production of cocaine. The **second** type of group are those where the organisational structure is weak, these groups tend to be involved in assaults, fuel adulteration, kidnappings and hijacking which is on the

⁴ This conclusion comes from the Congress on "The Researcher and the Politician", held 12-15 August, 2002, in Curitiba, Paraná, by the Interdisciplinary Program Economical Globalization and Rights in Mercosul (GEDIM). In this Congress, line 3 of research had as its aim to analyse "Organised Crime and its Control in the Mercosul".

⁵ See Souza, Solnaga Mendes (2001). *Cooperação Jurídica Penal no Mercosul: Novas Possibilidades*. Rio de Janeiro: Editora Renovar, pp. 111-137.

⁶ See Beck, Francis Rafael (2004). *Perspectivas de Controle ao Crime Organizado e Crítica à Flexibilização das Garantias*. São Paulo, Ibccrim, p. 74-82.

⁷ Resolution no. 55/25, Annex I, of 11/15/2000, of the United Nations General Assembly, dealing with the Convention on Transnational Organized Crime.

⁸ The situation is worse than in China, India and the Eastern European countries, according to Gama, Julio (2004). *O Preço da violência*. In *América Economia*. São Paulo, edição Brasil, October 2004, pp. 23-26.

⁹ Frossard, Denise (2001). *Somos Todos Reféns*. In *Revista Isto É*. São Paulo, no. 1666, September 2001, p. 32.

increase in the MERCOSUL region. The **third** type of criminal group are those that are significantly involved in a range of financial crimes which involves tax evasion and environmental crime.

In the **fourth** group organised crime is evident by the criminal activity within the State. This suggests that some public officials are corrupt or dishonest, co-operating with organised crime. This group also comprises police being associated with extermination groups. In the **fifth** group are the terrorist networks and organisations that take advantage of the impact of terror with extreme violence or threats, to satisfy ideologies, religious faith, and philosophical or political convictions. This was the case when two bombs exploded on April 30, 1981, during a concert promoted by the “Centro Brasil Democrático”, in the Riocentro area, in Rio de Janeiro. This bombing was an attempt to promote the intensification of the military dictatorship in Brazil.

Procedures to Overcome Organised Crime in the MERCOSUL Region

The links between the countries of MERCOSUL are considerable; this is evidenced by the number of official reports, multi-lateral meetings and the adoption of resolutions and protocols. The alliance that has developed within the MERCOSUL region is dependent on the political will of all participating countries and the development of trust between them that they will deal with the problems posed by organised crime, and the sentencing of criminals in ways they have agreed. Set out below are a number of strategic developments that need to be put in place to aid multi-lateral participation in relation to the issue of organised crime in the MERCOSUL region. In Brazil,

- 1) It is important to create a permanent group to ensure that a Brazilian Public Safety System for the MERCOSUL region is developed.
- 2) A database to assist in the exchange of information concerning the activities of organised crime needs to be put in place.
- 3) It is also necessary to strengthen inter-regional co-operation, including the union of Countries in other Continents, in order to exchange experiences and to reflect on the effectiveness of strategies to enhance public safety within MERCOSUL.
- 4) It is also necessary to consider forming a MERCOSUL police region with an integrated police force drawn from member states.
- 5) It would be appropriate to establish a *Center of Operational Support* within the Department of Justice in MERCOSUL in face of the need for protection of the *ius persequendi* and thus assist in ensuring proper procedures for the collection and presentation of evidence in relation to organized crime.
- 6) It is also important to ensure that corrupt practices are properly dealt with in order to reduce the impact of organized crime.
- 7) It is necessary to put in place the proper procedures and protocols to enable effective policing of the internet.

- 8) Within the MERCOSUL region it will be important to regionally ensure that treaties of extradition are upheld by legal statute.
- 9) In any agreements between MERCOSUL countries it will be important to ensure compatibility between the judicial and administrative procedures in relation to the transfer of unconvicted and convicted prisoners.
- 10) Mechanisms will need to be put in place in order to demonstrate transparency of public institutions.
- 11) It is important to reduce the risks of impunity with the strengthening of independence, alacrity, and celerity of the Criminal Courts to satisfactorily execute the duty of the filtering of criminal attitudes
- 12) It will be necessary to introduce joint approaches across the MERCOSUL region to protect tourism from criminal networks.
- 13) The activities of the 'shadow' economy will also need to be monitored and policed in order to prevent it from being manipulated by organised crime.
- 14) The MERCOSUL countries should consider enhancing border protection through strategies such as a standardised passport.
- 15) Universities provide a means by which to develop research and gain further understanding of the structure and processes of organized crime, such knowledge will contribute significantly to the development of effective control strategies.
- 16) In order for the MERCOSUL region to enhance its safety it will need to have a strong structure at the country and sub-country level.
- 17) By ensuring greater public safety in the MERCOSUL countries they will find it easier to develop and put in place the Free Trade Area of the Americas (ALCA).
- 18) Within MERCOSUL a special procedure of co-operation and joint working under the auspices of the UN Security Council will need to be established.
- 19) A First Forum of International Co-operation on the Control of Organised Crime in the Connections of Productions and Investments in the MERCOSUL should be organised as soon as possible.

Suggested Procedures to Reduce and Control Organised Crime in the MERCOSUL region with particular reference to:

- a) infiltration of state agencies by criminal networks and organisations;
- b) the infiltration of business and commerce and the consequences on employment, investments and commercial productivity.

Procedures to Reduce and Control Organised Crime:

- a) To ensure that one outcome of the 11th United Nations Congress on Crime and Crime Prevention is an understanding of the necessity of support from the United Nations to the *First Forum of International Cooperation on Organized Crime Control on the Relationship of Productions and Investments in MERCOSUL*; to be held in the City of Foz de Iguaçu, State of Paraná, Brazil (Brazilian municipality that forms a border with Paraguay and Argentina) in November 2005.
- b) To develop and implement a set of controls that will reduce the activities of organized crime, in three border cities: City of Foz do Iguaçu (Brazil), Ciudad del Este (Paraguay) and Ciudad del Puerto Iguazu (Argentina).

Identification of those Criminal Justice Agencies to implement policies concerned with the reduction of the activities of Organised Crime.

- a) the Law Enforcement Departments of the Member Nations and Associates of MERCOSUL;
- b) The city administrations of those cities located on the borders of MERCOSUL Nations;
- c) The experts of the *European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI)*, who are able to offer important collaboration for the development of the political strategies to counter organised crime in the MERCOSUL region.

The development and implementation of controls to reduce the activities of organized crime.

The development and implementation of a pilot project in the three border cities of Foz do Iguaçu (Brazil), Ciudad del Este (Paraguay) and Ciudad del Puerto Iguazu (Argentina).

Timetable for Implementation:

The First Forum of International Co-operation on the Control of Organised Crime which will take place on the City of Foz do Iguaçu (Brazil), during the period from 23 to 25 November, 2005, according to the agreements already initiated with the University and the City Hall of Foz do Iguaçu.

Final Considerations

There is an increasing concern with organised crime in South America. Very few of the goals set out in the “*Aims of the Millennium*”, a series of social actions established in 2000 by the United Nations, have been met. To end poverty those objectives set out in “*Aims of the Millennium*” will need to be accomplished by the year 2015. In order to achieve these goals it will mean the eradication of famine, the guarantee of the access for all to drinking water, the reduction of infant mortality and the expansion of access to basic education.

The escalation of organized crime in South America has reached an unacceptable level of activity culminating in the murder of Judges, Public Prosecutors, lawyers, policemen and journalists. Government in an attempt to tackle the consequences of organized crime will need to use social indicators to provide the context within which to institute social reforms in the areas of: education, public safety, the penal system and the administration of the Courts. Within the commercial framework it will necessary to improve the conditions for investment.

The 2005 studies of the Caribbean and Latin American Economic Commission (CEPAL), estimate that 44% of the South American population live under the poverty line, with less than a dollar a day for survival, without access to drinking water and proper sewage. Poverty is concentrated in the cities in the *shanty* towns., making the Latin American continent one of the most urbanized zones in the world. Latin American Governments need an agenda that prioritises a decade of growth in education to enable Latin American economies to become globally competitive.

Economic globalisation and the ensuing globalisation of crime have not been matched, maybe for good reason, with a juridical globalization¹⁰. Many judicial systems experience difficulties in sentencing due to a lack of alternatives to prison. Research sponsored by the *International Labor Organization* in November 2003, reveals that in the MERCOSUL region, during the period from 1995 to 1999, the average age of an offender was 15 to 16 years. However, by 2002 the average age had fallen to 12 to 13 years. One reason for this may be the recruitment of children and adolescents by organized crime.

There have been a number of changes and shifts in relation to crime in the MERCOSUL region, and some of these may be attributable to organised crime. First, crime became more violent. In 1990, 23% of the criminal offences were violent and by 2000 this had risen to 35%. We can also see a shift in the patterns of crime. For example, there has been a shift away from *solitary* offenders to offenders committing offences in *gangs*. In the MERCOSUL region organised criminality involves activities that are wealth generating, many of their activities penetrate financial systems undetected and utilize a range of strategies to remain unseen, such as off shore banking and the use of electronic resources to make financial transactions. In this respect, it is a problem that the criminal justice system functions with its basis in the principle of *individual* responsibility, whereas there is a great

¹⁰ See Weeramantry, C.G. (1998). Human Rights and Scientific and Technological Progress. In Human Rights: New Dimensions and Challenges. Aldershot, Unesco Publishing, pp. 247-248.

demand for a reorientation to the effect of coping better with gang activities¹¹. One consequence is that the serious work of good policemen and good judges suffers from a lack of impact.

There are serious consequences on society from the activities of organised crime. There is an increase in violence, the relationship between economic activity by organised crime and the subsequent flow of investment funds out of a country to economies that are considered to be better regulated and thus provide safer investment opportunities. Organised crime networks need to utilize economic structures in order to launder proceeds and there can develop a complex series of relationships that, if financial systems are not regulated, results in the state being complicit in the laundering activities of crime networks¹². Consequently if democratic structures are viewed as being unable to ensure the integrity of financial systems they might be seriously undermined and vulnerable to more authoritarian forms of government. Therefore, it is important that the MERCOSUL region is engaged with the international community to ensure the necessary exchange of information and the assistance to put in place agreed structures to combat the activities of organised criminal networks.

¹¹ cf. Delmas-Marty, Mireille (2004). *Le Droit Pénal Comme Éthique de la Mondialisation*. In *Revue de Science Criminelle et de Droit Pénal Comparé*. Paris. no. 1, Janvier-Mars, pp. 2-6.

¹² As pointed out by Maia, Rodolfo Tigre (1997). *O Estado Desorganizado Contra o Crime Organizado*. Rio de Janeiro, Editora Lúmen Júris, pp. 27-36.

Enhancing International Law Enforcement Co-operation: a global overview

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Introduction

Since 11 September 2001, since the attacks in Bali, Casablanca, Djakarta, Madrid, etc., other terrorist attacks have targeted our communities throughout the world. This has led national police forces and Interpol to re-focus their resources and has captured international public attention on an almost daily basis. Whether we live in Africa, in the Americas, in Asia, in Europe or in the Middle East, there can no longer be any doubt that terrorism can indeed strike any one of our countries, of our organizations, anywhere in the world and at any moment.

What we have learned from these terrorist acts is that constant police co-operation is vital: before, during and after the attacks. We have also realized that by setting up means of fighting terrorism, we are also creating a framework for fighting all forms of major trans-national crime.

Over recent years, and drawing on experience gained in the fight against terrorism, Interpol has undergone a far-reaching change in order to become a genuine, operational police support organization.

Today, Interpol offers all its 182 member countries essential services in three core areas:

I-24/7: a global police communications system that is unique; the possibility for law enforcement agencies to communicate with each other in complete security is the essential prerequisite for any form of international police co-operation.

a vast range of databases containing essential police information and numerous analytical services; once law enforcement agencies are able to communicate with each other, they must – in order to carry out their investigations or their crime prevention activities – have a large range of information available. Interpol has therefore created, and continues to develop, databases on key areas such as nominals, stolen travel documents, DNA, fingerprints, firearms, etc.

dynamic operational support for police work throughout the world, available around the clock and 7 days a week; here, Interpol has prioritized the following areas of crime: the fight against terrorism, drug trafficking and organized crime, all forms of human trafficking, financial and hi-tech crime, and the apprehension of fugitives.

Other projects have also been developed: to combat child sexual exploitation on the Internet, traffic in stolen vehicles, traffic in stolen works of art, bio-terrorism,

training for police forces, disaster victim identification, and co-operation with other international organizations.

Finally, Interpol makes a system of notices, intended to alert police services regarding wanted persons, available to its members. The most widely used and best-known type of these is the red notice, which consists of a request for provisional arrest with a view to extradition.

Today, therefore, Interpol offers all its 182 members efficient operational tools that can be implemented worldwide: secure communications (1), access to vital information (2) and operational assistance and support (3).

These tools have been created in a way that permits a rapid, co-ordinated and comprehensive response to the threats faced by the international community today.

The potential of these tools is nevertheless underestimated, and there is still not enough use made of them today.

The implementation of I-24/7, Interpol's global police communications network

Interpol's I-24/7 global police communications network is recognized as offering unparalleled, unique possibilities in terms of security, speed, and of transmitting information required for policing work (messages – images – files – general information, etc.). By 15 February 2005, 75% of the Interpol community was connected to the system, i.e. 134 countries. By the end of June 2005, virtually all member countries will be online. The network's effectiveness in terms of traffic is already proven: between 2002, when the former X.400 system was still in operation and the end of 2004, traffic over the Interpol network more than doubled.

The innovative character and the potential of this network also lie in the simplicity of its operation and the fact that it can be easily deployed in order to provide direct access at a theatre of operations. In Argentina, for example, several border control points at the international airports and at the frontiers with Paraguay and Brazil have been connected. In France, the Interpol network has been deployed in all the Regional Units of the Criminal Investigation Police Service and will soon be implemented at the major airports. Around forty countries are currently taking similar steps.

These developments require that the highest possible level of security must be considered a priority. The implementation of the new authorization and authentication system for I-24/7, called "INSYST", now permits Interpol's National Central Bureaus, i.e. the national police services that constitute the liaison between the Organization and the country in question, to extend, manage and monitor the use made by their police services of the tools available via I-24/7 in full security: control over the type of access granted, of entities with access to the system, and the way the system is used.

The Interpol network therefore offers the unique possibility of building up a genuine, planetary network in terms of secure communications and access to essential police services and information for investigations – among which the databases are at the forefront.

The development of the Organization's databases

There is a major interest in having databases available on a global level to provide support for those actions and investigations carried out by Interpol members and which today cannot be limited to a national or regional level alone.

Among the various databases developed by Interpol, five of them illustrate current developments and what remains to be achieved: these concern nominals, stolen travel documents, stolen motor vehicles, DNA, and fingerprints.

The nominals database

Today, this database contains over 166,000 international criminals (i.e. 33% more than four years ago), of which 33,000 are fugitives. Searches of this database have been progressing constantly since 2000, with an extremely marked increase as of 2003. In 2004, some 273,000 searches were carried out. The number of positive matches, or "hits" from the system is also progressing, by around 270% between 2000 and 2004.

The example of the 310 fugitives arrested during 2004 on Germany's account, in 40 different countries, demonstrates the interest of having records in the Interpol database and of the effectiveness of the system. To achieve this result, Germany made 511 requests over this period by means of Interpol notices issued or the publication of simple Interpol diffusions.

The stolen travel documents database

Launched in June 2002, this database contains around 5,800,000 stolen travel documents provided by 70 countries as at 15 February 2005.

This database should very rapidly reach several tens of million records. Providing data for it and using it, as encouraged by Interpol's Secretary General, is now highly recommended by the highest national political instances, notably in Africa and in Europe but also by the members of the G8 and by international organizations such as ICAO and the OSCE. This also grants the database universal recognition.

Nevertheless, and even though the number of searches of the database and of "hits" (26,511 searches for 226 hits in 2004) have progressed considerably, utilization remains low. Access to this database has not yet, in fact, been sufficiently decentralized to the various control points. It can nevertheless be strikingly effective on two conditions: that information is provided, and that it is used by a very large number of agents and officers.

The stolen motor vehicle database

Today, this database contains around 3,200,000 stolen vehicles, i.e. 24% more than in 2001. Some 84 countries use it regularly. The number of searches on the database

has increased by over 37% in the last three years, to exceed one million in 2003 for the first time in the history of Interpol. This progression continued in 2004, with over 1,300,000 searches. The number of hits is also increasing – by over 32% in 4 years (16,000 in 2004). Over 1,300 stolen vehicles are traced throughout the world each month thanks to the use of this database.

The example of South Africa is striking, since a total of 1,966 vehicles stolen there were traced to 38 different countries in 2004. Similarly, and also in 2004, Russia carried out 224,369 searches of this database and traced 1,141 stolen vehicles in 31 different countries. This illustrates the result obtained by a country within its own frontiers by consulting the database.

These two examples are a vivid demonstration of the interest in sharing information on stolen vehicles and of the effectiveness of the database.

The DNA database

By investing in the area of DNA, Interpol's General Secretariat is pursuing a twofold aim:

- that of having a dynamic, flexible DNA Unit in order to help Interpol member countries adopt and use DNA analysis
- and that of offering an international database for comparing DNA profiles.

After several years of work, a database has been launched. On 15 February 2005, it contained around 14,215 DNA profiles and 24 countries contribute information to it.

This database permits reliable comparison of profiles transmitted by the member countries:

- profiles from crime scenes,
- profiles of persons known to police services,
- profiles from missing persons or bodies to be identified.

On 27 April 2004, the database recorded its first official hit, between a Slovenian and a Croatian profile.

A second hit was made a few months ago, and can be summarized as follows: on 1 June 2004, Switzerland issued a request to the General Secretariat for a yellow notice concerning a missing person. The request contained a DNA profile that was immediately compared in the database. A hit was established with the DNA contained in a black notice issued in April 2004 at the request of Spain. This demonstrates that the concept, and the system implemented, function perfectly.

Very shortly (in March 2005), Interpol's DNA database will be directly accessible via the I-24/7 network. Each country may enter a DNA profile to be instantly compared with the profiles contained in the database, and will then receive an immediate response, either positive or negative.

The fingerprints database

The General Secretariat has operated an AFIS database since 2000. It is equipped with the latest version of the MetaMorpho system, which permits automatic comparison of fingerprints.

Unfortunately, it is quite evident that the amount of fingerprints provided for this database is still insufficient, even though a growth in the number transmitted was recorded during the first months of 2004.

Today, the database contains over 40,000 fingerprints, but could hold over 300,000.

Of the 182 members of Interpol, and per year:

- 56% transmit no fingerprints
- 36% transmit between 1 and 50
- 8% transmit over 50.

It is therefore essential to achieve progress:

- by multiplying the number of fingerprints sent
- by improving their quality
- by facilitating their transmission, notably by the use of the I-24/7 network

Fingerprints remain one of the most reliable and efficient means of apprehending criminals, and notably those who use different identities. Here are two such examples:

In August 2003, a criminal of Gambian origin was questioned regarding narcotics trafficking in Austria. Interpol Vienna transmitted the subject's fingerprints to the General Secretariat together with information on him. A comparison in the database immediately confirmed that this criminal had also been arrested in other countries (Sweden, Denmark, Switzerland and Germany) for other offences and under other identities.

On 5 June 2004, three men were arrested in Denmark during a seizure of 2 kg of cocaine. Their identities were verified in the General Secretariat's databases, but the searches were negative. It was only when the Danish police sent the offenders' fingerprints to the General Secretariat that the true identity and criminal history of one of the subjects was discovered. His fingerprints corresponded to those of a man who was wanted for a murder committed in the Republic of Serbia and Montenegro in 2002, and who was the subject of a red notice.

In both these examples, the criminals could not have been arrested without the transmission of fingerprints by the countries concerned.

In this connection, the complementarity of all Interpol's databases should be stressed. If one considers that 47% of Interpol members do not make regular use of the stolen vehicle database, that 62% do not yet participate in the stolen travel documents database, that 56% do not transmit fingerprints, and that 87% do not yet participate in the DNA database, it is extremely easy to imagine the extent of their potential and their scope for progression thanks to the introduction of the I-24/7 system.

In addition to those mentioned above, another Interpol database contains approximately 250,000 digital images that have been circulated via the Internet and that show acts of sexual abuse committed on 10,000 to 20,000 victims who are still minors. The system implemented is based on extremely powerful software that makes it possible to identify matches between victims, between crime scenes, and

between various images within a single set of photographs. It provides assistance to the law enforcement services for identifying victims and prevents the duplication of work by providing information relating to identified victims and to countries currently carrying out specific investigations.

Operational police support

The Organization has also achieved progress in the area of operational police support, for it is now capable of reacting and responding, in real time, to the policing needs expressed by its member countries.

First of all, by the creation of a Command and Co-ordination Centre operating within the General Secretariat around the clock and every day of the week, in the four official languages. Fully operational since 1 January 2004, the Command and Co-ordination Centre plays a major role in three of the Organization's key priority areas:

- Offering real-time response to urgent requests by member countries
- Co-ordinating the exchange of information
- Assuming crisis management functions.

The first interface between the member countries and the General Secretariat regarding the exchange of police information, the creation of the Command and Co-ordination Centre has made it possible:

- to increase the exchange of information sent from the General Secretariat to the NCBs by over 70%, particularly concerning responses within the framework of criminal investigations
- to reduce the response time to urgent requests from the countries to less than one day.

