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New ways of policing in combating transnational Organised Crime

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1. Introduction

It has become a common place to say that crime does not stay at national boundaries and that crime in today's society has to a large extent become transnational. The result of this is that states, if they rely on their domestic law making and law enforcement institutions only, cannot protect their citizens against crime. So close co-operation is an obvious response to this phenomenon.

2. The situation

Transnational and organized crime have traditionally been seen as a domestic problem bedeviling a relatively small number of states such as Italy, the US and Japan. In the last few years there has been a recognition that the problem is no longer limited to a few states and can no longer be treated as something that falls within a single jurisdiction. The rise of the global market for illicit drugs, and the global financial and trading systems have fundamentally changed the context in which criminal organizations operate and encouraged what had been predominantly domestic groups to develop into transnational criminal organizations.

The Single European Act from 1986 and the subsequent single European market in 1993 has in an instance created a common market within the EU allowing the free movement of goods, people, finances and services. Whilst this has many positive effects, it was also capitalized upon by criminals taking advantage of the freedoms without being restrained by adequate legislation to hinder their criminal activities.

The fall of the Iron Curtain in 1998 opened the borders between the EU and its eastern neighbors allowing not only law abiding citizens but also profession criminals into the EU. Following the fall of the Berlin Wall, both NATO and the EU have taken many steps to enlarge their communities with members of the east.

As a result, two trends emerged in the early 1990s in the European Union: firstly, transnational organized crime (OC) expanded in both geographical spread and crime-type attention – both in quantitative and qualitative terms – and, secondly, international co-operation between OC groups increased with the presence of groups and criminals from Eastern Europe.

These trends have been reinforced over the years. Although it is still the case that the criminal scene in the EU is dominated by indigenous OC groups, their relative dominance is being

challenged by a growing number of foreign criminals and criminal groups. The threat posed by these organizations has been dramatized by a variety of developments: the struggle of the Colombian cartels to change the government's extradition policy; the attack by the Sicilian Mafia on the Italian state, and the killing of judges such as G. Falcone; the emerge of Russian criminal organizations also in the EU and the US.

An alarming observation in this context is that an increasing number of people seem to become involved in OC. Today, there are some 3.000 know OC groups active in the EU with some 30.00 members that have been clearly identified. This number, based on the Member State contributions where figures are presented, only give a clue to the true situation where the figures are much higher. Their size, structure, organization and other characteristics differ both within and between Member States.

These criminal groups were quick to adapt to the new situation, but also to take advantage of technological advance, especially in the field of the high technology sector, for instance to ensure safer communication. The groups also increased their professionalism through the recruitment of experts such as lawyers and solicitors, or through the recruitment, education and training of their own members. These trends were established early and are still a major concern.

Sometimes, this means they engage in all types of criminal enterprises promising a certain level of profit. Other times, well established criminals engage in the "outsourcing" of crime, for instance by acting as a consultant in financial crime, providing information about company asset stripping, the concealment of payment relating to black labor and account dumping.

In a similar vein, criminals provide detailed knowledge about security systems or transports for which they receive payment from the people undertaking the crime itself.

There is a high degree of international co-operation between the groups; even between OC groups earlier considered insular and self-sufficient (for instance ethnic Albanian, Chinese and Turkish groups). At the same time, the members of the criminal groups are themselves often likely to be of different nationalities. Mixed criminal networks have become the rule rather than the exception, replacing ethnically homogeneous groups focusing on particular fields of crime. Crime entrepreneurs are gradually taking over from yesteryear's criminal monoliths, creating a criminal scene consisting of fluid relationships between highly professional criminals and groups engaged in various types of crime.

Some OC groups have become specialists in certain fields of the criminal market. Such criminal service providers, for instance transport facilitators, are linked to one another through a web of criminal contacts in a network upheld by criminal entrepreneurs. They rely on the provision of expert services and the promise of high returns to keep up their criminal endeavors rather than on the traditional element of trust.

OC groups in the EU are involved in all types of crime, especially drug trafficking, illegal immigration, trafficking in human beings, all sorts of commodity smuggling, fraud and other forms of financial crime. It has been noted that OC groups increasingly became involved in low risk/high profit enterprises. Although drug trafficking was still dominating their criminal businesses, smuggling of cigarettes, alcohol and people were also becoming increasingly popular by allowing great profits at little or no risk. Financial crime, fraud in particular, also

increased dramatically, not least as a result of the abolishing of intra-community borders. This trend has been reinforced over the years, and again proved to be important for organized crime in 2002 and 2003.

Criminal groups seldom concentrate on a single criminal activity. They often engage in various activities. For example, drug trafficking is often combined with other activities such as fraud, money laundering and illegal immigration. The same is true within the drug field itself; groups often engage in combined activities in different types of drugs.

The involvement in fraud and types of financial crimes also revealed another trend: the increased mixing of legal and illegal activities. It is not only the case that OC groups use legal companies for money laundering or other activities to hide their criminal dealings; today, they are investing their criminal proceeds in the legitimate economy thus disturbing established market practices. Today the use of legal structures is more widespread, and the dividing line between legal and illegal is becoming increasingly obscure. Financial crimes such as money laundering, fraud, product piracy, remain threatening phenomena. The use of more sophisticated *modi operandi* is the main obstacle for law enforcement agencies.

The use of violence, corruption and other forms of influence are integral dimensions of a well-functioning criminal supply and demand system. This can be seen as the lubricant for such volatile machinery.

Overall, taking these factors into consideration, the situation concerning OC in the EU displays disconcerting traits. OC seems to be increasing both quantitatively and qualitatively, spreading their criminal tentacles throughout the EU with links to areas outside the EU.

3. New ways of combatting

The problem of transnational crime is a real one that demands both more careful investigation and greater resources than have so far been devoted to dealing with it.

The traditional way in which states have always co-operated in criminal matters was by entering into international co-operation agreements in criminal matters in various forms. The institutional habitat in which these co-operation forms developed has been the Council of Europe, and not so much the EU.

It must be stressed that the Schengen agreements of 1985 and 1990 have had a considerable impact on police and justice cooperation in Europe. The particular relevance of several Schengen instruments – particular those on police cooperation, judicial cooperation and information exchange – have changed dramatically the ways of cooperation.

Only in recent times has the EU developed its own rules and mechanisms and has created a legal space of its own. The Treaty of Maastricht (1992) establishing the EU introduced a formal structure by creating the so-called Third Pillar. Examples are the EUROPOL Convention (1995, entering into force in 1999), and the Convention for the protection of the financial interests of the European Communities (1995, entering into force in 2002) and subject to the general rules and principles of the law of treaties, in particular ratification and implementation.

The Amsterdam Treaty now provides two new instruments. Framework decisions and decisions. An example is the 2002 framework decision on the European Arrest warrant (2002) and the 2002 Decision setting up EUROJUST.

Nevertheless EU-legislation is usually drafted as a complement to existing Council of Europe Conventions. It has also to be stated that, since the TAMPERE Council of 1999, the milestones adopted at that conference, became the connection of judicial co-operation in the EU.

In 2000, at the Intergovernmental Conference in Nice, there were two initiations aiming at achieving closer judicial integration in Europe: there was a radical proposal to introduce a European Public Prosecutor for fraud crimes in the EC-Treaty, and a proposal to introduce EUROJUST for a limited number of crimes in the EU Treaty. The intergovernmental conference only adopted the second proposal.

In 2004, ten new Member States will join the EU. Fifteen principles laid down in the Pre-Accession Pact¹. At the same date the Council of the European Union published a list of “Third pillar acquis” extending inter alia to the fields of police and judicial cooperation in criminal matters, plus human rights instruments. Important instruments that post-date the accession pact but nevertheless belong to the acquis include the Tampere milestones of October 1999, the convention on Mutual assistance in criminal matters between the EU MS’s of May 2000, the framework decision on the Euro (2000).

These days, when preparing a new European Constitution, there seems to be a consensus to merge the First and the Third Pillar of the Union. The plan to be occupied by EUROPOL, EUROJUST and a possible European public prosecutor for fraud crimes is to a large extent predicted on how the treaty will organize the general structure of the “United States of Europe”. Today this question is still unresolved.

Also the UN Transnational OC convention 2000, although not yet ratified by all EU MS’s, includes many new instruments in order to prevent and combat OC. The criminalization of offences committed by organized crime groups, taking further steps against money laundering and those handling the proceeds of crime, improving and accelerating the extradition processes, protecting witnesses, improving international cooperation, developing and taking further steps against transnational organized crime, imposes onerous duties on a range of countries, authorities and institutions for the future.

4. Pro and contra

Justice and home affairs cooperation, between the EU MS’s especially, has expanded considerably during the past few years; Cross-border cooperation in criminal matters has become more important as internal border controls are gradually being lifted and as criminal agents have more opportunities (increased mobility and increased technology) to exploit loopholes in the laws and policies of the individual countries and international/regional entities.

The actual situation is subject of much more detailed regulations such as:

- creation of new bodies (EUROJUST, EUROPOL, OLAF);
- new instruments for international co-operation with the EU;
- new procedures and capabilities.

Nevertheless many problems still arise. The most important are:

- insufficient strategic alliances;
- lacking quality reports and assessments;
- lack of training of main actors;
- lack of overall strategies;

¹ Pre-Accession Pact on organised crime between the MS’s and applicant countries of Central and Eastern Europe and Cyprus, approved by the JHA Council on 28 May 1998, Official Journal No. C220, 15.07.1998.

- insufficient co-operation;
- unclear interactions;
- no standardisation and eventual common use of communication platforms and intelligence concepts;
- no enough clear relationship between, for example, EUROPOL and EUROJUST.

One of the changes is that in most of the countries, criminal investigation methods are under revision, often dealt with in a crisis atmosphere (Van Traa in the Netherlands, Dutroux in Belgium). Quite a number of criminal justice systems verge towards the employment of undercover or proactive methods. Meanwhile facilities and resources are being redistributed between law enforcement agencies, nationally and internationally. In the various countries, police and prosecution agencies are in the process of being reorganized or they have just undergone a reorganization. The fight against OC has been instrumental to the extent that it has given an impulse to the enlargement of scale and to the redistribution of human and financial resources. At the same time, supervision and authorization procedures have changed significantly. The attempts to channel intelligence-gathering –which will improve the information position of the national criminal intelligence services and international agencies (such as Europol) are accompanied by coordination at the central level and by the future strengthening of regional centres of intelligence exchange. Centralization thus seems the organizational tendency (even of investigation units) in most countries, which is also a side-effect of European developments. A striking illustration of this phenomenon is that more and more police and judicial entities are created (Europol national unit, Syrene bureau, judicial contact point, national prosecutor in some countries). Also in most of the countries and also at EU level more and more strategies and activity plans are developed in order to better prevent and combat transnational crime.

The near future will show what type of “best practice” is available and all together we have to make best use of the learning process we are involved in. Some ongoing studies (e.g. on best plan for prosecuting) and research can also contribute to new activities in order to overcome (some of) the above mentioned problems. Specific research would be more than welcomed in the following areas : to what extent national and international criminal policies are intersecting with one another, to evaluate recent strategies and plans, what about the effectiveness of the new police and justice architecture, what about cooperation between police and justice authorities, the performance of central institutions in the fight against OC, what about the new accountability systems, and finally an assessment whether the new organizational changes are beneficial to combat transnational crime.

**INTERNATIONAL CRIMINAL LAW NETWORK
UNITED NATIONS CONFERENCE ON
“INTERNATIONAL COOPERATION ON TRANSNATIONAL CRIME”**

**NATIONAL AND INTERNATIONAL COMPETENCES :
AFRICAN PERSPECTIVE.**

UNCHECKED

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An overview

The criminal activities of gangs or loose coalitions of individuals or groups of individuals may not be a new experience in post independent Africa. Minerals and precious stones, for example, provided a fertile area in this regard.

However, the liberalization of the economics of most African States, from state controlled to market economies gave impetus to crime sophistication. Other facilitators included unprecedented rapid development in communication infrastructures, technological advances and vast movements of populations across free borders. It is therefore common ground today, that not only the preparation, organisation and perpetration of a crime may cut across several borders but also the offenders and victims may be located in several jurisdictions.

Owing to their sophisticated methods and means, organized criminal groups pose a serious treat to political and democratic institutions and processes, social and economic programs and human rights; They undermine the integrity of financial systems especially systems that welcome the illicit proceeds of their criminal activities.

To achieve their aims, Organised criminal groups frequently use the following methods to penetrate structures of the State and private sector:

- Bribery and corruption;
- The utilisation of influence through political patronage, and
- Intimidation or coercion;

A recent classic example took place in Mozambique, where the commercial bank of Mozambique lost 14 millions U. S. dollars through criminal networks (involving states officials) penetrating a business structure.

In Africa, studies have shown that organized crime flourishes in such domains as vehicle theft, arms trafficking, drug trafficking, counterfeiting of

currency, trafficking of cultural objects, corruption, money laundering trafficking in human beings/persons especially women and children, trafficking in precious stones etc.

Lack of information is a drawback to assessing the magnitude and impact of these phenomena at country and sub-regional levels.

It is however conceded that trafficking in mineral and precious stones is commonplace in South Africa, Democratic Republic of the Congo, Liberia, etc. In Nigeria, the 419 groups are reputed for currency offences and drug trafficking.

According to UNICEF estimates, up to 200.000 children are trafficked annually in West and Central Africa with the prevalence being in countries like Cameroon (CEMAC), Guinea Conakry (ECOWAS), Uganda (EAC), Zimbabwe and Mozambique (SADC).

The prevalence of trafficking in firearms and ammunitions is equally acknowledged. A recent report of UNAFRI for 2003 identifies this activity in Burkina Faso, Cameroon, Djibouti, Ethiopia, Guinea Conakry, Mozambique, Senegal, Tanzania, Uganda, Zimbabwe, Democratic Republic of the Congo, Rwanda, Burundi, etc.

Africa is increasingly used to smuggle cocaine out of South America, mainly Brazil into Europe. An estimated 60 % of all the cocaine shipped to South Africa passed through while the rest is consumed locally. Heroin is also transported from Asia to Africa seaports and airports on its way to Europe and North America. Heroin abuse is spreading in a few central African capitals and is a serious problem in Mauritius, Namibia and South Africa.

In order to adequately address the challenges posed by organised crime many countries have made and continue to make frantic efforts to build appropriate capacities and capabilities as well as broad coalitions at sub-regional, regional and International levels.

National Initiatives:

As said earlier, there is paucity of information on the activities of individual countries of the Region in the area of organised crime. Available evidence indicates that

Countries have responded differently to the prevalent crimes and in some, governments have admittedly prioritised national security issues over crime prevention and crime combating. It is proposed that henceforth the fight against organised crime should be viewed from the perspective of legislation, policy,

and policing or police investigative approaches. Law enforcement should shift its focus from targeting customer to operators, and then to proceeds of crime. We must however acknowledge the fact that action in this regard is still timid.

Recent figures show that of the 40 instruments of ratification yet deposited, only 10 are from African countries. This is far from satisfactory in the light of the threats of these phenomena. But this does not mean lack of efforts by these States in the fight against organised crime.

Implementation of the Palermo Convention and its Protocols, is seemingly an ongoing process in many countries. The activities of the UNODC in this regard is commendable.

In fact, some countries made noticeable strides before the Palermo Convention, for example, South Africa passed the Prevention of Organised Crime Act, in 1998 designed to combat organised crime, money laundering and criminal gang activities and so provide for the recovery and confiscation of the proceeds of unlawful activities. It also adopted a vast armoury of legislative tools and a variety of new and innovative strategies and greatly empowered law enforcement agencies. These strategies paid off. Successes included the elimination of 366 organised crime groups, the prosecution of 233 organised crime syndicate leaders and 2334 ordinary syndicate members. During 2000 also, a total of 4775 kilograms of gold-bearing material and various instruments used in the processing of gold-bearing material were confiscated from syndicates involved in the illegal trade in precious metals. Other countries within the sub-region had gone the same way..

Some West African countries like Nigeria, Ghana, Mauritius etc. have developed legislation in the area of money laundering. Nigeria for example has greatly empowered its law enforcement agencies in this regard: the Central Intelligence Bureau (CIB) at the State level, the Federal Intelligence Bureau (FIB) at Federal level both of which monitor activities of local and International groups.

The Nigerian Extradition Act also enhances cooperation with other countries on a wide range of countries.

