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Practical approaches to strengthening international cooperation in fighting crime-related problems

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I. Introduction

1. The struggle against transnational crime can be viewed from a Darwinian perspective as an evolutionary competition. If transnational criminals adapt to the changing global environment more rapidly than governments, the criminals will grow stronger, gain increased control of resources and profit at the expense of lawful societies. In the evolutionary race to adjust to an ever more interconnected global environment, criminal enterprises have already perfected the ability to operate across geographic, linguistic and legal borders and made that ability part of their genetic heritage. Meanwhile, criminal justice authorities labour to achieve even slow, incomplete and inefficient cooperation. Legal systems are burdened with obsolete concepts, practices unsuited to current conditions and rigid mindsets that inhibit change, while adaptable criminals grow ever more powerful in the global economic system and in national societies.

2. Admittedly, this contrast is an oversimplification. Criminals have no ethical or legal restraints. Governments must observe the rule of law and preserve higher values than mere efficiency and effectiveness. Moreover, unquestionable improvements are being made in achieving international cooperation in criminal matters, as will be described below. Nevertheless, radical improvement in the speed, facility and frequency of cross-border cooperation is long overdue. Extradition practice, mutual assistance, asset confiscation and other forms of international cooperation must evolve, and do so rapidly, if transnational criminality is to be effectively controlled.

3. A significant landmark for international cooperation in criminal matters was established in 1988 with the negotiation of the United Nations Convention against Illicit Traffic in Narcotics Drugs and Psychotropic Substances.[1] That Convention imposed obligations to extradite or prosecute accused drug offenders, to provide mutual legal assistance, to cooperate in restraining and confiscating drug proceeds or property of corresponding value and to engage in law enforcement cooperation.

4. The criminalization of drug money-laundering by the 1988 Convention and the increased attention paid to that phenomenon by national authorities occurred at a time of unprecedented public recognition of the dangers of organized crime and corruption. Drug trafficking and money-laundering were only two alarming demonstrations of the dangers and profitability of crime and its internationalization. Assaults by organized crime on the structures of the State in several regions, massive corruption, extortion, the proliferation of weapons in conflict zones and abuse of trafficked persons and migrants compelled the recognition that other crimes demanded international attention to limit their harmful consequences.

5. The accumulation of experience with cross-border criminality led to the adoption of the United Nations Convention against Transnational Organized Crime[2] in 2000. That Convention reflected the recognition that a ruthless hunger for gain made criminals omnivorous, ready to engage in any profitable enterprise, regardless of its nature or location. That opportunistic flexibility dictated the need for a comprehensive legal framework to deter and punish associations engaged in any

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[1] United Nations, *Treaty Series*, vol. 1582, No. 27627.

[2] Ibid., vol. 2225, No. 39574.

type of serious cross-border criminality. The Convention provided that framework by requiring the criminalization of participation in an organized crime group. Supplementary protocols addressed trafficking in persons, smuggling of migrants and illicit manufacture of and trafficking in firearms and were supported by detailed articles in the Convention on extradition, mutual legal assistance, restraint and confiscation. Detailed preventive and repressive anti-corruption measures were then developed in the United Nations Convention against Corruption of 2003.[3]

6. This array of agreements furnishes the necessary infrastructure for cooperation against all types of profit-oriented criminal groups. The Organized Crime Convention and the Convention against Corruption both established Conferences of the Parties, which meet periodically to encourage their utilization and address evaluation and technical assistance issues. The 1988 Convention enjoys near-universal adherence, with 184 States parties. The rapidity with which the Organized Crime Convention and the Convention against Corruption have gained 152 and 143 parties, respectively, is an endorsement of their value. The widespread membership of the instruments makes them preferred vehicles for extradition and mutual legal assistance among their many parties, and their use should be encouraged. In order to fully achieve their potential, it will be helpful to examine the obstacles to their use. Those obstacles, and means of overcoming them, are addressed below.

II. Extradition requirements

7. Among the issues examined at the Eleventh United Nations Congress on Crime Prevention and Criminal Justice, held in Bangkok in 2005, was the simplification of extradition in areas such as dual criminality, extradition of nationals, the political offence exception, the necessity of an evidentiary review and appellate processes.[4]

8. These same issues are still problematic, although some progress towards simplification had been made before the Bangkok Congress and has continued since. Practical experience and successful experiments are creating pressure to change doctrines and practices developed in prior centuries that are ill-suited to modern realities. Friction with common-law countries that required a prima facie case to be made before extradition would be granted has been diminishing. Reform legislation has rationalized evidentiary rules in several countries.[5] All three of the United Nations drug and crime conventions eliminate the fiscal offence exception for convention offences and forbid refusal of an assistance request on the grounds of bank secrecy. The 1988 Convention and the Convention against Corruption eliminate the political offence exception when extradition is based on their provisions, as do all of the United Nations terrorism-related global agreements. An encouraging trend is the adoption by a number of States of domestic legislation eliminating the political offence exception for any offence included in a

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[3] Ibid., vol. 2349, No. 42146.

[4] See A/CONF.203/9.

[5] Australia Extradition Act, 1988, Canada Extradition Act, 1999 and United Kingdom Extradition Act, 2003.