One of the most innovative aspects of the Command and Co-ordination Centre, however, resides in its capacity for immediate reaction in the case of a major crisis and its involvement in deploying Incident Response Teams with the aim of providing assistance to countries, notably those who have suffered terrorist attacks.

Since the end of 2002, the General Secretariat, in agreement with the member countries in question, has deployed several incident response teams following terrorist attacks in Indonesia, Saudi Arabia, Spain, Uzbekistan, and Bangladesh.

The purpose of these teams and their specific equipment is to provide an entire range of services such as direct access to the databases, assistance in the area of analysis, co-ordination in specific areas such as ballistics, or disaster victim identification.

Where needed, the Command and Co-ordination Centre also facilitates the temporary constitution (for the duration of the crisis) of Crisis Management and Support (CMS) Group, consisting of General Secretariat staff members but also of experts provided by the member countries. This Group is then tasked with co-ordinating all aspects related to managing the crisis, thus acting as an overall, international platform.

This was the concept that made it possible to react rapidly and in an extremely proactive way to the tsunami disaster and to the requests of the countries concerned. Interpol deployed incident response teams to Thailand, Sri Lanka and Indonesia, and created a Crisis Management and Support Group in order to assist in co-ordinating disaster victim identification teams from throughout the world and in processing and comparing ante-mortem and post-mortem information collected in order to permit the identification of victims.

Another development within operational police support was the creation of the orange notice: this alerts security services at airports or at any other location regarding the circulation or dissimulation of disguised or hidden weapons. Fifteen orange notices were issued during 2004.

Finally, the development of operational police support also includes implementing targeted programmes and projects in areas of crime defined as priorities, i.e.:

- The fight against terrorism
- The fight against drug trafficking and organized crime
- The fight against all forms of trafficking in human beings
- The fight against financial and hi-tech crime
- The apprehension of fugitives

Preventing acts of terrorism and constantly updating information on them constitutes one of Interpol's most important activities. The Sub-Directorate for Public Security and Terrorism continues to gather, store, analyse and diffuse information and details regarding suspected individuals, groups and their activities. Under the aegis of the Fusion Group, international or regional projects and programmes are carried out in South America, Africa, Central Asia, Asia, etc. (Operation Amazon, Operation Kalkan, Operation Pacific, Operation Passage, etc.). Moreover, work is also carried out in the areas of the fight against bio-terrorism and of trafficking in radioactive materials or chemicals.

Interpol continues to intensify co-operation among its member countries and to encourage the exchange of information concerning the fight against the illicit production and the trafficking of narcotic drugs and psychotropic substances. Projects and programmes are also carried out to fight organized crime and corruption (Sydrug – Marco – Nomak – Umbrella, etc.).

Interpol remains determined to eradicate sexual abuse and offences of which children are the victims, and to combat trafficking in women and children. Here, Interpol's activities during the next few years will focus on gathering information regarding paedophiles, trafficking in Asian migrants, and the participation of organized crime in the exploitation of women.

In the area of financial and hi-tech crime, activities will mainly concern financial fraud, money laundering and the financing of terrorism, intellectual property crime and hi-tech crime.

All these activities are aimed at providing Interpol's member countries with tools for preventing and fighting these forms of crime, by increasing the quantity of information in the databases, creating lists of suspects, the diffusion of alerts,

publishing guides, drawing up analytical reports, organizing working groups, etc., and ensuring that all this information is available via Interpol's I-24/7 communications network and/or its secure website.

In addition, Interpol carries out numerous other activities with a view to providing the most effective support possible for apprehending criminals or criminal groups throughout the world. This includes establishing Interpol notices, cross-referencing data, the automatic comparison of data from Interpol's criminal documentation system, a system of country-based file monitoring – all these techniques have been developed by the appropriate Sub-Directorates.

Furthermore, these techniques are also applied within the framework of research into perpetrators of war crimes, genocide and crimes against humanity.

Finally, the creation of an Interpol office within the United Nations in New York in October 2004; the Organization's policy of enhancing the capacities of its Sub-Regional Bureaus in San Salvador, Buenos Aires, Harare, Nairobi, Abidjan, and its Bangkok Liaison Office; and the setting up of service standards at all the National Central Bureaus are all factors that strengthen the dynamic operational support that Interpol is committed to offering its member countries.

Conclusion

Interpol's developments within its three core functions: secure, global police communication, the databases, and operational police support are complementary and form a whole. This "whole" converges towards a single objective: that of achieving security and effectiveness when preventing crime, identifying criminals, locating them and apprehending them.

Over the last four years, the number of fugitives registered by Interpol diffusions or notices has increased by 40%, bringing the number of fugitives in the nominals database to over 33,000.

Over the last four years, the number of terrorists in the Interpol databases per year has multiplied tenfold, and today over 8,000 names of suspected or convicted terrorists are accessible around the clock.

Over the last four years, the number of criminals arrested who were the subject of Interpol wanted information has increased by over 70%, to exceed 2,700 persons arrested in 2004.

These are all encouraging signs, and yet this is still not enough. In fact, to enhance international police co-operation and to ensure that the international community can offer a rapid, co-ordinated and full response to the threat it faces today, three steps are necessary.

The first of these has already been achieved: Interpol has made an integrated, global communications system available to its members.

The I-24/7 communications network now provides the unique opportunity of building up a genuine, global network in terms of secure communications and access to services and essential police information for investigations – among which the databases are at the forefront. With the setting up of this system came the adoption of the I-24/7 Security Charter. Maintaining a high level of security is an essential prerequisite for deploying Interpol's new communications system in absolute safety. By working within the framework defined by the I-24/7 Security Charter, the Interpol community is also agreeing to apply a set of common principles aimed at maintaining this high level of security in order to preserve the system's integrity. The primary objective of the Charter is to ensure that all users are committed to respecting the minimum recognized security norms and to guarantee to the Interpol community that these norms are respected. It defines the principles that the entities connected must follow regarding the network's security, the workstations, the access to services provided by Interpol, and how these aspects must be managed. The security-related partnership established between the General Secretariat, the National Central Bureaus and other authorized users contributes towards guaranteeing a completely secure environment, which is essential to the success of Interpol's new I-24/7 system.

Today, accomplishing the second step depends only on greater awareness on the part of the international community regarding the necessity of enhancing the exchange of information on an international level.

Interpol has created, and continues to develop, a number of databases that are an important aspect within international police co-operation. Moreover, the Organization makes many technical solutions available to its members that facilitate, for example, the input of information to these databases (direct access, inter-connection, data transfer).

For all these operations, the Organization acts in accordance with Rules adopted by the Interpol General Assembly and developed over more than twenty years. These guarantee the quality of the information (i.e. that it is reliable, up to date, and that it is examined regularly regarding the necessity of retaining it), the protection of the information (confidentiality, integrity), and respect for human rights (what is the ultimate purpose of the processing? is it in proportion to the objectives pursued? control?). These Rules today consist of the Rules relating to the processing of information for international police co-operation, the Rules relating to the control of information and access to Interpol's files, and the Rules relating to access by an inter-governmental organization to the Interpol telecommunications network and databases.

Despite the legal guarantees provided by this regulatory framework, the technical solutions implemented by Interpol's General Secretariat, and the fact that a very large number of databases now exist, Interpol channels and the Organization's databases are today under-used by the international community.

Nothing, however, justifies this under-use. The Rules mentioned above, drawn up with due respect for national sovereignty, adopt the principle that it is the source of the information that controls the right to access it or use it. In other terms, the source of an item of information remains the owner of it, and may thus impose restrictions regarding access to it.

Enhancing the fight against international crime is impossible without an increase in the amount of information exchanged: not only on a bilateral or regional level, but also on an international one. Without such an increase, any analytical work will be lacking in scope. And unless it is possible to cross-match more information and to establish links, a number of cases will remain unresolved.

Awareness of the necessity of using the integrated global communications system made available by Interpol, and which offers a unique weapon for the fight against international crime, is thus essential. So, in order to achieve the second step, it should be recommended to the Member States of the United Nations – the vast majority of whom are also members of Interpol – that all the necessary measures be undertaken on an administrative, legislative and/or technical level in order to increase the use made of the information in Interpol's databases.

Of the three steps suggested, the third – that of actually fighting international crime on an international level – is without doubt the most difficult, for it requires co-ordination and resources. Since Interpol is the only international criminal police organization, the best possible use should be made of the institutional structure it provides.

Article 2 of Interpol's Constitution states that the Organization's aims are:

- a) To ensure and promote the widest possible mutual assistance between all criminal police authorities within the limits of the laws existing in the different countries and in the spirit of the "Universal Declaration of Human Rights";
- b) To establish and develop all institutions likely to contribute effectively to the prevention and suppression of ordinary law crimes.

Given the scope of the mandate given by the countries represented in Interpol, the flexibility provided for in paragraph (b), the virtually universal character of the Organization and the know-how that it has acquired since its creation, Interpol constitutes the most comprehensive tool to date in order to offer the rapid, co-ordinated and full response mentioned above to the threat which the international community must face up to today.

This response, in fact, takes on two aspects:

- Enhancing co-ordination work; the task of the police officers at Interpol's General Secretariat mainly consists of supplying pertinent information to the members for the cases they are handling, of establishing links between different cases, and of putting various members involved in a single case in touch with one another. To do so, developing the concept of liaison officers and of contact points, holding conferences on specialized crime areas and holding operational meetings are all means used by Interpol to favour such co-operation and the exchange of information between members of the Organization. This effort must be pursued and enhanced, with the help of the international community.
- Greater support to the countries with the least resources for fighting international crime; sadly, certain countries do not have the means to fight international crime, to carry out complex investigations, or to take action against terrorist or organized crime groups. And yet, as long as these countries lack such resources, they constitute weak links in the fight against international crime. It is for this reason that Interpol has placed particular emphasis on ensuring these countries can access the I-24/7 telecommunications network in the same way as their

fellow members, and are trained to use it. It is nevertheless still essential that other initiatives are taken in order for the international community to form a united front and to demonstrate solidarity in the face of international crime.

The 11th United Nations Congress on Crime Prevention and Criminal Justice can thus also be the occasion for a recommendation to the Member States of the United Nations with a view to making full use of Interpol's potential regarding the achievement of the three important stages mentioned above. This recommendation is all the more pertinent since the members of the United Nations – of whom the vast majority are also members of Interpol – already have access to the services proposed by the Organization.

Enhancing International Law Enforcement Co-operation, including Extradition

Roberto Di Legami
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Europol

Introduction and background

In preparation of the participation of Europol to the 11th UN Congress on Crime Prevention and Criminal Justice which will be held in Bangkok, Thailand, in April 2005, the aim of this document is to highlight potentials and limits of Europol in the framework of international police cooperation in Europe.

Europol is the European law enforcement organisation which aims at improving the effectiveness and cooperation of the competent authorities in the Member States in preventing and combating serious forms of international organised crime falling under Europol's mandate¹.

The foundation of Europol was foreseen in the Maastricht Treaty on the creation of the European Union which was signed on 7 February 1992.

Based in The Hague, Europol initiated its activities on 3 January 1994 with a limited scope of action as EDU – Europol Drugs Unit, being its competencies restricted to illicit drugs trafficking.

The Europol Convention was signed on 26 July 1995 and was ratified by all Member States on 1 October 1998. Only as for 1 July 1999 Europol commenced its full activities, after the implementation procedure was finalised.

Europol's involvement can be requested when there exist factual indications that a given OC group is involved and carries out its illicit activities in a trans-national dimension by affecting two or more Member States of the EU.

This basically means that Europol can enter into action when the following minimum requirements are met:

1. an OC group operates internationally;
2. the given group affects the Member States of the European Union in a trans-national dimension (two or more Member States are affected by the criminal activities carried out);
3. the types of crime fall under Europol mandate.

¹ Illicit drug trafficking; Illicit trafficking of radioactive and nuclear substances; Illegal immigration networks; Illegal car trafficking; Terrorism; THB including child pornography; Money counterfeiting and other means of payment; Money laundering; Crimes against life, personal integrity and freedom; Crimes against property, public property and fraud; Illicit trading and environmental crimes

Europol is the European law enforcement organisation which handles criminal information by applying an *intelligence-led policing*, which allows for a **proactive approach**, as opposed to the **investigative-led policing** normally carried out by the law enforcement agencies in the Member States, which normally allows for a **reactive approach**.

Analysis is, therefore, the basic instrument used at Europol for this purpose. Information is not only *exchanged* but also *shared*, for the benefit of all the participants: finally, it is transformed into **intelligence** (knowledge as processed information designed for action).

Given that it does not have *supranational powers* upon the participating states, Europol operates in a **support capacity** by providing expertise, best practices, support and coordination of the investigations carried out by the relevant Member States.

The mission of Europol is to make a significant contribution to the European Union's law enforcement action against organised crime, with an emphasis on targeting criminal organisations. Taking into account that criminal organisations very seldom concentrate on a single type of crime, Europol applies a **horizontal approach** (criminal organisations are targeted as such, regardless the criminal areas they are involved in) and a **regional approach** (by focusing on OC groups originating from or rooted in a specific region).

The organisation at present consists of about 500 persons, 81 out of which are Liaison Officers seconded by the Member States and represent various law enforcement agencies such as police, gendarmerie, border police, immigration services and customs.

Current status

Europol has been operating now for five and half years. Although it still is a very young organisation, it is already possible to make an evaluation in order to highlight its strengths and weaknesses.

Strengths

- Europol is ruled by a Convention and other relevant legal instruments. It owns an *international legal personality* and can operate in the international arena based upon a reliable legal framework. This makes its work legally protected, acknowledgeable and fully utilisable from the beneficiaries because information are obtained, utilised and distributed in a *systematic* way;
- Among the many instruments that have been foreseen to properly tackle organised crime, the Conclusions of the European Council held in Tampere (Finland) on 15 and 16 October 1999 have identified several main “milestones” to be put in place as soon as possible² and most of them have enhanced the role of Europol;

² Among them, the establishment of a European Police Chiefs Operational Task Force in cooperation with Europol, but also the establishment of Joint Investigative Teams, of an

- Europol is now well known both in Europe and outside due to the constant participation in high-level international *fora*, awareness programs, seminars, meetings and other similar activities as well as by supporting actions both within the Member States and in some Third Countries;
- The Europol Liaison Officers network has been enlarged considerably also including the 10 newly accessed MS. Representatives from non MS with which specific agreements have been signed have been given a liaison office within the organisation. Europol Liaison Officers have been appointed in the U.S.A. and at the General Secretariat of Interpol. A significant number of Operational and Strategic agreements have been concluded with both Third States and Third Organisations and some others are still under way;
- The flow of information via the Europol Liaison Officers network has significantly increased. Data provided to Europol for processing within the legal framework of the Analysys Work Files have reached a considerable improvement and currently 17 Analysys Work Files are open and ongoing at Europol. Numerous Target Groups (sub-projects) within the existing Analysis Work Files have been established, thus allowing a better handling of the information gathered;
- Apart from the Analysys Work File's instrument for the handling of data and information, Europol has recently put in place an **Information System** (a database) though with still limited functions and still to be updated and enhanced, and an **Index System** which allows for the research of entities within all the Analysis Work Files ongoing at Europol;
- Operational and Strategic Reports are provided on a daily basis to the relevant Member States upon request or on Europol initiative. Many other informative documents are delivered constantly for the benefit of the participants. Support is provided to the Member States in line with the requirements indicated by the Convention;
- There is not a common concept of Organised Crime within the Member States of the European Union. Even though, common criteria³ have been established in order for the Member States of the European Union and some Third Countries to come into a more concrete and structured mechanism for reporting on Organised Crime.

Weaknesses

- Europol is rooted under the Third Pillar of the European Union. Judicial and Police Cooperation in Criminal Matters are dealt within the intergovernmental dimension. The decision-making process carried out in this "*sphere of action*" requires unanimity and this represents a hindrance to the fast changes that should be applied in this area;
- Many of the recommendations indicated in Tampere still need to be implemented, and this stands for a clear obstruction to efficient police cooperation in Europe. Important gaps are present in the field of crime prevention as well as in the one concerning the legal mutual assistance in the investigation and prosecution of serious economic crimes. In addition, the

European Police College, of Eurojust as judicial counterpart of Europol, and specific strategies in the field of crime prevention and fight against drugs and money laundering.

³ Joint Action (98/733/JHA) on 21 December 1998, based on Enfopol 35 issued by the Council on 21 April 1997

establishment of common definitions, incriminations and sanctions for certain serious crimes still remains pending;

- Although Europol is known in the Member States, a lot should still be done in order to spread, till the lowest level of the law enforcement structures, information on how to cooperate jointly in the international arena also taking advantage of the Europol support capacity;
- Europol should continue signing agreements of an operational and strategic nature with more Third Countries and Third Organisations. The conclusion of these agreements will allow for establishing more and more relations with those legal entities considered vital to properly fight OC groups in a more appropriate way and possibly accept new Liaison Officers to be appointed at Europol premises to speed up the communication exchange. The appointment of other Europol Liaison Officers abroad should be foreseen, especially in those areas which need particular attention (e.g. Balkans);
- The flow of information which relates to international OC groups acting in a trans-national dimension, for those crimes falling under Europol's mandate, should be further enhanced. Furthermore, inclusion of data exchanged via the Europol Liaison Officers into the Analytical Work Files in place at Europol should be always foreseen by the data providers. This could allow for avoiding to lose data and to better exploit the information;
- The Palermo Convention – which gives for the first time a definition of trans-national organised crime – and its three additional Protocols⁴ have not yet been ratified by all Member States.

Current changes – new challenges

A New Constitution for Europe

On 29 October 2004 the New Constitution for Europe was signed in Rome (Italy). The venue where the signature took place brings a particular meaning as it mirrors the historic foundation of the European Communities in 1957. The ratification and implementation processes of the new European Constitution are crucial and should now be speeded up as much as possible. Nowadays the rigid “Pillars” structure of the European Union presents a hindrance to smooth procedures in the decision-making process. The new Constitution will hopefully avoid these problems as the “pillars” will disappear; nonetheless, a certain rigidity will continue to apply in the decision-making system whenever dealing with specific cases of a particular importance. As a result, police cooperation will remain a politically sensitive issue and, therefore, protected by some exceptions from the general decision-making procedure. As a consequence, Member States will continue to exercise a considerable power and control over specific sensitive areas to such extent that in some cases, from a practical point of view, the “Third Pillar” will still operate.

⁴ Protocol to prevent, suppress and punish trafficking in persons, especially women and children; Protocol against the smuggling of migrants by land, sea and air; Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.

The Constitution represents, therefore, an important step forward also for police cooperation issues but it must be taken into consideration that a certain unbalance will continue to exist in this sphere.

Ten new MS joined the EU

New 10 MS have joined the EU in May 2004 and, following the ratification procedure of the Europol's Convention, recently became fully-fledged Members of Europol. According to the requests received, those new MS have joined the Analysis Work Files they were interested in and became Members of the relevant Analysis Groups with complete powers.

The new 10 Member States still need to reach the standards of police cooperation which the "old" 15 Member States have in place even though big efforts have been already done accordingly. In 2007 two other new states (Romania and Bulgaria) will join the Union and Europol have to be ready for receiving them in a proper way.

Joint Investigation Teams

The two terms "Joint Investigative Teams" and "Joint Investigation Teams", seem to be used alternatively in the legal instruments provided, even though the latter is a more recent expression. In addition, the term "Joint Teams" is commonly used in some legal instruments as well, but the small literal distinction doesn't affect the basic meaning of the term and it seems clear that all of them relate to the same technical instrument. J.I.T.s denote basically some actions, well defined and finely structured, in fighting organised crime in which the main impetus is given by the multi-agency approach.

Article 30 of the Maastricht Treaty mentions Joint Investigative Teams and this concept is mirrored by many European Councils and by the Europol Convention. Point n. 43 of the Conclusion of the Tampere European Council urges for a fast setting up of this instrument.

Other legal instruments do exist⁵, but until the ratification process is finalised, its common effectiveness will not be reached. In the meantime, practical operational guidelines are being prepared.

⁵ a) The Council Recommendation on 30 November 2000 in respect to Europol's assistance to J.I.T.s set up by the MS; b) The Council Framework Decision on J.I.T.s issued on 13 June 2002, which basically contains the same legal provisions indicated in Article 13 of the EU Convention on Mutual Legal Assistance in Criminal Matters (Council Act of 29 May 2000) because the latter has not yet been ratified by the MS; c) The Council Act on 28 November 2002 drawing up a Protocol amending the Europol Convention. A deadline of June 2004 was given for the implementation of the Council Framework Decision of 13 June 2002. In the interim, the position of the MS in relation to the transposition into national laws of the obligations imposed by the Framework Decision, is such that in 16 MS the legislation is now in place and is either in force or due to come into force by 30 June 2004, in 7 MS legislation is in the process of passing through the Parliament, whilst in the remaining 2 legislation is otherwise in progress.

South Eastern Europe: major threats

As 5 out of the 14 Countries which are usually considered as SEE Countries have joined the European Union last May (Poland, Czech Republic, Slovak Republic, Hungary and Slovenia), and another 2 will follow in 2007 (Bulgaria and Romania), it appears of crucial importance to make the state-of-play of the current situation in terms of international judicial and police cooperation, and to understand which are the possible areas of improvement.

As far as the 7 just mentioned Countries, it must be said that all of them have seconded to Europol Liaison Officers from the different Police Agencies who ensure a fast, protected and regular exchange of information to and from Europol, the quality of which is improving every day.

Unfortunately, however, Europol bases its analysis and investigations on information provided by European Union's Member States and other supporting partners, which do not include the majority of the Balkan countries: therefore, there are only limited data coming directly from judicial or law enforcement authorities of the remaining South East Europe countries.