Many countries are now reviewing their domestic Legislations: Penal or Criminal codes in order to adapt them to the provisions of the UN. Convention against Transnational Organized Crime and its protocols. So far Countries like Madagascar, Benin, Comoros, Mali, Democratic Republic of Congo, Burundi etc, are already benefiting from UNODC technical assistance programme within the framework of Ratification and Implementation of the Convention.

Unlike ratification which largely depends on political will, institution and capacity building requires much more in terms of resources. This is where African Nations are impeded in their respective actions.

Regional and Sub-regional Initiatives

The threats of organised crime and its devastating effects have scared African countries to seek a comprehensive, collective and responsive approach to combat it. They have been forward-looking in the strategies being adopted.

1. Regional Initiatives:African Union

The demise of the Organisation of African Unity (OAU) ushered in the African Union and NEPAD. The latter is an ambitious programme to stir African out of the hither-to development cul-de-sac. It will be spun by the new Union whose objectives seek to forestall the paralysis of yester-years.

In its early birth, the Union has adopted a number of instruments, to wit: The Convention against terrorism, the Convention against Corruption etc Its action in the field of organised crime is still awaited. It is yet too early to talk of results.

But the apparent vacuum in treaties at the regional level is greatly compensated by sub-regional initiatives some of which are impressive and far-reaching.

II Sub Regional Initiatives

1. The Southern African Development Community (SADC).

The twelve countries that make up the sub-region recognize the global threat posed by organised crime and the necessity for cooperation. In the area of law enforcement there is the Southern African Regional Police Chief Coordinating Organisation (SARPCCO), formed under the auspices of SADC in August 1995. It is a forum for information exchange, joint management of criminal records and support of joint operations. It operates within the frame work of the Interpol office in Southern Africa. In the area of firearms, its work is complemented by a data base, and it is the implementing agency in that field.

SADC adopted protocols on Drug Trafficking on August 24 1996. In October 1997, they signed an agreement on multi-lateral police cooperation, training, exchange of information and cross-border operations of covert nature as well as cross-border investigations. It permits police officials of the respective SADC Police service to enter the respective countries for the purpose of joint investigations and operations.

Statistically, Police cooperation has yielded enormous results in the domain of Motor vehicle theft, Drug-trafficking and Arms smuggling. In August 2000, they launched the Operation MAKHULU, in 10 SADC countries, in three phases over 9 months. The result was the seizure of 535 stolen vehicles, the arrest of 219 suspects and 1.159 illegal immigrants and the confiscation of 9.105 Kg of Cannabis/dagga.

From January – November, 2000, the South African Police exacted forty-nine (49) controlled deliveries, of which nineteen (19) entailed cooperation with Germany and South Africa. Eighteen (18) thereof involved cocaine.

Regarding money laundering there is in the sub-region the Eastern and Southern African Anti-Money Laundering Group (ESAAMLG) built on the principles of the Financial Action Task Force on Money Laundering (FATF) 40 Recommendations.

2. The Economic Community of West African States (ECOWAS).

On the strength of most recent survey conducted by UNAFRI on the situation and trends of Trafficking in Women and Children in Africa Countries May 2003. Many countries have provisions in their respective Penal Codes criminalizing some of the elements specified in Article 3 (a) of the relevant Protocol.

At the sub-Regional level, the 14 countries that make up the sub-Region have made a political Declaration (17 December 2001) and adopted an Action Plan (UMS, 20 December 2001) that obligates them to speedily ratify and fully implement crucial international Instruments of ECOWAS and the United Nations in the domain of human trafficking, especially women and children.

The Action Plan equally calls for a new special Police Units to combat trafficking of persons, training for Police customs and immigration officials and Prosecutors and Judges. The Countries are also required to set up direct communication between their border control agencies and expand efforts to gather data on human trafficking.

Bilateral Agreements also exist between some States in this area, for example, the agreement between Cote d'Ivoire and Mali (Anti-Slavery) of September 2000, on Prohibiting the illegal trafficking of children for labour.

Still in the area of children, the West and Central African States have adopted a common platform of Action (22 to 24 February 2002) which proposes to elaborate a law to protect child workers, improve the system of taking child victims of trafficking into custody, the strengthening of cooperation among governments and the establishment of transit and reception centres for returned children.

In the fight against illicit proliferation, circulation and trafficking in firearms, the ECOWAS member states have declared a three year renewable moratorium on the importation, exportation, and manufacture of light weapons and adopted a Code of Conduct governing its implementation. They have also established a regional project administered by UNDP called The Programme for Coordination and Assistance for Security and Development (PCASED)(Mali ,March 1999) . Activities already being undertaken include training of security forces, collection and destruction of surplus and unauthorized weapons, revising and harmonization of national laws on weapons, dialogue with supplier and producer countries and the establishment of a database and an arm register .

Several factors including the paucity of effective international monitoring and policing mechanisms, the chronic abuse of end user certificates, to identify the ultimate destination of arms shipments tend to limit the ability to control arms flows into Africa especially in the politically unstable areas of sub-Sahara Africa.

To counter money laundering within the sub-Region ,the Heads of States of member countries of ECOWAS, in Lome Togo, in December 1999,decided to create an inter-governmental Action Group against Money Laundering.(GIABA). The sponsoring principles are those of the FATF 40 Recommendations .

Inter-state cooperation, formally or informally takes roots in the sub-region, encouraged by high fluidity of mass movements of populations across their various borders.

3.The Economic Community of Central African States (ECCAS)

Trafficking in arms is phenomenal in the sub-region torn by Internal Conflicts .The lure of maximum profits is an attraction to organised criminal groups in this industry. There has been concerted efforts at the sub-Regional level to curb these activities notably through the Council of Peace and Security (COPAX) and its support organs: Central African multinational Force (FOMAC) and Early Warning Mechanism (MARAC) .Arms trafficking has been favoured by the numerous conflicts in the sub-Region and the porosity of borders.

In 1999 GAFI declared sub-Sahara Africa to be ‘vulnerable to money Laundering’

In December 2000, the Heads of State of the member countries of the Economic and Monetary Community of Central Africa agreed to set up an action Group Against money Laundering in Central Africa (GABAC) with the aims to;

- fight against Money Laundering and proceeds of Crime;
- take unified, joint and appropriate measures in ECCAS's action;
- evaluate the results of the action and the effectiveness of the measures taken;
- collaborate with existing structures in Africa and Internationally.

However, unlike its counterpart in West Africa, GABAC is still crawling.

In June 2002 the Heads of State and Government of ECCAS decided to relaunch activities for drug control and the fight against the Laundering of money derived from drug and organised crime in Central Africa. In this regards, they are called upon to revitalize and possibly establish national structures including:

- an international committee responsible for defining, promoting and coordinating drug control activities in the fields of prevention, law enforcement and treatment;
- A Central Office for enforcing illicit drug and precursors trafficking;
- A toxicology laboratory responsible for identifying and testing drugs;
- The adoption of a harmonised legislation, the establishment of a Regional Data Bank and the elaboration of a Regional Master Plan on drug control and fight against the laundering of money derived from drug and organised crime.

4. International Initiatives

The International Community fought hard to develop, negotiate and adopt the Palermo Convention, a historic, comprehensive and strong instrument to combat Transnational Organised Crime . It is essentially a cooperation instrument found on a broad coalition of Sates to combat a common enemy.

As said earlier , despite the exuberance of political will the process of ratification and implementation of the Convention and its Protocols is yet to vibrate in many African countries.

In this particular respect, the United Nations through the Office on Drug and Crime in Vienna is working hard to achieve results through its technical assistance programme. Several countries , have either received or are receiving the benefits of the programme. A number of Seminars and Workshops are being organised, some by the Commonwealth Secretariat, to promote ratification and implementation. The finalization of Legislative guides and implementation tool kits have proved useful.

In November 2003 UNODC will be organizing in Bamako (Mali) an inter-regional seminar-workshop to promote ratification and implementation of the Universal Convention against Terrorism and the UN. Convention against Transnational Organized Crime and its Protocols. It will group experts from about any countries of countries and is intended not only to speed up ratification but also to train experts on techniques of implementation.

Intergovernmental bodies like UNAFRI are also doing a marvelous job in the region. On the 28th January 2003 UNAFRI, organized in Kampala (Uganda) a workshop on the **strategies to strengthen** the prevention and combating of trafficking in women and children in the region. The outcome of it was a project proposal with objectives to monitor the recruitment of traffickers, information collection and exchange as well as develop needed anti trafficking legislation and ratify the TOC and its Protocols.

Most of the problems African countries face are in the area of assets recovery, where several jurisdictions may be involved.

The problem may be compounded by the absence of bilateral agreements between the countries concerned. The solution will usually depend on the cooperation laws of the requested states. The difficulties were illustrated in the recent cases of **the Lesotho Highlands Water Project Corruption case and the Abacha embezzlement case in Nigeria**. In the first case, crucial information was located in Switzerland. In the second, Abacha's funds were traced to about 21 countries. In both cases, Switzerland was very cooperative as its national legislation allowed mutual legal assistance on such issues subject to a declaration of reciprocity. Additionally good will was an important element in the Nigeria success story in retrieving part of Abacha' funds.

In conclusion, the African experience is still budding in the field of this complex and ever expanding crime. The lack of resources, rather than the absence of expertise, account for the low level results yet registered in the overall response to organised crime in m, the region.

UNODC technical assistance, in its present form, does not adequately meet the needs of these countries and should be reviewed

There is also need to build a stronger and broader coalition to combat crime especially in Africa.

Thank you.

UNITED NATIONS
OFFICE FOR DRUG CONTROL AND CRIME PREVENTION

**GLOBAL PROGRAMME AGAINST TERRORISM AND TRANSNATIONAL
ORGANIZED CRIME**

DRAFT IMPLEMENTATION STRATEGY FOR AFRICA

Consultant/ODC

AN IMPLEMENTATION STRATEGY OF THE GLOBAL PROGRAMME AGAINST TERRORISM AND TRANSNATIONAL ORGANIZED CRIME IN AFRICA.

REASONS, MANDATE AND ACTIVITIES

1. Combating terrorism and transnational organized crime (and their effects) in Africa

The September 11th 2001 attacks, foreshadowed by the terrorists attacks against the two U. S. Embassies in Nairobi and Dar Es Salaam on the 7th of August 1998, have increased the quest for a Global Perspective for Peace and Security. In reaction to these attacks which hit the very heart of the values of the UN, the Security Council adopted Resolution 1373 of September 28, 2001. This Resolution underscores the need to increase the coordination of National and International efforts in order to reinforce a global response.

Before the Security Council's reaction, the UN, preoccupied by the expansion of Transnational Organized Crime, adopted through Resolution 55/25 of 15 November 2000, and Resolution 55/255 of 31 May 2001 of the General Assembly, the Convention against Transnational Organized Crime and its 3 supplementary Protocols. The Convention and its Protocols constitute effective instruments for the prevention, repression and International Cooperation on matters concerning the fight against Transnational Organised Crime.

Mindful of the fact that there is an absolute necessity to streamline the process of prevention and repression of these two scourges, in the centre of national policies and decisions, it undoubtedly appears evident that, the putting in place of an implementation Strategy for Africa is *the best way forward* for the **acceleration of the process of ratification and implementation** of the relevant International Instruments, and consequently **fight effectively** against these two scourges and their pernicious effects.

Of course, there is today in the developing continent of Africa, depending on the cultural, social, political, economic and infrastructural specificities of each sub-region, an unprecedented scourge of :

- * Illicit Trafficking on firearms, their parts, elements and munitions (the Great Lakes Regions and West Africa);
- * Illicit Trafficking on precious stones and drugs. (Southern and Central Africa and the Great Lakes Regions);
- * money Laundering (all the regions of Africa);
- * Trafficking in persons, especially Women and children and the Trafficking of Migrants (West, Central and North Africa);

*National Terrorism and recent disquieting developments of International Terrorism.(North and Eastern Africa);

It is therefore necessary to envisage, through *direct and mediate actions*, measures for collective action through enhanced Cooperation at Sub-Regional, Regional and International levels. Conscious of this imperative, African countries have been engaged in the fight against these two scourges and their effects by adopting certain Declarations, Conventions, and Resolutions in conformity with the UN's recommendations, and above all, by their preoccupations for peace, economic and social development. At the Regional level, we can cite; the Conventions of the African Union (AU) against Corruption and Terrorism, while at the sub-Regional level we can equally cite for example, the Inter State Agreement of ECOWAS, on the fight against the Trafficking in Persons, especially women and children etc.

In this regards, it is necessary to commend these laudable and remarkable African initiatives, through direct and precise Strategies which the Project proposes to carry out, taking into account the work done by International Organizations: (ODC, CICP) , intergovernmental organizations (UNAFRI, IMF, Commonwealth, Francophonie, European Union etc,) Regional Organizations (AU), and Sub-Regional Organizations (ECCAS, ECOWAS, SADCC, IGA) in order to :

- Firstly, assess the present needs of States in the Region for the fight against Terrorism and Transnational Organized Crime;

-Secondly, jointly develop, with these States and Organizations, operational strategies for the promotion and implementation of the relevant International Instruments, new cooperation mechanisms relative to extradition, mutual legal assistance, exchange of information and the reinforcement of border controls;

-Thirdly, and as a follow up of actions taken, create a data bank which will serve inter alia for the elaboration of tool kits for ‘Best Practices’ and ‘National Profiles’.

2. Reasons and Mandate of the implementation Strategy for Africa .

The rationale and Mandate of the Implementation Strategy for Africa are those assigned and defined on the one hand, in the Global Programme Against Terrorism, and on the other hand, in the Global Programme against Organized Crime; including trafficking in persons especially women and children, trafficking of migrants, illicit trafficking of firearms, their parts, elements and munitions and money laundering.

ACTIVITIES OF THE PROJECT

A. Action at the level of each country

1. The putting in place of a legal framework

Through -

- a) the identification of the needs for ratification and the implementation of International Instruments against Terrorism and Transnational Organized Crime;
- b) The Organization of Information and Sensitization Seminars;
- c) The elaboration of techniques of implementation or adaptation appropriate to the African context;
- d) Encourage States to ask for Technical assistance and to fully Cooperate.

2. The putting in place of Institutional frameworks

Through -

- a) Appropriate domestic institutions that foster the internal and external policy of the State against Terrorism and Transnational Organized crime;
- b) The adoption of strategies for the building or reinforcement of Partnerships, law enforcement agencies, in combating Terrorism and Transnational Organized crime;
- c) Design of support mechanisms necessary for each country.

3. Training and building of Institutional and Professional capacities

through -

- a) The Organization of training seminars for experts on Technical and appropriate methods;
- b) The using of legislative guides and the appropriate implementation kits for the 12 Universal Instruments against Terrorism and the Palermo Convention and its supplementary Protocols.

4. Encourage the signing of bilateral agreements

Through -

- a) The identification of obstacles and needs for ratification;
- b) The development and putting in place of operational strategies for material assistance for Inter States cooperation on:
 - Extradition;
 - Mutual Legal assistance;
 - Law enforcement cooperation;
 - The reinforcement of border controls;

- The cooperation of financial institutions in the fight against money laundering;
5. Promoting the formation of NGOs, working within the mandate of the Project and building cooperation partnerships in the fight against Terrorism and Transnational Organized Crime and their effects .

B Action grouping several Countries, Sub-Regional and Regional Organizations.

1. At Sub-Regional level.

- a) Putting in place Sub-Regional anchor offices, management and coordinating Organs destined to :
- Encourage and enhance the signing of Cooperation Agreements between States of the same Sub-Region;
 - Putting in place of Sub-Regional cooperation Strategies developed by the Project;
 - Establish concrete and direct contacts between the competent services of ODC and Sub-Regional groups concerned in the activities of the Project;
 - Reinforce the Partnership between Sub-regional Organizations and Regional Organizations, National and International NGOs, with the other Organizations and NGOs engaged in the fight against terrorism and Transnational Organized Crime .
 - Furnish material assistance to Sub-Regional Organizations, National NGOs and eventually Sub-Regional and Regional Organizations which are participating in the fight against Terrorism and Transnational Organized Crime .
- b) Elaboration of *implementation strategy harmonization plans* carried out by focal points of the same Sub-Region.