United Nations agreement, and in some countries in any multilateral agreement, under which the State has an obligation to extradite or prosecute.[6]

9. Many procedural obstacles create delays and waste resources, regardless of the basis for extradition. Frustration with the ability of accused offenders to manipulate judicial systems to delay can lead to reliance upon deportations, expulsions and informal substitutes for extradition, which may not be desirable or legal. The Informal Expert Working Group on Effective Extradition Casework Practice, convened by the United Nations Office on Drugs and Crime (UNODC) in 2004, reviewed cases involving forum shopping and so-called trampoline appeals timed to cause delays at multiple points during the extradition process. Without questioning the need for judicial review, the Group concluded that extradition review processes were overdue for streamlining. It recommended that, to the extent possible, appeals be consolidated in one review of all factual and legal issues. Similar views were expressed in regional workshops in 2007 and 2008, indicating a need for legal systems to evolve beyond this chronic inability to cope with a persistent appellate deficiency.[7]

A. Regional recognition of arrest warrants

10. A commonly held misconception is that the so-called red notice issued by the International Criminal Police Organization (INTERPOL) is an international warrant allowing police anywhere in the world to arrest a fugitive. Some States treat a red notice as the equivalent of a request for provisional arrest, but others regard it only as informational. Once the subject of the notice is identified, the national central bureau (the coordination office in each of the 188 countries belonging to INTERPOL) notifies the country that requested the notice. That country must send a request for provisional arrest for the purpose of extradition promptly enough to permit the capture of the fugitive, which can be difficult when translation is required. If the provisional arrest is accomplished, then the formal extradition request must be made within the time established by the controlling legal agreement or the domestic law of the custody State.

11. A desirable simplification eliminating the need for both a provisional arrest request and an extradition request can accelerate extraditions while maintaining judicial control. This alternative involves the authorization of arrest for the purpose of extradition by a judge of the requested State, who endorses a warrant issued by a foreign court or issues the requested State's own warrant on the basis of the foreign warrant. The countries that utilize the London Scheme for Extradition within the Commonwealth of 1966 adopt domestic legislation and regulations permitting their courts to issue a provisional warrant for arrest or to directly endorse a warrant from another member of the group. On the basis of that endorsement, or upon issuance of a domestic warrant, the person sought can be arrested and extradition set in motion. An executive determination of whether specified grounds for refusal exist is

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[6] Australia Extradition Act, 1988; Extradition Act of Botswana, 1990, sect. 7 (2)(a); Ley de cooperación internacional en material penal, Argentina, 1997, art. 9 (g); Canada Extradition Act, 1999, sect. 46 (2); and Extradition Act of Papua New Guinea, 2005, sect. 8. See also London Scheme for Extradition within the Commonwealth, 1966, art. 12.1 (b).

[7] See CTOC/COP/2008/5, sect. III. B.

optional under the Scheme, depending on the law of the requested State. The European arrest warrant, implemented since 2005 by all 27 European Union (EU) member States, is a further evolution of this model. The EU Framework Decision establishing the procedure, implemented by national legislation, permits removal based on a judicial decision, without the need for a political determination of whether extradition should be granted or a review of evidentiary sufficiency.[8] Dual criminality is presumed for a list of serious offences, but may be examined for non-listed offences.

12. The advantages of such systems are increasingly recognized. The Nordic countries, including two non-EU member States, agreed to a Nordic arrest warrant in 2005, and the 15 member States of the Caribbean Community (CARICOM) negotiated the CARICOM Arrest Warrant Treaty in 2008. This type of agreement is compatible with the United Nations drug and crime agreements, none of which require an evidentiary review or a particular allocation of responsibility between the judiciary and executive for ordering removal, so long as international human rights guarantees are observed. They envision that their parties should conclude bilateral and multilateral agreements to enhance the effectiveness of extradition. The imposition of "mini-trials" in requested States has long made extradition practice synonymous with hypertechnical procedural obstacles and, together with repeated appeals, allowed transnational criminals to avoid being brought to justice. The adoption of agreements and legislation to permit the backing of warrants would go far towards enhancing extradition effectiveness and consequently merits serious consideration.

B. Non-extradition of nationals

13. The non-extradition of nationals has long complicated extradition relations. It is becoming less of an issue with the departure from the absolute prohibition that previously existed in many countries of the continental law tradition. A breakthrough was achieved with the adoption of the European arrest warrant in 2004. An EU Framework Decision required EU member States that prohibited the extradition of nationals to modify that rule for other EU members. It would be logically consistent for States that no longer prohibit the extradition of nationals in a regional or bilateral context to consider why they should continue that prohibition with respect to other legal systems that observe international human rights guarantees.

14. While more States are now allowing specified or discretionary extradition of nationals, others still have constitutional or legislative limitations. To deal with these situations, the drug, crime and terrorism conventions contain provisions to ensure that the denial of extradition on the grounds of nationality does not result in immunity. These provisions establish the obligation to extradite or prosecute, but

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[8] An EU member State that abolished its evidentiary review requirement for European arrest warrant partners also entered into a bilateral extradition treaty abolishing the requirement with a non-EU member State. This occurred even though the treaty was asymmetrical, in that the non-EU State continued to require an evidentiary showing because of a constitutional provision. The willingness to enter into an asymmetrical arrangement is precisely the kind of flexible adaptability that can enable States to cooperate effectively.

that is actually a duty to extradite or submit for domestic prosecution. This principle requires that the State where an accused offender is found either extradite that person or submit the case to its domestic authorities for the purpose of prosecution as though the acts had occurred within its jurisdiction. The decision on whether or not to proceed to trial is governed by the same standards as in a similar case under domestic law.