The European Union has a number of tools operating in the region that are relevant for the fight against organised crime originating from or linked to the Western Balkans, such as the different police and customs missions managed either by the European Commission or by the Council. Member States also have various agencies in place, including various types of Liaison Officers from the immigration/customs/police services. However, these different instruments developed to address several policies operate under different chains of command. There is limited coordination at all levels.

Europol has been authorised and mandated to cooperate with the Western Balkan countries. Due to deficiencies in the field of personal data protection in these countries, no agreements have been concluded yet (even though some agreements are in progress). At present, Europol has no operational relationship with international organisations or EU police and customs missions in the Western Balkans.

The role of Europol as a partner for the Western Balkan region should be further developed. In particular, Europol should be allowed:

- to share regional strategic analysis with the countries of the Western Balkans region and engage in closer cooperation with those investigative services;
- to conclude operational agreements with relevant international stakeholders in the fight against organised crime originating from or linked to the Western Balkans, including the police and customs missions, in order to enable the exchange of criminal information and intelligence;
- As Europol has not yet concluded operational agreements with the States of the Region, the Liaison Officers Network should be strengthened in order to fill the temporary gap before full operational cooperation can be established with each state or territory of the region;

- to establish an agreement with the SECI-Centre in Bucharest⁶, with which Europol hasn't been allowed to enter into a cooperation agreement as they lack the required international legal personality.

Extradition procedures

The progressive elimination of border controls within the EU considerably facilitated the free movement of persons, also making it easier for criminals to operate trans-nationally by taking advantage of the different internal legislations.

Mutual assistance in criminal matters is a well-established principle in international judicial cooperation; it operates when a State is unable to continue with an investigation or procedure on its own and requires another State's help. Many legal instruments have been adopted to facilitate judicial cooperation but mutual assistance is still not effective enough.

A Council Act was issued by the EU Council of Ministers on 29 May 2000 establishing the Convention on Mutual Legal Assistance in Criminal Matters between the Member States of the European Union. Unfortunately, this important instrument has not yet been ratified and is therefore not applicable.

Resembling the content of the Amsterdam Treaty, which called for the creation of an effective area of freedom, security and justice, the European Council held in Tampere on 15 and 16 October 1999 devoted, among the others, a special chapter entitled "*A genuine European area of justice*". For this purpose, four major points were highlighted as achievements goals for the EU institutions in view of a better access to justice in Europe and a better cooperation in criminal matters:

- Harmonisation of legislation;
- Development of instruments based on the mutual recognition principle of judicial decisions;
- Improvement of judicial cooperation mechanisms;
- Development of relationships with Foreign Countries.

As far as the principle of recognition of judicial decisions is concerned, important steps forward have been made as this issue has been considered a "cornerstone" of judicial cooperation in criminal matters. Concretely, this principle allows for a decision made by a judicial Authority of one Member State to be recognised and executed in another Member State on the basis of mutual confidence.

The EU has therefore adopted a Council Framework Decision on 13 June 2002 (2002/584/JHA) on the European Arrest Warrant and the surrender procedures between the Member States.

The European Arrest Warrant is designed to replace the current extradition system⁷, to simplify the process with strict time limits and a speed up a judge-to-judge mechanism with normally no ministerial involvement.

⁶ The Regional Center for Combating Transborder Crime.

It applies to all offences, whenever a person is being prosecuted for an offence punishable by a custodial sentence of over a year or when the person has been sentenced to a prison term (custodial or detention order) exceeding four months. The European Arrest Warrant is meant to replace present extradition procedures for grave crimes and a list of 32 serious offences has been foreseen⁸; crimes on this list have to be executed by the arresting State irrespective of whether or not the definition of the offence is the same, providing that the offence is serious enough and punished by at least 3 years' imprisonment in the Member State that has issued the warrant.

As of 1 July 2004 the Framework Decision was meant to become operational but some delays occurred. On 1 January 2004 the European Arrest Warrant entered into force for eight countries⁹ while the other 7 Member States of the European Union failed the implementation deadline. In the meantime other 10 Countries have joined the European Union and should follow the same implementation procedure.

Consequences for Europol

The European Arrest Warrant is a pure instrument for judicial mutual assistance in criminal matters therefore it applies in the field of international judicial cooperation. Europol belongs to the dimension of international police cooperation in criminal matters and the operability of the European Arrest Warrant shouldn't have an immediate effect on it. On the other hand both judicial and police cooperation have strict relationships and affect each other's sphere of action.

The range of crimes falling under Europol's mandate surely complies with the European Arrest Warrant. The procedures to be applied don't engage anyway Europol directly; in fact, provision is made for cooperation with the Schengen Information System and with Interpol, with Eurojust and the European Judicial Network. Europol's involvement could be foreseen, at least by making initially use of the Liaison Officers posted within the structure.

Areas of improvement and recommendations

A proper tackling of OC requires a common action both at political and law enforcement level. Legislative and judicial strategies on one side should be developed in parallel and in a consistent manner.

⁷ The 1957 European Extradition Convention and the 1978 European Convention on the suppression of terrorism as regards extradition; the Agreement of 26 May 1989 between 12 MS on simplifying the transmission of extradition requests; the 1995 Convention on the simplified extradition procedure; the 1996 Convention on extradition; the relevant provisions of the Schengen agreement.

⁸ These include being member of a criminal organization, terrorism, trafficking in human beings, sexual exploitation of children and child pornography, corruption, fraud, money laundering, counterfeiting of money, illicit trafficking in arms, ammunition and explosives, etc.

⁹ Belgium, Denmark, Finland, Ireland, Portugal, Spain, Sweden and the U.K.

Possible proposals at political level

- To toughen the implementation of the Tampere conclusions, in particular those concerning the strengthening of Europol's role;
- To adopt measures necessary to implement the Council Decision on the common use of Liaison Officers posted abroad by the law enforcement agencies of the MS, which allows Europol to make use of those Liaison Officers with a particular emphasis of Western Balkans¹⁰;
- To adopt and implement a clear legal instrument concerning Joint Investigative Teams (JIT), in particular the Council Framework Decision issued on 13 June 2002. This is absolutely crucial and guidelines should be provided on the relevant role of Europol. A fundamental point should also include the financing of such teams, preferably with Europol budget, and the use of a common "Model Agreement" for setting up such an instrument;
- To urge the Accession into the European Union of some Countries of the Balkan area and to maintain and support the "Stabilisation and Association" Process for the Western Balkans as the major driving force for political, democratic and economic reforms in a region which is considered nowadays one of the most important threats to the stability of Europe and therefore a priority for the EU;
- To continue the process of ratification of the Palermo Convention and its Protocols by all 25 Member States of the European Union in order to have a common legal instrument in the fight against trans-national organised crime, based on the same definition at European Union level;
- To agree on a common definition of Terrorism which, despite the efforts carried out in the aftermath of the terrorist attacks in Europe, is still a pending issue;
- To speed up the process of ratification of the European Convention on Cyber Crime in all the signatory States¹¹ in order to achieve a common operational platform for the fighting against High Tech Crimes;
- To comply with the content of the "Hague Programme" issued by the Council of the European Union¹² at the end of 2004, especially for some crucial topics dealt within the chapter on security¹³.

Possible proposals at law enforcement level

- To make use of the Liaison Officers posted abroad by the Law Enforcement agencies of the Member States, as an important tool to be exploited in the field of Police cooperation at international level. In this respect, the attempt to create a Network among the Liaison Officers posted in the Balkans could be considered as an example;

¹⁰ Council Decision (2003/170/JHA) issued on 27 February 2003 on the Common Use of Liaison Officers posted abroad by the law enforcement agencies of the Member States.

¹¹ CETS n. 185, Budapest 23.11.2001. Among the signatory States, only 8 have already ratified the Convention.

¹² Among the most important recommendations, to: **a)** Design a common strategy to fight terrorism at a EU level also by making enhanced use of Europol and Eurojust; **b)** Intensify practical cooperation between police and customs authorities in the MS and with Europol; **c)** Make sure that Eurojust provide Europol of all necessary high quality information in good time; **d)** Europol should also be designated by the MS as the central office of the EU for Euro counterfeiting.

- To make full use of all those European Union tools operating in the region, that are relevant to the fight against organised crime originating from or linked to the Western Balkans, such as the different police and customs missions managed either by the European Commission or by the Council, and to ensure a proper coordination at all levels;
- To gain closer co-operation with customs agencies, including access to the Customs Information System, as tobacco, oil and alcohol smuggling is a very important area of “business” for organised crime;
- To implement effective information sharing (as opposed to the mere information exchange) across agencies within a country and across national borders, particularly when fighting OC and terrorism. Moreover, this sharing should go beyond traditional Law Enforcement Agencies and should also include national security and intelligence services;
- To examine the possibility of establishing, with due respect to national legal requirements, an EU-wide reporting system on pending OC investigations that would allow Europol and Eurojust to detect and recommend coordination in overlapping situations;
- To direct more efforts toward suspicious financial transactions, identification of criminal proceeds and asset seizures, because money is the “backbone” of organised crime.

Europol's role

- The experience of Europol in the fight against OC has clearly demonstrated that the road ahead lies in the **multi-agency** and **horizontal approach**, which ensures that criminal organisations are targeted as such, regardless of the crime area of involvement.
- To have greater Member States' commitment in Europol projects and Analysis Work Files. These should be used as tools for trans-national scale investigations and Europol should be an instrument at the disposal of investigators, including public prosecutors;
- To make effective the agreement between Europol and Eurojust on the cooperation in the fight against trans-national organised crime;
- To continue the signing of operational and strategic agreements with Third States and Third Organisations in order to reinforce more and more the cooperation against OC.

Extradition and Mutual Legal Assistance in the Asian and Pacific Region

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Introduction

This paper addresses the current situation of judicial cooperation in the *Asian and Pacific region*, with special emphasis on extradition and mutual legal assistance, and mainly focuses on the legal systems and policies of several countries in the region.

The regional arm of the United Nations Secretariat for the Asian and Pacific region is the *United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP)*, located in Bangkok, Thailand. UNESCAP has 53 member states. For the purpose of this paper, the term the *Asian and Pacific region* tentatively means the following 48 member states of UNESCAP:³ Afghanistan, Armenia, Australia, Azerbaijan, Bangladesh, Bhutan, Brunei Darussalam, Cambodia, China, Fiji, Georgia, India, Indonesia, Islamic Republic of Iran, Japan, Kazakhstan, Kiribati, Korea (Democratic People's Republic of), Korea (the Republic of), Kyrgyzstan, Lao People's Democratic Republic (the), Malaysia, Maldives, Marshall Islands (the), Micronesia (Federated State of), Mongolia, Myanmar, Nauru, Nepal, New Zealand, Pakistan, Palau, Papua New Guinea, Philippines (the), Samoa, Singapore, Solomon Islands, Sri Lanka, Tajikistan, Thailand, Timor-Leste, Tonga, Turkey, Turkmenistan, Tuvalu, Uzbekistan, Vanuatu, and Viet Nam.⁴

Perhaps very few people, even those who live in this region, may know the whereabouts of all these 48 countries. However, many people would agree that the Asian and Pacific region is one of the most diverse regions in the world in terms of, to name a few, ethnic groups, religions, languages, government types, legal systems and historical backgrounds.

¹ UNAFEI is one of the Programme Network Institutes (PNIs) affiliated with the United Nations, established by an agreement between the United Nations and the Government of Japan signed on March 15, 1961. The purposes of UNAFEI are the training of personnel, research in the field of the prevention of crime and the treatment of offenders, as well as in the prevention of juvenile delinquency and the treatment of juvenile delinquents. Since the amendment of the agreement in 1970, the Government of Japan has been assuming all administrative and financial responsibilities for the activities of UNAFEI.

² Views expressed in this paper are those of the author, and do not necessarily reflect the positions of UNAFEI or the Government of Japan.

³ See *General description* (www.unescap.org/about/index.asp) and *Members* (www.unescap.org/about/member.asp).

⁴ France, the Netherlands, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland, and the United States of America will not be included in the Asian and Pacific region in this paper, although they are member states of UNESCAP.

Parties to UN Conventions in the Asian and Pacific Region

Region

As indicated in the official background document for this workshop, provisions on extradition have been included in several international conventions that deal with specific types of crime, and the best-known two examples are the *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* (hereinafter referred to as the *1988 Convention*) and the *United Nations Convention against Transnational Organized Crime* (hereinafter referred to as the *TOC Convention*). The document also states that the sets of provisions included in these two UN conventions are so extensive that they have been seen to constitute “mini-treaties” on mutual legal assistance. Thus, it will be sensible to identify the party states to the conventions in the Asian and Pacific region.

According to the latest information available as of February 18, 2005, 170 states in the world are parties to the 1988 Convention, and the TOC Convention has 147 signatories and 99 parties.⁵ Parties and signatories in the region are as follows (emphasis added to fourteen countries that are parties to both the 1988 Convention and the TOC Convention):

A. 1988 Convention

35 parties: Afghanistan, Armenia, Australia, Azerbaijan, Bangladesh, Bhutan, Brunei Darussalam, China, Fiji, Georgia, India, Indonesia, Islamic Republic of Iran, Japan, Kazakhstan, Kyrgyzstan, Lao People’s Democratic Republic, Malaysia, Maldives, Mongolia, Myanmar, Nepal, New Zealand, Pakistan, Philippines, Republic of Korea, Singapore, Sri Lanka, Tajikistan, Thailand, Tonga, Turkey, Turkmenistan, Uzbekistan, and Viet Nam.

B. TOC Convention

15 parties: Afghanistan, Armenia, Australia, Azerbaijan, China, Kyrgyzstan, Lao People’s Democratic Republic, Malaysia, Federal State of Micronesia, Myanmar, New Zealand, Philippines, Tajikistan, Turkey, and Uzbekistan.

15 signatories: Cambodia, Georgia, India, Indonesia, Islamic Republic of Iran, Japan, Kazakhstan, Republic of Korea, Nauru, Nepal, Pakistan, Singapore, Sri Lanka, Thailand, and Viet Nam.

Bilateral Extradition treaties and Mutual Legal Assistance Treaties Between Countries in the Asian and Pacific Region and their Basic Legal Systems

As an American reference librarian stated in her useful guide about researching multilateral and bilateral treaties, “finding bilateral treaties where the U.S. [or your

⁵ See *Monthly Status of Treaty Adherence* [1], 1 January 2005 (www.unodc.org/unodc/en/treaty_adherence.html) and *United Nations Conventions against Transnational Organized Crime* (www.unodc.org/unodc/en/crime_cicp_signatures_convention.html).

country] is not a signatory is a difficult task and could take a fair amount of time”⁶ Sometimes the current legal status or scope of a bilateral treaty could be ambiguous even between possible party states. This is often the case when a state becomes newly independent or merges with another state.⁷

An example is a recent dispute between Thailand and Malaysia on whether they have an enforceable extradition treaty. According to a British news network, “Thai PM Thaksin Shinawatra told reporters he wanted Malaysia to extradite Abdul Rahman Ahmad, also known as Chae Kumae Kuteh.”⁸ Australian radio reported: Mr. Surakiart [the Thai Foreign Minister] says the two countries have a long-standing treaty that would allow for his extradition. But the Malaysian Prime Minister, Abdullah Ahmad Badawi, has said the suspect is a Malaysian citizen, and that the two countries do not have an extradition treaty.⁹ Apparently the two governments had softened their stance by early February, 2005. A global television network of Thailand reported: “Even though Malaysia has an extradition treaty with Thailand, it depends on Malaysia whether or not it wishes to send its citizen to face criminal charges in Thailand,” the [Thailand’s Office of the Attorney General’s] spokesman said.¹⁰ In the meantime, Malaysia’s online newspaper reported: Foreign Minister Surakiart Sathirathai has written two letters to his Malaysian counterpart, Datuk Syed Hamid Albar...“I will write back to him and thank him for re-affirming the close relationship between Thailand and Malaysia,” Syed Hamid said...“It is just a letter which stated Thailand’s interest to have Chae Kumae extradited.”...Yesterday, Prime Minister Datuk Seri Abdullah Ahmed Badawi said the Attorney-General’s Chambers would study whether an extradition treaty ever existed between Malaysia and Thailand. Abdullah, who is also Internal Security Minister, said he had not been aware of the existence of any extradition treaty between the countries, but noted that there was an arrangement during the British administration of the country that allowed fugitives to be extradited to Thailand. The Thai Government’s claim for the extradition of Chae Kumae is anchored on its belief that an agreement between Britain and Thailand in 1911 is still enforceable.¹¹

⁶ See Stefanie Weigmann, International Legal Studies Library at Harvard Law School, *Researching Non-U.S. Treaties*, May 15, 2001 (www.llrx.com/features/non_ustreaty.html).

⁷ The U.S. Department of State publishes a comprehensive list of treaties and other international agreements of the United States on record in the Department. The note in the list under the name of “Vietnam” states: The agreements listed below were in force between the United States and the Republic of Viet-Nam (South Viet-Nam). The status of these agreements remains under review by the United States. See *Treaties in Force* (www.state.gov/s/l/c8455.htm).

⁸ See *Malaysia holds Thailand militant*, BBC News world edition, last updated on January 27, 2005 (<http://news.bbc.co.uk/2/hi/asia-pacific/4211603.stm>).

⁹ See *Thailand to ask Malaysia to hand over suspected militant*, online news of ABC Radio Australia, last updated on February 1, 2005 (www.abc.net.au/ra/news/stories/s1293857.htm).

¹⁰ See *Thai attorney express concern over Malaysian extradition case*, MCOT, last updated February 4, 2005, (www.mcot.org/print.php?nid=35483).

¹¹ See *Thailand moves to end war of words*, New Straits Times, February 9, 2005 (www.nst.com.my/Current_News/NST/Saturday/National/NST32234194.txt/Article/indexb_html).

Identifying all relevant bilateral treaties in the Asian and Pacific region is very difficult, especially with regard to the many countries in the region that were once colonized. Instead of endeavouring to achieve this ambitious goal, it might be useful to give examples by listing bilateral treaties signed and/or ratified by some countries in the region and touch upon their domestic legal systems and policies, on the basis of reliable sources accessible to the public or available to the author in his capacity as a UNAFEI professor. One example is a common law and commonwealth country: Australia. The other three are generally categorized as civil law countries or countries primarily influenced by the civil law tradition: China, Japan and Thailand.

A. Australia

The Australian Legal Information Institute has developed and maintained a comprehensive national Internet database which is supported by the Department of Foreign Affairs and Trade and is freely accessible to the public.¹² Australia has concluded numerous treaties on extradition and mutual legal assistance, mainly with countries of Western Europe and the Americas. Modern treaties negotiated by Australia that are found through a search of the database under the subject of “extradition” or “mutual assistance in criminal matters” and with governments in the Asian and Pacific region are as follows (emphasis added):

- Agreement for the Surrender of Accused and Convicted Persons between the Government of Australia and the Government of Hong Kong [1997]
- Extradition Treaty between Australia and the Republic of Indonesia [1995]
- Treaty on Extradition between Australia and the Republic of the Philippines [1991]
- Treaty on Extradition between Australia and the Republic of Korea [1991]
- Agreement between the Government of Australia and the Government of Hong Kong concerning Mutual Legal Assistance in Criminal Matters [1999]
- Treaty between Australia and the Republic of Indonesia on Mutual Assistance in Criminal Matters [1999]
- Treaty between Australia and the Republic of Philippines on Mutual Assistance in Criminal Matters [1993]
- Treaty between Australia and the Republic of Korea on Mutual Assistance in Criminal Matters [1993]

An outline of Australia’s legal system for extradition and mutual legal assistance is as follows:¹³

- Australia’s extradition relations take four forms: bilateral treaties, including modern treaties negotiated by Australia and treaties inherited from the United

¹² See *Australian Treaties Library* (www.austlii.edu.au/au/other/dfat/).

¹³ See *Report 40 Extradition – a review of Australia’s law and policy*, Joint Standing Committee on Treaties, Parliament of the Commonwealth of Australia, August 2001 (www.aph.gov.au/HOUSE/committee/JSCT/reports/report40/report40.pdf); *Inquiry Into Australia’s Extradition Law, Policy and Practice*, Submission by the Attorney-General’s Department (www.aph.gov.au/house/committee/jsct/extradition/agd.pdf); and *Mutual Assistance in Criminal Matters Manual*, The Attorney-General’s Department, July 8, 2002 (www.ag.gov.au/agd/www/Criminaljusticehome.nsf/Page/695AEB7823AA0757CA256BA40012127E?OpenDocument).

Kingdom;¹⁴ non-treaty relations with Commonwealth countries under the *London Scheme*;¹⁵ non-treaty relations with non-Commonwealth countries based on understandings of reciprocity; and extradition provisions in multilateral treaties on specific classes of crime.

- The *Extradition Act 1988* may be applied to countries with which Australia has no extradition treaty. Although the principal use of non-treaty application of the Act is to provide for extradition between Australia and other Commonwealth countries, the Act has also been applied to a small number of non-Commonwealth countries on a non-treaty basis. Extradition to New Zealand is governed by a separate regime set out in the Act, on a simple “backing of warrants” system on substantially the same basis as extradition among the States and Territories of Australia, in which all decisions are taken by the courts.¹⁶
- The *Mutual Assistance in Criminal Matters Act 1987* came into force in 1988. The Act is administered by the International Branch of the Criminal Law Division in the Commonwealth Attorney-General’s Department, which performs the functions of the *central authority* in respect of all incoming and outgoing mutual assistance request. Between the passage of the Act and the amendments introduced in 1996, Australia has undertaken a comprehensive mutual assistance treaty negotiation programme. Following the amendments, treaty negotiations will be undertaken only with countries with which Australia has substantial mutual assistance traffic and where a treaty would significantly facilitate such traffic, or with countries that require a treaty for their own domestic reasons. Also following the 1996 amendments, assistance may be granted to a requesting foreign country with which there is no treaty in force on a reciprocal basis.