2. At Regional level

- a) Identify the domains of cooperation between the different services of the African Union (AU) and the competent services of ODC within the framework of the Project;
- b) Provide support to AU and NEPAD actions, through the furnishing of necessary expertise in the fight against Terrorism, Transnational Organized Crime including the illicit trafficking of firearms, drugs and money laundering in the African Region.
- c) Develop and harmonize (by the Regional office) *implementation strategies* of the different Sub-Regional groups in the area of :
- exchange of information;
 - border controls;
 - capital movements;

- migration of populations;
 - movements of firearms;
 - legislation relating to issue of passports or other travel documents.
- d) Develop and implement implementation strategies of sub-regional groups within the general policy of Africa Union and NEPAD;
- e) Elaborate a strategy for the organization of joint working sessions with the African Union in order to facilitate the implementation of the 12 International Instruments against Terrorism and the Convention Against Transnational Organized Crime and its Protocols;
- f) Establish cooperation links with the Intergovernmental Organizations (more or less concerned with the activities of the Project) such as UNAFRI, UNICEF, IMF, World Bank, Commonwealth, Francophonie, European Union etc.

C. Assessment of the progress of the different phases of the Project.

Through –

1. Assessment Seminars jointly organized with the State authorities concerned
On:
 - the progress made in the area of ratification and implementation of the relevant International Instruments;
 - the level of inter-State partnership and partnership with other relevant Organizations.
2. Organization of Sub-Regional and Regional periodic meetings for the mutual exchange of information and the sharing of experiences on the fight against Terrorism and Organized Crime.

D. Creation of a data Bank

1. Collection of ‘Best Practices’

On :

- relevant national legislations;
- appropriate national, sub-regional and regional institutional frameworks;
- international cooperation arrangements.

3. Elaboration of tool kits of ‘Best Practices’ and ‘National Profiles’

- Findings and lessons learnt from the Project;
- current and future needs.

E. Assessment of the Project’s results (at the national, Sub-Regional and Regional levels)

Through:

1. Annual assessments by national experts within the framework of inter ministerial meetings;
2. Biennial assessments within the framework of Sub-Regional conferences with ODCCP
3. Quadrennial assessments at the level of the African Union (AU) during the summits of Heads of State and Government.

ANNEX

Synoptic view of African Regional and sub-Regional instruments on the Fight Against Terrorism and Transnational Organized Crime.

- OAU Resolution AHG/Res. 213 (XXVIII) on the Strengthening of Cooperation and Coordination among African States, adopted by the Assembly of Heads of State and Government in 1992 in Dakar.
- Resolution AHG/Del . 2(XXX) on the Code of Conduct for inter-African Relations, adopted by the Assembly of Heads of State and Government in June 1994 in Tunisia
- The Yaounde Declaration and plan of Action on Drug Abuse control and The illicit drug trafficking in Africa, adopted in 1995
- The Dakar declaration on the prevention and control of Transnational Organized Crime and Corruption, adopted in 1998.
- The Algiers Convention on the Prevention and Combating of Terrorism , adopted by the Assembly of Heads of State and Government in July 1999.
- The Bamako Declaration on an African common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons, adopted in 2000
- The solemn Declaration of the Lome summit on Security , Stability , Development and cooperation in Africa ,adopted in July 2000.
- The OUAGADOUGOU Declaration Supporting to the ratification of the UN. Convention against Transnational Organized Crime and its Protocols, adopted on the 30th of November 2001.
- The Constitutive Act of the African Union article 4 (o) on the reject of impunity acts of Terrorism and subversive activities.

Dear colleagues!

First of all I would like to express my gratitude to organizers of this forum for providing such an excellent opportunity to make a speech from such a high rostrum.

My report is devoted to the issues of the “Northern route “ of the Afghan illicit drug trafficking and countermeasures in Central Asia.

Estimating a complex of factors, which affected and is currently affecting drug situation in Kyrgyzstan and in general in the region of Central Asia in the boundary of millenniums, I would like to stress the following:

- The global changes have created quite new international geopolitical and economical situation which is influencing internal and external development of Kyrgyzstan and the Central Asian Region as well;
- The increasing volume of illicit drugs flow from Afghanistan en route Tajikistan and further to CIS countries and West Europe, has led to emergence of a new, so called “Northern route” of illicit drug trafficking. According to UN estimates, 80% of heroin, consumed in Western Europe, is emanating from Afghanistan and Pakistan. In our part, approximately a quarter of these drugs (about 60 tons, if expressed in heroin equivalent) are being delivered to Europe via Central Asia. The direct consequence of activation of the “northern” drug route is the events in Southern Kyrgyzstan in 1999 and 2000 when armed gangs of Islamic fundamentalists made an incursion into the territory of the Kyrgyzstan with the indirect aim to organize new drug trafficking routes;
- Availability of raw narcotics, i.e. wild growing cannabis and ephedra (in Kyrgyzstan – about 8000 hectares) and conserved practice of illegal cultivation of the opium poppy as well;
- Worsening of the social and economical situation, causes involvement of population of various social layers into drug trade, which finally results in appearance of so-called “public” drug business;
- Weakening of state mechanism on control and prevention of drug abuse and drug related crime.

It’s essential to note that drug situation in the country since 1999 has undergone the following changes:

- If earlier main flow of drugs had been passing via Horog – Osh highway, now mounted and foot way of transportation is more wide spread at all perimeter of Kyrgyz-Tajik border, which has been proved by increase in seizures of drugs and arrests of drug traffickers;
- Dislocation of the world drug production centre to Afghanistan and consequent increase in trafficking of Afghan drugs through the Central Asian countries facilitated significant drugs price-cutting in “black” market both in region and in the country. As one of the consequences, number of drug abusers in the country rapidly increased, as well as social situation has worsened and rate of crime has risen.
- The country is strenuously becoming a large settling of narcotics, which leads to increase of drug related and other crimes, as well as drug abuse spread among the population. As an example, in December 1999, 831 kilograms and 744 grams of opium and 2 kilograms 638 grams of heroin were seized in the hiding place in the Osh region in Kyrgyzstan.
- Increase in corruption as an inevitable element of drug trade.

- Integration of organized drug associations into the transnational criminal system, and fight for the areas of influence, most often involving Islamic extremists, transform Central Asian region into the vast area of instability.

All these factors directly related to increasing flow of narcotics have dramatically impacted internal and external country development and imposed direct threats to the national security of Kyrgyzstan.

Analysis of the statistics shows that transborder regions of Tajikistan and Afghanistan pose main threat of drug trafficking. According to the data of law-enforcement agencies of Tajikistan about 4 tons of heroin were seized in 7 month of this year. The largest heroin seizure was registered in Russian Federation in July 2003; in the outskirts of Moscow 420 kgs of heroin were seized in the track bounding for Tajikistan with Kyrgyz plate.

However, relatively low volume of drug seizures should not mislead the one, i.e. drug related crime is highly latent, and interconnected with corruption.

Taking into account estimates of international experts reporting that on the territory of Afghanistan there are about from 2,5 to 5 tons of opium and heroin, as well as the “harvest” of the 2003, further attempts of illicit drug trafficking through the territory of Central Asia can be expected.

All countries of the Central Asian region are undertaking organizational and legal countermeasures. Several essential agreements in this sphere were reached. The Intergovernmental Commission on Drug Control of the Central Asian community was established. The Protocol adopted at the of the Second Session of the Intergovernmental State Commission on Drug Control is the basis for cooperation between drug law enforcement agencies and customs of the region, and for creation of the united informational database as well as unification of the legislative framework on drug control.

Uzbekistan, Tajikistan, and Kyrgyzstan concluded bilateral agreements on cooperation with Islamic Republic Iran in the sphere of drug counteraction. As it is known, Iran is undertaking great efforts to suppress Afghan illicit drug trafficking (volume of seizures impresses: for the year 2002 – about 80 tons of opium were seized). Therefore, as reported by leaders of the Iran Headquarter on Drug Control, in recent years Afghan drug dealers have switched more to “northern route” regarded as more safe, than the “Balkan” route.

To strengthen security belt around Afghanistan in 1999 under the UNODC project was established a Drug Control Agency under the President of Tajikistan. Tragic events in September 2001 in USA urged Central Asian countries to enhance cooperation with the USA. The same Drug Control Agency was established in summer 2003 in the Kyrgyz Republic with the support of the USA government.

United Nations Office on Drugs and Crime, which is currently implementing large portfolio of regional projects, has rendered the essential assistance to the drug control institutions in the

region. In recent years the program CADAP of European Union has been implemented. The UNODC's project "Precursors control in Central Asia" has a significant preventive effect and is aimed at prevention of diversion of precursors to Afghanistan. Several countries are ready to take part in the international operation "Topaz" also directed at suppression of illegal acetic anhydride diversion into illicit circulation.

Since the midst of 2001 within the framework of the EU Program for Central Asia – CADAP the activities on suppression of illicit drug trafficking, including setting up modern checkpoints in airports of large cities and large-scale ports of the regions, have implemented. Nowadays, the second phase of the CADAP programme is under consideration and is being elaborated.

However, cooperation of transborder law-enforcement authorities remains at low level and in many cases has a declarative nature. Information exchange is carried out formally and the institution of drug liaison officers in practice doesn't work. Controlled deliveries are carried out rarely (Kyrgyzstan conducted 12 controlled deliveries, mainly to Kazakhstan and Russia). In recent years there was stirred up anti-drug cooperation of the countries included into Treaty Organization on Collective Security. It is planned to conduct international special operations on suppression of illicit drug trafficking.

Kyrgyzstan has been always playing an active role in combating not only illicit drug trafficking, but also other negative consequences of transnational crime. I would like to emphasize that the Kyrgyz Republic has already ratified the UN Convention against transnational organized crime in April 2003.

In a view of the transnational nature of drug abuse and illicit drug trafficking, close cooperation among countries of Central Asia, CIS and foreign countries with the assistance of leading international organizations should be maintained and enhanced. Therefore, Drug Control Agency of Kyrgyz Republic is considering this task as one of the utmost priorities in development and strengthening of international anti-drug cooperation of Kyrgyzstan.

Thank you for your attention.

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Conference on “International Cooperation on Transnational Crime: Effective
National and International Cooperation and Coordination”
The Hague, 9-10 October 2003

Conclusions of the chair

1. The Hague Conference was attended by experts from over 30 countries representing all major regions of the world as well as by representatives of Interpol, the EU Commission, Europol and Eurojust and The International Association of Prosecutors (see annex). The Conference was chaired by Jan Van Dijk (UNODC) with Ronald K. Noble, Secretary-General of Interpol chairing part of the morning session on the first day. The Conference was addressed by Joris Demmink, Secretary-General of the Ministry of Justice of The Netherlands and Ronald Noble at the opening session.
2. The Conference reiterated the growing importance of regional and global cooperation in fight against transnational crime. According to several speakers priority should be given to strengthening of operational cooperation, using existing legal instruments and mechanisms, rather than to the elaboration of new legal instruments. In this context the United Nations Convention against Transnational Crime was welcomed as an important new framework for combating cross-border and organized crime, including organized crime committed by terrorist groups. There was consensus amongst participants at The Hague Conference of the importance of the current period, falling as it does between the entry into force of the Convention in September 2003 and the first meeting of the Conference of States Parties, as being critical in initiating the process of conceptualising and debating how the Convention can be effectively implemented.
3. Many speakers stressed that those Member States of the United Nations that have not yet ratified or acceded to the Convention should be encouraged to do so as a matter of urgency in order that they qualify for participation in the work at the inaugural session of the Conference of State Parties in June 2004. The participants recognised that the Conference of State Parties has a critical role to play as the established mechanism for the effective implementation of the Convention, and in order to encompass a full spectrum of views, should have as wide a participation of States as possible.
4. Given the importance of the effective implementation of the Convention, and the short period before the Conference of State Parties is due to meet for the first time, participants underlined the importance of the process of discussion and consensus building on the appropriate mechanisms to operationalise the Convention and its Protocols. Critical issues that must be addressed in order to make the Convention an effective international instrument include the exchange of information on trends and impact of organised crime and on best practices as well as mechanisms for more effective law enforcement cooperation and mutual legal assistance.
5. Noting in particular the lessons learned from the case study and themes considered at The Hague Conference, as well as the requirement for improved exchange of information amongst law enforcement officials of different countries more generally, the Conference saw the need for strengthening of existing institutions such as Interpol as well as regional institutions such as Europol and Eurojust. Better use should be made of existing provisions and mechanisms for cooperation. The example was given of the need for all Member States of Interpol to give some legal status to that organization’s “red notices”.

6. The Conference was informed about the development of internet-based communications tools for mutual legal aid and extradition in the framework of regional organizations such as the Organization of American States and Eurojust. Since no such support structure was yet available at the global level, its development could be a task for UNODC. As a concrete first step UNODC might want to consider developing a *multi-lingual website* providing information on central authorities or designated officials responsible for international legal cooperation as well as a guide on the relevant national procedures for mutual legal assistance and extradition in collaboration with the International Association of Prosecutors. Also available on such website should be information on trends in organised crime and on national legal and institutional frameworks for tackling organised crime. In this context the proposal was made for the forging of goal-oriented partnerships between UNODC, Interpol, the International Association of Prosecutors and relevant regional and sub-regional organisations.
7. In order to ensure effective implementation appropriate mechanisms and tools must be developed for data collection, monitoring and review of the implementation of the TOC Convention. The suggestion was made to build on the experiences of regional organizations with review mechanisms and to collect such international best practices for discussion at the first session of the Conference of State Parties. For the collection, exchange and analysis of information work done by regional organisations and the scientific and academic communities should be used as foundations for efforts at the global scale.
8. Several speakers at the Conference reiterated the importance of providing technical assistance to developing countries and countries with economies in transition at their request as foreseen in the TOC Convention. Such forms of assistance could include capacity-building, including training, as well as the provision of mentors to ensure the effective transfer of skills and experience. Special attention should be given to the reconstruction of justice systems in post-conflict situations. In this context developed countries were reminded of the treaty obligation to endeavour making adequate and regular voluntary contributions to a special UN funding mechanism for the provision of such technical assistance. The suggestion was made that developed countries should be encouraged to include in their development assistance programmes capacity building for strengthening of institutional capacities to address organised crime and corruption as critical conditions for poverty reduction and sustainable development.

**Organized crime and the Congolese war economy:
the case of the African Union Reserve System (AURS)**

Jeroen Cuvelier

Introduction

As Naylor (2002) has rightly pointed out, the first obstacle to understanding organized crime is finding out what it is supposed to be. One of the most comprehensive definitions of the phenomenon - according to Naylor - was given during a conference of U.S. law enforcement agents in 1965. On that occasion, organized crime was defined as *'the product of self-perpetuating criminal conspiracy to wring exorbitant profits from our society by any means – fair and foul, legal and illegal. Despite personnel changes, the conspiratorial entity continues. It is a malignant parasite which fattens on human weakness. It survives on fear and corruption. By one or another means, it obtains a high degree of immunity from law. It is totalitarian in its organization'*.

In Naylor's view, organized crime distinguishes itself from common criminality in five respects. First, it requires a specialization in market-based crimes. As opposed to common criminality, which is mostly associated with predatory crimes such as burglary, armed robbery and kidnapping, organized crime appears to specialise in market-based offences, i.e. the production and distribution of illegal goods and services to willing consumers. Second, organized crime groups need to have a hierarchical and durable structure in order to assure themselves of a constant flow of product onto the market. Although all types of underground activity require some organization, organized crime is different in the sense that its participants organize not just to participate in the market for criminal goods and services but also to dominate that market. Third, organized crime always involves the use of violence and / or corruption. The aim of this violence is to establish the group's monopoly power and to strengthen its position in the ongoing marketplace. In its turn, the use of corruption allows organized crime groups to undermine the state's regulatory apparatus, thereby creating opportunities to increase their profit margins. Fourth, organized crime typically generates higher rates of return than common criminality. Finally, organized crime groups have a tendency to penetrate the legal market and take over businesses in order to obtain even more criminal profits. In order to facilitate this penetration, they use all the means at their disposal, including violence, money and corruption².

The discord and confusion about the distinctiveness of some of its characteristics have clouded the debate on organized crime, while simultaneously slowing down the development of efficient policy interventions. Self-evidently, these definitional problems are not unique to the issue of organized crime. Academics and policy makers are also struggling to come to grips with the concept of war economies. While some analysts have shown a tendency to lump all business activities conducted in war zones into the category of 'war economy', others have been more cautious and selective. Ballentine and Sherman (2003), for instance, have pointed out several features, which - in their view - are unique to the 'economies of civil war': they are parasitic, as they are controlled by rent-seeking and the extraction of and trade in primary products, rather than value adding economic activities; they are illicit, because of their heavy dependence on black and grey markets operating at the expense of legal and formal economic activity of the state; and they are predatory in the sense that they are based

² *'Wages of crime: black markets, illegal finance, and the underworld economy'*, 2002, R.T. Naylor: pp. 14-16.

on the deliberate and systematic use of violence to acquire assets, control trade and exploit labour. Additionally, they heavily rely on external financial and commodity networks giving access to the globalized marketplace³.