15. In the abstract, there is no reason why submission for prosecution should not be as satisfactory as extradition in bringing an accused offender to justice. However, in real situations, this alternative is not always attractive. Often it is very difficult and expensive to present in one State evidence that has been gathered in another State that may have a different legal system. Authorities whose extradition request has been refused may feel that a country that will not subject its nationals to foreign justice and has suffered no harm from the offence will treat the accused more leniently than would the country where the social harm was inflicted. The State charging the alleged offender may be unwilling to risk a possible acquittal, especially when that acquittal may bar subsequent efforts to bring the alleged offender to trial. Officials of the requesting State may fear that their evidence will not be presented effectively by foreign prosecutors or will not be well received by foreign judges or juries, or that foreign law may lack the advantages of domestic law. While these feelings may not be well founded, they can make a State reluctant to request submission for prosecution or to provide its evidence to another State.

16. A requested State may not be eager to receive the transfer of a prosecution that could strain limited resources or create problems of public order. It may perceive that the transferred evidence is unlikely to result in a conviction in its courts because of evidentiary weaknesses. It may feel that the prosecution on which the extradition request is based, while technically proper and satisfying the requirement of double criminality, is difficult for the court to understand and not the kind of case it wishes to present. All of the drug and crime conventions recognize these possibilities. The 1988 Convention (art. 6, para. 9 (a)) obliges the requested party to submit the case for prosecution “unless otherwise agreed with the requesting Party”. The more recent Organized Crime Convention and the Convention against Corruption require the State where the alleged offender is found to submit the case for the purpose of prosecution only at the request of the charging State.

17. The surrender of a person for trial in the requesting State, on the condition that any sentence imposed will be served in the requested State, can resolve the impasse that results when submission for prosecution is not considered a desirable outcome. The Organized Crime Convention (art. 16, para. 11) and the Convention against Corruption (art. 44, para. 12) provide that conditional surrender, when permitted by domestic law, satisfies the “extradite or prosecute” obligation. This solution permits the case to be tried where the social harm occurred and where the victims and witnesses are located. The ability to conduct a trial and reach a resolution under the law of the requesting State is an immediate advantage for that State. Once a defendant is convicted and sentenced in the requesting State, the degree of interest on the part of the investigating and prosecuting authorities, the media and the public of the requesting State will normally decrease. Transfer for service of the sentence may be unwelcome when there are pronounced differences in penal policy between States, but the cost savings to the requesting State can be a compensating factor. The condition that the person be returned to the State of nationality for the service of any

sentence satisfies that country's constitutional or legislative duty to ensure certain protections for its nationals. Returning the prisoner to the State of nationality has clear rehabilitative and humanitarian advantages, so conditional surrender can be a mutually beneficial resolution that merits increased consideration. In addition, this may be accomplished through the combination of an extradition treaty and a treaty on the transfer of a foreign sentenced person.

III. Mutual legal assistance

18. Each of the drug and crime conventions contains what may be called a "mini-mutual legal assistance treaty". Article 18, paragraph 7, of the Organized Crime Convention is typical. It provides that when States parties are bound by a bilateral treaty, the treaty applies unless the parties to a request agree to apply the provisions of the United Nations Convention. When there is no bilateral treaty, the broad powers established in the mutual assistance provisions of the Convention apply. Experience under these articles has led the Conference of the Parties to recognize the potential contribution of central authorities as the most direct avenue to the improvement of mutual assistance practice. All of the conventions require the designation of a central authority with the responsibility and power to execute mutual assistance requests or to transmit them for execution to the competent authorities. Central authorities have been a focus of the open-ended interim working group of government experts on technical assistance created by the Conference of the Parties. In its decision 3/4, the Conference endorsed priorities for technical assistance proposed by the working group, including a recommendation for assistance in establishing and/or strengthening central authorities. With regard to capacity-building, the group urged education directed at the establishment of a competent central authority, with particular attention to mutual legal assistance. The crucial role of central authorities has been endorsed by the Conference of the Parties. It is a progressive adaptation necessary to make international criminal justice cooperation as routine, effective and commonplace as is the cooperation of criminals across borders.

19. A computer application that has the potential to bring dramatic improvement in the frequency and facility of international cooperation is the Mutual Assistance Request Writer Tool developed by UNODC. At its fourth session, in 2008, the Conference of the Parties to the Organized Crime Convention welcomed the Request Writer Tool's availability, encouraged central authorities to make use of it and requested its use in the training of central authorities and practitioners.

Double criminality

20. Extradition, submission of a foreign offence for the purpose of prosecution and even mutual legal assistance traditionally depended on double criminality, meaning that the conduct for which cooperation is sought is a punishable offence under the laws of both the requested State and the charging State. With regard to mutual legal assistance, article 18, paragraph 9, of the Organized Crime Convention allows discretionary assistance in the absence of dual criminality. The Convention against Corruption goes one step farther in its article 46, paragraph 9 (b), which requires a

State party, where consistent with its domestic law, to allow non-coercive measures in the absence of dual criminality.