B. China

Since 1996, UNAFEI has conducted the *Special Seminar for Senior Criminal Justice Officials of the People’s Republic of China*. The 8th Special Seminar was held from February 24 to March 14, 2003 and its main theme was *International Cooperation in Crime Prevention and Criminal Justice*. One of the Chinese participants on this seminar was Mr. Guo Jianan, Director of the Institute for Crime Prevention, Ministry of Justice of China. Director Guo stated in his paper titled *Situation, Problems and Strategies of International Cooperation in Combating Transnational Organized Crime within the Framework of UN Conventions*:

¹⁴ The above-mentioned *Report 40 Extradition* states in *Appendix D – Australia’s extradition relations*: Australia regards itself as having succeeded to 20 UK extradition treaties (not counting those which have been displaced by a modern treaty or non-treaty arrangement) which now cover 25 countries...In many cases it is unclear whether these countries regard themselves as having an extradition treaty in place with Australia.

¹⁵ The above-mentioned *Inquiry Into Australia’s Extradition Law* states in *Executive Summary*: In 1966, the Commonwealth adopted the London Scheme, a non-treaty arrangement under which members would enact legislation to enable them to extradite to each other in accordance with agreed principles.

¹⁶ The above-mentioned *Inquiry into Australia’s Extradition Law* states in *Background to Extradition*: The reasons for the lesser requirements [for New Zealand] are: the ease and frequency of travel between Australia and New Zealand; the close economic and political relationship between Australia and New Zealand; and the shared legal and political traditions of the two countries.

Since adopting its “Open and Reform Policy” in the 80s of last century, China has also carried such a policy in the area of criminal justice. Its cooperation with other countries in this regard starts from scratch, develops fast and increases dramatically. Up to June of 2002, China has signed treaties on judicial assistance in civil and criminal matters with 18 countries, treaties on judicial assistance in criminal matters with 9 countries, treaties on extradition with 19 countries and treaties on transfer of sentenced person [with two countries].

Treaties that are found in his *List of countries that signed relevant treaties with China* and with countries in the Asian and Pacific region are as follows¹⁷:

1. Treaty on Extradition¹⁸

- Uzbekistan (Took effect on September 29, 2002)
- [Republic of] Korea (Took effect on April 12, 2002)
- Thailand (Took effect on March 7, 1999)
- Kazakhstan (Took effect on January 10, 1999)
- Mongolia (Took effect on January 10, 1999)
- Laos (Signed on February 4, 2002)
- Philippines (Signed on October 30, 2001)
- Cambodia (Signed on February 9, 1999)
- Kyrgyzstan (Signed on April 27, 1998)

2. Treaty on Judicial Assistance in Criminal Matters¹⁹

- Philippines (Took effect on April 28, 2001)
- Indonesia (Took effect on February 28, 2001)
- [Republic of] Korea (Took effect on March 24, 2000)

3. Treaty on Judicial Assistance in Civil and Criminal Matters²⁰

- Laos (Took effect on December 15, 2001)
- Vietnam (Took effect on December 25, 1999)
- Tajikistan (Took effect on September 2, 1998)

¹⁷ Although this paper relies on a relatively new list of Director Guo, a similar but slightly different table can be found on the website of the Ministry of Foreign Affairs of China. See *Table on Dates of Signing and Effective Dates of Bilateral Judicial Assistance Treaties (Updated May 30, 2003)* (www.fmprc.gov.cn/eng/wjb/zzjg/tyfls/tyfl/2631/t39537.htm).

¹⁸ As for non-Asian and non-Pacific regions, Chinese treaties on extradition with Ukraine, Romania, Belarus, Bulgaria and Russia had come into effect by July 2000; and had been signed with Lithuania, United Arab Emirates, South Africa, Tunisia and Peru by June 2002.

¹⁹ As for non-Asian and non-Pacific regions, treaties on judicial assistance in criminal matters with the United States, Bulgaria and Canada had come into effect by March 2001; and had been signed with Estonia, Tunisia and Colombia by June 2002.

²⁰ As for non-Asian and non-Pacific regions, treaties on judicial assistance in civil and criminal matters with Greece, Cyprus, Egypt, Belarus, Cuba, Ukraine, Russia, Romania and Poland had come into effect by June 1996; and was signed with Lithuania on May 4, 1999.

- Uzbekistan (Took effect on August 29, 1998)
- Kyrgyzstan (Took effect on September 26, 1997)
- Turkey (Took effect on October 26 1995)
- Kazakhstan (Took effect on July 11, 1995)
- Mongolia (Took effect on October 29, 1990)

As a recent development, the People's Daily reported: China and Thailand on Friday [January 21, 2005] exchanged instruments of ratification of the Treaty between the People's Republic of China and the Kingdom of Thailand on Mutual Legal Assistance in Criminal Matters. The treaty will take effect on Feb. 20. (Emphasis added).²¹

An outline of China's legal system for extradition and mutual legal assistance is as follows:²²

- China launched international judicial assistance in criminal matters when it signed the civil and criminal judicial assistance treaty with Poland in 1987.
- China enacted the *Extradition Law of the People's Republic of China* in 2000 which consists of 55 articles and is the most advanced and comprehensive law in China in the field of international judicial assistance. The Law, bilateral treaties and multilateral treaties form the legal basis for extradition. China can cooperate with a foreign state as a matter of comity or mutual benefit even in the absence of a treaty. The Extradition Law designates the Ministry of Foreign Affairs as a contact point with a foreign state.
- China revised the *Criminal Procedure Law of the People's Republic of China* in 1996 and added one new article on mutual legal assistance to the Law, namely Article 17. This article provides: In accordance with the international treaties concluded or acceded to by the People's Republic of China or on the principle of mutual benefit, the Chinese judicial authorities and their foreign counterparts may seek assistance in criminal justice from each other. Although the simple language of this article enables authorities to interpret it in a flexible manner, some Chinese officials stated that more comprehensive laws on mutual legal assistance should be enacted.

C. Japan

The only treaty that Japan has signed with a country in the Asian and Pacific region is as follows (emphasis added):

- Treaty on Extradition between Japan and the Republic of Korea (Entered into force June 21, 2002)

²¹ See *China, Thailand establish mutual judicial assistance in criminal matters*, People's Daily Online, updated January 21, 2005 (http://english.peopledaily.com.cn/200501/21/eng20050121_171503.html).

²² This brief description is based on the papers of Chinese senior officials who participated in the above-mentioned 8th Special Seminar on international cooperation at UNAFEI in 2003: Mr. Huang Feng, Senior Counselor for the Department of Judicial Assistance and Foreign Affairs, Ministry of Justice; Mr. Zhu Weide, Senior Judge, Supreme People's Court; Mr. Xue Jianxiang, Deputy Chief, Jiangsu Higher People's Court; Mr. Chen Jianhua, Assistant Prosecutor, Supreme People's Prosecution Service; and Mr. Ma. Hanquan, Director, People's Prosecution Service of Shanxi Province.

An outline of Japan's legal system for extradition and mutual legal assistance is as follows:

Japan has only two extradition treaties in force: the above-mentioned recent treaty with the Republic of Korea and the *Treaty on Extradition between Japan and the United States of America* which came into effect in 1980. Japan signed its first mutual legal assistance treaty, namely the *Treaty between Japan and the United States of America on Mutual Legal Assistance in Criminal Matters*, on August 5, 2003. This treaty is expected to be in force in the near future after necessary ratification proceedings.

- Japanese laws allow, even in the absence of a treaty, both the extradition of a non-national fugitive and the provision of mutual legal assistance, even when being requested to carry out compulsory measures including search and seizure, to a requesting state if the state assures reciprocity. Primarily because of such a flexible legal system, that enables Japan as a requesting state to assure reciprocity to a foreign state, Japan has not been very active in concluding extradition or mutual legal assistance treaties²³.
- Japan enacted the *Law of Extradition* with 34 articles which entered into force in 1953 and the latest amendment was made in 1993. A request for extradition is submitted through diplomatic channels.
- The principal law on an incoming mutual legal assistance request is the *Law for International Assistance in Investigation* which entered into force in 1980. The Law was amended in 2004 in order to implement the obligations under the newly signed Japan – U.S. Mutual Legal Assistance Treaty and at the same time facilitate judicial cooperation with other countries. The Law has 26 articles after the amendment and includes newly introduced systems or measures regarding the *central authority*,²⁴ prisoner transfer for testimony or other purposes and the certification of business records and so on. This amendment is expected to facilitate more active treaty negotiation by the Japanese government in the future.

D. Thailand

The international Affairs Department of the Office of the Attorney General of Thailand issued the fourth edition of the manual titled *Laws related to Mutual Legal Assistance in Criminal Matters* in March 2002. According to the list in this manual, Thailand has concluded ten extradition treaties with Asian, European and North American countries and five treaties on mutual legal assistance with European and North American countries. Treaties that are found in this list and with countries in the Asian region are as follows (emphasis added):²⁵

²³ Perhaps one of the other possible reasons is that Japan has not had substantial extradition or mutual assistance traffic with foreign states. In spite of above-mentioned flexible legal system and Japan's willingness in assisting foreign states, Japan extradited only 14 fugitives in accordance with requests from foreign states in ten years from 1994 to 2003 and received only 225 mutual legal assistance requests in the same period. See *Hanzai-Hakusho (The White Paper on Crime) 2004*, Research and Training Institute, Ministry of Justice.

²⁴ The Minister of Justice will be the central authority and directly receive all incoming requests for mutual legal assistance, provided that an applicable treaty to which Japan is a party provides so.

²⁵ As for non-Asian and non-Pacific regions, Thai extradition treaties with the United States, Belgium and the United Kingdom entered into force on May 17, 1991, January 14, 1936

- Treaty Between the Kingdom of Thailand and the Kingdom of Cambodia on Extradition (Entered into force March 31, 2001)
- Treaty Between the Kingdom of Thailand and the People's Republic of Bangladesh Relating to Extradition (Entered into force March 19, 2001)
- Treaty on Extradition Between the Kingdom of Thailand and the Lao People's Democratic Republic (Entered into force March 1, 2001)
- Treaty on Extradition Between the Kingdom of Thailand and the Republic of Korea (Entered into force February 15, 2001)
- Treaty Between the Kingdom of Thailand and the People's Republic of China on Extradition (Entered into force March 7, 2001)²⁶
- Treaty Between the Government of the Kingdom of Thailand and the Government of the Republic of the Philippines Relating to Extradition (Entered into force December 7, 1984)
- Treaty Between the Government of the Kingdom of Thailand and the Government of the Republic of Indonesia Relating to Extradition (Entered into force June 18, 1980)

An outline of Thai legal system for extradition and mutual legal assistance is as follows:²⁷

- Thailand, which is one of the civil law countries, promulgated the *Extradition Act B.E. 2472* in 1929. Unlike “treaty prerequisite countries”, Thailand may extradite a fugitive even in the absence of a treaty. A request for extradition from a foreign state, whether or not there is a bilateral extradition treaty, is sent through diplomatic channels.
- Since the Extradition Act, which has been used for more than seven decades, “is no longer able to cope with modern concepts and the progress of contemporary extradition”, the Cabinet “passed a resolution setting up a Special Committee to review and revise laws related to extradition including the Extradition Act” on April 1, 1997.²⁸
- Thailand had executed a mutual legal assistance request from a foreign state in accordance with the “general principle of international law” which includes comity, reciprocity and “rules of due process” until 1992, when Thailand promulgated a new and comprehensive law with 42 sections on this matter, namely the *Act on Mutual Assistance in Criminal Matters B.E. 2535*. Assistance may be granted to a requesting state even in the absence of a treaty “provided that such state commits to assist Thailand under the similar manner when

and March 4, 1911, respectively; and mutual legal assistance treaties with Norway, France, the United Kingdom, Canada and the United States had come into force by September 2000.

²⁶ As stated above, the *Treaty between the People's Republic of China and the Kingdom of Thailand on Mutual Legal Assistance in Criminal Matters* will take effect on February, 20 2005 (emphasis added).

²⁷ See Sirisak Tiyanpan, Expert State Attorney, Legal Counsel Department, Office of the Attorney General, Thailand, *Extradition and Mutual Legal Assistance in Thailand*, Resource Material Series No. 57, Work Product of the 114th International Seminar “International Cooperation to Combat Transnational Organized Crime – with Special Emphasis on Mutual Legal Assistance and Extradition,” UNAFEI, September 2001 (www.unafei.or.jp/english/pdf/PDF_rms_all/no57.pdf).

²⁸ According to the above-mentioned mutual legal assistance manual, apparently the revision of the Extradition Act had not been finalized by March 2002.

requested.” The Attorney General is designated by the Act as the *Central Authority* of mutual legal assistance. A foreign state must submit a request through diplomatic channels unless it has a mutual legal assistance treaty with Thailand.

Bilateral Extradition Treaties and Mutual Legal Assistance Treaties Between Countries in the Asian and Pacific Region and the United States of America

The United States has conducted one of the most active campaigns to negotiate bilateral extradition treaties and mutual legal assistance treaties (MLATs). The United States had “extradition treaties with about one hundred and eleven (111) countries”, had “thirty-one (31) MLATs in force”, and had “signed MLATs with another twenty-three (23) countries” as of early 2000.²⁹ Since the laws of the United States “require that there be an extradition treaty in force before extradition can take place”,³⁰ a country that does not have an extradition treaty in force with the United States will not be granted an extradition request. Although the mutual execution of *letters rogatory* is possible under its laws without a treaty on judicial assistance, the United States has made the negotiation of MLATs in Asia a particular high priority, in part to maximize its ability to address transnational organized crime problems.³¹

Treaties that are found in the above-mentioned *Treaties in Force* of the U.S. Department of State under the category of “extradition” or “judicial assistance” and with governments in the Asian and Pacific region are as follows (emphasis added to seven governments that have both an extradition treaty and a MLAT in force with the United States):

A. Extradition

- Sri Lanka (Entered into force January 12, 2001)
- [Republic of] Korea (Entered into force December 20, 1999)
- India (Entered into force July 21, 1999)
- Hong Kong (Entered into force January 21, 1998)
- Malaysia (Entered into force June 2, 1997)
- Philippines (Entered into force November 22, 1996)
- Thailand (Entered into force May 17, 1991)
- Turkey (Treaty on extradition and mutual legal assistance in criminal matters; entered into force January 1, 1981)
- Japan (Entered into force March 26, 1980)

²⁹ See John E. Harris, Director, Office of International Affairs, Criminal Division, United States Department of Justice, *International Cooperation in Fighting Transnational Organized Crime: Special Emphasis on Mutual Legal Assistance and Extradition*, above-mentioned Resource Material Series No. 57, UNAFEI. Mr. Harris also stated that “many other countries have begun active campaigns to negotiate MLATs, too, notably the Philippines, [the Republic of] Korea, Canada, Australia, and the United Kingdom” (emphasis added).

³⁰ *Id.*

³¹ *Id.*

- Kiribati (Extradition treaty between the United States and the United Kingdom; entered into force January 21, 1977)
- Tuvalu (Extradition treaty between the United States and the United Kingdom; entered into force January 21, 1977)
- Australia (Entered into force May 8, 1976)
- New Zealand (Entered into force December 8, 1970)
- Singapore (Extradition treaty between the United States and the United Kingdom; entered into force June 24, 1935. Agreement confirming the continuance in force between the United States and Singapore of the extradition treaty; entered into force June 10, 1969.)
- Pakistan (Extradition treaty between the United States and the United Kingdom, made applicable to India, from March 9, 1942)
- Burma³² (Extradition treaty between the United States and the United Kingdom; applicable to Burma from November 1, 1941)
- Nauru (Extradition treaty between the United States and the United Kingdom; applicable to Australia, including Nauru, from August 30, 1935)
- Fiji (Extradition treaty between the United States and the United Kingdom; entered into force June 24, 1935)

B. Judicial Assistance³³

- Georgia (Agreement on co-operation in the field of law enforcement; entered into force June 18, 2001)
- China (Entered into force March 8, 2001)
- Singapore (Agreement concerning the investigation of drug trafficking offences and the seizure and forfeiture of proceeds and instrumentalities of drug trafficking; entered into force February 12, 2001)
- Hong Kong (Entered into force January 21, 2000)
- Australia (Entered into force September 30, 1999)
- [Republic of] Korea (Entered into force May 23, 1997)
- Philippines (Entered into force November 22, 1996)
- Thailand (Entered into force June 10, 1993)
- Turkey (Treaty on extradition and mutual legal assistance in criminal matters; entered into force January 1, 1981)

Regional Mutual Legal Assistance Treaty Among ASEAN Member States

On November 29, 2004, the Ministry of Law of the Republic of Singapore put out a press release on a newly signed regional mutual legal assistance treaty (emphasis added):³⁴

³² Myanmar is referred to as “Burma” in the documents of the U.S. State Department.

³³ For the purpose of this paper, U.S. treaties on judicial assistance will include MLATs both in the form of treaty and agreement and an agreement in the field of law enforcement under the category of “judicial assistance”, but exclude agreements on procedures for mutual assistance in connection with matters relating to specific aircraft corporations.

³⁴ See *Press Release on Signing of Mutual Legal Assistance Treaty*, Ministry of Law (http://notesapp.internet.gov.sg/_48256DF20015A167.nsf/LookupContentDocsByKey/GOVI-677FJL?OpenDocument).

1. The Attorney-General Mr. Chan Sek Keong today signed, on behalf of the Republic of Singapore, a Treaty on Mutual Legal Assistance in Criminal Matters amongst countries in this region. Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, the Philippines, and Vietnam also signed the Treaty. The signing ceremony was hosted by Malaysia in Kuala Lumpur.

2. The Treaty provides for the parties to provide legal assistance in criminal matters to each other. Such assistance includes the taking of evidence, service of documents and recovery of proceeds of crime. All assistance rendered under this Treaty would be subject to the domestic laws of the respective countries. In other words, assistance will be rendered only if provided for under the domestic laws of a country, and if the relevant safeguards in those provisions are satisfied.

3. Singapore views this Treaty as an important step in the fight against terrorism and transnational organized crime. This is the first treaty among ASEAN member states on legal cooperation, and will form the basis for closer cooperation among our law enforcement agencies in tackling serious crimes. It facilitates the investigation of crimes that occurred in Singapore, even where the perpetrators or the proceeds of the crime are outside Singapore.

4. The Treaty will come into effect later, after ratification by the respective Governments.

This press release only states that eight *ASEAN (Association of Southeast Asian Nations)* member states signed the treaty on that day and does not say anything about the positions of the remaining two members. However, according to a newspaper article issued the next day in Singapore, “Thailand and Myanmar were involved in negotiations and are understood to be considering signing it [the treaty] as well” (emphasis added).³⁵

ASEAN had annually held the *ASEAN Senior Law Officials Meeting (ASLOM)*. Apparently this matter had been touched upon in a couple of ASLOM meetings as one of the legal matters to be discussed. The treaty was “first proposed by Malaysia at the 8th ASLOM”³⁶ held in Kota Kinabalu, Malaysia on or around July 3, 2003, and at least the Philippines immediately and officially welcomed the proposal.³⁷ After making this proposal, Malaysia had “initiated and hosted two meetings of like-minded countries to formulate this Treaty”³⁸ by August 2004, when the 9th ASLOM Meeting was held in Brunei Darussalam. Apparently the signing ceremony of “the first treaty among ASEAN member states on legal cooperation” on November 29, 2004 was the result of this relatively new initiative.

³⁵ See *S’pore signs regional legal assistance pact*, the Straits Times, November 30, 2004, at H2.

³⁶ See *Joint Press Statement of the 9th ASEAN Senior Law Officials Meeting (ASLOM) 23-24 August 2004, Brunei Darussalam* (www.aseansec.org/16336).

³⁷ See *ASEAN Treaty on Mutual Legal Assistance - Major Contribution to Regional Efforts to Fight Terrorism*, Press Release, Department of Foreign Affairs, the Philippines, July 3, 2003 (www.dfa.gov.ph/news/pr/pr2003/jul/pr327.htm).

³⁸ See above-mentioned *Joint Press Statement of the 9th ASLOM*.

Conclusion

- The Asian and Pacific region, comprising 48 countries, is one of the most diverse regions in the world and accordingly legal systems and policies regarding extradition and mutual legal assistance significantly differ between countries.
- Only 14 countries, 29 per cent of all countries in the region, are parties to both the 1988 Convention and the TOC Convention, because most of the other countries have not ratified the latter, which was adopted in November 2000. Although 15 signatories to the TOC Convention are expected to ratify it relatively soon,³⁹ the remaining countries should be encouraged to sign and ratify it. The international community, especially the United Nations and its PNIs, should provide technical assistance to developing countries that are willing to effectively implement the TOC convention.⁴⁰
- Since the 1990s a bilateral treaty network, both on extradition and mutual legal assistance, has been developed in the region. Efforts made by active countries including Australia, China, the Republic of Korea, the Philippines and Thailand should be commended and encouraged to continue. The positive role that some active non-Asian-Pacific countries, including the United States, have played in the region should also be noted. Although bilateral treaties, by nature, are negotiated and concluded according to the specific needs of the states in question, such treaties facilitate a country in reforming its domestic laws and at the same time they open the gate for future treaty partners. Bilateral treaty negotiations also deepen each country's understanding of the other's legal system and practices.
- Since negotiating and updating numerous bilateral treaties requires significant time, expertise and resources, it may not be feasible to expect all countries in the region to enter into them in the near future. Regional (multilateral) treaties could be a possible solution to this problem, provided that respective countries have a longstanding close relationship, as in the ASEAN example.
- Commonwealth countries in the Asian and Pacific region⁴¹ have an existing scheme for facilitating extradition. These countries should try to reach out to non-Commonwealth countries. This is especially the case when Commonwealth countries maintain the "treaty prerequisite" policy in judicial cooperation, since

³⁹ For example, the Japanese Cabinet obtained the approval of the Diet, the sole law-making organ of the State, for the ratification of the TOC Convention in May 2003, and has submitted a bill to the Diet in order to implement the Convention. The bill is under consideration by the Diet and hopefully will be passed in the near future.