For obvious reasons, organized crime groups are very much attracted to settle in war economies. Given the strength of their organisational structure and their familiarity with the use of violence and corruption, they find it easy to marginalize local economic operators and monopolize commodity markets. Moreover, the penetration of organized crime in the economies of central Africa has been facilitated by the significant criminalization of the state apparatus in Angola, Namibia, the Central African Republic, Rwanda, Uganda, Burundi and Zaire during the decades before the recent war in the Democratic Republic of Congo. Jean-François Bayart has demonstrated that the state itself had become a vehicle for organized criminal activity due to the so-called '*politics of the belly*', an expression referring to the embodiment of profit from the public sector, practices of corruption and political as well as spiritual powers⁴. According to William Reno, the process of criminalization was spurred by the fact that the political leaders of failed African states tried to cope with the threat posed by the fragmentation of their former networks of patronage in the post-Cold War era by forming alliances with foreign mining companies and private security firms. By doing this, African rulers avoided the emergence of local and competing power centres, but, at the same time, they were also responsible for destroying their own conventional state structures⁵.

For their part, warlords in central African countries have often been compelled to use the services of organized crime groups, as they found themselves politically and economically isolated and deprived of foreign financial aid. In this article, the focus will be on a failed attempt by the RCD-Goma rebel movement to set up a new banking system in rebel-held territory, involving the introduction of a gold- and diamond-backed monetary system called the African Union Reserve System (AURS). Apart from describing the workings of this system, we will try to explain the motives underlying its establishment as well as the reasons for its failure. It will be shown that the AURS may have been set up and considered as an instrument for money-laundering and self-enrichment by economic operators linked to networks of international organized crime.

The genesis of the Congolese war economy

The case of the DRC is commonly viewed as a paradigmatic example of a resource-driven conflict. Nevertheless, it should be stressed that the real picture is very complex. While Congo features a high level of primary commodity dependence and is therefore at a high risk of civil conflict⁶, Charles Cater has shown that the insurgencies in eastern DRC were not only aimed at capturing lucrative economic assets. Rather, the rebellion was the outcome of decades of political misrule and corruption by the state elite, aggravated by socio-economic deterioration and institutional decay⁷. The tradition of kleptocratic governance, brought into fashion during the Mobutu era, created fundamental distrust and dissatisfaction among the population, giving

³ '*The political economy of armed conflict: beyond greed and grievance*', 2003, Karen Ballentine & Jake Sherman (eds.): pp. 261-262.

⁴ '*The criminalization of the state in Africa*', 1999, Jean-François Bayart, Stephen Ellis & Béatrice Hibou (eds.), Oxford: James Currey.

⁵ 'African weak states and commercial alliances', William Reno, in: *African Affairs*, vol. 96 (1997): pp. 165-185.

⁶ According to Collier, the risk of conflict is greater, where the level of a country's dependence on primary commodity exports is around 32 per cent of the Gross Domestic Product ('*The political economy of armed conflict: beyond greed and grievance*', 2003, Karen Ballentine & Jake Sherman (eds.): p. 265.

⁷ *Ibidem*: pp. 261-262.

rise to an expansion of the informal economy. Ironically, it was Mobutu himself who urged the Zairians to 'fend for themselves' and provide themselves with an additional source of income outside the formal economy. As Janet MacGaffey has demonstrated in *'The real economy of Zaire: the contribution of smuggling and other unofficial activities to national wealth'* (1991), Mobutu's call did not remain unanswered. The 1970s and 1980s were characterized by an incredible extension of the informal sector, which, in turn, created an ideal climate for the large-scale looting during the second Congo war, which began in August 1998. From then on, the government of President Laurent Désiré Kabila was challenged by a Rwanda- and Uganda-backed rebellion. While troops from Zimbabwe, Angola, Namibia, Chad and Sudan intervened to support the Kinshasa regime, Rwanda and Uganda set up a Congolese rebel movement to defend their interests. It was called the *'Rassemblement Congolais pour la Démocratie'* (RCD) and headquartered in Goma, near the Rwandan border.

A UN Panel investigating the illegal exploitation of natural resources from the Democratic Republic of Congo has repeatedly accused the belligerents of looting Congolese minerals and using the illicit proceeds to reward businessmen, politicians and highly placed military officials supportive of their beleaguered regimes. In the last UN Report on this issue, published in October 2002, Rwanda and Uganda were blamed for setting up mechanisms to secure their interests in the Congolese mineral business after the withdrawal of their troops from Congolese territory.

A tentative assessment of the motives underlying the establishment of the African Union Reserve System

On 15 June 1999, an accord of mutual cooperation was reached for the advancement of monetary administration and economic development for the Congo. The signatories of the agreement committed themselves to create and implement a central banking regulatory facility and a gold- and diamond-backed currency. The agreement further stipulated that the System would be granted a number of special privileges. First, it was decided that the government would take into consideration a request from the System for specific land, conveying to the System (for fair market consideration) a tax-exempt leasehold interest in this land for a period of sixty years. Second, it was stipulated that the government would exempt the system from corporate income taxes, on condition that the System would pay into the treasury of the Congolese state distributions equivalent to 35 per cent of those distributable earnings which were from its central banking activities within the Congo. And third, it was decided that the key personnel associated with the System would be provided with citizenship, diplomatic passports and accreditation credentials to facilitate their travels⁸.

Several potential business partners were contacted to raise funds for 'the System'. There is evidence that, on November 30th 1999, Valery Shishkin, the then chairman of the Jachton gold mining company (a member of the Russian Gold Association) authorised Anatoly Khlopetsky to travel to Europe in order to raise funds against gold bullions of the Jachton company⁹. Seven days earlier, on November 23rd 1999, Shishkin had already stressed his company's preparedness to engage in the project of the African Union Reserve System by writing a letter in which he confirmed to have 20.000 kg of gold available for purchase or deposit as a guarantee. The gold would consist of 12.5 kg bars, and the gold bullions were

⁸ Accord of mutual cooperation for the advancement of monetary administration and economic development for the Congo, 15 June 1999.

⁹ Letter from Valery Shishkin, 30 November 1999.

stored in the Department of Precious Metals and Diamonds in the Republic of Saha¹⁰. Other Russian partners contacted in relation to the African Union Reserve System allegedly included the Bank Avangard and the Shazirat company¹¹.

When the agreement for the establishment of the African Union Reserve System was signed, its initiators from the rebel side were only controlling a small portion of Congolese territory. Hence, the term ‘government’ probably refers to the rebel authorities, who were still hoping – at that time - to overthrow and replace the Kabila government in Kinshasa. In order to understand their motives for setting up the African Union Reserve System, it is essential to analyse the political and economic conditions at the time of the negotiations. After all, the financial requirements of an insurgent group appear to depend on both the scale and form of a guerrilla struggle. According to R.T. Naylor, it makes sense to distinguish between three successive stages in a rebellion. The earliest stages of an insurgency are characterized by the fact that the guerrilla group operates in zones of contention. As the rebel organization focuses mainly on hit-and-run operations to politically discredit the government, its expenditure requirements are, for the most part, military and relatively small. In the second stage of the conflict, however, it becomes increasingly important for the guerrilla group to sustain itself financially. While on the one hand, the rebels aim to destroy the basic infrastructure and disrupt the industry and commerce with a view to scare away investors, create unemployment and inflation and cause a drop in the formal production, on the other hand, they need to boost their military expenditure as the size and firepower of military units increase along with the scale of operations. Finally, during the third stage of the insurgency, when the rebel movement has succeeded in implanting itself on a piece of territory that is completely inaccessible to the central government, it tries to create zones of control and stabilize its sources of revenue. In addition to having to cover its normal expenses, the guerrilla movement is faced with the need to obtain funds for the upgrading of its arsenal to secure its gains¹².

By the time of the negotiations about the establishment of the African Union Reserve System, the RCD-ML rebel faction of Wamba-dia-Wamba had reached the third rebellion stage described by Naylor (cfr. supra). While originally at the head of the RCD, Wamba-dia-Wamba had been prompted to move his headquarters from Goma to Kisangani in March 1999, due to growing opposition from within the movement. The split between the RCD-Goma faction and RCD-ML was formalized in May 1999. In that month, the college of founders removed Wamba as the President of the RCD and replaced him with Emile Ilunga¹³. Following his move from Goma to Kisangani, Wamba became a key player in Uganda’s strategy to mobilize the Congolese population in the Northeast DRC¹⁴. For Wamba’s rebel faction and its Ugandan backers, the establishment of the AURS was of vital importance to create economic stability in the territory under their control and to attract foreign investment. On a personal level, Wamba wanted to promote himself as a consensus-building politician, ready to restore the political and economic unity of the DRC.

The motives of the businessmen gathered by Wamba to support the establishment of the African Union Reserve System were slightly different than those of the rebels. One of the

¹⁰ Letter from Valery Shishkin, 23 November 1999.

¹¹ Interview with confidential source, 13 February 2003.

¹² ‘*Wages of crime: black markets, illegal finance and the underworld economy*’, (2002), R.T. Naylor, London: Cornell University Press: pp. 45-48.

¹³ ‘*Scramble for the Congo: anatomy of an ugly war*’, December 2000, International Crisis Group: pp. 21-22.

¹⁴ *Ibidem*: p. 34.

most intriguing among these was the American businessman Arthur Van A. Brink, aka Gilbert Allen Ziegler. According to a series of articles published on a website exposing serious fraud cases, Van A. Brink was involved in the scandal of the First International Bank of Grenada, described as ‘one of the crudest ever examples of financial crime’. Van A Brink is described as a former bankrupt with no prior banking experience, no money and a passport issued by a country that does not exist, Melchisedek. Reportedly, he was allowed to capitalize a bank by a photograph of a ruby the bank did not own or possess and take in more than 100 million USD of deposits by offering annual interest up to 250 per cent that was guaranteed by a sham insurer incorporated in a jurisdiction – Nevis – that does not even license offshore insurers. The First International Bank of Grenada was liquidated in 2001 and Van A. Brink decided to move to Uganda¹⁵.

The second partner in the AURS project was a man called Willy Mishiki. According to Tim Raeymaekers, Mishiki is the self-proclaimed prince of the Congolese village of Walikale who used to serve as a Minister for Agriculture in one of the governments under Mobutu. Reportedly, he was questioned on suspicion of money laundering by the American authorities on his arrival in the US in the beginning of 2002. More recently, on 27 June 2002, Mishiki was arrested in Belgium for his alleged involvement in attempts to change 300.000 euro worth of false CFA notes¹⁶.

At least until very recently, Willy Mishiki was a close business associate of the Russian businesswoman Valentina Piskounova, the third and last partner in the AURS project. In addition to running a Ugandan-based coltan trading company under the name of La Conmet, Piskounova used to be the manager of the Ituri Gold Mining Company Ltd, a business enterprise with offices in Kisangani, Bunia and Kampala. On the basis of the available information, it can be assumed that she had a privileged relationship with Salim Saleh, the brother of the Ugandan President Yoweri Museveni. Salim Saleh has been accused by the UN Panel of Experts of having been one of the key actors in the illegal exploitation of natural resources in areas controlled by Uganda during the recent war in the Democratic Republic of Congo.

Reasons for the failure of the System

On 24 June 2000, the Ugandan newspaper New Vision reported that the humanitarian aid and development deal between the rebel faction led by Wamba-dia-Wamba and Arthur Van A. Brink had flopped. One of the sources close to the deal was quoting as saying that Van Brink had used the documents of the agreement to deceive banks and keep 58 m USD for himself. Reportedly, the humanitarian goods were never delivered to the target groups in the DRC.

Given the background of the group of businessmen gathered by Wamba, one may assume that the recovery of the Congolese economy was not these people’s prime concern. It cannot be excluded that they were more interested in the special privileges granted by the System than in the positive impact on investment in the Congolese trade and economy. While there is not enough evidence to describe this group as an organized crime network, the case of the African Union Reserve System does indicate how easily the chaotic and disorganized business climate of the Congolese war economy has been penetrated by unscrupulous entrepreneurs merely interested in short-term economic benefit.

¹⁵ Offshore business news and research website.

¹⁶ *‘Network war: an introduction to Congo’s privatised war economy’*, Tim Raeymaekers, September 2002.

UNITED NATIONS OFFICE
ON DRUGS AND CRIME

IMPLEMENTATION OF THE UNITED NATIONS CONVENTION AGAINST
TRANSNATIONAL ORGANIZED CRIME

CONTRIBUTION BY

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SECRETARY
CONFERENCE OF THE PARTIES
TO THE CONVENTION

Background

Organized crime has benefited from the new shape of the world. It is a threat to all the values that the democratic world holds dear.

There are fundamental changes that have brought this about. The traditional roles, activities and organizational structures of organized crime are being reviewed and altered. The result is a new profile of organized crime. Diversification, flexibility, increased sophistication and modernization are its new characteristics. The old, well-known mafias have revamped their structures and operations, while smaller and much more flexible groups have emerged and are operating all over the world. They too are shifting from country to country, region to region and activity to activity, depending on opportunity, profitability and the lack of capacity on the part of national authorities to place their operations at risk.

Organized crime has become a global business with turnover and profits that very often dwarf the GDP of many nations. In fact, according to some estimates, these illegal profits may be as high as 3 to 4 percent of global GDP annually. That is well in excess of US \$ 1 trillion. The power and destructive potential of these sums circulating in the world economy every year defies the imagination.

The Convention

The international community rose to the challenge posed by transnational organized crime and embarked on a demanding endeavour: to equip the world with a strong, functional and effective international instrument to fight this form of crime. The result of the international community's collective strong political will and sustained commitment was attained in record time. The United Nations Convention against Transnational Organized Crime and its three Protocols are instruments that can act as a shield for all countries of the world against the operations of organized criminal groups. They are instruments that will strengthen the existing capacity of countries to counter organized crime and create that capacity for those countries that do not yet possess it. They are instruments that will ensure that there are no more safe havens for organized criminal groups.

The process leading to the successful completion of the Convention and its Protocols is a remarkable example of the strength of the international community when it operates collectively and is driven by a common purpose.

It is also a concrete manifestation of the ability of the United Nations to function as the framework for the promotion of international cooperation and the achievement of tangible results. Results that are based on the principles of genuine cooperation, the achievement of acceptable and workable solutions to complex problems, and the attainment of agreement that reflects all concerns, without compromising the quality, functionality and universality of the final product. These are the principles that make the Convention a unique and strong instrument, with the full potential to guide the international community in building a future beneficial to all.

The development of the Convention and its Protocols is marked by these qualities throughout. Not only was it negotiated in record time, but it has met with overwhelming support: its signatories stand at 147, while 53 States have deposited their instrument of ratification. The Convention entered into force on 29 September, while the Protocol on Trafficking in Persons, as a result of the successful Treaty Event that we had in New York last week, will enter into force on 25 December. The Protocol against the Smuggling of Migrants now has 37 ratifications and is, therefore, not far behind. The third Protocol on Trafficking in Firearms now stands at 12 ratifications and may require some more time to catch up.

The entry into force of the Convention, and the clear roadmap towards the beginning of the implementation phase of the new instrument, make it more important than ever to take a critical look at the record of the participation of the members of the European Union. It is true that all members of the European Union supported actively the development of the new Convention and its Protocols, with active and constructive participation in the negotiation process, making substantial contributions to the improvement of the final text. It is also true that several of them also supported with generosity the negotiations process and the efforts of the *United Nations Office on Drugs and Crime* to promote the entry into force. However, it is somewhat puzzling that only France, Spain and, more recently, Denmark have completed the ratification process to date. It is even more perplexing when one considers that the Convention and its Protocols have been included in the *acquis communautaire* and, perhaps exactly because of that inclusion, the Convention and the Protocols have already been ratified by most of the accession countries. The complexity of domestic procedures required for the ratification may be one reason, but it can hardly serve as an excuse. The ratification process is a manifestation of political will and complexities can be overcome if there is enough political will to assign to that process the high priority that the instruments deserve. There is still some time to rectify this situation, and make sure that the European Union members are present as full Parties when the Conference of the Parties starts its work, but for this to happen action is necessary as soon as possible.