21. With regard to extradition, article 44, paragraph 2, of the Convention against Corruption provides that a State whose law so permits may grant extradition for any of the Convention offences that are not punishable under its domestic law.[9] This is a significant departure from traditional extradition treaties, but it may be an evolutionary step whose time has come.

22. A State whose criminal policy does not recognize certain conduct as deserving of prosecution can properly choose not to lend its assistance to a foreign State's prosecution. Under traditional bilateral treaties, extraditable offences were defined not by their elements but by a list or threshold approach. Without agreement on the elements of an offence in a treaty, comparing the offence charged with a domestic offence was the only way for the requested State to ensure it was not cooperating in the punishment of conduct that it did not consider deserving of prosecution. The Convention against Corruption, however, does not deal with offences with unknown elements. The States parties have committed themselves to criminalizing certain bribery and misappropriation offences in their domestic law. They have further agreed on the definitions of other offences in the areas of trading in influence, illicit enrichment and private sector corruption and accepted the obligation to consider the adoption of those optional offences. All States parties have agreed on the material and mental elements of the Convention offences and committed themselves to multiple mechanisms of international cooperation. Some of the new offences defined in the Convention against Corruption whose social harm is evident may exist in one legal system but not yet in another. A country may be relatively slow in criminalizing offences for understandable reasons. Meanwhile, there seems to be no compelling reason why forms of cooperation provided by a convention should be denied to a treaty partner with respect to offences, the material and mental elements of which are already agreed upon, and which the requested State has an obligation to criminalize or consider criminalizing in its national law.

IV. Legal gaps and uncertainties regarding extradition and mutual legal assistance

23. Ratification of the conventions is the necessary first step towards their greater utilization. Another step is more complete implementation in domestic law of their substantive and procedural elements. Not every State that has adopted the crime conventions has criminalized all the offences established therein or adopted legislation enabling its domestic courts to exercise jurisdiction on all of the enumerated grounds. Gaps may relate to the tendency of common-law countries to base jurisdiction only upon territoriality, although some of those countries in recent years have expanded their jurisdictional grounds. Other gaps result from the approach a particular country takes to the effect of international treaties. Countries of the so-called dualist tradition require an explicit adoption of domestic legislation or regulation to implement an international law obligation, such as the duty to

[9] This discretionary power should be subject to the guarantees of fair treatment and protection against discrimination found in paragraphs 14 and 15 of article 44.

extradite or submit for prosecution. Countries of the so-called monist legal tradition tend to view an international law commitment, once adopted, as an integral part of national law without legislative action. One crucial gap that may result from these differences is the failure to establish jurisdiction based on an accused offender's presence in the country, which is essential for implementing the obligation to extradite or submit the case to prosecution.

24. Not only gaps but also uncertainty can influence the use of the conventions as the legal basis for cooperation. The degree of concrete detail that can be found in a bilateral treaty is not feasible in the negotiation of United Nations framework treaties. Establishing universally acceptable evidentiary rules, time limits and other procedural details is unrealistic in an agreement intended for adoption by nearly 200 different legal systems. Nevertheless, the negotiation and widespread adoption of the global conventions demonstrates their comparative advantage. There are 192 States Members of the United Nations. The time and resources required for treaty negotiation make it impossible for every State to have a network of 191 extradition treaties and 191 mutual legal assistance treaties. The near universal coverage of the United Nations drug and crime instruments makes them cost-effective resources that every country should have available. In this regard, it should be noted that an outdated bilateral treaty from the 1930s may not offer the same mechanisms that a more modern global convention provides, so a multilateral framework instrument may in some situations be superior to a detailed but limited bilateral treaty.

25. The inherent characteristic that global legal instruments contain fewer factual particulars than bilateral agreements is compensated for by articles in the drug and crime conventions that make the execution of cooperation requests subject to the conditions established by the law of the requested party.[10] Unfortunately, not every country has domestic legislation or regulations establishing the necessary operational infrastructure for cooperation in the absence of a bilateral treaty. When the requested State does not have legislation establishing basic extradition or confiscation procedures, reliance upon one of the drug and crime conventions as a legal basis involves uncertainty. When officials of the requesting State cannot know what the foreign law demands and thus are unable to intelligently appraise whether they can satisfy its requirements, they may wait for another opportunity elsewhere rather than expend substantial time and effort with little promise of success. Consequently, States should recognize that they need legislation establishing the necessary procedures for international cooperation in the areas of extradition, mutual assistance and restraint and confiscation in order to allow the drug and crime conventions to be used to their full potential.

V. Asset confiscation

26. Some of the 1988 Convention's innovations concerning tracing, seizure and confiscation have now become accepted standards. The Organized Crime Convention and the Convention against Corruption echoed the 1988 Convention's

[10] Art. 6, para. 5, of the 1988 Convention, art. 16, para. 7, of the Organized Crime Convention and art. 44, para. 8, of the Convention against Corruption.

abolition of bank secrecy as grounds for refusal of mutual assistance.[11] Legislation on confiscating criminal assets, often in laws called proceeds of crime acts, is now common. UNODC provides assistance upon request with respect to the criminalization of money-laundering and the detection, seizure and confiscation of the proceeds of crime.