⁴⁰ UNAFEI and the *UN Center for International Crime Prevention (CICP)* jointly organized a two-day seminar in Osaka, Japan, in August 2002 for senior officials from some 20 countries in the Asian and Pacific region in order to promote the ratification of the TOC in the region. UNAFEI also conducted an international training course on transnational organized crime from September 10 to November 2, 2001 in which 11 officials of Japan and 16 officials from developing countries participated; and ten of them were from the Asian and Pacific region. See *Work Product of the 119th International Training Course*, Resource Material Series No 59 (www.unafei.or.jp/english/pages/PublicationsRMS.htm).

⁴¹ The Commonwealth is an association of 53 countries. The following 17 Asian and Pacific region countries are members: Australia, Bangladesh, Brunei Darussalam, Fiji Islands, India, Kiribati, Malaysia, Maldives, Nauru, New Zealand, Pakistan, Papua New Guinea, Samoa, Singapore, Solomon Islands, Tuvalu, and Vanuatu. See *Members*, Commonwealth Secretariat, February 18, 2005 (www.thecommonwealth.org/Templates/Internal.asp?NodeID=20724).

it is not feasible if a requesting state is required to negotiate the terms and conditions of a treaty or an agreement with such countries prior to submitting a request, especially when the matter is urgent. Australia's flexible approach in terms of its non-treaty basis judicial cooperation should be commended and other countries should be encouraged to take a similar approach.

- In order to maintain a cooperative relationship, judicial cooperation should not be politicized. If such matters are dealt with from a political point of view, a more powerful country will often prevail over a less powerful one. It will not be a wise policy even for most powerful nations, since judicial cooperation will be successful only when a requested state is willing to cooperate with a requesting state, and officials will be unwilling to cooperate when they are forced to do so. It seems that Malaysia and Thailand handled the above-mentioned sensitive extradition case in a very wise manner by ending the political dispute at the earliest stage possible and allowing the appropriate authorities responsible for criminal justice matters to negotiate without political interference.
- Treaties and domestic laws always leave room for interpretation and many matters arising in practice are not explicitly set forth. Close and friendly communications on a daily basis between designated authorities of countries are indispensable in finding the most constructive solution. The system of a central authority, seen in many mutual legal assistance treaties, notably in U.S. MLATs, is a good practice in this regard. Another possible measure is seconding law enforcement or judicial experts to foreign countries so that they can discuss judicial cooperation matters with their foreign counterparts on a face to face basis.⁴² The international community, especially the United Nations and its PNIs, might be able to facilitate such face to face communications among officials in charge of judicial cooperation.⁴³

⁴² Japan's public prosecutors are seconded to its Embassies in China, France, the United Kingdom and the United States to deal with legal matters, including extradition and mutual legal assistance. The Republic of Korea conducts a similar practice. The recent success in concluding the Japan – Korea Extradition Treaty was the result of the significant contributions of successive Korean legal counsellors (prosecutors) working for their Embassy in Tokyo in facilitating the mutual understanding and cooperation between the two neighbouring countries.

⁴³ UNAFEI has itself assumed this mission by conducting numerous international courses and seminars for more than 40 years.

Extradition Measures

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Extradition can be defined broadly as the surrendering of a fugitive to a requesting State for the purpose of prosecution or enforcement of a sentence.

Extradition emerged as a tool of judicial and prosecutorial cooperation in the late 1800s. Particularly in the period after World War II, the increase in the number of extradition agreements was significant.

Basis for Extradition

The basis for extradition can either be a bilateral treaty or agreement between two sovereign nations, or extradition can be provided on the basis of multilateral treaties.

Bilateral treaties between States are usually not confined to a specific type of crime, but rather they are limited to offences of a certain seriousness, which is usually manifested in the punishment offences attract under domestic criminal law of the contracting states.

Multilateral conventions on extradition have been prepared within the framework of a range of international organisations, including, in particular, the United Nations. Provisions on extradition have been included in several international conventions that deal with specific types of crime, including the *Convention for the Suppression of Unlawful Seizure of Aircraft* (the *Hague Convention*), the *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation* (the *Montreal Convention*), the *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, the *International Convention for the Suppression of Counterfeiting Currency* and the Protocol to that Convention, the *International Convention against the Taking of Hostages*, the *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents*, the *Single Convention against Narcotic Drugs*, the *Convention on the Physical Protection of Nuclear Material*, the *Convention on the Safety of United Nations' and Associated Personnel*, the *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation*, the *Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platform Located on the Continental Shelf*, and the *Convention for the Suppression of Terrorist Bombings*.

The two most recent, and perhaps best-known examples are article 6 of the 1988 *Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances* (known as the *Vienna Convention*) and article 16 of the 2000 *Convention against Transnational Organised Crime* (the *Palermo Convention*).

Article 16(1) of the Convention requires State Parties to allow foreign requests for extradition of persons engaged in organised crime provided the alleged offence is criminalised in the requesting and in the requested country (“dual criminality”).¹

Article 16, which is based on the extradition provisions of the *Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, enables Signatories to seek extradition from other Member States of offenders charged with a Convention offence, ie participation in an organised criminal group, money laundering or corruption. Thus, the Convention operates as an extradition treaty in the absence of other bilateral or multilateral agreements, article 16(4). If the countries involved do have an existing mutual extradition treaty, the Convention offences “shall be deemed to be included as an extraditable offence” in this treaty, article 16(3).²

Provisions in these and other international conventions include mechanisms to enable Signatories to prosecute offenders of transnational organised crime and the like in their territory or seek extradition of those who are located abroad (the principle known as ‘aut dedere aut judicare’). In addition, bilateral and multinational extradition treaties, mutual legal assistance treaties (MLATs), other agreements over judicial cooperation, and law enforcement memoranda of understanding (MoUs) have been established to assert jurisdiction and prosecute criminals across international borders.

The international conventions also allow countries to refuse extradition in a variety of circumstances, for example, if they have no bilateral extradition with the requesting country,³ if they suspect, that the person will be prosecuted for reasons of gender, ethnicity, nationality, race, religion or political opinion,⁴ or if their domestic laws prohibit the extradition of their own nationals.⁵ Extradition can further be refused in the absence of dual criminality.⁶ Alternatively, the requested country can surrender the person under the condition he/she will return to serve the sentence.⁷ Further, extradition may be refused if the requested country considers the offence “political” or “military”,⁸ or if it does not consider the alleged offence sufficiently serious to warrant extradition and severe penalties.

¹ For proposals and contributions during the elaboration of art 16 see UN Ad Hoc Committee on the Elaboration of a Convention against Organised Crime, *Proposals and contributions received from Governments*, UN Doc A/AC.254/5/Add.20 (11 Feb 2000).

² See also art 16(6): Countries that use the Convention as a basis for extradition (in lieu of an extradition treaty) shall recognise the Convention offences as extraditable offences.

³ See, for example, art 16(4) *Convention against Transnational Organised Crime*; art 6(3) *Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*.

⁴ See, for example, art 16(14) *Convention against Transnational Organised Crime*; art 6(6) *Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*. Cf Faiza Patel, “Crime without Frontiers: A Proposal for an International Narcotics Court” (1989-90) 22 *NYU Journal Int’l Law & Politics* 709 at 722-723.

⁵ Cf art 16(7) *Convention against Transnational Organised Crime*. Cf M Cherif Bassiouni & Edward M Wise, *Aut Dedere aut Judicare: The Duty to Prosecute or Extradite in International Law* (Kluwer, 1995) 10, 62; Faiza Patel, “Crime without Frontiers: A Proposal for an International Narcotics Court” (1989-90) 22 *NYU Journal Int’l Law & Politics* 709 at 721-722.

⁶ See, for example, art 16(1) *Convention against Transnational Organised Crime*.

⁷ See, for example, art 16(11) *Convention against Transnational Organised Crime*.

⁸ Cf s 7 *Extradition Act* 1988 (Cth). See generally M Cherif Bassiouni & Edward M Wise, *Aut Dedere aut Judicare: The Duty to Prosecute or Extradite in International Law* (Kluwer, 1995) 10-11.

Domestic Perspectives

At the time of writing (April 2005) Australia was party to 35 bilateral extradition treaties. Further, special arrangements exist between Australia and all members of the Commonwealth of Nations and 17 other countries. Moreover, Australia is a Signatory to 15 international conventions which give rise to extradition obligations.

The most recent additions to the list of bilateral extradition entered into by Australia is the *Treaty on Extradition between Australia and the Republic of South Africa* which entered into force in 2001.⁹ Under article 1 of the treaty, “each Contracting State agrees to extradite to the other, in accordance with the provisions of this Treaty, any persons who are wanted for prosecution or the imposition or enforcement of a sentence in the Requesting State for an extraditable offence.” For the purposes of this treaty, under article 2(1) “extraditable offences are offences however described which are punishable under the laws of both Contracting States by imprisonment for a maximum period of at least one year or by a more severe penalty. Where the request for extradition relates to a person convicted of such an offence who is wanted for the enforcement of a sentence of imprisonment, extradition shall be granted only if a period of at least six months of such penalty remains to be served.”

At the national level, international extradition is in most countries governed by extradition acts or equivalent legislation. In Australia, the *Extradition Act 1988* (Cth)¹⁰ codifies extradition practice. The Act applies to various countries under a variety of different extradition relationships. The Act is the Australian implementation of its extraditions obligation under bilateral and multilateral treaties. Section 3 states the purpose of the Act:

S 3 *Extradition Act 1988* (Cth) Principal objects of Act

The principal objects of this Act are:

- (a) to codify the law relating to the extradition of persons from Australia to extradition countries and New Zealand and, in particular, to provide for proceedings by which courts may determine whether a person is to be, or is eligible to be, extradited, without determining the guilt or innocence of the person of an offence;
- (b) to facilitate the making of requests for extradition by Australia to other countries; and
- (c) to enable Australia to carry out its obligations under extradition treaties.

The application of the *Extradition Act 1988* (Cth) is limited to so-called ‘extraditable offences’ as defined in section 5 of the Act:

extradition offence means:

- (a) in relation to a country other than Australia—an offence against a law of the country:

⁹ 2001 ATS 19.

¹⁰ No 4 of 1988 (as amended).

- (i) for which the maximum penalty is death or imprisonment, or other deprivation of liberty, for a period of not less than 12 months; or
- (ii) if the offence does not carry a penalty under the law of the country—the conduct constituting which is, under an extradition treaty in relation to the country, required to be treated as an offence for which the surrender of persons is permitted by the country and Australia; or
- (b) in relation to Australia or a part of Australia—an offence against a law of Australia, or a law in force in the part of Australia, for which the maximum penalty is death or imprisonment, or other deprivation of liberty, for a period of not less than 12 months.

Most notably, extradition offences are only those which attract a minimum penalty of 12 months imprisonment (formerly referred to as felonies) unless the exception in subparagraph (ii) applies.

Part II of the Act, sections 12 to 27 set out the regulations for extradition requests made by Australia to other countries. Part III, sections 27 to 39 of the *Extradition Act 1988* (Cth) contains specific provisions which apply for extradition to New Zealand. The remaining part, Part IV, sections 40-53 of the Act deal with extradition to Australia from other countries.

APPENDIX A

Article 16 Convention against Transnational Organised Crime

Extradition

1. This article shall apply to the offences covered by this Convention or in cases where an offence referred to in article 3, paragraph 1 (a) or (b), involves an organized criminal group and the person who is the subject of the request for extradition is located in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.
2. If the request for extradition includes several separate serious crimes, some of which are not covered by this article, the requested State Party may apply this article also in respect of the latter offences.
3. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.
4. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.
5. States Parties that make extradition conditional on the existence of a treaty shall:
 - (a) At the time of deposit of their instrument of ratification, acceptance, approval of or accession to this Convention, inform the Secretary-General of the United Nations whether they will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and
 - (b) If they do not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.
6. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.
7. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.
8. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.
9. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose

extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

10. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

11. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 10 of this article.

12. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting Party, consider the enforcement of the sentence that has been imposed under the domestic law of the requesting Party or the remainder thereof.

13. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

14. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.

15. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

16. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

17. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

International Law Enforcement Co-operation, Including Extradition Measures: An Overview of Initiatives in Southern Africa

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Introduction and Background

In this paper Southern Africa is used to refer to the region that consists of the 13 member states of the Southern African Development Community (SADC).¹ The paper attempts to elucidate some of the challenges facing the sub-region in the area of law enforcement co-operation, including extradition. An attempt is also made to highlight some of the initiatives that have been taken by governments in the sub-region to address the challenges.

The SADC is part of several regional groupings in Africa that, in accordance with the principles laid down in the Lagos Plan and the Abuja Treaty in 1991, is one of the building blocks for the establishment of an African Economic Community. It covers more than 9 million square kilometres.

In economic terms, the SADC region is underdeveloped. Some of the SADC member states fall under the category of least developed countries.² The Community has meagre resources available to develop effective programmes relating to education, health or law enforcement. The challenges of underdevelopment are further aggravated by various factors including the sub-region's vulnerability to transnational organised crime. Organised crime groups operating in the region are known to specialise in motor vehicle theft, arms smuggling, drug trafficking, fraud, stock theft, illegal trade in precious stones and minerals, money laundering, poaching and prostitution. Evidence is also emerging of an ever-increasing involvement of organised crime groups in human trafficking.³ The syndicates are using the region as a source, transit and destination point for illegal migrants. An additional debilitating factor in some of the SADC Member States has been prolonged conflict and wars.⁴

¹ SADC member countries are Angola, Botswana, Democratic Republic of Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe. The Seychelles withdrew from SADC membership in August 2003.

² Angola, DRC, Malawi, Mozambique and Malawi

³ Eye On Human Trafficking, Issue 2/May 2004

⁴ Especially in DRC and to a limited extent Angola which has had relative peace since 1992

Establishment of the Southern African Regional Police Chiefs Co-operation Organisation

Notwithstanding the complex political, economic and social challenges facing the sub-region, SADC has achieved considerable success in enhancing law enforcement co-operation. One of the landmark developments in law enforcement co-operation in the sub-region is the formation in 1995 of the Southern African Regional Police Chiefs Co-operation Organisation (SARPCCO). This initiative aimed at improving law enforcement co-operation between states and co-ordination of strategies against transnational crime has extended to other regions of the African continent. The Economic Community of West African States (ECOWAS), for example, has established the West African Police Chiefs' committee through a formal agreement that has been ratified by the Heads of State of the Member States. The agreement facilitates the exchange of criminal information, restitution of stolen goods and police-to-police return of offenders. East African States have a similar sub-regional law enforcement body known as the East Africa Police Chiefs' Co-operation Organisation.⁵

SARPCCO was established in 1995 at the initiative of the chiefs of police of 11 Southern African countries. These were Angola, Botswana, Lesotho, Malawi, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe. A twelfth country, Mauritius has since joined. The formation of SARPCCO was primarily motivated by the escalation in cross-border criminal activities in the region. The objectives of SARPCCO, as set out in its constitution, are as follows:

- The promotion, strengthening and perpetuation of co-operation and the fostering of joint strategies for the management of all forms of cross-border and related crimes with regional implications;
- The preparation and dissemination of relevant information on criminal activities when necessary to benefit members in their attempts to contain crime in the region;
- The regular reviewing of joint crime management strategies with the purpose of accommodating changing national and regional needs and priorities;
- The efficient operation and management of criminal records and the efficient joint monitoring of cross border crime by taking full advantage of the appropriate facilities available from Interpol;
- The making of relevant recommendations to governments of member countries in relation to matters affecting effective policing in the Southern African region; and
- The execution of any relevant and appropriate acts and strategies for purposes of promoting regional police co-operation and collaboration as dictated by regional circumstances.

The objectives of SARPCCO are pursued through the following structures:

Council of Police Chiefs

The Council of Police Chiefs (CPC) is the supreme body of SARPCCO. It consists of all Chiefs of Police of Member States. The CPC is responsible for formulating

⁵ EAPCCO members are Burundi, Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, Seychelles, Somalia, Sudan, Tanzania and Uganda

policy on all sub-regional police co-operation matters to ensure the efficient functioning of all SARPCCO structures and the attainment of the organisation's objectives. The CPC fulfils its mandate through issuing directives and prescribing standard operating procedures. It meets once a year but additional meetings may be convened under extraordinary circumstances. The CPC chairman is elected among the police chiefs for a one-year term at the end of which a new chairman is elected on a rotational basis. The implementation of the decisions taken by the CPC is subject to the approval of ministers responsible for policing in each of the Member States. A meeting of the ministers, therefore, follows each annual meeting of the CPC.

SARPCCO Secretariat

In 1997, Interpol reinforced SARPCCO by establishing an Interpol sub-regional Bureau for Southern Africa in Harare. The Interpol office also serves as the secretariat of SARPCCO. The head of Interpol's Sub-regional Bureau for Southern Africa is also the head of the SARPCCO Secretariat. A desk has been established at the Bureau to take care of all matters relating to SARPCCO. The desk is manned by Liaison officers who are responsible for co-ordinating matters relating to cross-border crime in the sub-region, including the monitoring of crime trends with the aim of advising police chiefs on crime areas that require attention.

Permanent Co-ordinating Committee

The Permanent Co-ordinating Committee (PCC) consists of heads of the Criminal Investigation Divisions (CIDs) of all Member States. The PCC is responsible for formulating strategy to combat crime in the sub-region, creating operational mechanisms, and dealing with any other matter referred to it by the CPC. The PCC convenes as often as it deems it necessary. The PCC has been vested with the authority to create sub-committees or ad hoc task units or even to co-opt heads of other police components according to particular needs. The PCC is accountable to the CPC and reports to its annual meeting or as otherwise requested.

Committees, Sub-committees and Task Units

The following permanent subcommittees have been established under Article 7 of the SARPCCO Constitution:

- **The Training Sub-Committee** is tasked with the responsibility of identifying training needs and putting together relevant curricula for the training of Police officers throughout the sub-region; and
- **The Legal Sub-Committee** has the task of making recommendations in relation to legislation, the ratification of international conventions, deportations and the repatriation of exhibits.

Anti-Terrorism Early Warning Centre for Southern Africa

The Anti-Terrorism Early Warning Centre for Southern Africa was established in 2003. The centre has been created to gather and disseminate police intelligence about terrorist threats in the sub-region. It focuses on terrorist groups, links between them, financial and support networks, and factors that may increase the likelihood of terrorist activity.⁶

⁶ See Interpol at Work, 2003 Activity Report

Multilateral Agreements on Law Enforcement Co-operation in Southern Africa

In an attempt to further improve its capacity to combat cross-border crime, SARPCCO spearheaded the drafting of a multilateral agreement on law enforcement co-operation. The initiative resulted in the signing of An Agreement on Co-operation and Mutual Assistance in the Field of Crime Combating on 30 September 1997 by all Member States of SARPCCO, except Mauritius. The Agreement seeks to create an environment conducive to the development of an advantageous working relationship between the sub-region's law enforcement agencies. In particular, it makes provision for cross-border police operations including search and seizure of exhibits, tracing and questioning of witnesses. Other instruments concluded by SADC States to combat cross-border crime include the Protocol on Combating Illicit Drugs (1996); SADC Protocol on Legal Affairs (2000); SADC Protocol Against corruption (2001); SADC Protocol on the Control of Firearms, Ammunition and other related Materials (2001); SADC Protocol on Mutual Legal Assistance in Criminal Matters (2002); and SADC Protocol on Extradition (2002).

Bilateral Law Enforcement Agreements

In addition to multilateral agreements on law enforcement co-operation, the sub-region has effective bilateral law enforcement agreements. The South African Government, for example, has concluded a number of bilateral agreements that have facilitated the posting of crime liaison officers in Swaziland, Mozambique and Namibia for the purpose of gathering, managing and coordinating drug and organised crime related information.⁷ A bilateral law enforcement agreement signed in 1992 between South Africa and Mozambique resulted in the commissioning of a project known as 'Kosi Bay'. The project involved the deployment of a South African police unit in the Salamanga Bridge area, fifty kilometres inside Mozambique for the purpose of combating cross-border crime. The unit has been highly effective in curbing the smuggling of motor vehicles into Mozambique and central Africa from South Africa. During its first months of operation, the unit recovered 134 stolen motor vehicles, and 122 people were arrested. By 2005, the unit had successfully sealed the hitherto notorious Salamanga Bridge smuggling route.⁸

Law Enforcement Agreements with Non-SADC Member States

Due to the increasing number of criminal activities, particularly drug trafficking, being committed in the sub-region by transnational organised crime groups from other parts of the world, SADC member States have recognised the need for law enforcement cooperation with countries outside the sub-region. The South African Government, for example, has concluded the following police cooperation agreements with countries outside the SADC:

- Multilateral police cooperation agreements relating to the combating of drugs and drug trafficking between South Africa, Brazil, Argentina and Chile.
- A memorandum of understanding in respect of the combating of drugs and drug trafficking concluded with the Islamic Republic of Iran.