The way forward

With the entry into force of the Convention, its implementation mechanism will also become operational. Pursuant to the procedure outlined by the Convention itself and the General Assembly, the *United Nations Office on Drugs and Crime* is preparing to convene, in late January 2004, the Ad Hoc Committee that conducted the negotiations for the Convention and its Protocols in order to prepare draft rules of procedure for the Conference of the Parties. The first session of the Conference of the Parties is scheduled to be convened in Vienna in late June 2004.

The development of the implementation mechanism of the new Convention is the result of substantial debate and careful negotiation. It was never an option during the negotiations not to put in place such a mechanism. The debate revolved around the type of mechanism that would be appropriate for instruments like the Convention and its Protocols. It also covered the question of whether, and to what extent, the new Convention would be inspired by, or seek to replicate, the experience of other mechanisms that had been established in the context of other instruments, mainly at the regional level.

There were many concerns that needed to be taken seriously and given adequate attention, most prominent among them those related to issues of protection of sovereignty. Other concerns were more practical and related to the experience from other mechanisms that were taxing national authorities heavily.

The formula found reflects the desire of all countries to achieve effectiveness and efficiency, while preserving key principles and ensuring that the universality of the new

instruments remains always in sharp focus. The Conference of the Parties is a clear departure, a movement forward from previous practices in the field of implementation of international conventions, at least in the context of the United Nations. The more traditional practice of country reports on progress in implementation is supplemented by additional review mechanisms, which the Conference may establish. But perhaps the most important feature of the Conference of the Parties is that it will not only function as a review body. It will pay equal attention to serving as a forum for developing countries and countries with economies in transition to explain the difficulties they encounter with implementation and seek the assistance necessary to overcome such difficulties. This link between implementation and technical cooperation and assistance reinforces the collective will that guided the negotiations to take into account all concerns and needs and address them jointly in order to achieve the common goals embodied in the new Convention.

To fully appreciate this link, it is important to recall the development of the technical cooperation provisions of the new Convention, another feature that set it apart from other similar instruments.

These provisions were negotiated the understanding that the implementation of the Convention would be in the interest of all countries. Consequently, such implementation would be the responsibility of all countries, regardless of their level of development. Developing countries would gear their systems and bring their limited resources to bear in discharging this responsibility. However, everyone recognizes that, once this has been done, there will be many areas where developing countries and countries with economies in transition would require significant assistance until they are able to bring all their capacities up to a common standard. Bridging these gaps would be the function of targeted and focused technical cooperation. For the provision of technical assistance to developing countries the Convention foresees the operation of a special account under the United Nations Crime Prevention and Criminal Justice Fund, to which regular financial contributions would be made. It is encouraging that almost immediately after the signature of the Convention, donor countries began making contributions to that account, demonstrating the seriousness with which they regard the matter of providing assistance to developing countries and countries with economies in transition, even at the pre-ratification stage.

Concluding remarks

The development of the Convention against Transnational Organized and its Protocols has generated new momentum for increased international cooperation.

This new momentum must not be allowed to dissipate. It needs to be coupled and supplemented by a shift in the more traditional way of viewing international cooperation for development. Building roads or schools, irrigation or electrification systems are essential as the "hardware" of sustainable development. Equally crucial is commitment to investing in the rule of law, human safety and good governance. As much as those may be "soft" components of social dynamics, there should be no doubt that unless they are present in a society, development can never be sustainable.

Fortifying the pillar that is criminal justice is an essential guarantee for economic development and growth, as much as the absence of corruption is a guarantee for economic investment. It used to be that devoting resources to these issues was caught in the argument of competing priorities. If one had to choose between strengthening the skills of judges and building new roads, the latter was likely to be considered as a higher priority of infrastructure-building. That equation must be fundamentally altered in order to lay the foundations for truly sustainable development.

The achievement of the goals of the new Convention and its Protocols is a good example. Success in this field will hinge not only on the faithful and consistent implementation of the measures they include, but also on the capacity of all countries to sustain their commitment and honour their obligations. There needs to be a conscious effort to achieve comparative capacity of States. That implies sufficient provision of technical cooperation and the concomitant commitment by donor countries to make available the required resources.

The new Convention must mark the beginning of a joint effort in which there will be no weak links. Lack of capacity to fight organized crime domestically or to cooperate in fighting it internationally is bound to create weak links that the international community cannot afford. We must all look upon technical cooperation as an investment in the future with the potential for very high returns.

The new Convention makes a long-lasting contribution to national and international efforts by including provisions designed to achieve two fundamental goals. First, to shield the legitimate economy from the efforts of organized crime to infiltrate it. Second, to strengthen the culture of legality, which is the only way of ensuring that organized criminal groups do not forge links or find support within society.

The challenge for the future remains complex and difficult. However, there are many reasons for optimism. Rarely has an idea matured and acquired the consensus of the international community so quickly, overcoming the scepticism about the tendency to reduce international instruments down to the lowest common denominator. The opportunity to make a quantum leap in the fight against transnational organized crime is now available.

ICLN-conference on Effective National and International Instruments for Institutional Cooperation and Coordination - The Hague, 9-10 October 2003

Reflections and considerations from the break-out session on trafficking in human beings; short report from the chair (*See for background information and the chosen angles for discussion the annexed document, containing the introductory remarks of the chair*)

Chair: Anna G. Korvinus
Contributions by: Ingela Klinteberg
Marco Gramegna

We can look back on an interesting session on the subject of trafficking in human beings (THB). The central question in the break-out session, put forward by the organisers of this conference, was how to increase the efficiency and effectiveness of existing national and international counter-trafficking instruments, especially with regard to prosecution of THB.

When speaking about 'increase', it is first necessary to designate success factors to make possible progress visible (*see for further explanation the annexed document*).

First we have been listening to the contributions of two distinguished and well experienced speakers; one, by Mrs. Ingela Klinteberg, from the perspective of prosecution, the other, by Mr. Marco Gramegna, with a focus on prevention, protection and assistance to the victim, with an open eye for the need of a clear punishment of the trafficker.

Then we had discussion on three items, indicated as possible success factors in the fight against trafficking. These items are directly linked with what is generally considered to be the main feature of the crime of THB and the driving force for the perpetrators: *high profits, low risks* (to be caught and brought to justice). All these three items are included, although only in basic terms, in the UN Convention and the annexed Trafficking protocol.

The first item was: how to *increase the willingness of victims to cooperate with law enforcement*, because in practice their testimony or statement is almost indispensable for investigation and prosecution. A suggestion that could increase this willingness could be to offer the victims (preferably after the proceedings in court) a right to permanent stay in the country (or at least be more generous in granting them such a permit on humanitarian grounds) or to accept state obligation to guarantee protection (and assistance) upon return in the country of origin (see also art. 8 of the Protocol: return shall be with due regard for the safety of that person (etc.)).

The second item of discussion was the need to look for means to *improve confiscation of the proceeds of the crime of THB*. For, this is necessary to lower the profits of the traffickers. A recommendation was introduction of the principle of reversal of the burden of proof. Yet, that could lead to a conflict with the principle of presumption of innocence. Some practical solutions to this conflict of interest were suggested, but for the sake of brevity I will not go into details on that.

The remaining time was spent on the final item of discussion: *victim compensation*. Compensating the victim for the damage suffered (as it is also stated in art. 6 paragraph 6 of the Protocol) can be regarded as an essential way of doing justice, not only to the victim, but also to society at large, in accordance with the rule of law. An interesting thought on this point was raised, namely that victim compensation is a responsibility of the state and should not be automatically linked with the confiscation of the proceeds of the crime.

These are the most elementary conclusions out of the break-out session on THB.

ICLN-conference on Effective National and International Instruments for Institutional Cooperation and Coordination

The Hague, 9-10 October 2003

Contribution of Anna G. Korvinus for the break-out session on trafficking in human beings.
(text will not be delivered in its entirety)

The UN Protocol aims at suppressing THB, by preventing and combating it, by punishing the perpetrators and by protecting and assisting the victims, including their human rights. To meet these objectives, cooperation between state parties should be promoted.

Introduction

Word of welcome.

I will first introduce the theme and goal of this break-out session. Then I will give the floor to two distinguished speakers, who both will go into more details on the trafficking item in relation to their respective professional fields. After these speeches, I will briefly indicate some thoughts to instigate the discussion.

The central question we will have to discuss this afternoon is how to increase the efficiency and effectiveness of the fight against THB, especially prosecution of THB. Before we can look for answers, some preliminary questions rise:

- a. What do we regard as efficient (acceptable balance between the input of means and the results thereof) and effective (the set goal is reached)? And, should we approach this from a national or an international point of view?
- b. How can be measured that anti-trafficking activities are efficient and effective? How can progress and success be made visible?

Annex to these questions, two aspects should be taken in mind:

1. Inherent disappointment: Because of its inherent hidden character it is impossible to get a complete (numerical) overview of the scope of the THB problem. Thus, success will be difficult to measure (f.e. more prosecutions might seem to indicate more success, but could also mean that the attention for prosecuting trafficking is rising or that prevention is not successful).
2. But then the challenge is: Look for indications that can demonstrate that progress is made. Use them to show how successful anti-trafficking measures

and practices are. Such an indication is needed before the question can be answered that the organisers of this conference have put forward: if and what new instruments are needed and how to increase the effect of existing and new instruments?

Before proposing to you three concrete items for debate, I would like to give the floor to the two speakers for this session. (*Follows contribution of Mrs. Klinteberg and Mr. Gramegna*)

Introduction to the actual discussion

As indicated at the start of this session, to know if and what new instruments are needed, we look for ways to measure the success of existing anti-trafficking efforts, based on existing instruments. I propose two ways, but are open to your suggestions.

- Continued integrated research for figures and facts on the same items. Repetitive (annual) presentation will show trends, which will indicate success or failure.
- Designate success factors. Success is not always quantitative (more or less), but could also be qualitative (better). Improved reception and assistance to victims of THB discovered f.e. could be a success factor (perhaps not in tackling the problem, but at least in handling it). An increasing number of assisted repatriations could be as well.

Actual discussion items

The idea of designating success factors is a starting point for further discussion. I propose three items in anti-trafficking that, in my opinion, might be called guaranteed success factors, if they are implemented and effectuated in practice. These items are included in the UN Convention and/or the trafficking Protocol, but mainly in basic terms and thus need further elaboration, in order to be efficient and effective. These would thus be priorities in implementation of the Convention and the Protocol.

All three items are linked with what is considered to be the main feature of the crime of THB and the driving force for the perpetrators: **high profits, low risks**. In order to be successful, the plan of attack should thus be: how to increase the risks and lower the profits?

The three items I propose are:

1. *Victim cooperation in law enforcement*. As practice shows, their cooperation is indispensable. Increasing the willingness of victims to testify and act as a witness in the law enforcement process leads to more successful investigation and prosecution. However, too often the thought of low protection and having to return to the country of origin frightens them away from this cooperation. Art. 24 of the Convention obligates state parties to take appropriate measures to protect witnesses and their relatives, but there is the stage before being a witness, in which circumstances may hamper a victim to consider being a witness. Often this concerns the prospect of the lack of adequate safety after cooperation with the authorities. Art. 25 of the Convention and art. 6 para. 3 of the Protocol require for several assistance measures to be taken, while para. 1 and 5 of this article require for protection

(of privacy and identity of victims and of their physical safety). But the latter provision is - in the nature of this range - restricted to the condition that the victim is within the state's territory. Articles 7 and 8 of the Protocol see to providing (temporary) residence and repatriation. All these provisions are rather precise and detailed, but their application in national practice is still limited.

Improvement on the point of victim cooperation would lead to higher risks for the perpetrator to be caught and brought to justice.

2. *Confiscation of the proceeds of the crime.* Hit the perpetrator where it hurts most: is his wallet. A high (if possible 100%) percentage of confiscation among cases in which the perpetrator was convicted means success. Article 12 of the Convention incites state parties to adopt national legislation to make confiscation possible and art. 13 extends this to the sphere of international cooperation. Both articles contain minimum norms on when confiscation is possible. However, this does not mean that this possibility is actually applied in practice. Therefore, these provisions should be further elaborated to make them more concrete, specifically with regard to international cooperation. Confiscation has a discouraging effect and in that way works preventive. It also minimises the profits.
3. *Victim compensation.* Compensating the victim for the emotional and physical harm inflicted upon her can be structured as part of the punishment of the perpetrator. But most of all it is an essential way of doing justice in the form of redress and satisfaction for the victim. Art. 6 para. 6 requires state parties, in basic terms, to adopt legislation to this end. Apart from damage compensation, retribution of the earnings of her exploitation should take place. Art. 14 of the Convention indirectly incites state parties to use the proceeds confiscated for the purpose of compensation. Yet, neither compensation nor retribution should be made dependent from confiscation. Compensation and retribution add to effective punishment and to restoration of justice, both for the victim and for society at large, in accordance with the rule of law. Again, further realisation of the instrument of compensation, and introduction of provisions for retribution, are needed. These measures add to the risk run by the perpetrators and also minimise their profits.

(Interim conclusion: not the existence in itself of rules and regulations on these three items, but rather their implementation and, more accurately, their effectuation, should be given priority. If this is done to the general aim of the Convention and the Protocol, this will result in higher risks and minimised profits for the perpetrator. Reaching this goal could be called a success. Thus, focussing on these three items would enhance the efficiency and effectiveness of not only prosecuting, but also of preventing and suppressing THB.)

Closing up

Introductory speech for ICLN conference on 9 October 2003 from 09:05 – 09:20

Transnational crime in the 21st century: national and international instruments (± 15 minutes = 1500 words)

To be given by SG Demmink

Dear Chariman, Ladies and Gentleman

It is my pleasure as well to welcome you most cordially to this conference on international cooperation on transnational crime. You have chosen an excellent site, The Hague, the Capital City of international law, as well as a very special venue: the Peace Palace.

I have been asked in my introductory speech to briefly discuss the instruments, both national and international, that are currently available. First of all, I will stress how important it is that our fight against international crime remains effective. Then I will briefly touch upon the discussion launched by the Netherlands on a separate European Criminal Justice Area in the context of the European Convention.

First of all, the instruments to fight international crime effectively. The international community has made great progress in this field, especially in recent years. Fighting crime figures prominently on the agenda of many international organizations, which is as it should be. This shows that countries are well aware that we must collaborate in the field of criminal law in order to protect our common interests.

International agreements in the field of criminal law made in bodies such as the UN, the Council of Europe, the European Union and the OSCE take many different approaches: exchanging information about one another's legislation and best practices, improving operational cooperation between criminal investigation services of various countries and approximation or even harmonizing legislation.

A very recent example where the global community has been successful, and one we are all familiar with, is the UN Convention Against Transnational Organized Crime (TOC-Treaty) which became effective last week. The Netherlands is convinced that crime can be more effectively and energetically tackled on the basis of this Convention. The next important step for the contracting states, and especially the EU member states, is to ratify this convention as soon as possible.

The number of instruments

The Netherlands is a member of many international organizations such as the Benelux, the Council of Europe, the EU, the OSCE and naturally the UN. We have noted a great increase in the number of activities, particularly in the fight against organized crime and its many manifestations such as terrorism, human trafficking, money laundering and corruption. It is a good thing in itself that many international bodies work on ways of dealing with serious forms of transnational crime. But it does have a drawback: I am referring here to the large number of new instruments that have been drawn up, sometimes without enough regard for how they are related, sometimes perhaps showing too much overlap, and even without enough thought to the consequences for national legislation, or for the deployment of capacity by the competent national services.

An example of a field in which much legislation has been adopted in recent years is human trafficking. It all started quite a while ago, in 1904, when the first convention was concluded for the suppression of white slave traffic. Six years later an international agreement put a further rein on trafficking in women; then, in 1950, the Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others was adopted, and even today this is the instrument we use in the fight against international human trafficking. A specific protocol to combat human trafficking, or in the terms of the protocol: modern forms of slavery, has been appended to the UN Convention Against Transnational Organized Crime. The European Union has also focused its attention on human trafficking, resulting in the adoption of a framework decision to combat human trafficking. Presently, subsequent to the Declaration of Brussels, new instruments are being drafted. These will take into account the broad definition used in the UN Protocol. In the Council of Europe, after having adopted a Recommendation on human trafficking in 2000, the logical next step seems to be drafting a new convention, with emphasis on the formulation of international standards for human rights. The Netherlands currently chairs the OSCE, where human trafficking has been named as a priority.

As you see, with the passage of time, conventions become more specific and they succeed one another ever more rapidly. Apparently this is an instrument that requires continual adjustment and fine-tuning. And this brings me to my next point: how the various instruments are interrelated.