27. UNODC also manages the International Money-Laundering Information Network (IMoLIN) on behalf of a consortium of institutions and regional Financial Action Task Force (FATF)-style bodies. The network makes available information on national anti-money-laundering and confiscation laws, regulations and contacts. UNODC, in partnership with the International Monetary Fund (IMF) and the Commonwealth Secretariat, has also developed Model Provisions on Money-Laundering, Terrorist Financing, Preventive Measures and Proceeds of Crime for common-law legal systems (2009). These resources provide information on and enhance practitioner familiarity with a complex field of law and practice. Confiscation can be accomplished by a range of mechanisms, some based upon conviction of the person controlling the property, others directed against the property itself because of its criminal origin or use and some aimed at a person's assets, regardless of origin, because they represent the benefit of criminal activity.

28. An area of recent emphasis is the tracing and recovery of stolen public assets and corruption proceeds, which is the subject of a joint initiative by UNODC and the World Bank. The Stolen Asset Recovery (StAR) initiative of 2007 promotes implementation of the Convention against Corruption to prevent the diversion of public funds, which harms global development and destroys confidence in governance, and helps countries with the return of such funds by fostering institutional changes and providing capacity-building assistance.

29. Conviction-based confiscation utilizing a criminal standard of proof is a feature of legal systems of both the civil- and common-law traditions. Non-conviction-based confiscation can be found in civil-law countries such as Colombia, Italy, Switzerland and Thailand. In many common-law jurisdictions a civil burden of proof is the applicable standard for non-conviction-based confiscation. Moreover, the fact that a country does not itself use non-conviction-based confiscation does not preclude it from registering and enforcing confiscation orders from a country in which such confiscations are lawful. The drug and crime conventions provide two options for achieving confiscation of proceeds, i.e., property of equivalent value or instruments of foreign crime. One option is for the receiving State to submit the request to its competent authorities for a domestic order of confiscation, in which event the domestic confiscation procedures and standards of proof would apply. The other option is for legislation to enable the judiciary to register a foreign confiscation order and enforce it against proceeds, property or instruments within its jurisdiction or as a debt against the person involved.

30. Recognition of a foreign confiscation order must always be open to judicial challenge with respect to reasonableness, proportionality and respect for the presumption of innocence. If those conditions are satisfied, there is no international law impediment to legislation allowing the recognition of a foreign

[11] Art. 7, para. 5, of the 1988 Convention, art. 18, para. 8, of the Organized Crime Convention and art. 46, para. 8, of the Convention against Corruption.

non-conviction-based confiscation imposed on a probability standard, just as there is no bar to allowing collection of a foreign debt. The IMF practical guide to confiscating criminal and terrorist assets, published in 2009, provides a comprehensive discussion of the applicable international standards and legislative means of satisfying those standards in all legal systems.

31. Investigative obstacles encountered in recovering criminal proceeds include: (a) the difficulty of locating assets that may be hidden anywhere in the world and (b) the problem that even when assets are located in circumstances that strongly imply a criminal origin, it may be impossible to link the property or account to a particular criminal activity or source. For this reason, the conventions propose that consideration be given to placing the burden of proof regarding issues that are peculiarly within the knowledge of a subject, such as the lawful origin of property, on that person.

32. Confiscation of assets based on foreign evidence or a foreign court order or conviction requires decisions concerning disposition of those assets. The 1988 Convention proposed that a country confiscating property as a result of international cooperation against the immensely profitable drug trade share the proceeds with intergovernmental anti-drug bodies or with other States parties. The Organized Crime Convention, with its broad application to any type of serious crime committed by a group for profit, contains the same provision, and also urges the return of confiscated property to the requesting State party so that compensation can be given to victims of crime. The Model Bilateral Agreement on the Sharing of Confiscated Proceeds of Crime or Property was developed under the auspices of the Commission on Crime Prevention and Criminal Justice and adopted by the Economic and Social Council in its resolution 2005/14. The Convention against Corruption is the first convention that introduces the concept of unconditional return of confiscated proceeds of crime when certain prerequisites are met.

VI. Liaison arrangements

33. Investigative agencies have long maintained representatives abroad as liaisons with their foreign counterparts. Prosecutors and magistrates have now begun to adopt this practice, which overcomes the impersonal nature of cooperation requests that arrive through a central authority and expedites requests by building relationships of mutual trust. Through exposure to the legal system of the foreign country, a liaison representative becomes able to guide prosecutors and magistrates at home to avoid mistakes and misunderstandings in making or executing requests. A liaison serves as a filter, reducing the need for bureaucratic procedures when officials of the foreign State are legally able and willing to provide assistance without a formal request. With proper language skills, or even using a local interpreter, liaison representatives can eliminate much of the translation that accompanies communication by formal written documents, as requesting authorities, without guidance on this regard, frequently submit more documentation for translation than is necessary. A principal obstacle to the deployment of liaison representatives is their cost, which can be reduced by having a representative act on a subregional or regional basis. Several countries may choose to participate in a burden-sharing arrangement. The five countries of the Nordic Police and Customs

Cooperation offer an example of a successful model, with liaison officers in 20 foreign countries.