⁷ Paper by F.J. Msutu (former Head of Interpol sub-regional Bureau, Harare), presentation at SADC Regional Conference on responses to organised crime, South Africa, 26 February, 2001(Unpublished)

⁸ www.iol.co.za

- General police co-operation agreements with the Russian Federation, France, Hungary, the People's Republic of China, Austria, Portugal, Turkey and Bulgaria.

Confidence-building Measures

One of the immediate challenges facing government in Southern Africa in the early 1990s was the development of measures to build mutual trust among their police organisations, as well as between police officers. As a result of the anti-colonial struggle including the fight against minority rule in South Africa that occurred from 1960 to the early 1990s, poor relations and suspicion generally had characterised the relations between police agencies in the sub-region. During the struggle, the sharing of information between police organisations was strictly controlled by Governments operating in an environment where a person could be classified as a criminal or a freedom fighter depending on which side of the border he or she was located. When the anti-colonial struggle ended and apartheid in South Africa was abolished in the early 1990s, governments in the SADC recognised the need to complement the signing of law enforcement co-operation agreements with programmes designed to build mutual trust among their law enforcement organisations, as well as between police officers. The promotion of sports and cultural exchange programmes among police organisations in the sub-region is one of the confidence-building measures that SARPPCO has successfully implemented.⁹

Cross-border Joint Operations

Since the establishment in 1997 of SARPPCO and the Interpol sub-regional Bureau for Southern Africa, several cross-border joint operations have been conducted by police organisations in the sub-region. These operations have focused on the most common transnational crimes in the sub-region, such as motor vehicle theft, drug trafficking, arms smuggling, illegal dealing in precious stones, and organised crime in general. Some of the notable joint operations undertaken since the formation of SARPPCO and the Interpol sub-regional Bureau include the following:¹⁰

Operation Voyager 4 (V4)

This operation was undertaken between South Africa, Mozambique, Zambia and Zimbabwe. It was launched at the beginning of 1997 with the objective of addressing the problem of theft of motor vehicles. During the operation, 1,576 stolen vehicles were seized and 143 suspects arrested.

Operation Midas

This operation was conducted in 1998 between Lesotho, Mauritius, Swaziland and South Africa. Its objectives were to address motor vehicle theft, drug trafficking, firearms smuggling and other transnational crimes. The operation resulted in the seizure of 76 stolen motor vehicles, 14 firearms, more than 20,000 rounds of ammunition, 116.94 kilograms of marijuana and the arrest of 22 suspects.

Operation Atlantic

This operation was carried out in 1998, involving Botswana, Namibia and South Africa. Its aim was to combat motor vehicle theft and other cross-border crimes. The operation resulted in the seizure of 114 stolen motor vehicles, 11 firearms, 71 rounds

⁹ F.J. Msutu

¹⁰ Interpol at work, 2003 Activity Report

of ammunition of various calibres, 27.910 kilograms of marijuana and the arrest of 23 suspects.

Operation Sesani

This operation was undertaken between Malawi, Mozambique, Tanzania, Zambia and Zimbabwe, with technical support from South Africa. Its objective was to address the problem of transnational organised crime, including motor vehicle theft. The operation commenced in 1998 and was concluded in 1999. It resulted in the recovery of 180 stolen motor vehicles, 47 firearms and seizure of over 400 kilograms of narcotic drugs, and 64 suspects were arrested.

Operation Makhulu

This operation took place in 2000 and covered Botswana, Lesotho, Mozambique, Namibia, South Africa, Swaziland and Zimbabwe. The operation focused on cross-border crime including theft of motor vehicle, drug trafficking, and illegal immigration.

Operation Matokwane

The cultivation and trafficking of cannabis has been and continues to pose a serious challenge to police organisations in the sub-region. The major trafficking route is towards South Africa. The main suppliers of cannabis are located in Lesotho, Swaziland, Malawi, Mozambique, Zambia and Zimbabwe. The cultivation in Lesotho, Malawi and Swaziland occurs on a commercial scale. Most of the cannabis is intended for the European market. SARPPCCO has been involved in the collection of intelligence on the cultivation and trafficking of cannabis. The intelligence is used by national police organisations to trace suspects and locate and destroy cannabis crops. During 2001, a regional joint operation, code named Matokwane, was conducted in Malawi, Lesotho, Swaziland and South Africa. More than 6,000 tons of cannabis were destroyed during the operation.

Operation Mangochi

This is a joint operation on stolen motor vehicles between Botswana, Kenya, Lesotho, Malawi, Mozambique, South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe. It was co-ordinated by the Harare Sub-Regional Bureau and SARPPCCO. The operation was conducted over three phases in 2003. It led to the recovery of 102 stolen vehicles.

Operation Stone

This is an ongoing intelligence-gathering operation undertaken between Angola, Botswana, Namibia and South Africa. It focuses primarily on collecting and analysing intelligence on criminal groups involved in smuggling of diamonds and other precious stones. Evidence has emerged linking diamonds and other precious stones to a number of conflicts on the African continent. Operation Stone, therefore, seeks to address both the economic and security implications associated with illicit trade in precious stones.

Project Baobab-Africa

This is a regional Interpol project covering the whole of Africa. It aims to contribute to the United Nations efforts to combat terrorism through the collection of intelligence and identification of active terrorist groups in Africa.

Extradition and Mutual Legal Assistance in Criminal Matters

Extradition is widely accepted in the SADC region as an important mechanism for regional and international law enforcement co-operation. The development of SADC frameworks for mutual legal assistance and extradition took a piecemeal approach. The first step in this regard was taken in 1996 when the SADC Member States signed and adopted the Protocol on Combating Illicit Drugs. The objectives of this Protocol were largely influenced by the principles set out in the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988). The Protocol obliges Member States to establish appropriate mechanisms for co-operation among their law enforcement agencies including the introduction of effective extradition arrangements to enable extradition in all cases of drug trafficking and money laundering and introduction of effective mutual legal assistance in all cases of drug trafficking and money laundering.¹¹

On 7 August 2000 the SADC Member States signed and adopted a Protocol on Legal Affairs. The Protocol, among others, established the SADC Legal Sector whose objectives include, among others, the development, as far as possible, of common strategies and standards dealing with the administration of justice and law enforcement.

The desire by the Community to develop common strategies and standards on countering corruption resulted in the signing and adoption by Member States, on 14 August 2001, of the SADC Protocol against Corruption. Article 10(1) of the Protocol obliges State Parties to “afford one another the widest measure of mutual assistance by processing requests from authorities that, in conformity with their domestic law, have the power to investigate or prosecute the acts of corruption described in [the] Protocol, to obtain evidence and take other necessary action to facilitate legal proceedings and measures regarding the investigation or prosecution of acts of corruption.”

The SADC Protocol on the Control of Firearms, Ammunition and other Related Matters that was signed and adopted by Member States on 14 August 2001 recognises “the importance of regional and international co-operation and regional and international initiatives undertaken to prevent, combat and eradicate the illicit manufacturing of, excessive and destabilising accumulation of, trafficking in, possession and use of firearms and related materials.” Member States are obliged under this Protocol to establish appropriate mechanisms for co-operation among law enforcement agencies of the State Parties including the:

- establishment of direct communication systems to facilitate a free and fast flow of information among the law enforcement agencies in the Region;
- establishment of an infrastructure to enhance effective law enforcement, including suitable search and inspection facilities at all designated ports of exit and entry;
- establishment of national focal contact points within the respective law enforcement agencies for the rapid information exchange to combat cross-border firearm trafficking; and
- introduction of effective extradition arrangements.

¹¹ See: Article 9 of the Protocol

Member States adopted a comprehensive arrangement on mutual legal assistance on 3 October 2002. The signing of the SADC Protocol on Mutual Legal Assistance in Criminal Matters occurred against the background of an international environment in which the issue of organised crime had rapidly moved up on the law enforcement agendas of both governments and international organisations. The importance attached by the international community to increased efforts to fight organised crime is best illustrated by the involvement of more than 120 states in the negotiations that led to the finalisation in July 2000 of the United Nations Convention against Transnational Organised Crime. This Convention, among other matters, provides for expanded international co-operation and mutual legal assistance. A number of countries in the SADC have demonstrated political will, commitment and readiness to join the international community in countering transnational organised crime by ratifying the United Nations Convention against Organised Crime Convention.

The SADC Protocol on Mutual Legal Assistance in Criminal Matters, according to its preamble, reflects the desire by Member States to extend to each other the widest possible mutual assistance within the limit of the laws of their respective jurisdictions. The Protocol provides for the following forms of assistance:

- Locating and identifying persons, property, objects and items;
- Serving documents, including documents seeking the attendance of persons and providing returns of such service;
- Providing information, documents and records;
- Providing objects and temporary transfer of exhibits;
- Search and seizure;
- Taking evidence or obtaining statements or both;
- Authorizing the presence of persons from the Requesting State at the execution of requests;
- Ensuring the availability of detained persons to give evidence or to assist in possible investigations;
- Facilitating the appearance of witnesses or the assistance of persons in investigations; and
- Taking possible measures for location, restraint, seizure, freezing or forfeiture of the proceeds of crime.

The SADC Protocol on Extradition

On 3 October 2002, the SADC Heads of state signed the SADC Protocol on Extradition. The action of the Community was largely influenced, according to the Protocol's preamble, by concerns regarding "the escalation of crime at both national and transnational levels, and that the increased easy access to free cross border movement enables offenders to escape arrest, prosecution, conviction and punishment".

Legal experts have cited several obstacles to the effective administration of the extradition process in the sub-region.¹² The obstacles include lack of expertise in extradition matters due to limited training opportunities, lack of a common definition of extraditable offences, undue delays in surrendering fugitives, prohibitive expenses

¹² Recommendations of a regional Government Legal Experts Workshop on Extradition and Mutual Legal Assistance, hosted by the Institute for Security Studies, Pretoria, 2004

associated with extradition, and conflict of extradition laws and practices including matters relating to the extradition of nationals and the death penalty.

Extraditable Offences

Bilateral and multilateral treaties and other arrangements governing extradition existed between some SADC Member States before the conclusion of the SADC Protocol on Extradition. The most commonly applied extradition agreement in the region is the London Scheme on the Rendition of Fugitive Offenders. The Scheme regulates extradition between Commonwealth countries. It defines an extraditable offence as “an offence however described which is punishable in the requesting and requested country by imprisonment for two years or a greater penalty.” On the other hand the SADC Protocol defines extraditable offence as offences punishable by imprisonment for “a period of at least one year, or by a more severe penalty.” Additionally, domestic legislation on extradition of the SADC states have various definitions of what constitutes extraditable offences. In an attempt to harmonize the definition of extraditable offences in the sub-region, article 19 of the SADC Protocol provides that the provisions of any treaty or bilateral agreement governing extradition between any two State Parties shall be complementary to the provisions of the Protocol and shall be construed and applied in harmony with the Protocol. In the event of any inconsistency, the provisions of the Protocol shall prevail. Additionally, in determining what constitutes an extraditable offence it shall not matter whether:

- the laws of the State Parties place the conduct constituting the offence within the same category of offence or describe the offence by the same terminology; and
- the totality of the conduct alleged against the person whose extradition is sought shall be taken into account and it shall not matter whether, under the laws of the State Party, the constituent elements of the offence differ.

The Protocol also provides that an offence is extraditable whether or not the conduct on which the Requesting State bases its request occurred in the territory over which it has jurisdiction.¹³

Mandatory Grounds for Refusal to Extradite

Article 4 of the Protocol provides the following mandatory grounds for refusal to extradite:

- if the offence for which extradition is requested is of a political nature. An offence of a political nature under the Protocol does not include any offence in respect of which the State Parties have assumed an obligation, pursuant to any multilateral convention, to take prosecutorial action where they do not extradite, or any other offence that the State Parties have agreed is not an offence of a political character for the purposes of extradition;
- if the Requested State has substantial grounds for believing that the request for extradition has been made for the purpose of prosecuting or punishing a person on account of that person’s race, religion, nationality, ethnic origin, political opinion, sex or status or that the person’s position may be prejudiced for any of those reasons;
- if the offence for which extradition is requested constitutes an offence under military law, which is not an offence under ordinary criminal law;

¹³ See Article 9 of the Protocol

- if there has been a final judgement rendered against the person in the Requested State or a third state in respect of the offence for which the person's extradition is requested;
- if the person whose extradition is requested has, under the law of either State Party, become immune from prosecution or punishment for any reason, including lapse of time or amnesty;
- if the person whose extradition is requested has been, or would be subjected in the Requesting State to torture or cruel, inhuman or degrading treatment or punishment or if that person has not received or would not receive the minimum guarantees in criminal proceedings, as contained in Article 7 of the African Charter on Human and Peoples Rights; and
- if the judgement of the Requesting State has been rendered in absentia and the convicted person has not had sufficient notice of the trial or the opportunity to arrange for his or her defence and he or she has not had or will not have the opportunity to have the case retried in his or her presence.

Optional Grounds for Refusal to Extradite

Article 5 of the Protocol provides the following optional grounds for refusal to extradite:

- if the person whose extradition is requested is a national of the Requested State. Where extradition is refused on this ground, the Requested State is obliged, if the other state so requests, to submit the case to its competent authorities with a view to taking appropriate action against the person in respect of the offence for which extradition had been requested;
- if a prosecution in respect of the offence for which extradition is requested is pending in the Requested State against the person whose extradition is requested;
- if the offence for which extradition is requested carries a death penalty under the law of the Requesting State, unless that State gives such assurance, as the Requested State considers sufficient that the death penalty will not be imposed or, if imposed, will not be carried out. Where extradition is refused on this ground, the Requested State is obliged, if the other state so requests, to submit the case to its competent authorities with a view to taking appropriate action against the person for the offence for which extradition had been requested;
- if the offence for which extradition is requested has been committed outside the territory of either State Party and the law of the Requested State does not provide for jurisdiction over such an offence committed outside its territory on comparable circumstances;
- if the offence for which extradition is requested is regarded under the laws of the Requested State as having been committed in whole or in part within that State. Where extradition is refused on this ground, the Requested State is obliged, if the other State Party so requests, to submit the case to its competent authorities with a view to taking appropriate action against the person for the offence for which extradition had been requested; and
- if the Requested State, while also taking into account the nature of the offence and of the interest of the Requesting State, considers that, in the circumstances of the case, the extradition of that person would be incompatible with humanitarian considerations in view of age, health or other personal circumstances of that person.

Extradition of Nationals

Another area that was identified by relevant role players in the region as a source of problems in respect of implementation of legislation on extradition is the lack of a common legal position regarding the extradition of nationals. The region is divided on this issue between countries that allow extradition of nationals and those that do not. Mozambique, and Angola, for example, have constitutions that prohibit the extradition of their nationals. On the other hand, South Africa, Swaziland, and Zimbabwe are among countries that allow the extradition of their nationals.

Death Penalty

Countries in the region have divided views on the death penalty and as a result, concerns have often been raised where the requested state does not have the death penalty, either generally or in relation to that particular offence. In South Africa, for example, the decision in the case of **Mohamed and Another V. President of South Africa and Six Others** makes it clear that because the death penalty has been determined to be unconstitutional domestically, extradition or deportation to face the death penalty, without any assurances, is also unconstitutional.¹⁴

The SADC Protocol on Extradition addresses the death penalty, under Article 5(c), as a discretionary ground of refusal to extradite with the possibility of assurances.

Channels of Communication

Requests for extradition within the SADC are usually communicated through the diplomatic channel. The Protocol on Extradition, however, makes provision for communication of requests through 'other channels'. Article 6(1) of the Protocol provides that a request for extradition, supporting documents and subsequent communications shall be transmitted through the diplomatic channel, directly between the Ministries of Justice or any other authority designated by the State Parties. The disadvantage of the diplomatic channel is that it involves a certain degree of delay. The law enforcement agency investigating a case requiring the extradition of a suspect refers a request for extradition to its foreign ministry. The request is then sent to the embassy of the requesting state. The embassy, in turn, sends the request to the foreign ministry of the requested state that dispatches it to the ministry of justice that then sends it to the competent law enforcement agency for execution. The results of the request are sent back to the requesting authority by the same procedure.

The procedural steps of executing an extradition request also involve a lengthy process. Most SADC States require that facts of the alleged crime be made available to the requested state, to determine if there is sufficient evidence for extradition to proceed. The standard for sufficiency applied is that of the prima facie case. Under this test, the requested state will require the submission of evidence, which a court will have to determine whether or not it satisfies the required standard to justify committal of the person for trial under domestic law, if the case had arisen there. The requested person has a right to appeal against an adverse court ruling.

In an attempt to simplify the extradition procedure, Article 9 of the Protocol provides that the requested state, if not precluded by its laws, may grant extradition after receipt of a request for provisional arrest, provided that the person sought explicitly

¹⁴ South African Supreme Court 16 February 1991(1992) 31 ILM888

consents, before a competent authority, to be extradited. Additionally, under Article 13 of the Protocol Member States are mandated to arrange for the surrender of a requested person without undue delay. If circumstances beyond its control prevent the requested state from surrendering or removing the person to be extradited, the Protocol requires the requested state to notify the other state and the two State Parties must mutually decide upon a new date of surrender.

The delays associated with extradition have resulted in the search for simpler and quicker methods to secure the return of a person to face prosecution or serve a sentence. Law enforcement agencies in the region often use deportation as alternative processes to obtain extradition. In some cases, suspects, with the connivance of the police, have been forcibly brought within the jurisdictions of countries seeking to bring the suspects to justice in disregard of proper judicial process. Despite being the quickest methods of surrendering a suspect, deportation and other unconventional practices of surrendering suspects, have the disadvantage of being open to legal challenges in the requesting state. Indeed, some jurisdictions do not recognise deportation as an alternative process to obtain extradition. A case in point is that of **Bennett vs. H.M. Advocate**.¹⁵ In that case the applicant, who was a New Zealander residing in South Africa, was wanted for prosecution in the United Kingdom. After a decision was made not to seek extradition, the police in the United Kingdom consulted with their counterparts in South Africa. Eventually, Mr. Bennett was deported from South Africa, with arrangements made by the police for travel that included a stop in the United Kingdom where he was arrested.

In relation to a challenge to subsequent proceedings, the House of Lords held that: “Where process of law is available to return an accused through extradition procedures the courts of the United Kingdom will refuse to try him if he has been forcibly brought within their jurisdiction in disregard of those procedures by a process to which police, prosecutors or other executives authorities have been knowing parties.”¹⁶

Some courts in the SADC region have also entertained applications by surrendered persons to stay prosecutions that were premised on arguments that they were illegally extradited. For example, in the South African case of the **State vs. Ebrahimi**, a kidnapping from Swaziland to South Africa, it was held that a South African court has no jurisdiction to try a person abducted from another state, by agents of the state.¹⁷

Expenses

One of the central issues concerning the execution of extradition requests in the region is the cost of proceedings arising out of such requests. In most of the countries in the region, government institutions including the courts and law enforcement agencies operate in an environment of extreme resource constraints including critical shortage of fuel and transport. Account must also be taken of the enormous surface area that is involved in the conduct of law enforcement operations. Tanzania, for example, covers an area larger than the combined area of Germany, France and the Netherlands. Foreign requests for assistance in carrying out normal

¹⁵ (1993) WLR p.90

¹⁶ Ibid

¹⁷ CCT 17/01 Unreported 28 May 2001

operations such as locating and arresting a suspect may easily cause financial hardships and adversely affect the operations of the government agencies involved. Due to the financial implications involved, government institutions may naturally be reluctant to get involved in lengthy and complex extradition proceedings. Under article 18 of the Protocol matters relating to costs associated with extradition are dealt with as follows:

- the Requested State is obliged to make all necessary arrangements for and meet the cost of any proceedings arising out of a request for extradition;
- the Requested State must bear the expenses incurred in its territory or jurisdiction in the arrest and detention of the person whose extradition is sought, and the maintenance in custody of the person until that person is surrendered to the Requesting State;
- if during the execution of a request, it becomes apparent that fulfilment of the request will entail expenses of an extraordinary nature, the Requested State and the Requesting State must consult to determine the terms and conditions under which execution may continue;
- the requesting State must bear the expenses incurred in translation of extradition documents and conveying the person extradited from the territory of the Requested State;
- consultations may be held between the Requesting State and the Requested State for the payment by the Requesting State of extraordinary expenses.

Surrender of Property

One of the fundamental provisions of the Protocol is Article 15, which reflects the determination of the State Parties to address cross-border transfers of illicitly acquired assets through the strengthening of regional cooperation in asset recovery. Article 15(1) provides that all property found in the requested state that has been acquired as a result of the offence for which extradition is sought should be surrendered upon request, to the State Party that is granted extradition. The property may also be surrendered to the requesting state even if the extradition agreed to cannot be carried out.

Conclusion

While the growth in transnational organised crime is an international phenomenon, its rapid growth in the SADC region is a matter of serious concern; particularly that economic deprivation, conflict, and disease are already having a devastating impact on the population. Governments in the region through the SADC have taken a number of positive initiatives to deal with the problem of cross-border crime, including transnational organised crime. The development and adoption of protocols dealing with extradition and mutual legal assistance in criminal matters as well as the establishment of SARPCCO forms a firm foundation upon which to build further blocks for regional and international co-operation for combating transnational crime. It is also significant that a number of countries in the sub-region have ratified and are implementing the UN Convention Against Transnational Organised Crime and its protocols. Several challenges, however still confront law enforcement agencies in the sub-region. A major challenge for law enforcement agencies in the region, however, is the problem of inadequate resources for crime prevention. The lack of appropriate skills including legal expertise in areas such as extradition, frequently

acts as a barrier to effective and efficient co-operation and exchange of information between law enforcement agencies in Southern Africa. In this regard, international bodies such as the United Nations Office on Drug and Crime can play a crucial role in the provision of international technical co-operation, including research, exchange of information and training.