In drawing up new instruments for fighting international crime, we must make sure that they continue to supplement and complement one another, that they are consistent in their terminology and do not create uncertainty.

Most of you will be able to name examples where this was not completely successful – definitions that are not entirely consistent, or

differences in terminology used in the provisions of the conventions. The EU framework decree on terrorism and the UN convention can be mentioned in relation to the definition of 'terrorist intent'. Fortunately, at the last minute the terms in the UN convention were allowed to prevail, although the EU ultimately decided to add a third category, the economic and social disruption of a country by a terrorist act.

Another clear example of differences in terminology can be seen in the proposal of the European Convention for a new EU constitution. The draft text includes provisions that are closely related to the European Convention on Human Rights. But the trouble is that the terminology is not exactly the same. I expect this will lead to a great many legal discussions as to the scope of the provisions and the relationship between the two conventions.

And lastly, the consequences for national legislation.

Often, as a result of new international conventions, the national legislation of the member states must be adjusted. For instance, as a result of international agreements, the Dutch government recently submitted to parliament legislative amendments on human trafficking (the definition and making it an offence to obtain proceeds from human trafficking) and on terrorism.

Coincidence or not, today and tomorrow many Ministers of Justice are meeting in Sofia, Bulgaria in the context of the Council of Europe to discuss the desirability of a new convention on terrorism. For the time being the Netherlands has opted to take an attitude of reticence – primarily because the UN convention was only recently drastically amended and the member states now need to work things out in further detail.

Now, what is the Netherlands position on further harmonising national law in this field?

It goes without saying that the Netherlands attaches great importance to effectively fighting international crime. But what this ultimately boils down to is that sufficient instruments are available at an operational level to tackle this form of crime effectively and efficiently. In popular terms, this means catching the crooks who are involved in international crime. To achieve this objective, it can sometimes be desirable to harmonize the legislation of member states. But harmonization must not be an end in itself: it should only take place if it can contribute to better operational collaboration between the competent authorities of the countries involved. A good example of this would be the Joint Investigation Teams that have been made possible in an EU context.

Now that there has been so much emphasis in recent years on harmonization of legislation, and now that so much has been achieved in this field, I think time has come to place greater emphasis on implementing the instruments we have and on charting their consequences for our investigation services. I have the impression that we have an adequate number of instruments available in many fields that allow us to effectively tackle international crime. If we find that there are still problems at an operational level, then we first need to see whether these problems can be solved in a simple manner. This might involve setting up auxiliary aid to investigation services such as networks, handing out information on the powers of the various services in the member states or exchanging best practices. Another point that requires our attention is that international agreements must be implemented conscientiously, and in most cases this means that the national services must make available extra capacity for this. And this is often where a problem arises, because priorities set at an international level then compete with national priorities. Experience has shown that in such a case, member states usually put their national priorities in first place, so that international agreements take a back seat.

And this brings me to another point I wish to mention, which is the idea of a separate European Criminal Justice Area.

In the context of the European Convention, the Dutch Minister of Justice, Mr Donner, has written a discussion paper in which he argues in favour of a separate European legal order in which serious transnational forms of crime can be investigated, prosecuted and tried. This would help bring about a solution to the problem of 'competing' national and international priorities which I just referred to. This legal order would function alongside the national legal order of the member states and would lead to EU criminal legislation with EU law of criminal procedure and EU capacity for prosecuting and trying cases. Unfortunately, this proposal is nowhere to be found in the draft text of the European Convention. At the InterGovernmental Conference where government leaders met this past Saturday, 4 October, it became clear that many member states wished to amend the draft text. The Dutch government has stated that it wishes to stick as close as possible to the result of the European Convention. Even so, as far as the Netherlands is concerned, efforts continue to be aimed at developing the idea of a European criminal justice area. It will undoubtedly take a long time, but this is not infrequently the case for international cooperation.

It is time to wind up. Several times I have referred to developments that took place only recently (such as the UN convention on organized crime, which recently became effective, and the IGC) or that are taking place as we speak (such as the ministerial conference of the Council of Europe). This goes to show that the theme of this conference is highly topical and that the international community is still hard at work on developments in this field. Moreover, the UN convention took effect last week, so it is now time to work out the practical implementation of the provisions of this convention. This conference therefore comes at an excellent time, and the programme offers points of departure for interesting discussions. So just let me wish you a fruitful conference.



EUROPOL

Cyber Crime
by
Björn Clarberg
High Technology Crime Centre

Dear Ladies and Gentlemen,

High technology crime, cyber crime, computer crime, digital crime, IT crime; the phenomenon has been given a number of expressions, and many attempts have been made to define it. Europol has adopted the terminology High Technology Crime to recognize that it is a wide spread phenomenon and impacts upon so many forms of traditional crimes as well as generating new types of crime. For the purpose of describing and visualising the relationship between High Technology Crime and Cyber Crime the following definitions have been assumed by Europol, which in reality means that cyber crime forms a part of the greater phenomenon of high technology crime:

- ✓ *High Technology Crime: The use of information and communications technology to commit or further a criminal act, against a person, property, organisation or the networked computer system.*
- ✓ *Cyber Crime: The criminal use of any computer network or system on the Internet. Attacks or abuse against the systems and networks for criminal purposes. Crimes and abuse from either existing criminals using new technologies, or new crimes that have developed with the growth of the Internet.*

The whole area of high technology crime is shrouded in a cloak of mystery due to the very nature of the crime: that being that it can, and does occur within “cyberspace”; crimes that predominantly involve data and information, which are intangible products of the crime. It is also often interpreted that there is a whole host of “new” crimes involving, and against information networks, however this is not the case and there are only a very small number of crimes that you really could call “new” and yet some are still debatable as to whether they are truly new, and not just rehash of traditional crime types. It must also be recognised that high technology crime is often not a crime in isolation, and forms part of a crime which is also occurring within the physical world. It is very difficult to find a real world crime that does not have a high technology element, even if it is as common and straightforward as the use of a mobile telephone.

The new crimes are those which are focused on attacking the systems and networks, such as forms of hacking, viruses and Denial of Service. However these latter types can be in support of other traditional crimes such as extortion and fraud, and hacking to obtain data is a form of theft. Most identified disruptive attacks to date have not been committed by organised criminal groups, but by individuals motivated principally by the desire to cause harm or mischief rather than to make money. A notable exception is the so-called ‘hacktivism’, adopted by a number of political movements, the anti-capitalist movement being one example, as an effective form of protest. So the distinction between old and new crimes may become even more clouded.

To demystify the entire subject of high technology crime it can be considered as being, in nature, both vertical (cyber crimes such as hacking, cracking, Trojan horses, malicious codes, etc) and horizontal, thus impacting across all crime types (for example facilitation of terrorism, trafficking in human beings, drugs, economic crimes, etc).

Targets for the “cyber-criminal” are now available worldwide from military, government and educational institutions to corporate and commercial businesses, to the public and users of online services, to the very companies which provide the infrastructure and services for the Internet, to national critical infrastructure. The global vulnerabilities of the networked world have been increasingly evident through incidents of malicious code spreading worldwide, crippling systems and costing millions of euros in damage.

Law enforcement agencies/workers face huge challenges in addressing the complications caused by the use of new communication methods; the increased sophistication of technology and criminals. Computers and Internet have added another tool to the arsenal that criminals have at their disposal to commit crime. A good starting point in understanding this is to approach high-technology crime as: **OLD CRIMES NEW TOOLS: NEW CRIMES NEW TOOLS.**

There are many constraints and hurdles involved in gathering reliable information to characterise and assess the volume and impact of high-technology crime. This is further magnified when attempting to do so in the context of organised crime. There is very little, if any quantitative data available for assessment of the size and impact of high-technology crime within the European Union. The European Union suffers from a lack of mechanisms to capture data on the varying forms of high technology crime, and even more challenging is the extraction of the high-technology element from already reported crime. As highlighted within the research of the European Union Joint Research Centre¹⁷:

“A credible and rigorous reporting system for Europe and the MS’s is critical to understanding the scale of this threat to the citizen and E-Europe”¹⁸.

Another issue is international norms and standards that national governments ultimately will be expected to meet in their legislative, regulatory, and enforcement efforts and that will have to be agreed upon. The Council of Europe’s **Convention on Cyber Crime** is the first major step in this direction. In this context data retention is often cited as a contentious issue that can and does impede law enforcement investigations. It is an area where consensus within the European Union would contribute greatly to the outcome, as all those involved could benefit from a common standpoint and the results this may bring. Europol has taken steps in this direction in order to support and coordinate the various efforts already undertaken in the Member States. Europol’s work on a compilation of the Member States law enforcement minimum requirements for data retention will soon be submitted to the European Union (e.g. the Commission and the Council). Also harmonisation is needed for both substantive and procedural laws between the European Union Member States and beyond to successfully fight high-technology crimes. Countries have to reappraise and revise rules of evidence, search and seizure, electronic phone tapping, data protection rules, the global nature of the Internet etc. A better coordination of procedural laws would also facilitate cooperation in investigations that cover multiple jurisdictions. The issue of jurisdiction is of particular interest and importance when you have a crime that does not recognize any “borders”. The juridicial competence of and how to police cyber space is one of the greatest challenges of yesterday, today and for tomorrow. The initiatives carried out by the European Union Commission to bring forward a comprehensive policy in the context of the Commission’s Communication **“Creating a Safer Information Society by Improving the Security of Information Infrastructures and**

¹⁷ Joint Research Centre of the European Union is a Directorate-General of the European Commission, providing science and technology advice to European policy makers.

¹⁸ “Cyber Abuse in E-Business Processes: Report of an Exploratory Study”, Joint Research Centre of the European Commission, October 2001

*Combating Computer-related Crime*¹⁹ are well recognised. In particular the legal proposals announced in the cyber crime communication will pave the way for a harmonised legal framework and closer cooperation.

In addition to appropriate legislation, it is important that the Member States with their different approaches towards addressing high-technology crime, due to the varying legal systems, priorities and organisational structures of their law enforcement services, develop the capacity to implement these laws and regulations. This requires the development of expertise in the area of high-technology crime as well as effective information sharing across agencies within a country and across national borders. Moreover, this sharing has to go beyond traditional law enforcement bodies to include national security and intelligence services.

A new and important development at the European Union level is the European Commission's recent (April 2003) initiative and proposal to establish a new European Union Agency on Networks and Security for Information and Computer Technology. The Agency will carry out research and be an early warning system on digital threats (vertical approach). Furthermore, it will look into legislative issues related to Information Communication Technology.

Another vital component of a strategy to combat high-technology crime is partnership between governments (e.g. law enforcement, CERT's²⁰.) and the private industry, especially the information technology sector. Information sharing arrangements have to be established in order to minimize the damage of attacks, infiltration by organised crime and to share experience and knowledge. Government and private sector cooperation of this kind is not always easy but it is clear that a degree of mutual trust and interest can make a difference. For cooperation to be extended, law enforcement services have to exercise considerable care and discretion not to expose company vulnerabilities, while the companies themselves have to be willing to report any criminal activities directed against their information and communication systems.

In recent years, international co-operation in law enforcement has been achieved through a series of extradition and mutual legal assistance treaties that allow governments to share information and evidence with each other. The legal framework for Joint Investigations Teams (JIT) is another interesting example on the possibility of international law enforcement co-operation. It is a multi-national task force with multi-agency approach and will provide for joint operations of police, customs and other specialized law enforcement services of the European Union Member States. However, there are still some practical challenges to overcome such as: How exactly is the set up decision for a Joint Investigation Team to be taken? How to solve different national approaches on the division between investigative and prosecutorial functions? How to exactly organize the information exchange between the participants? Can intelligence possibly be treated as evidence? Which criminal procedure is to be applied to evidence taken in the course of the Joint Investigation Team? What will be the legal position of team members in court proceedings?

The rapid development in Information Communication Technology (ICT) together with the international phenomenon of using the Internet for any criminal activity simply calls for an appropriate approach responding to the professionalism of offenders and criminal organisations and networks at least at the European level. Some European Union Member

¹⁹ COM (200) 890

²⁰ Computer Emergency Response Teams

States have already established specialised units to counter the phenomenon of high-technology crime. Preferably all MS should establish High Technology Crime Units at least on a national level. Europol should play a crucial role as we all know that high-technology crime is an international problem which requires an international response and co-ordination. Co-operation and co-ordination are central to successfully addressing the phenomenon. Europol's task is to support ongoing cross-border investigations and to coordinate Member States' efforts in countering criminal organisations and networks. The outcomes of this kind of Europol support, complemented with direct operational analysis have already proved to be successful. Greater dependence should be placed upon Europol by the Member States for these purposes, and law enforcement services are able to utilise Europol to facilitate preventive and investigative activities of an international dimension in the arena of high technology crime. Europol has positioned itself to play this role within the EU through the work carried out by the development of its **pilot project** High Technology Crime Centre²¹. In some cases, Europol could provide the service for those MS without specialist units, and with the extension of the European Union to ten more MS the issue could become even more significant.

The business case for the pilot project was that MS experts' expressed strong demands to have a central point of support (e.g. coordination, information exchange, analysis, training, research and development) in investigations of high-technology crime in the European Union. Due to very rapid technical developments the added value provided by the High Technology Crime Centre is efficient coordination, dissemination of information and intelligence. This is fully in line with Europol's vision statement. As mentioned high-technology crime covers a wide range of topics. To ensure a high and consistent quality of the deliverables, taking into account existing resources, the strategy is to begin with limited activities and actions in some prioritised areas. To have and allow an experimental and learning process; this will provide insight as to whether to extend, limit, adapt or prioritise any of the activities and crime areas. A structured and quality approach is also required for further development. The High Technology Crime Centre progression and activities will continue to be customer driven. The task and responsibility to counter high technology crimes is both vertical and horizontal, thus impacting across all crime types. The latter will be carried out in close co-operation with Europol's expert units. Due to the fact that Europol had a slow start in the high-technology crime arena, many areas of cyber crime have already been explored by Member States' law enforcement services and other organisations. The High Technology Crime Centre will focus its efforts on issues where it can develop and offer the internal and external clients specialist competences. To develop the High Technology Crime Centre further, the next and future steps would be to focus on the intelligence work.

Europol is in contact with many partners in the MS, frequently exchanging information on investigations including personal data through the well-established Europol Liaison Officer network and also collecting MS requirements for future activities. One of the main needs is to share experiences and good practice guidelines. The awareness of high-technology investigations is mainly achievable through learning-by-doing; theory is a complement to it. For this reason, the need to have an on-line forum for the exchange of technical information on top of the Europol Liaison Officer network has been voiced many times by Member States' experts without any response. Therefore, Europol has joined, for a trial period the so called "Hanover Group" project, recently renamed the 'European Union High Tech Crime Virtual Private Network' by the participants. The aims and objectives of this project are to

²¹ The pilot project High Technology Crime Centre was launched in September 2002 to bring together different initiative on high technology crimes at Europol and to have a common and co-ordinated approach on the issue.

link high-technology crime expert units in the Member States in a secure virtual private network for the purpose of exchanging technical information only.²²

Europol has developed a basic training course on Internet investigations with the aim to provide fundamental skills for investigating crimes committed on the Internet and to bring law enforcement investigation standards together. Furthermore, it aims also to disseminate the latest investigation techniques and methods and to promote the sharing of mutual experience. As Europol is not a training institute, high-technology crime training delivered to externals will in future be planned and organised in close cooperation with CEPOL.

As it is becoming increasingly the case that criminals are applying technology in their activities, and that it is somewhat difficult to find a crime, particularly of a serious organised nature, where there is not a high-technology element, what does this mean for law enforcement tomorrow?

It means that there is going to be a greater demand placed upon law enforcement agencies/personnel for computer forensic capabilities. This is in respect to resources in the sense of trained personnel at all levels of law enforcement at local, regional and national levels; computer hardware and software which is regularly updated in line with technological developments; research and development to keep abreast of emerging challenges in this field. In the future, digital and law enforcement personnel need to position themselves proactively in order to be able to respond to the challenges this is bringing.

It is not only the challenge of data storage size increases that law enforcement face, but also the variance in data storage devices. New communication and media devices, all of which can contain data relating to criminal behaviour, are being rolled out. Integration of mobile communication devices and the Internet will undoubtedly increase criminal opportunity and provide law enforcement with even greater challenges.

A focus should also be on the non-legal measures to improve the cooperation between the different specialised units in the Member States!