VII. Communication networks to enhance international cooperation

34. Foreign assignment of liaison officers, prosecutors or magistrates is not the only means of enhancing cross-border communication. The global model for investigative cooperation is INTERPOL, with national central bureaux in 188 countries. INTERPOL is supplemented by regional police cooperation networks, including the recently formed Police Community of the Americas, the European Police Office (Europol), the Heads of National Drug Law Enforcement Agencies, the Stability Pact Police Forum Initiative, the Pacific Islands Chiefs of Police, the Southern African Regional Police Chiefs Cooperation Organization and the Association of Southeast Asian Nations Chiefs of Police Conference. Prosecutors and magistrates have lagged behind police in establishing communication networks. The Pacific Islands Law Officers' Network, the Commonwealth Network of Contact Persons, the European Judicial Network, Eurojust, the Hemispheric Information Exchange Network for Mutual Assistance in Criminal Matters and Extradition of the Organization of American States and the Ibero-American Legal Assistance Network of judicial authorities of Spanish- and Portuguese-speaking countries have been formed only in recent years.

35. Nearly all of the above networks maintain both open and restricted websites. The open websites make an important contribution to the transparency and effectiveness of international cooperation by making accessible the relevant legislation of network members. Knowledge of the foreign law and international practice governing international cooperation is necessary for a successful request. While that knowledge may be acquired through trial and error, that method is hardly efficient, requiring successive amendments of a request, and runs the risk of refusal. Prior research is preferable and is being greatly improved by the availability of relevant material over the Internet. Not only judicial cooperation networks but also national authorities are increasingly recognizing the value of transparency in international cooperation and are establishing websites at which their extradition law and policies, and even the internal operational manuals of their central authorities for the processing of requests, can be accessed. This trend towards transparency should be encouraged, as it achieves an entirely positive result at minimal cost.[12] While language barriers will always be a problem, it is more and more possible to inform oneself about the international cooperation law and practice of another country. Collections of national laws offered by UNODC, academic online libraries and computer applications such as the Mutual Assistance Request

[12] The Attorney-General's Department of Australia provides a checklist for mutual assistance requests to that country and contact point information through its website, www.ag.gov.au. The United States Attorneys' Manual, title 9, section 15.00 et seq. is a published version of the instructions followed by prosecutors handling extradition requests forwarded for arrest through the United States central authority (see www.usdoj.gov) publications. Guernsey, one of the Channel Islands with an active financial sector, provides a website with instructions on how to make mutual assistance requests for investigative assistance, restraint and confiscation (www.gov.gg/ccm/navigation/government/law-officers/advice/).

Writer Tool are also available to inform government practitioners on the grounds and procedures for making international cooperation requests.[13]

36. The Conference of the Parties to the Organized Crime Convention, in its decision 3/2, requested the Secretariat to set up an online directory of central authorities designated to deal with various international cooperation issues under the Convention and its Smuggling of Migrants Protocol. In many States the competent authorities were the same for different cooperation functions, so in December 2007 a consolidated directory was launched for authorities designated under both the Organized Crime Convention and the Convention against Corruption. This directory is an important information source for, and a step towards the creation of a virtual network of, central authorities. Such a network, with the capability for use as a secure discussion forum, is another priority effort requested by the Conference of the Parties in its decision 4/2. In addition, the Conference noted the need to expand interregional communication and problem-solving. Since no global or interregional network exists, UNODC, as requested by the Conference of the Parties, has held two expert group meetings on the establishment of a global cooperation network. The most recent, in November 2009, considered the feasibility and possible design of such a network and the role that UNODC might play in expediting its creation.

37. An investigative example of good practice in the development and use of a communication network is the success of INTERPOL in focusing attention on and combating the problem of stolen and lost travel documents, which both facilitate the commission of cross-border crime and permit offenders to escape justice.[14] INTERPOL has created a database of nearly 20 million entries, over 10 million of which relate to stolen or lost passports. To make this data usable by Member States, the Fixed INTERPOL Network Database (FIND) and Mobile INTERPOL Network Database (MIND) systems have been developed. FIND allows police, immigration and other authorities to scan a travel document or manually enter its number and within seconds receive a reply from the INTERPOL database. MIND achieves the same result when direct connectivity with the Lyon database is not feasible. The MIND system furnishes continuous updates from the database network to a national database that can be accessed by mobile devices. The next logical step in improving document security is increased use of unique biometric identifiers for identity and travel documents. Public concerns will necessitate privacy protocols capable of scrupulously protecting personal data from misuse, but without unique identifiers effective border control may be only an illusion.

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[13] UNODC operates a legal library containing laws and regulations implementing the United Nations drug conventions. The Anti-Money-Laundering International Database operated by IMoLIN provides government officials access to anti-money-laundering laws and regulations. A legislative database maintained by the Terrorism Prevention Branch of UNODC contains terrorism-financing laws, international cooperation legislation and some criminal law and criminal procedure codes. The Council of Europe European Committee on Crime Problems also compiles reports on mechanisms for international cooperation and has produced a manual on mutual assistance in criminal matters. Many governments have a website where one may find criminal law and procedure codes, extradition acts and other relevant materials. For example, French legislation is available in both French and English at www.legifrance.com.

[14] One conclusion of the Eleventh United Nations Congress on Crime Prevention and Criminal Justice was the need “to combat document and identity fraud, in particular the fraudulent use of travel documents, through improved security measures, and encourage the adoption of appropriate national legislation (General Assembly resolution 60/177, annex, para. 27).