International Criminal Co-operation or Mutual Assistance^{*}

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Context of the Criminal Procedure Reform in Chile

Throughout history and for over 100 years, Chile's system of criminal justice has been of an inquisitional nature, largely as a result of our Spanish heritage. In the past, all judicial functions were concentrated in the hands of the judge who investigated cases alone in a secret "summary" investigation without any sort of time limit, pressed charges and then in the "plenary" phase which was construed as contradictory tried the case. The procedure was essentially written, entailed no provisions to allow for diversity of penalty based on the circumstances of an individual crime, nor provided an effective institutional structure for the defense of the accused. In sum, the procedure was not public, did not truly involve opposing parties, failed to safeguard the right to defense and other rights of the accused and protect victims and witnesses.

Although for many years Chile sought to revamp its inquisitional system of criminal justice and replace it with an adversarial one, the magnitude of such sweeping changes and the resources they required led to continued postponements. It was thus not until 1997 that the wheels of legislative action began to turn with a view toward a momentous reform involving changes to the Constitution, the passage of a new Criminal Procedure Code, modification of an array of legal texts, the creation of new institutions such as the Office of the Public Prosecutor (OPP), the Public Defenders Office and the new courts - Guarantee and Oral Trial - all of which required infrastructure and equipment in order to operate effectively.

The criminal procedure reform began to operate in Chile gradually, with the first phase coming into operation in December 2000. The process will culminate on June 16th of this year 2005 with the roll-out in the Santiago Metropolitan Region.

The overhaul to the way Chile administers justice is undoubtedly the most important reform the country has undergone in the last 100 years. Moreover, because of the depth and breadth of the change and the cultural and legal paradigms involved, may observers have called the transformation revolutionary.

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International Criminal Cooperation or Mutual Assistance

Evolution of this topic under the criminal procedure reform

Despite the complexities inherent to the implementation of the comprehensive reform described above, it became clear very early on that effectively investigating and prosecuting transnational crime and criminals would have to rely heavily on international cooperation and mutual assistance between States. Moreover, the spillover effect on domestic crime as a result of globalization enhanced the need for international cooperation. By this we mean the assistance one State lends to another in securing information or conducting investigative action within its territory with a view towards initiating an investigation or facilitating a criminal investigation underway in the petitioning State.

These topics are all the more germane in light of our increasingly interconnected and interdependent world: obtaining information or evidence located in other nations, through official channels, that meets the standards of the new procedures and, above all, within the brief deadlines allotted to investigation under Chile reform, are of the essence.

That said, however, given the natural evolution and the gradual roll-out in the parts of Chile where the reform is in effect, an accent was initially placed on bringing legitimacy to the new system quickly. In part, that meant focusing on the types of crime with the greatest social visibility, such as burglary, assault, larceny and rape all of which have a domestic connotation and origin. In practice, the need for international cooperation and mutual assistance was relegated to a secondary level during the first few years of the reform.

As the new system came to tackle effectively with the crimes mentioned above, experience increased and the institution evolved, the Office of the Public Prosecutor (OPP) began focusing on the investigation and prosecution of more complex crimes, offenses in which transnational aspects are tremendously salient.

This pattern of evolution within the OPP-transitioning from local crimes to other, more complex transgressions with international connotations – has been repeated in general terms in all of the regions in which the reform has come into effect.

Obstacles and General Context

Although events themselves have made the need for fluid cooperation with other countries increasingly indispensable, Chilean culture and legal/institutional practice have not moved at a parallel pace, thus producing a gap that needs to be closed and addressed proactively. We believe that the OPP has a key – although not exclusive – role to play in this arena, given that our office is tasked with investigating and prosecuting criminal action and, therefore, is most keenly interested in a successful prosecution. That success often depends on international cooperation.

In effect and speaking solely to the Chilean case - although a similar phenomenon can be seen across our region - it is clear that the internationalization of the

administration of justice has not progressed as quickly as other realms in the globalization process.

For Chilean society, for example, several decades of economic reform and expanded opportunities in international economics and trade have made globalization a widely accepted fact of life, whose beneficial effects we reap on a daily basis. We can see that a similar phenomenon is underway in other spheres, such as culture and the dissemination of habits, ideas, patterns of behavior and sense of aesthetics around the world.

Nonetheless, despite the evolution in International Law and the efforts of multilateral organisms, especially as of the second half of the 20th century, the field of justice clearly lags behind these disciplines. It appears that the belief among our people and institutions persists that the administration of justice is inherent to the sovereignty of states and that, as such, domestic legislation is of an exclusive nature and prevails above any other norm.

Clearly, that increasingly discreet but still deeply rooted antiquated and self-sufficient view of justice is not naturally conducive to international cooperation and mutual assistance in criminal affairs. The key to success thus lies in a change in mindset and, in that context, the OPP, as a completely new institution in Chilean history, one that is called to act in on a different stage, will play a crucial role.

In effect, the new criminal system brings protagonism to a new player, the OPP, and grants it exclusive responsibility for leading criminal investigations. This is thanks to a constitutional reform effected in 1997 which gives the OPP full autonomy and sets it forth as one of the State's flagship institutions.

The reform failed, however, to provide domestic regulations to guide international assistance systematically within the context of the new procedural setting, including the OPP. As a result, the only regulations on international criminal assistance in Chile have to do with procedures for judicial letters rogatory and a succinct indication that the Supreme Court and the Ministry of Foreign Affairs shall serve as liaison institutions for such requests. There are some exceptions, however, for especially serious transnational offenses such as drug trafficking and money laundering for which more detailed provisions exist.

This lack of regulation is compounded by the persistence of practices by institutions that have not yet adapted to the logic and demands of the new criminal procedures. Their torpor and tenacity is largely due to the fact that the reform has yet to be implemented in Santiago, the nation's political, economic and administrative capital.

While from the traditional perspective this context could appear inauspicious for the OPP in the areas of cooperation and mutual criminal assistance, the lack of specific regulations is also an opportunity for us, as a new player unfettered by the formalities of the old system, to generate new, more effective practices and processes in the realm of international cooperation and mutual assistance. With a view toward optimizing criminal prosecution in general and combating transnational crime in particular, these new procedures will meet the demands of the new criminal procedures and be in step with the technologies that modern life affords.

Moreover, the opportunity to generate profound change is facilitated by a wave of reforms to the administration of justice across our hemisphere, with a common focus on respect for the rule of law as a fundamental prerequisite for economic development and the sustainability of democratic governance.

The simultaneous nature of these transformations has led to an active exchange of experiences in the realm of justice, heated debate, the dissemination and replication of successful models and practices and, thus, a level of horizontal cooperation seldom seen in our region. Although this dynamic process is still very much in the making, the OPP has become a model and a standard for other reform processes thanks to the pioneering nature of Chile's reform and its level of consolidation. As a result, in addition to the benefits of personal contacts and a better understanding of legal cultures around the region, we are also seeing a degree of convergence in our systems which will undoubtedly facilitate exchange and transnational action by our legal institutions in the future.

International institutions within the OPP and its response with regard to specific issues in the area of criminal assistance and cooperation

To better organize and systematize the flow of international cooperation within the OPP, a specialized unit in "International Cooperation and Extradition" was created in 2004. The new unit reports directly to the National Prosecutor and is tasked precisely with facilitating the organization's investigative efforts when they involve assistance from other countries and coordinating with other prosecutor's offices and prosecutorial institutions to jointly address cases of transnational crime. In addition, the unit is responsible for providing assistance and follow-up to requests for both active and passive extradition.

Initially, in order to ascertain the status and needs for international criminal cooperation and mutual assistance within the OPP, an in-house survey was conducted in the 12 regions in which the reform is operational. The questionnaire had two parts.

The first section sought to identify how often international assistance had been necessary, how often such assistance had been dismissed and the reasons for that decision. It also asked prosecutors to address the most relevant obstacles they had found to having investigations conducted abroad and to propose solutions.

The second section focused on cases in which a request for international assistance had been made, the results of that petition and the way the information was used in court.

The results and conclusions can be summarized as follows:

- a) Although relatively few prosecutors stated the need for international co-operation in their cases (18.6% of respondents), petitions were on the rise.
- b) While in a significant number of cases prosecutors felt they could have benefited from international assistance, they refrained from requesting it (66% of the total).

c) In a sizable number of cases, prosecutors reported that they had not moved forward with the request due to the complexities of the procedure, a lack of confidence in the foreign officials who would receive the request, limited expectations for success, the extended time frames needed as compared to the brevity of the investigative phase and, lastly, a lack of clarity in terms of where to direct the petition.

Most importantly, the study shows that although there is need for international criminal assistance in an increasing number of cases, prosecutors are unfamiliar with the appropriate procedures and legislations involved. This lack of information can pose a major obstacle if not dealt with in a timely fashion. Paradoxically, the lack of acquaintance with other systems included procedures in neighboring countries with which the flow of requests is greatest.

In light of the survey results, growing practical experience within the OPP and conditions across the region, the OPP has identified a series of problems in the area of mutual criminal assistance and cooperation. These emerging obstacles are being addressed by the organization in keeping with the structure and needs of the new system of criminal justice as follows:

A. Obstacles at the domestic level

As indicated earlier, legislative developments in the area of international cooperation have been deficient in terms of supplementing the constitutionally-mandated powers of the OPP. Existing regulations are limited, exceptional and scattered about in different texts. Unfortunately, it does not appear that the political and legislative authorities are truly cognizant of the importance and repercussions of this topic in successfully prosecuting cross-border crime. As such, we do not foresee the issue becoming a priority in the short term. Viewed alone, the lack of regulation is not really a problem and could even be perceived as an advantage. However, when combined with the logic, practices and concepts of the old system of criminal justice, it does pose an obstacle. In effect, the lack of definitions and procedural regulation often hinders the dexterity and speed required by the new system, as people fill the void with requirements and formalities from the old school that impede rapid action.

For example, we initially found that non-judicial letters rogatory received by the Ministry of Foreign Affairs were being sent to the Judiciary, even though their processing was within the sphere of action of the OPP. After protracted consideration and subsequent loss of valuable time, the Judiciary remitted them to the OPP for handling. While this situation has been ameliorated in some cases, a systematic procedure has yet to be established.

We are equally concerned by the role of the Foreign Ministry as the official conduit for these requests and as Central Authority under a series of treaties, as the Ministry is strapped for resources in light of the bounding increase in requests for assistance and cooperation to and from Chile, all of which require expedited processing. In general, we have noted that the preset, short deadlines established under the new system make current procedures and practices unworkable.

Clearly, then, strengthening the institutions involved in international cooperation is of the essence. In that context, the Foreign Ministry plays a crucial role, even while

prosecutorial agencies may be designated as Central Authorities in cooperation treaties to make collaboration in criminal matters more expedient and fluid.

How has the OPP grappled with these problems to date?

In light of the absence of regulations on procedures and institutional jurisdiction, the OPP has encouraged inter-institutional cooperation by forming several task forces that bring together the primary players in the reform to work toward common criteria and more expedient channels of communication. In this same vein, a group was recently created within the OPP to work with a team from the Foreign Ministry.

The OPP has understood that in order to perform its duties effectively and efficiently, it must have solid inter-institutional ties with a range of agencies, encourage opportunities for dialogue, and the exchange of information with other institutions, such as Policía de Investigaciones detective force, Carabineros uniformed police, INTERPOL, Customs, etc.

It is important to note that it has not been easy to assemble and coordinate the array of governmental institutions and agencies involved. The task has been all the more complex because the impetus comes from a newcomer to the nation's institutional stage and, as always, any reorganization of this magnitude causes friction and resistance by the organizations whose functions are curtailed or modified.

B. Obstacles in the international environment

There are multiple obstacles to cooperation in the international sphere.

One obstacle that immediately comes to mind –and was reflected in our in-house survey – is the tremendous lack of (reciprocal) familiarity with the legislation in force in other countries, including those with which we have the greatest levels of criminal interchange, that is, neighboring countries.

The lack of knowledge also encompasses unfamiliarity with relevant institutions and procedures used in other countries, as well as their legal culture.

This reflects not only the backwardness we suffer in legal affairs in terms of globalization, but also the dearth of integration among our countries despite our many similarities and shared roots.

One reason for the deficiency can be found in the institutional instability that has plagued our nations. Those changes have led to constant variations in regulations and officials, with the consequent impairment to mutual understanding and reciprocal ties.

These conditions are compounded by a lack of international instruments in effect in our countries in the areas of international cooperation and mutual assistance in the criminal realm and by the fact that many of the agreements that do exist have become obsolete, as they reflect past times and logics (they refer to crimes that today are irrelevant or contemplate procedures that are now entirely too slow). This hampers fluid contact with our counterparts and noticeably diminishes effectiveness in these proceedings.

It is important to highlight the exceptions to this rather dire scenario, including such agreements as the Inter-American Treaty on Mutual Assistance, the Vienna Convention on Drug Trafficking, and the Palermo Convention on Transnational Organized Crime, all of which have been signed and ratified by Chile and by a substantive number of nations in the Western hemisphere. These agreements address the current needs and obstacles to international cooperation in their respective fields.

Moreover, the Ibero-American Association of Public Prosecutors (AIMP) brings together prosecutorial officials from Latin America, Spain and Portugal. The association has engaged in productive efforts to make criminal assistance more expedient among participating members.

Lastly, a substantive obstacle to fluid cross-border investigation and prosecution is the availability of human resources, infrastructure and equipment.

Fortunately, the constitutional reform that created the OPP in Chile was accompanied by a comprehensive set of measures to allow for its gradual implementation.

Devised in response to a national policy and a long-coveted aspiration for an expedient, efficient system of criminal justice, planning for the reform included participation from an array of sectors (academics, economists, legal experts, legislators, etc). This made it possible to more accurately identify the full range of resources that would be required to make the reform a success.

Thus, in addition to considering appropriate pay for the new players and bolstered remuneration for members of the Judiciary, unprecedented funding was allocated to training, management, infrastructure and equipment, in the understanding that all of these aspects are essential to the overall success of the system.

The net result of this investment has been a modern system of criminal justice, at the forefront of the legal and technological developments of our times.

These conditions, however, are not necessarily reflected in other countries across the region. The disparity leads to problems in communications, compliance with deadlines, and in meeting the objectives of cooperation.

How has the OPP grappled with these international challenges?

We have placed a priority on strengthening ties with organizations on our own continent and, specifically, with our neighbors in South America.

Toward this end, we are working on two complementary lines of action:

- a) Strengthening organizations that bring together prosecutorial officials;
- b) Direct inter-institutional efforts with neighboring countries.

For example, the OPP joined the Ibero-American Association of Public Prosecutors (AIMP) and the International Association of Prosecutors (IAP) at an early stage, in the understanding that both serve as outstanding platforms for contact and opportunities for joint efforts in areas of mutual interest.

A key topic within the AIMP has been encouraging and facilitating mutual criminal assistance and cooperation. The agreements signed by the members on that topic, as noted above, have been increasingly utilized as the basis for petitions and the granting of assistance.

With a view toward strengthening that line of action and facilitating greater coordination among its members, National Prosecutor Guillermo Piedrabuena ran for office in the organization's most recent round of balloting. He was elected, along with the Attorney General of Paraguay, to lead the organization for the period November 2004-November 2006 and to serve as Chair for the period September 2005-November 2006.

At the regional level, the OPP has sought to promote meetings and direct contacts with its counterparts in neighboring countries in an effort to improve communication.

A system of internships has been created to allow prosecutors from neighboring nations to spend time in other countries to bolster awareness of our different systems and form bonds of trust.

Toward this end, we have sought to forge ties with a variety of cooperation agencies and multilateral institutions active in the field of justice, including the notable support of GTZ, the German cooperation agency.

Within the context of the accent on work with our neighbors, the OPP is organizing the First Meeting of Law Enforcement Officials and Prosecutors from Argentina, Bolivia, Chile, Paraguay and Peru for the month of October 2005. The gathering seeks to share experiences and methods in the work performed by prosecutors and law enforcement officers – key entities in successful criminal prosecution - and establish more expedient channels of communication. Moreover, the conference seeks to provide a mechanism for periodic cooperation and coordination in dealing with cross-border crime.

Extradition

Extradition is a crucial institution in criminal prosecution cooperation between States and will continue to be essential under Chile's new criminal procedure. A long-standing tradition of extradition on our continent and in Chile specifically as well as developments in statutory regulations – domestic, international conventions, international principles - and legal and political practice are all conducive to this procedure.

We should note that our system places decisions on active and passive extradition solely in the hands of the Supreme Court, the highest court in Chile. The Ministry of Foreign Affairs serves exclusively as the conduit for requests to and from other countries. As a result, our procedure is less political and more judicial than those used in other countries.

Another important feature of our system is that it does not limit extradition to countries with which Chile has a treaty in force. Rather, petitions may be granted on the basis of the principles of International Law, which provides a broad base for successful extradition petitions.

The Supreme Court has systematically granted extradition on the basis of reciprocity with the petitioning State. That concept has been interpreted broadly and reflects elements inherent to the principles of international cooperation. It is important to note that Chile, unlike most of the countries in the region, does not have legislation that prohibits the State from extraditing its citizens. Moreover, the Supreme Court has not shirked from extraditing Chilean nationals, even when the corresponding treaty allows for that option. It would seem that the Court favours the modern belief albeit with some reservations-- that international cooperation is the cornerstone of extradition, thereby moving away from the principle of reciprocity and toward that of better justice, under which a crime must be judged in the jurisdiction in which it was committed.

The procedural rules that regulate extradition in the new Code are equally favorable, as they are set within a completely different procedural system: one that is adversarial, oral, public and involves new players with defined, differentiated roles. These features are present in the extradition process, making it shorter, with greater presence of the justices and with the OPP serving as the representative of the petitioning State and the public or private defender assisting the accused. This new role for the OPP sets us in uniquely good stead in the area of extradition and tasks us with strengthening it as a tool for international cooperation in criminal prosecution. The International Cooperation Unit will be responsible for providing assistance in these cases, seeking to ensure their expedient processing and efficacy.

The freedom allowed under the new system in the submission of evidence as well as that of the justices to rule based on their knowledge and experience provides greater flexibility in proving and assessing the events upon which the extradition request is based. This is particularly important because the circumstances surrounding the events are often investigated abroad under different procedural rules.

As noted above in the case of criminal assistance, we need to strengthen our collaboration with the Foreign Ministry to secure the nimbleness required in these cases in light of the preset, short deadlines under the new system.

In terms of issues on the international stage, we once again see a void of treaties signed by Chile in this arena. This includes recent treaties that reflect modern trends and resolve the problems that extradition currently poses.

The dearth is particularly evident for countries outside the Ibero-American region, as Chile does have extradition treaties in place with most of the latter. Although the lack of specific agreements does not impede extradition, as noted earlier, it does lead to greater hurdles and uncertainties.

Conclusion

In sum, it is clear that in mutual assistance in criminal affairs and - to a lesser extent in extradition - both Chile and much of the region are in a time of legal/cultural transition between an old inquisitorial systems and new adversarial ones.

As in all transitions, many elements are in flux and even in conflict. Nonetheless, the time is nigh to innovate, adapt, and systematize channels of communication and procedures to grapple with the pressing needs of international cooperation to combat the growing phenomenon of transnational crime.

Although the Office of the Public Prosecutor of Chile has played an active role in this regard, it is clear that without the collaboration and contributions of other institutions, both domestic and foreign, an integrated system is inconceivable. Without such cooperation, the plethora of scattered regulations and reciprocal ignorance will persist, to the detriment of effective criminal prosecution.

The dream of integration has been revered in Latin America for hundreds of years. Today, thanks to the convergence of profound reforms to the systems used to administer justice, an opportunity exists to bring it to fruition in an area that not only affects people's lives, but is also essential to the economic and democratic development of our countries.

Half a century ago, Europe confronted a similar situation in terms of diversity of legislation and imperfect cooperation. Today, those times seem to be anecdotal bygones in light of the European Union and its joint institutions and common procedures.

The EU's success, despite myriad differences and difficulties, is an inspiration to us in our region and a model to be emulated. The Office of the Public Prosecutor of Chile is committed to working toward that goal.

Annex 1

Workshop Programme

Workshop on Enhancing International Law Enforcement Cooperation,
including Extradition Measures
Bangkok 21 April 2005

Workshop moderator: Mr Klas Bergenstrand, Chief of the Security Police, Sweden
Scientific rapporteur: Dr Jay Albanese, Chief of the International Center, National
Institute of Justice, United States

10.00 **Opening of the workshop**
Keynote address: Mr Kunihiro Horiuchi, Director and
Secretary General of Asia Crime Prevention Foundation, Japan

10.30: First panel discussion: Law enforcement cooperation

Panellists:

- Director Masamba Sita, UNAFRI
- Dr Rob McCusker, AIC
- Professor Edmundo Oliveira, University of Amazonas, Brazil
- Mr Ulrich Kersten, Special representative of Interpol to the
United Nations
- Mr Roberto Di Legami, Head of OC Groups Unit, Europol

12.00 –13.00: Statements from the floor

15.00: Second panel discussion : Extradition measures

Panellists:

- Professor Takafumi Sato, UNAFEI
- Mr Andreas Schloenhardt, University of Brisbane, Australia
- Mr Mukelabai Mukelabai, ISS
- Mr Juan Pablo Glasinovic Vernon, Director, Specialized Unit
in International Cooperation and Extraditions, Public
Prosecutor's Office, Chile
- Mr Andrew Wells, Senior Legal Adviser, UNODC

16.30-17.30: Statements from the floor

17.30-18.00: Conclusions and recommendations

Annex 2

Reflections on the 11th UN Congress on Crime Prevention and Criminal Justice

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Introduction

The process of criminal justice policy making at the international level is complex. The United Nations Congress on Crime Prevention and Criminal Justice is the most significant global policy making body that is engaged in identifying and co-ordinating the key areas of global crime control policy in order to achieve consistency in relation to such policy making through agreed conventions and protocols.