The uncertainty of the size and extent of high technology crimes clearly indicates that intelligence led policing is a necessity and therefore a greater subscription to the intelligence process is needed by the law enforcement services.

Finally, innovative strategies are required to respond to the increasing drain on law enforcement resources and lack of legislation in the field of high technology crime!

²² No personal or operational data which is subject to Articles 8 & 10 of the Europol Convention will be communicated or exchanged.

The European Convention and its implications for combating transnational crime.

by

Roelof Jan Manschot, Chief public prosecutor, member for the Netherlands of Eurojust.

In part III of the draft-Convention, articles 154-173, we can find the ideas on how the area of freedom, security and justice will be constituted by the Union in the near future.

It shall be done with respect for the fundamental rights, taking into account the different legal traditions and systems of the Member States (art.153,par.1).

The Union shall endeavour to ensure a high level of security by measures to prevent and combat crime, racism and xenophobia, and measures for coordination and cooperation between police and judicial authorities and other competent authorities, as well as by the mutual recognition of judgements in criminal matters and, if necessary, the approximation of criminal laws.(art.153,par.3).

Before I elaborate on the various proposals in the draft it seems appropriate to analyse shortly what the situation is at present in order to compare in what way the proposals are indicating a change to the current situation within the Union.

At this moment there are no supranational instruments in the Union in the field of the combat against transnational crime, neither on police level nor on prosecutorial or judicial level.

There is neither a supranational Criminal Code nor a Criminal Procedural Code (although there exists a draft for a *Corpus Iuris Europeensis*).

Of course there are Conventions on Mutual Legal Assistance and extradition like the Convention of 1959 and the European Convention of 2000 and its Amending Protocol of 2001, the last one giving us promising possibilities for closer cooperation in investigations and prosecutions, in setting up Joint Investigation Teams, in mutual recognition of judgements and judicial decisions in criminal matters, but only a few member states have ratified the 2000 Convention. There is the European Arrest Warrant, to be implemented in the national laws of the member states before the first of January 2004 ;it is already clear that quite a few member states will not finalise this project in time,whereas some of them even have not started at all.The same applies more or less for the Framework Decision on Joint Investigation Teams.

There are no supranational courts (maybe except for the Strasbourg court on Human rights),there is no supranational prosecution service, there is no supranational police force with operational competence.

Why this reluctance when it is obvious that criminality quickly adapted itself to the situation that there are no longer border controls and is vastly profiting from this, whereas those who try to stop them still suffer from a range of legal obstacles when trying to meet the new challenge.

The reality is that the individual member states until now never have been very enthusiastic about having to give away national sovereignty in the field of internal security. Don't most of us think that we have the best criminal law system which others are quite welcome to take over and that we do not need others to help us to clean our own homes and gardens ? It is not easy to get rid of old principles which filtered into the respective criminal (procedural) law systems after a long process of careful thinking and democratic decision making. How do we overcome the huge differences between the common law-systems and the civil law systems and still make it work in all jurisdictions concerned . The outcome might be questionable if it

is a rather uneasy compromise like, for instance, the Statute of the International Criminal Court, where the real rules will have to be established on the way as some of them still seem somewhat vague.

This, of course, does not mean that we should not try to approximate our systems; in my opinion this seems inevitable in the long run as in most other fields which are important to our societies the member states are rapidly growing together, sometimes without noticing it. Maybe we should not be too ambitious in view of the fact that more than 80% of the criminality is originating from the surroundings where it is being committed. We could deal with these offences on a local level within our respective national systems and restrict ourselves to the internationalization of the remaining criminality, small in quantity, but quite important as a real threat to our societies. The Dutch Minister of Justice Mr. Donner expressed some thoughts on this at the inauguration of Eurojust on the 29th of April this year. If we “federalize” certain types of heavy, organized, cross-border criminality, we might become more successful in combating it. He referred to the U.S.-system of federal and non-federal crimes. Thus we would not have to give up our national jurisdictions, competences and legal systems entirely and thus prevent an endless road of harmonization, but we could concentrate on specific types of criminality which harm our societies severely although sometimes unnoticed by the individual citizens, where it has become clear that the individual member states cannot cope with that criminality alone and that only a combined effort will create a change to curb it sufficiently.

At present we have the following instruments within the framework of the E.U. which are involved in the combat against cross-border crime

Eurojust, Eurojust and OLAF. And, on a more strategic level, the European Task Force of Police Chiefs.

Eurojust is a police organization which must support national police authorities in their investigations. It can provide analyses based on information supplied by the member states, it can participate in Joint Investigation Teams, it can stimulate and coordinate investigations in a police level in the member states, but it has no executive powers.

Thus it is not a supranational police force with supranational powers; it can not set priorities for the member states in their criminal investigations and the decision which offences or suspects are going to be investigated remains with the national competent authorities.

OLAF (Organisation de Lutte Anti Fraude) is an administrative instrument in the first pillar which has to look into any matter which concerns possible fraud against the budget of the E.U. As such it is a supranational instrument with quite far going administrative powers, but it is not competent for criminal investigations or prosecutions.

In daily life the findings of OLAF may be transferred to the competent authorities in the member states in order to start criminal investigations and/or prosecutions there. In case more than one member state is involved Eurojust could be asked to coordinate between the countries involved or the between the member state and the Union itself.

A Memorandum of Understanding between OLAF and Eurojust is ready to be approved by the Council of Ministers in order to ensure the necessary cooperation between the two instruments. Of course we speak about a two way road. Eurojust will inform Olaf when it comes across an investigation or prosecution which concerns offences against the financial interests of the Union.

Eurojust started as a provisional unit in march 2001 and was officially founded by the Council decision of February 28, 2002. It is an intergovernmental instrument in the third pillar, consisting of prosecutors, judges or police-officers with the same competences from the member states.

.Its tasks are

- to improve co-operation between competent authorities in the member states in the combat against serious, organized cross-border crime, involving two or more member states, a member state and the Union or a member state and third countries
- to coordinate cross-border investigations and prosecutions
- to exchange information
- to make recommendations to change laws in the member states to improve MLA and extradition arrangements.

Eurojust has no supranational competence but it can make formal requests to a member state either through the national member or as a College

- to undertake investigations or prosecutions
- to accept that one country is better placed to prosecute than another
- to coordinate criminal investigations and prosecutions in the member states
- to set up a Joint Investigation team and, when appropriate, participate in it
- to have the information from the member states which is needed to carry out its tasks.

The member state concerned may refuse to fulfil the request but it has to do so in writing and it has to motivate its refusal to comply. If this would happen to a member state too often in a short time there may be questions in the JAI-Council or in the European Parliament which may cause political embarrassment, so as such it may well prove to be a rather powerful instrument for Eurojust, although it is not a supranational competence.

After the terrible event of September 11, 2001 two interesting developments took place. First the E.U. decided on a common definition on terrorism. Although this agreement has to be implemented in the various national legislations it means in fact a shy opening towards European criminal law. The second one concerns the European Arrest Warrant.

This also has to be implemented in the national legislations of the member states, but isn't it in fact European criminal procedural law? So the first modest steps have been set, many others will undoubtedly follow.

This, ladies and gentlemen, more or less sums up the current situation. In what way then is the draft Convention providing changes in this situation and if so, are these changes to be considered as improvements?

In my opinion the drafters of the Convention realized they are walking on eggs and too bold steps could lead to fierce resistance to their proposals from the member states.

On one hand they say : the European Council shall define the strategic guidelines for legislative and operational planning within the area of freedom, security and justice Art III-154). They shall, not they may. But straight after that they add: Member states' national parliaments shall insure that the proposals of this chapter comply with the principle of subsidiarity and (...) they may participate in the evaluation mechanisms contained in Art III-156 and in the monitoring of Europol and the evaluation of Eurojust's activities.

Then: The Council of Ministers may, on a proposal from the Commission adopt European regulations or decisions laying down the arrangements whereby member states ,in collaboration with the Commission, conduct objective and impartial evaluation of the implementation of the Union policies (..)by member states' authorities, in particular to facilitate full application of the principle of mutual recognition.

The European parliament and member states' national parliaments shall be informed of the content and results of the evaluation (art III-156)

A standing committee shall be set up within the Council of Ministers in order to ensure that operational cooperation on internal security is promoted and strengthened within the Union.(...) It shall facilitate coordination of the action of the member states' competent authorities. Representatives of the Union bodies and agencies concerned may be involved in the proceedings of this Committee. The European parliament and member states' national

parliaments shall be kept informed of the proceedings (art III-157) Each careful step towards Union measures, is immediately followed by the involvement of the national authorities and in case the previous article might be interpreted as a grasp for supra national competences art. III-158 takes this impression at least somewhat away by stating : This chapter shall not affect the exercise of the responsibilities incumbent upon member states with regard to maintaining law and order and safeguarding internal security. Somewhat of a careful compromise between the prospect of setting up European legislation and possible supranational instruments and not violating the existing national competences.

Possible changes in judicial cooperation in criminal matters police cooperation can only be adopted on the proposal of the Commission or on the initiative of a quarter of the member states (Art III-160),so these proposals will not come forward too easily, although this statement seems to strengthen the position of the Commission somewhat.

How is this general framework which, I think, should not raise too many objections from the member states, worked out in detail in the sections 4 and 5 of Chapter IV ?

The beginning is audacious:

Judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgements and judicial decisions and shall include the approximation of laws and regulations of the member states in certain areas which I will mention hereafter.

A European law or framework shall establish measures to

- establish rules and procedures to ensure the recognition throughout the Union of all forms of judgements and judicial decisions
- prevent and settle conflicts of jurisdiction between member states
- encourage the training of judiciary and judicial staff
- facilitate cooperation between judicial or equivalent authorities of the member states in relation to proceedings in criminal matters and the enforcement of decisions. Art III-166,par1)

All this, in the view of the draft, has to be done and it is not all. Par 2 says:

In order to facilitate mutual recognition of judgements and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension, a European framework law may establish minimum rules concerning

- mutual admissibility of evidence between member states
- the rights of individuals in criminal procedure
- the rights of victims
- any other aspects of criminal procedure which the Council of Ministers has identified in advance by a European decision. It shall act unanimously after receiving the consent of the European parliament.

Adoption of such minimum rules shall not prevent member states from maintaining or introducing a higher level of protection for the rights of individuals in criminal procedure.

Here the draft is more careful where it says may instead of shall, but it still provides for a big jump forward to harmonization. What to think of mutual admissibility of evidence, when we look at the existing differences between our current legal systems. It will also be difficult for a member state having a higher level of protection for the rights of individuals to accept judicial decisions from another state which has a lower level.

About the question which areas of criminality the draft has in mind

Art.III-167 reads:

A European framework law (is it a law or a framework decision ?)may establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly

serious crime with cross-border dimensions resulting from the nature or impact of such offences or from a special need to combat them on a common basis.

Who defines the common basis, are we speaking about minimum sanctions for each different offence ? That will cause some discussions I presume.

These areas of crime are: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organized crime.

On the basis of developments in crime the Council of Ministers may adopt a European decision identifying other areas of crime that meet the criteria specified in this paragraph. It shall act unanimously after obtaining the consent of the European parliament

If the approximation of criminal legislation proves essential to ensure the effective implementation of a Union policy in an area which has been subject to harmonization measures, a European framework law may establish minimum rules with regard to the definition of criminal offences and sanctions in the areas concerned.

So in fact we are speaking of all criminality as long as it is organized with cross-border dimensions, we are speaking about common definitions and about common sanctions.

This looks like a silent passage towards a European Criminal Code and Criminal Procedure Code.

This is not all .In article III-169 the tasks of Eurojust are redefined

Eurojust's mission shall be to support and strengthen coordination and cooperation between national prosecuting authorities in relation to serious crime affecting two or more member states or requiring a prosecution on common basis ,on the basis of operations conducted and information supplied by the member states' authorities and by Europol. This is what Eurojust is doing already now

A European law shall determine Eurojust's structure, workings, scope of action and tasks.

Those may include:

The initiation and coordination of criminal prosecutions conducted by competent national authorities, particularly those relating to offences against the financial interests of the Union.

It says initiation; this is new as we at present can ask member states to act, but they may refuse to do so.

The strengthening of judicial cooperation, including by resolution of conflicts of jurisdiction.

At this moment we may advise on such matters or, again, ask a member state to take up a prosecution or refrain from it as another state may be in a better position to do so.

A European law shall also determine arrangements for involving the European parliament and member states' national parliaments in the evaluation of Eurojust's activities.

Eurojust is not a supra national instrument yet, but both the European and the national parliaments are involved in the evaluation .

And then in art III-170 the development towards a European Prosecutor comes to light.

In order to combat serious crime having a cross-border dimension, as well as crimes affecting the interests of the Union, a European law of the Council of Ministers may (not shall) establish a European Public Prosecutor's Office from Eurojust. Good for Eurojust !

It shall be responsible for investigating, prosecuting and bringing to judgement, where appropriate in liaison with Europol, the perpetrators of and accomplices in serious crimes affecting more than one member state and of offences against the Union's financial interests.

It shall exercise the function of prosecutor in the competent courts of the member states in relation to such offences. So no European Criminal Court yet, but who then will control such an office and does the office have competence over national investigation teams in relation to national priorities and capacity ?

The European law as mentioned shall determine the general rules applicable to the European Public Prosecutor's Office, the conditions governing the performance of its functions, the rules of procedure applicable to its activities (are those not the laws of the member state where the performance takes place ?)as well as those governing the admissibility of evidence, and the rules applicable to the judicial review of procedural measures taken by it in the performance of its functions.

Again here is a possible conflict between national legislation and the actions taken by the European Prosecutor.

In comparison to the proposed position of Eurojust the position and competences of Europol do not change significantly in the draft. The description of what Europol should do is in agreement with what its competences are now, although in article III-172 par 3 there is a slight hint towards Europol becoming more operational where it says: any operational action by Europol must be carried out in liaison and in agreement with the authorities of the member states whose territory is concerned. The application of coercive measures shall be the exclusive responsibility of the competent national authorities.

This seems to be a small step towards Europol becoming an executive police force after all, even when on a small scale.

Ladies and Gentlemen:, my time is up and you must be getting tired of all these proposals.

What seems to be the bottom line? I have the impression that in the field of judicial cooperation in criminal matters and a bit less in police cooperation the draft is in the end quite ambitious. And not to be forgotten there are also quite far going ideas about harmonization of criminal law and criminal procedural law or even about European legislation in this field.

I am sure that this will give ground for fundamental discussions. Don't we all think that our law system is the best there is and that harmonization means that others are welcome to take it over ? Are we convinced that the maybe inevitable path towards supra nationality ensures sufficient democratic control over supranational bodies who partly may replace our police, our prosecutors and in the end maybe our courts ? Are all the participants in the criminal procedure well enough protected?

If there is still time I would like to have a discussion on these questions with you.

As for myself I am convinced that whereas there are no longer internal borders within the Union there should not be legal borders in the field of serious cross-border criminality.

The only people who seem to profit from the existing legal obstacles are the perpetrators, who do not recognize any borders in the first place.

I do not think that such a situation is in the interest of our citizens and the societies they live in and it does not help to create the area of freedom, security and justice which we agreed upon already some time ago.

In this respect the Draft Convention must be considered as an improvement. Let us try to make the best of it in reacting to its proposals in both a positive and a responsible way.

Thank you for your kind attention.

Conference
International co-operation of Transnational Crime
9. - 10. October 2003, Peace Palace, The Hague, The Netherlands

Ladies and gentlemen, thanks for attending break-out session on terrorism, hoping that with your assistance we will reach our goal.

Before turning over the floor to the distinguished members of the panel,(introduction) please let me touch briefly on the question of terrorism. There has been a tendency among international law enforcement officials to treat terrorism separately from other crime problems. In part, this may happen because the security and intelligence services in many countries have either joint or exclusive jurisdiction over terrorists. Nevertheless, there are a great many countries in the world where terrorism is treated as a law enforcement issue and there are many treaties that deal with terrorism as a problem to be addressed by criminal law.

For those countries that assign responsibility for counter-terrorism to their police services, Interpol provides valuable support. The reduction in the state funding of terrorist groups over the past decade means that most groups operating in the world today are highly dependent on self-financing through criminal activity.

As a result, the relationship between terrorism and criminality has taken on a new importance. When assessing contemporary security threats, it has become increasingly difficult to distinguish between political and criminal motivations. The most common alliances exist in the field of international smuggling operations, evident in the cocaine for arms ties developed between the Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia - FARC), Mexican drug trafficking groups, and Russian criminal groups. They have commonly involved document fraud and counterfeiting operations, as illustrated by the provision of false documentation to several radical fundamentalist groups by Algerian criminal groups.