VIII. Joint investigative teams

38. The synergetic benefit to be derived from joint investigative teams are obvious. One is the neutralization of the advantages that criminals derive from the legal and organizational compartmentalization of different national intelligence and investigative systems. Another is the overcoming of cultural and linguistic barriers to a host country's efforts to secure intelligence, witnesses and evidence from within an ethnic community speaking a foreign language. Native speakers can be present to interview witnesses in their mother tongue and to monitor intercepted foreign-language communications. Such teams can also heighten the level of trust and intelligence exchange between investigative agencies by creating a shared investment in a common venture. Their members can share information directly and immediately request investigative action without the need for formal procedures. The resources of all participating agencies can be called upon to support operations.

39. In some situations political or other sensitivities dictate that such cooperation be carried out discreetly. However, as a general principle, it is desirable to have a formal legislative basis for any activity in which an official will perform law enforcement functions in a State other than his or her own. The 1981 Convention introduced the concept that joint investigative operations might be conducted as authorized by the law and appropriate authorities of the State on whose territory the team was operating. The Organized Crime Convention and Convention against Corruption went further. They contain identical articles encouraging the conclusion of agreements or arrangements for joint operations on a continuing or case-by-case basis.[15] Both Conventions also have articles that permit the parties, in the absence of such agreements or arrangements, to "consider this Convention as the basis for mutual law enforcement cooperation".[16]

40. Arrangements such as the 1985 Schengen Agreement establish rules for cross-border surveillance and pursuit. A judicial cooperation unit exists within Eurojust to encourage the creation and utilization of such teams and has produced, with the cooperation of Europol, a guide to EU member States' legislation on joint investigation teams and a joint investigation teams manual. The exercise of law enforcement powers, including the use of force in self-defence, is one of the most potentially controversial aspects of joint investigative teams. This subject deserves very close legislative and managerial attention, as any unfortunate incident involving the use of force could damage international relations and obstruct even routine law enforcement cooperation.

IX. Technical assistance

41. Articles 29 and 30 of the Organized Crime Convention call for training programmes, secondments and exchanges of staff to improve capacity in identified areas of need by means of regional conferences, increased training and technical assistance within international and regional bodies and provision of financial support for capacity-building. The complexity of confiscation mechanisms alone

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[15] Art. 19 of the Organized Crime Convention and art. 49 of the Convention against Corruption.

[16] Art. 27, para. 2, of the Organized Crime Convention and art. 48, para. 2, of the Convention against Corruption.

underscores the need for the technical assistance offered by UNODC, the information available through IMoLIN and the educational work done by entities such as IMF, the World Bank, FATF, INTERPOL and donor countries on the confiscation of proceeds of crime. Article 60, paragraph 2, and article 62 of the Convention against Corruption make recommendations similar to those in the Organized Crime Convention, while its article 61 calls for the development of analytical expertise concerning corruption and of common definitions, standards and methodologies to combat corruption.

42. The Organized Crime Convention was adopted in 2000 and the Convention against Corruption in 2003. Subsequently, the Bangkok Declaration on Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice was adopted by the Eleventh Congress on Crime Prevention and Criminal Justice, in 2005, and by the General Assembly in the resolution 60/177 in December of that year. The Declaration expresses the need to: "improve international cooperation in the fight against crime and terrorism, at the multilateral, regional and bilateral levels, in areas, including, among others, extradition and mutual legal assistance" (para. 3).

43. In order to achieve the improvements called for in the conventions and at the Bangkok Congress, attention must be paid to the lack of familiarity of national authorities with the capabilities of United Nations instruments. This problem was emphasized in October 2009 in the report of the Open-ended Interim Working Group of Government Experts on Technical Assistance. The Group recommended to the Conference of the Parties to the Organized Crime Convention that technical assistance projects should focus on a list of priority areas, which began with awareness-raising of States parties and, where appropriate, non-parties, and capacity-building in all its dimensions, including education, concerning international cooperation against transnational organized crime.

44. The need to train central authorities and their importance in the mutual assistance process has been underlined in decisions of the Conference of the Parties, as has the need to promote awareness of the Organized Crime Convention's cooperation possibilities, so that authorities will be readily identifiable through the UNODC directory and will be able to communicate informally among themselves, thus increasing their effectiveness.

45. Fortunately, the situation concerning technical assistance is not characterized by a lack of tools or by tools' lack of quality. Arguably, the availability of a training product and its cost-effectiveness could be improved by additional reliance on computer-based courses and interactive tools, but that need is recognized and is increasingly being addressed by UNODC e-learning courses. Moreover, a balance must be maintained with other means of technical assistance delivery that can be successful despite the uneven distribution of information technology in the least developed countries. A number of publicly available educational and operational tools to enhance international cooperation capacity have already been mentioned above. Chief among those are the UNODC Mutual Assistance Request Writer Tool; the Model Bilateral Agreement on the Sharing of Confiscated Proceeds of Crime or Property; the StAR initiative's good-practice guide to non-conviction-based forfeiture; IMoLIN; the 2009 Model Provisions on Money-Laundering, Terrorist Financing, Preventive Measures and Proceeds of Crime for common-law legal systems produced by UNODC, IMF and the Commonwealth Secretariat; the

Europol-Eurojust publications on joint investigative teams; the FATF recommendations; and the report of the Informal Expert Working Group on Effective Extradition Casework Practice convened by UNODC in 2004. Other valuable tools are the comprehensive legislative guides for the Organized Crime Convention and the Convention against Corruption; the United Nations technical guide on the Convention against Corruption, describing preventive and repressive measures; and the IMF practical guide to confiscating criminal and terrorist assets, published in 2009.