In order to achieve this task the United Nations is committed to convening “....every five years a worldwide congress, so as to provide a forum for discussion of priority concerns by policy makers, administrators, academicians and other professionals in the field.” (United Nations 2005a A/CONF.203/INF.)

The idea of the Congress is now deeply embedded in the organizational and policy making structure of the United Nations and is viewed by many countries as an important event to attend. The Eleventh Congress, which took place in Bangkok in 2005, is in a tradition that started fifty years ago in Geneva. This lengthy trajectory places the congresses very firmly as a core element of the United Nations business and as such it demands a high degree of respect and is perceived by many participants as ‘being, in itself, a good thing’. Commenting on the Eleventh Congress the Executive director of the UNODC said:

“Bangkok was a milestone 1. Together, Member States considered how the existing Conventions against Crime and against Corruption are helping them reach domestic goals in these areas. One point in particular was repeated frequently at the Congress: the connection between criminal justice, the rule of law, and global security. Today, we can safely say that all Member States agree that the rule of law is a prerequisite to peace.” (United Nations 2005b)

However, it is appropriate to consider how effective the Eleventh Congress was in achieving its aims and whether the aims could have been more effectively achieved by other means. So, the test is to put the outcome of the Congress alongside the explicit aims, as published in the information to participants (UN 2005), and to see if the aims are realized, and if so to what extent.

The Aims of the Eleventh United Nations Congress

The aims of the Congress are detailed below:

“The United Nations congresses ..., as a consultative body of the programme, shall provide a forum for:

“(a) the exchange of views between States, intergovernmental organizations, non-governmental organizations and individual experts representing various professions and disciplines;

“(b) The exchange of experiences in research, law and policy development;

“(c) The identification of emerging trends and issues in crime prevention and criminal justice;

“(d) The provision of advice and comments to the Commission on Crime Prevention and Criminal Justice on selected matters submitted to it by the Commission;

“(e) The submission of suggestions, for the consideration of the Commission, regarding possible subjects for the programme of work.”

(United Nations 2005a)

These aims suggest an open and transparent process in relation to policy making and take account of all groups equally. Furthermore the knowledge of experts who have a detailed understanding of the issues in relation to their own profession and discipline is highly valued. The first aim set out above is the keystone upon which the other aims are supported and bound together. The aims of the Congress are focused on partnership working at the international level in order to secure a safer and more equal world.

Consequently the Eleventh Congress embraced the spirit of collaboration by adopting the Congress theme of: “*Synergies and responses: strategic alliances in crime prevention and criminal justice*”. It is within this Congress theme that the aims are brought together, the idea of countries working together, forging strategic alliances¹. In order to focus the work of the Congress five ‘substantive’ areas were identified, these were: 1) *effective measures to combat transnational organized crime*; 2) *international cooperation against terrorism and links between terrorism and other criminal activities in the context of the work of the United Nations Office on Drugs and Crime*; 3) *corruption: threats and trends in the twenty-first century*; 4) *economic and financial crimes: challenges to sustainable development* and 5) *making standards work: fifty years of standard-setting in crime prevention and criminal justice*. (United Nations 2005a) In order to further the levels of co-operation and to deepen the knowledge of participants the Congress was also structured to provide what were termed ‘workshops’. These six workshops were on the following areas: 1) enhancing international law enforcement cooperation, including extradition measures; 2) enhancing criminal justice reform, including restorative justice; 3) strategies and best practices for crime prevention, in particular in relation to urban crime and youth at risk; 4) measures to combat terrorism, with reference to the relevant international conventions and protocols; 5) measures to combat economic crime, including money-laundering and 6) measures to combat computer-related crime. These substantive agenda items and six workshops have a degree of

¹ It might be argued that the area of crime prevention and criminal justice is presented within the Congress documents as being unproblematic.

congruence in that the substantive items reflect broad concerns and the workshops provide a more detailed knowledge in respect of a particular area.

Structure of the Congress

The work of the Eleventh Congress was structured so that after the formal opening ceremonies the Congress was able to consider each of the substantive items. The substantive items were scheduled to run over the first four days of the Congress, allowing approximately two sessions per item. However, from the last session on day three the first of the workshops commenced. The workshops ran over days four, five and six. There was a process of informal consultations over days five, six and seven with the 'High Level Segment'² commencing on the sixth day and concluding on day eight. The Congress concluded on day eight with the formal adoption of the declaration (United Nations 2005a). The Congress was also required by the General Assembly of the United Nations to '...adopt a single declaration.' (United Nations 2005a). The conclusion of the Congress in relation to the substantive items and also the workshops was to inform the final declaration.

In addition to the substantive items and the workshops there were a number of '*ancillary meetings*'. These meetings were organized by Non-Governmental Organisations (NGOs) and were an attempt to influence delegations in specific areas of crime prevention and criminal justice policy. The ancillary meetings covered a range of topics; women's imprisonment, violence, trafficking in children, criminal exploitation of women and children and youth violence to name but a few. These meetings were scheduled to occur simultaneously with the substantive items and the workshops.

So, the Congress is an event of considerable political activity, diplomatic engagement and lobbying by the large number of NGOs. Indeed Thomas Mathiesen (1986) has detailed the 'political' activity of the 1985 Congress, identifying five types of, what he terms, *typical* Congress behaviour. These types of behaviour were defined by Mathiesen as norms, these are; *the importance norm*, that attendance makes the individual a very important person. The *known by everybody norm*, defines behaviour that seeks to impress other Congress attendees that a person is very well known by the important Congress people thus adding to their own importance. The *show respect to everybody else (regardless what you think of them! norm)*, highlights the need to maintain good relationships with all. The *unanimity norm* reflects the need to show that the Congress is in agreement what ever the underlying disagreements, and the *my-country-norm* reflects the need for the delegate to put their country before all others. These norms of behaviour were, in relation to my own observations, still as apparent in 2005 as they were in 1985. This supports the argument put forward by Mathiesen that there is a 'culture' of the

² A 'High Level Segment' is an '...opportunity to high-level representatives of Governments to inform the Congress of progress made in their countries in crime prevention and criminal justice, discuss the experience of their Governments in undertaking criminal justice reform and exchange views on good and promising practices in that field. It will also offer an opportunity for high-level representatives to engage in dialogue and exchange views on the implications of the report of the High-level Panel on Threats.

Congress and it appears that this culture is reproduced Congress after Congress. Whilst, for some, such cultural forms of behaviour may be of assistance in meeting their countries requirements it is also true to say that the forms of behaviour normalised by Mathiesen do not allow for flexibility, genuine discussion and the development of policy in a dynamic process. It rather encourages a bureaucratic form of policy development and presentation.

The formal structure of the congress is such that it requires countries in the discussion of the agenda items and in the workshops to give notice of their intention to speak and having done this the delegations make prepared statements in relation to the topic area. So, the contribution to the substantive items and the workshops will primarily have a '*political perspective*', they may well have been prepared prior to the Congress and delivered to underscore a political position, to take a position against one or more other countries with a countervailing point of view or they may be statements provided to enhance that particular country's international standing, for example in relation to issues of human rights. So, crime provides the topic through which to realise political goals, or contribute to their realisation, and the Congress provides a forum through which to incrementally develop policy that is acceptable to the delegations of a sponsoring country. So, we have an event where there are a number of different agendas being negotiated and resolved.

Patrik Törnudd (1986) also writing about the 1985 Congress raises a number of important points in relation to the structure and organisation of such events. His main concerns are those of cost, he sees the Congress as overly expensive, overly self-important and overly vague in many of the official documents so that no one could easily take offence. There can be no doubt about the cost, and add what should be realistic concerns in relation to climate change, it is worth raising the question whether the expense and the damage to the environment caused by flying four thousand participants to Bangkok and all the accompanying literature and exhibition materials is justified by the outcomes? Törnudd does not deny the value of international meetings, the need for policy makers, experts and politicians to meet but suggests that perhaps this could be more usefully tested in a smaller forum with more focus. It is to this question we now turn.

Was it all worth it?

In attempting to answer whether it was all worth it I will use a case study example of my attempts to track one particular topic through the Congress. The choice of topic was relatively random in that a number of different areas could have been followed and I am confident that similar comments would be made in relation to those other areas. I chose the topic of imprisonment. It is clear that in terms of criminal justice expenditure it is a significant consumer of resources, there are a range of UN and Council of Europe conventions and protocols relating to the treatment and containment of prisoners and the use of imprisonment and treatment of prisoners is used as a benchmark of how different countries observe the international requirements in relation to human rights. So, this is an important topic, and one that stretches beyond the problems associated with the management of prisons and prisoners.

Due to the political nature of the topic of imprisonment and the concerns expressed as to the over use of imprisonment globally the topic also attracts a number of NGOs and 'experts' with the agenda of seeking agreements on the reduction of prison populations globally. This NGO activity, the link between prison systems and human rights and the political nature of imprisonment should have meant that this topic was a central one at the Congress and therefore a good window into the workings of the Congress. However, the main substantive items of the Congress were not focused on imprisonment and so the main substantive item where this issue could be negotiated was within the final item of *'Making standards work: fifty years of standard-setting in crime prevention and criminal justice.'* Whilst there was no substantive item in relation to imprisonment there were a number of related 'ancillary meetings' that focused on the issue of imprisonment. These were organized through a coalition of NGOs that included Prison Reform International, Howard League for Criminal Justice, International Centre for Prison Studies (King's College London) and other NGOs that focus on the issue of imprisonment. The ancillary meetings are different to the set pieces of the workshops and the substantive items in that there are no formal delegations. This means that 'experts' are entitled to take the floor and the debate concerning the topic area is allowed to develop as a dialogue rather than a venue for countries to make statements. This provides for an open exchange and debate; however, in following the prison focused ancillary workshops it was clear that many of the participants were converted to the arguments of the main presenters. So, the ancillary meetings become a means of publicising a certain position that is agreed between the meeting presenters. As a consequence of this it is difficult to see how such proceedings influence the position of delegations that do not attend because there is little political value in them being present.

Within the prison ancillary meetings it was apparent that there were some participants who had considerable knowledge of Congress procedures and a detailed understanding of how to influence the final declaration. Essentially the route to influencing the final declaration is through one of the substantive items or through one of the workshops. At the end of the first meeting in relation to prisons it was suggested that the ancillary meeting scheduled for the following day should be devoted to strategic thinking in relation to the raising of incarceration as an important item and its inclusion in the final declaration. At the following prison based workshop there was an attempt to, what some delegates may define as 'politicise' the proceedings, focus on the final declaration; however, these requests were met with, on the whole, a lack of enthusiasm. This was due to a number of reasons; first the organisers of the second workshop were not the same as those of the first day. Consequently they needed to realise their political agenda. Second, there was a sense of deference to the Congress; that somehow such overt action was not in accordance with accepted procedure and protocols. The conservatism of the Congress, its sense of occasion and importance made the taking of overt political action, that of subverting an ancillary meeting, 'feel' too difficult. It was impossible to ascertain whether this deference to the Congress was through a sense of a too great risk to disrupt a meeting, a sense of it not being the 'done thing' and therefore the perpetrators would lose political influence or that the occasion itself overrode any sense of achieving desired outcomes through more confrontational means.

Finally, even though certain participants attempted to raise the issues in the second meeting that had been raised in the first meeting, and in doing so hoped for a detailed debate about strategy these attempts were first ignored and then placed

outside of the ancillary meeting with the chair suggesting a discussion immediately after the closure of business. The importance of this move was to place such activity outside of the 'official' meetings and to deny the advantage of translation between potential participants who might have wanted to have achieved an agreement about imprisonment in the final declaration.

However, this lack of concerted action on prisons did not mean that there was no attempt to discuss prisons in the final substantive agenda item; *'Making standards work: fifty years of standard-setting in crime prevention and criminal justice.'* However, it was clear that a number of NGO participants and 'experts' supporting such NGOs considered that prisons were not a focus of concern for the Congress and so the issue was sidelined. Some participants viewed this as nothing more than the roundabouts and swings of criminal justice policy making and were resigned to it not being a significant item of concern for the Eleventh Congress. Whilst the final declaration did not mention the issue of prisons at least the issue of prisons was not lost altogether with the final statement commenting:

"The Congress recommended that the Commission on Crime Prevention and Criminal Justice give consideration to reviewing the adequacy of standards and norms in relation to prison management and prisoners." (United Nations 2005c)

This recommendation was included in the draft declaration, along with a recommendation for the more extensive use of restorative justice policies, and as such may not be viewed by those wanting a more far reaching statement as a successful outcome in relation to the final declaration. The comments of Salvatore Pennacchio (Observer of the Holy See) were also recorded in the final document (United Nations 2005c) where he called for a Charter of Fundamental Rights of Prisoners in which a *prisoner's right to dignity, humane treatment and their reinsertion into society* should be acknowledged and addressed.

The final declaration does little more than re-state the UN position on prisons, imprisonment and the treatment of offenders. Therefore, in terms of the decarceration lobby the outcome of the Congress could not be seen to be particularly successful. Part of the problem is the very structure of the Congress itself that militates against the ancillary meetings of being of benefit. However, before considering this in depth it is important to consider the workshops. The workshops were formal, they required delegations to give notice of their intention to speak and the chair of the workshop was responsible for providing a report on the proceedings. Due to the timetabling of the workshops it was not possible to follow more than two workshops in their entirety (even though six workshops were scheduled) due to the overlapping of times. Presumably the intention of the workshop was to provide a forum where experts could deliver short papers on their particular topic and where delegations could take consideration of the expert advice before making a statement. Such a structure assumes a coherent framework to each of the workshops so that the contributions by the experts provide a coherent overview of the topic and informs the policy making and implementation decisions. However, the structure of the workshops did not allow for such a coherent approach to the topics. For example, Workshop One which was focused on International Co-operation in Policing and Extradition was the combining of two different and complex areas of co-operation. Due to the fact that the structure of the workshops was the same as that of the substantive items this resulted in country delegations reading prepared statements. The outcome of this was that the prepared statements bore little relationship to the

papers given by the experts, and the experts had no choice than to sit quietly whilst each delegation read out its prepared statement. So, the question arises, why have workshops when countries appear to take no account of the expertise available? The workshops are little more than another forum for the delivery of pre-prepared statements that are attempting to resolve a range of political agendas that are wider than the topic under discussion. This was evidenced by the attempt of the Chair of Workshop One to divide the time equally between International Co-operation in Law Enforcement and then to focus on extradition. However, nearly every delegation that took the floor in the first half of the workshop spoke about extradition, even though they had been asked to confine their comments to co-operation and they were given the assurance that they would be granted the floor to make a statement concerning extradition in the second half of the workshop.

So the workshop became subverted by the perceived need of delegations to make their statements in full and to ensure that what they were attempting to achieve was maximized. This strategy was also apparent in workshop three; this was focused on economic crimes and corruption. An attempt by the workshop organisers to provide a more interactive approach did not succeed in reducing the number of pre-prepared statements. The structure of the workshops could be seen to be unhelpful. This was, no doubt, an unintended consequence of the organisation of the Congress. For example many of the workshops were structured to deal with more than one theme; so workshop two was *Enhancing Criminal Justice Reform, including Restorative Justice*. The question is why was there not a workshop on restorative justice in its own right? It looks as though the workshops were amalgamated thus creating the potential for fragmentation and loss of cohesion and coherence.

Finally, the overall structure of the Congress makes it impossible for there to be any in depth analysis of the topics discussed. The substantive items require country statements, and it is probably appropriate that these are pre-prepared. In some senses there is nothing wrong in pre-prepared statements in the substantive items as this may encourage countries antipathetic to certain conventions and protocols to move nearer to the accepted UN position. However, the fact that many of the workshops overlap with one another, that some overlap with substantive items, and that workshop participants are not in a position to incorporate expert advice into their statements results in the workshops being nothing more than another stream of substantive items. The ancillary meeting are situated in the same space as both substantive items and workshops and so they tend to be outside the parameters of the attendance for many delegations, especially the smaller delegations who experience difficulties in attending the substantive and workshop sessions. As one delegate told me:

"I have no doubt that the ancillary meeting are the most useful and informative, but we cannot attend those because of the main agenda items and workshops we need to be involved in."

Conclusions and Recommendations

Is it possible to evaluate such an event? Perhaps the truth is that for some states it is invaluable and for others it cannot be missed, for fear of what others might do, but it has very little value in its own right. So, evaluating such an event will mean that the

evaluation for some will not take account of the benefits for them and for others it will be an anodyne evaluation of no real value. However, having acknowledged that there is the potential for such a difference of view it is my intention to try and evaluate the event. I do think that one part of it can be evaluated because each element is a dynamic component of the whole.

There can be no doubt that the Congress is an event with considerable energy, bringing together policy makers, policy implementers, practitioners, NGO representatives and academic experts from all over the world. It provides informally an atmosphere in which people can discuss, debate and share ideas. At this informal level it is probably a positive event in developing, enhancing, sustaining and creating networks of criminal justice professionals who are trying to solve a series of difficult problems that have no real solution. So, the sharing of experience and strategies for addressing some of the more significant transnational crimes cannot be a bad thing. It is also a good thing that a forum is provided where those states less inclined to consider issues of human rights and humanitarian reforms are pushed slowly towards the goals established by the United Nations. It cannot be denied that all of this comes at a considerable cost in terms of financial and human time because the Congress is the end product of many hours of work put in by individuals before it actually meets.

However, for all of this the only real evaluative test is whether the Congress meets its aims as set out in the Congress documentation. There are five aims, but the first three are the ones that we are most concerned with in this paper. The first aim is *the exchange of views between States, intergovernmental organizations, non-governmental organizations and individual experts representing various professions and disciplines;*” In some senses this can be said to have been met, but only partially. There is a considerable exchanging of views within the informal processes of the Congress yet it is difficult to see that the dynamic represented in this aim, a synergy between governments, NGOs and experts actually ever takes place formally. This does not occur because the structure of the Congress prohibits such an interaction between the different players on the Congress stage. As the comments above on both the ancillary meetings and workshops suggest there is no real exchange of views within the formal sessions, many of which have now been rendered as ‘set pieces’. The ancillary meetings are there to compliment and provide a forum for NGOs to attempt to influence proceedings, but considering the overlap of sessions it is difficult to argue that such meetings are influential. The conclusions of my attempts to look for significant changes in the final declaration on imprisonment appear to support this assertion that ancillary meetings are of little influence. Indeed it is true to say that the exchange of expertise is hard to discern as almost all of the forums for exchange are now controlled set piece environments. So, the first aim is at best only partially met in the formal proceedings and in terms of this evaluation the conclusion is that the Congress is not an efficient means to meeting the first aim.

The second aim is that of *‘the exchange of experiences in research, law and policy development’*. In the formal sessions it is difficult to pinpoint exactly where such exchanges occur. The country statements are not flexible and open enough to fit this aim. If anything the country statements tend to be formulaic in that they detail the country’s concern with the particular issue, detail their attempts via legislation to address the problem and finish by urging the UN to undertake more action, or at least maintain their current level of commitment to solving the problem. So, there is

no forum, not even in the ancillary meeting, to explore the research evidence, to debate its meaning and to consider the application of research findings to legislation and policy. This aim is a worthy one and may be achieved in the informal processes of the Congress but as a formal aim it is difficult to conclude that it is met.

The third aim is '*The identification of emerging trends and issues in crime prevention and criminal justice*'. Similar comments that have been made about aims one and two apply here. There is no real forum for such a process to take place. It is within the workshops that such processes should occur. The workshops should provide an exchange of views on emerging trends and problems and the identification of solutions to such crime problems. However, the formal emphasis of country statements removes the opportunity for debate and engagement with the more complex issues of crime prevention and control. Furthermore the focus on delegations within the workshops results in the contribution from experts as being only cursory because there is no real way in which their expertise informs the policy decisions of the Congress. Whilst experts may attempt to identify the emerging trends in their contributions the inclusion of such information does not occur in the country based statements. In general it appears that the aims are only partially met by the Congress and that many opportunities pass by unused because of the structure of the Congress, its sense of importance and therefore lack of real academic debate and the failure to provide a forum for analysis of problematic issues in relation to crime and criminal justice.

So what is to be done? There are a number of options, however, assuming that the informal processes of the Congress and its official business processes ending in a declaration are not going to be replaced then what has to be done is to restructure the Congress. Such a restructuring should allow for the exchange of expertise, of ideas, of research findings and policy implementation practices. It is also necessary to provide a 'real' forum that encourages and stimulates debate to allow countries to take account of the synergy that exists between participants. It is this failure to exploit this synergy in the business of the Congress that is the most negative of processes. It is clear that the United Nations Congress on Crime Prevention and Crime and justice has a globally important role to play and its influence in maintaining human rights, the delivery of justice and proper treatment of offenders should be maximized.

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