In addition to these relatively straightforward alliances, more sophisticated relations have emerged between criminal and terrorist groups in the context of transnational smuggling operations that move various commodities - including illicit narcotics, weapons, and human cargo - between countries and continents. The problems inherent in all alliances - including security concerns; differences over priorities and strategies; distrust; and the threat that

alliance could create competitors - have resulted in most criminal and terrorist groups developing the capacity to simultaneously engage in criminal and terrorist activities on their own.

Although the use of terror tactics can be traced back into the history of organized crime, terrorist engagement in organized crime to secure profits for future operations did not seriously emerge until the early 1990s. In both cases, however, the post-Cold War era exacerbated conditions and drove many criminal and terrorist groups to shift their operational focus. As a result, criminal groups have increasingly engaged in political activity in an effort to manipulate operational conditions present in the rising numbers of weak states; and terrorist groups have increasingly focused on criminal activities to replace lost financial support from state sponsors.

The increased linkages among criminal organizations themselves and between them and terrorist organizations, serve to make criminal organizations more violent and terrorist organizations more criminal. It is imperative that we develop the capacity of our police and intelligence organizations to share vital information and to penetrate or monitor criminal and terrorist organizations and their activities.

All too often, organized crime and terrorism are treated as separate issues by police authorities, and this has prevented authorities from receiving a valid, overall view of the threats posed by these groups. The problem lies more in a lack of integrated intelligence collection, exchange and analysis, than in the lack of cooperation as such.

*Only by **combining the available data** from different agencies and countries, and setting up **consultation mechanisms** among different experts from all fields, can we provide a suitable platform to further assess the threat and to formulate adequate counter-strategies.*

As the only truly global police organization, Interpol is uniquely positioned to address some of the issues raised by the threat of terrorism. Defining Interpol's role in assisting in the anti-terrorism efforts of our Member Countries has been difficult, given the nature and classification of terrorism investigations, even more so since September 11. Investigations of

terrorist organizations and activities are considered among the most sensitive of investigative activities due to the nature of the threat, geo-political considerations, and the extremely sensitive nature of many of the sources of information. In many countries, terrorist investigations involve both the law enforcement and intelligence communities, which are by their very nature organized and operated in fundamentally dissimilar manners, under different legal standards and governing paradigms.

Taking these problems into account, Interpol created new counter terrorism program the Fusion Task Force (FTF), to develop innovative and multi-disciplinary ways to assist our Member Countries in their investigation of terrorism, without requiring Member Countries to reveal their most sensitive information. Interpol's unique membership should be viewed as strength, and could be used as a catalyst to collect information to identify members of terrorist organizations and the logistical networks that support them.

The IPSG exploited our databases for the benefit of Interpol's Member Countries by engaging in proactive searches and analysis to retrieve, compare, and collate information that could aid Member Countries in determining whether identified organizations, suspects, or techniques pose a risk to them, and to produce reports from this compilation. One important concept was that these reports would go to ALL Member Countries and provide them with information to assist in not only ongoing investigations, but assist them in the establishment of counter terrorism programs. For many of our countries, that includes providing them not only with alerts, general intelligence on terrorist groups and members, but also information that they can use to expand their own intelligence programs. The counter terrorism program has concentrated in the past year on membership of selected terrorist organizations, the use of stolen passports and other identity and travel documents facilitating terrorism, and the financing of terrorism, particularly by NGOs or charitable organizations.

Unfortunately, due to the sensitivity of information in ongoing terrorism cases, I cannot tell you all of the successes we are currently experiencing within the terrorism field due to the analysis conducted and information passed within the FTF. What I can say is that one of our successes has been to increase the level of intelligence sharing among countries, particularly as the FTF set up a contact police officers network involved in the fight against terrorism, spread over five continents. As an example, we have had great success in receiving both intelligence and cooperation in ongoing investigations in such diverse countries as Algeria,

Libya, the UK, Kenya, the US, Belgium, Bahrain, Mali, France, Italy, Croatia, Fyrom, Portugal, and the list could go on and on.

One of our core tasks continues to be assistance in the identification, disruption, and dismantling of terrorism and organized crime organizations. Several investigations reported to the FTF, which have resulted in arrests in Europe, have dealt with terrorist groups dealing not only in forged and counterfeit credit cards, passports and identification theft and fraud, but searches revealed directions and recipes for explosives and poisons, and in some cases, the actual poisons (RICIN) themselves.

The methods employed, and the successes currently achieved, by the FTF have led me to examine our entire terrorism program and the focus of several of our projects. We are now in the process of initiating several regional projects to assist in capacity building and training, but also to give analytical support for that region or country regarding certain terrorist groups. For example, we recently sent an analyst to Jakarta to assist the Indonesian police in their ongoing investigations.

Another example: Many members of international terrorist groups and organizations take part in some kind of military training to acquire the skills necessary to carry out terrorist activities and acts. Instructors in training camps, often with the assistance of radical religious leaders, use “brain washing” methods in order to create the perfect terrorist entity, ready to fulfill any demand regarding terrorist activities, including suicide bombing.

The attendees get military training necessary for their future terrorist activities. They are instructed to use different internationally accepted legal instruments in order to obtain status such as: asylum seeker, refugee, or irregular immigration etc. Additionally, trainees develop relationships with other attendees from different countries and different organizations, eventually developing their own worldwide networks, exchanging information on phone numbers and addresses of safe houses, potential accomplices, and other data.

We are conducting a project which aims to identify the members of international terrorist groups involved in operating terrorist training camps and recruiting people to attend such training camps, and to identify those members of terrorist organizations that have attended different training camps in order to acquire the skills necessary for their future terrorist activities and attacks.

Thanks to several member states contribution, IPSG is in possession of app.200 nominal data on terrorists, trained in various countries South East Europe, North Africa, Middle East and

Asia. One of those terrorists trained in such camp during 1995 and 1996, on 11th of September 2001 was in airplane crashed in Pennsylvania. Where are the others?

I will not go into more depth now; I am sure that many of the themes and issues I have raised will be developed in detail by other colleagues during the remainder of the Conference.

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The break out session on cybercrime conclusions:

Cybercrime is a growing and serious threat that knows no national boundaries. To address this threat, all countries should have: 1. Adequate substantive laws punishing cyber attacks and other conduct; 2. Adequate procedural laws that allow the tracing and identification of cyber criminals; 3. Trained investigators who understand these crimes; and 4. Increased international operational cooperation. It is also important that law enforcement work closely with the private sector in combating cybercrime. Because of, among other things, the urgency of the threat, there is not a need for new international legal instruments but rather countries should look to implementing or being guided by existing models, such as the Council of Europe Cybercrime Convention, in this area.

Chris Painter

CHECK AGAINST DELIVERY

National and international competences in the fight against transnational
crime – the European perspective
ICLN conference
The Hague, 9 October 2003

Chairman, Ladies and Gentlemen,

My director, Denise Sorasio, regrets not being here personally. She has asked me to participate on her behalf and I will try my best to fill the gap.

Ladies and Gentlemen,

Trans-border organised crime poses a growing threat to our societies. We have an urgent need to learn more about the ramifications, causes and functioning of OC but also about the instruments that are being developed to combat this plague. Today's conference offers an excellent opportunity for doing exactly this.

I have been asked to present the European perspective on the fight against transnational crime.

With 15 minutes to speak I don't want to dwell too long on past achievements. Nevertheless, it seems important to recall that the Amsterdam Treaty only entered into force in May 1999. It gave a platform for the European Union and the Commission to provide citizens with a high level of safety within an area of freedom, security and justice.

Without wanting to be complacent, I believe progress at EU level has been considerable since 1999. Let me briefly mention the most important areas:

- **Institutionally**, the framework for enhanced co-operation against serious crime was established by setting up European Union bodies such as Europol and Eurojust.
- **Legislation** - progress was achieved in the approximation of EU Member States' laws in a wide range of substantial criminal law topics. Framework Decisions on money laundering and the identification and confiscation of the proceeds of crime, trafficking in human beings, and attacks against information systems, just to name a few, show the breadth of activities.
- **Judicial co-operation** - progress has been achieved in rendering mutual legal assistance more effective. The mutual recognition of decisions and

judicial orders will form the cornerstone of judicial co-operation in criminal matters in the future, the adoption of the Framework Decision on the European Arrest Warrant being the first point in case.

- **Investigative tools** - while respecting privacy legislation and the rule of law, we aim at enhanced inter-operability of specific investigation methods, such as undercover actions or controlled deliveries. The Framework Decision on Joint Investigative Teams, adopted in 2002, marks an important progress in the fight against organised crime, allowing for joint transborder investigations.

[Policy planning instruments]

So far, two main EU Action Plans on the Fight against Organised Crime have been adopted since 1997. The latest, the Millennium Strategy dating from 2000, is currently being implemented. A recent mid-term review identified a number of priorities to be pursued between now and mid 2005, such as the setting up of European crime statistics, witness protection in judicial proceedings, enhanced fight against fiscal crime and the setting up of a European crime proofing mechanism.

In 2004, the European Commission is due to evaluate the implementation of the Tampere European Council conclusions. The Tampere European Council provided us in 1999, as you will remember with a European Action Plan for the establishment of an area of freedom, security and justice. Besides evaluating past achievements, this will also provide the opportunity to think about next steps in the development of a European response to the challenges of organised crime. Whereas the Tampere Council Conclusions focussed mainly on the institutional and legal groundwork for a European policy, we now should pay attention also to the effective implementation of the instruments established. This shall include the promotion of best practice policies and establishment of effective monitoring instruments.

[Challenges to EU policy in the fight against organised crime]

Ladies and Gentlemen,

let me now turn to what lies ahead of us. Our analysis of current developments in the area of organised crime does not give rise to excessive optimism. The level of assets, instruments and sophistication organised crime disposes is remarkable, I regret to say.

Criminals assess the risks they run in different countries when planning their activities. This may lead them to prepare crimes in one country, conduct them in another, launder the proceeds of crime in a third country and enter the legitimate economy in a fourth. Differences between countries in opportunity structure, public and private efforts to control crime and many other considerations influence the “investment decision” of an organised crime group. But even if organised crime is organised globally, it acts locally. It must therefore be fought at all levels of interaction: local, national, European and international. The challenge today at European level is to promote a policy response that involves local and global actors at the same time, while respecting the principle of subsidiarity.

An effective European policy should therefore:

- build on an agreed definition of what organised crime is;
- support, where necessary, the approximation of substantive and procedural legislation in criminal matters;
- improve the conditions for the fight against organised crime at local and national levels;
- fill policy gaps in the co-operation between EU Member States – and beyond; and
- develop best practices at EU level that can inspire and catalyse international legislative and policy developments.

[Treaty establishing a Constitution for Europe]

The European Union’s future Constitution will help us to implement these policies. As you are certainly aware, the distinguished European Convention completed its work in July 2003 with the elaboration of a draft Treaty establishing a Constitution for Europe. Although the Commission would have preferred the text to be more ambitious on certain aspects, we are satisfied with the overall result for the justice area.

I welcome in particular the end of the separation into first and third pillars. Another positive development is the generalisation of qualified majority voting for legislation on judicial co-operation in criminal matters and

approximation of substantive and procedural criminal law. Moreover, the Constitutional Treaty will enshrine the principle of mutual recognition. However, unanimous voting will not disappear completely, it remains for instance regarding operational police co-operation. The Commission believes that the draft Constitution is a good document that should not be amended substantially. But it believes that qualified majority voting should be introduced in some specific areas where unanimity is provided to date, including police co-operation. If this could not be agreed immediately, one could follow the example in the Amsterdam Treaty and fix at least a date for the future introduction of QMV.

[Specific policy areas in the fight against organised crime]

In the following, I would like to touch upon some of the most important policy areas and issues to be addressed at EU level.

[Crime prevention]

The effective fight against organised crime must begin with effective prevention policies, including the elaboration and consistent application of good governance and accountability standards in the public and private sectors. The demarcation between legal and illegal activity must be drawn clearly. This will reinforce our society's value system and rules and facilitate the detection and disruption of illicit activity. Enhanced transparency of our economies and institutions provides the indispensable basis for more secure societies.

It is in such a policy environment, that crime opportunities are reduced. The fight against corruption is perhaps one of the most challenging issues as corruption can subvert the rule of law at every level. Corruption can lead to a very damaging influence over political life, the media, public administration, the judiciary and the economy.

In May 2003, the European Commission submitted a Communication that aims at fighting corruption inside the EU in a comprehensive way and supporting EU Member States in their respective efforts. The Commission also contributed to the successful negotiation of the draft UN Convention against Corruption. Negotiations were finalised last week - the ministerial signing conference is scheduled for December. Additional efforts need to be mobilised to set up a corruption monitoring and evaluation mechanism. Such a mechanism could render the global fight against corruption and international crime more robust, in particular by supporting weaker states in their administrative capacity building efforts.

[Inter-agency co-operation and information sharing]

Information collection, analysis and sharing are the focus of our current activities in the area of inter-agency co-operation. The backbone of this is a mutual evaluation process. Existing information exchange mechanisms between EU Member States and Europol are currently being evaluated under the auspices of the Secretariat General of the Council. It will allow developing a detailed overview of the strengths and weaknesses of criminal intelligence systems in all EU Member States. Ideally, improvements in inter-agency co-operation and intelligence collection and analysis at national and EU levels should be the final outcome.

Speaking about improved analysis and co-operation, please note that a major conference on “Partnership in the fight against organised crime” will take place in Dublin on 20-21 November which aims at concrete results related to this very topic, data collection, analysis and assessment. The conference will also look at the specific role of the private sector in the prevention of organised crime. Overall developments towards privatisation and a diminishing role of the state in the supervision of economic activity require an increasingly pro-active co-operation between public and private sector representatives in the fight against crime. A final conference declaration is in preparation and its draft will be made available on the conference website – I can provide the web address should you be interested [www.tocpartnership.com].

[Financial crime and its investigation]

Another sector that can hardly be underestimated in its importance is the fight against financial crime and its effective investigation. Criminals use increasingly sophisticated working methods and have learned to diversify their activities in order to maximise profits and minimise risks. Organised crime attempts to take control of legitimate companies so as to dispose of a stable basis for the monitoring or control of legitimate markets. Investigating systematically the financial activities of criminal networks is therefore key to better understand, trace and disrupt organised crime activities. Removing the assets of those groups is probably the most effective way of tackling OC. The European Commission services are working on a Communication on the prevention of and fight against organised crime in the financial sector. I cannot unveil too much because the Communication is not yet approved by the Commission College. However, it is likely that the Communication will recommend removing assets of OC groups more effectively, for example with the help of duly empowered asset recovery bodies as exemplified by certain

Member States. It may also be fruitful to commit more resources to financial investigations which are not limited to the specific crime but investigate more broadly the surrounding criminal networks including the identification of proceeds of crime, gather intelligence regarding the behaviour of suspects, in conformity with data protection provisions, and attempt to identify the ultimate beneficiaries of organised financial crime.

[Judicial co-operation in criminal matters]

Effective co-operation between law enforcement and the judiciary is of course a core priority at European level. We still face many obstacles, in particular, with regard to national differences in the definition and admissibility of evidence, depending on procedural legislation and safeguards. A Framework Decision is in preparation that will apply the principle of mutual recognition to orders with the specific objective of obtaining objects, documents and data for use in proceedings in criminal matters. The European Evidence Warrant's objective is to provide a single and effective mechanism for obtaining evidence and transferring it to the issuing State.

This brings me to the concluding remarks.

The European Union is deeply concerned with the growth of organised crime and its multi-sectoral ramifications. Following the entry into force of the Amsterdam Treaty in 1999, the EU has embarked on developing a comprehensive approach towards crime prevention, opportunity reduction and effective repression, while at the same time protecting the freedom and fundamental rights of individuals and economic operators. Justice and Home Affairs at EU level is still in the making, with many ongoing and future construction sites.

To end on a positive note, I would like to welcome the recent entry into force of the UN Convention against Transnational Organised Crime, the first legally binding UN instrument against organised crime. The European Community, along with all EU Member States, is one of the signatories of the UNTOC and supportive of its objectives. In August 2003, the Commission proposed to the Council the ratification of the UNTOC and its protocols on smuggling of migrants and trafficking in human beings on behalf of the European Community. I hope that the European Community will soon join the 53 countries that have ratified this important Convention to date.

Thank you for your attention.

Heike Buss
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