46. Awareness-raising is a foundational activity that creates national readiness for assistance in the adoption of the crime conventions and protocols. Legislative advice and drafting may be an essential preliminary step in establishing the infrastructure of substantive and procedural law that a central authority needs for its work. A central authority, and the foreign counterparts that await its help, will be doomed to frustration if the prosecutors who present requests to judges, and the judges themselves, lack the capacity to process cooperation requests properly and promptly. The challenges are numerous and formidable. Nevertheless, the evolutionary analogy with which the present paper began should serve as a reminder of the competitive struggle with transnational criminal groups. Criminal enterprises have learned to communicate with every modern technical resource, free of legal and bureaucratic obstacles. Failure by criminal justice systems to make similar use of technology and to advance beyond the existing accumulation of unnecessarily burdensome and outmoded practices can lead to only one result. If national authorities do not adapt mechanisms for international cooperation more effectively, and do so quickly, they will lose ground in the governance of their economies and societies to their more flexible, imaginative and successfully evolved criminal competitors.

X. Conclusions and recommendations

47. On 8 December 2009, the Secretary-General addressed the Security Council concerning the threat posed to international peace and security by drug trafficking. After noting the association of drug organizations with brutal insurgencies, violent criminal groups, corruption and competition with the legitimate economy, he drew the conclusion that:

> the transnational nature of the threat means that no country can face it alone. This fight requires a comprehensive international approach based on a strong sense of shared responsibility. States must share intelligence, carry out joint operations, build capacity and provide mutual legal assistance. So far, cooperation between Governments is lagging behind cooperation between organized crime networks.[17]

48. The Secretary-General's observation concerning the global community's inadequate response to drug trafficking is applicable to other forms of organized crime. Cooperation between Governments falls substantially short of what is needed to confront the global nature of crime and the cooperation within and between organized crime networks. The resulting security gap is widening as criminals

[17] S/PV.6233.

become progressively more agile, while criminal justice authorities struggle against ossified procedures that no longer serve the world's needs. The remedies are obvious. Implementing those remedies requires a bold willingness to critically evaluate laws and procedures.

49. Countries that still demand "mini-trials" for extradition must evaluate what relationship those elaborate rituals have with determining whether another sovereign State has a legitimate interest in conducting its own fair trial of a fugitive. Legislatures and courts need to ask how delaying extradition proceedings with multiple partial appeals preserves any rights that could not be protected by a unified appeal giving appropriate consideration to all legal and factual issues. Geographical and other groupings of States must consider whether extradition within the group could be made more effective by reciprocal mutual recognition of warrants.

50. Long-held attitudes about extradition of nationals need to be critically examined. The "extradite or prosecute" rule of the international drug and crime conventions must be implemented in ways that serve the practical interests of both the requesting and requested States, such as the greater use of surrender for trial linked to service of any sentence in the national's home country. Substantive and procedural laws, particularly regarding jurisdiction, must be updated to achieve compliance with the drug and crime conventions.

51. To reduce delays in mutual assistance practice, bureaucratic rivalries and competition over jurisdiction must be suppressed. Ways must be found to combine the advantages of direct contact between magistrates with the increased efficiency and institutional expertise contributed by a central authority. Policymakers must recognize that a central authority, and the foreign counterparts awaiting its help, will be doomed to frustration if the prosecutors who present requests to judges, and the judges themselves, lack the capacity to process requests properly and promptly.

52. Other challenges are numerous and formidable. Prosecutors and judges must devote more time and financial resources to elevating their cooperation networks to the level achieved among police agencies. A rigorous analysis must be made regarding the wisdom of requiring dual criminality for offences whose elements have been defined by an international convention to which both the requesting and requested States are parties. Effective and well-tested innovations, such as non-conviction-based forfeiture, should be examined with an open mind and adopted, if there are no truly insurmountable problems, to permit the achievement of the confiscation goals of all the United Nations Conventions. Every country should have a basic set of foreign assistance laws allowing international cooperation whenever it serves the national interest, whether based upon reciprocity, comity, ad hoc agreement or conventional treaty.

53. The technical assistance requirements of States are many. Developed countries must accept the financial burden that derives from the fact that only their resources are sufficient to support broad implementation of the drug and crime conventions. Developing countries must commit themselves to building the capacity of their officials, with the knowledge that not every assistance programme can address fully and exhaustively their needs. None of these steps are easy, and some will be unwelcome.

54. Radical change is needed to allow lawful society to compete effectively with international criminal groups. The Secretary-General has publicly warned the

Security Council and the public of this danger. It would be regrettable negligence on the part of relevant national officials if they did not admit the need for radical improvement in international cooperation, recognize that such improvement will not occur until they take drastic action within their Governments, and then initiate that long-overdue action.