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STRATEGIES AND PRACTICAL MEASURES TO STRENGTHEN THE CAPACITY OF PROSECUTION SERVICES IN DEALING WITH TRANSNATIONAL ORGANIZED CRIME, TERRORISM AND CORRUPTION

by

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***SECOND WORLD SUMMIT OF ATTORNEYS GENERAL, PROSECUTORS
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Working Paper II

**Strategies and Practical Measures to Strengthen the
Capacity of Prosecution Services in Dealing with
Transnational Organized Crime, Terrorism and
Corruption¹**

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I. Introduction

1. Dealing with transnational organized crime, corruption, and terrorism, not to mention financial or economic crime and cyber-crime, presents some unique and pressing challenges to criminal justice systems all around the world. Individually and collectively, States have embarked on legislative and procedural reforms, training and other capacity building initiatives to face the increasing complexity and sophistication of the activities of criminal groups and terrorist organizations. For some States, building such a capacity within their prosecution services and throughout the rest of their criminal justice system has been, to say the least, a struggle.
2. In recent years, globalization has contributed an additional dimension to these challenges. For most countries, globalization holds some enticing promises, but for countries which are not able to adapt quickly to this new reality, it also raises the prospect of debilitating social and economic consequences. In many instances, their social and economic development can even be compromised. Globalization and, more specifically, the emergence and expansion of transnational organized crime and the threat of international terrorism confront all justice systems with some new difficulties.
3. Members of organized criminal groups and terrorist organizations are mobile and often seek to evade detection, arrest and punishment by operating across international borders. They avoid being caught by taking advantage of those borders and playing on the frequent reluctance of law enforcement authorities to engage in complicated and expensive transnational investigations and prosecutions. The weak capacity of any one State to effectively address some of these new threats translates itself into an overall weakness in the international regime of criminal justice cooperation. For States with a relatively weak criminal justice capacity, these challenges can sometimes appear insurmountable. This, in turn, has raised broader questions about the nature and extent of international cooperation in bringing about the required reforms.
4. The international community now recognizes international cooperation in criminal matters as an urgent necessity and prosecution services are at the heart of these efforts. This demands national efforts to comply with new international standards, to encourage convergence and compatibility of national legislation, to introduce complex procedural reforms, and generally to develop a much greater investigation and prosecution capacity at the national level as well as strengthen the capacity to cooperate at the international level.
5. One of the key objectives of this Second World Summit is to explore strategies and practical measures to strengthen the capacity of prosecution services in dealing with particularly challenging and complex forms of criminal activity, such as transnational organized crime, corruption and terrorism. Another key objective is to further strengthen international cooperation in criminal matters. The two objectives are obviously related and, in the final analysis, it is clear that the strength of international cooperation in the fight against terrorism, corruption and organized crime will always rest on the strength of existing national capacities to carry out the effective investigation and prosecution on these crimes.

6. Whether a State is attempting to prevent organized crime activities, financial and economic crime, corruption or terrorism, the establishment of better legal bases for international cooperation is a prerequisite². Strengthening the convergence of criminal law and criminal law procedure is part of any long-term strategy to build more effective international cooperation. Developing stronger bilateral and multi-lateral agreements on mutual legal assistance is also part of the solution. The universal conventions against terrorism, as well as the United Nations Conventions against Transnational Organized Crime and against Corruption provide a strong basis for legal cooperation and often suggest some of the elements that must be developed as part of a national capacity for effective investigation and prosecution of these crimes. Having national legislation in place to fully implement these instruments is therefore of paramount importance³, as is the adoption of the administrative measures necessary to build strong prosecution services and support the various modalities of both domestic coordination and international cooperation.

7. The present paper deals specifically with promising strategies for building or strengthening a national capacity to investigate and prosecute serious crimes, and that, to a certain extent, will also touch upon the very crucial capacity of prosecution services to collaborate with and assist each other. However, a separate paper and another workshop will focus more directly on the mechanisms and modalities of international cooperation in criminal matters among prosecution services and on methods of enhancing them.

8. For the purpose of this paper, the “capacity” of prosecution services is defined broadly to reflect the fact that the role of prosecutors varies considerably among legal systems. In particular, prosecutors may play a more or less active role in the actual investigation of crime, depending on national law, and as a result their respective relationship with the police may be different. In many States, public prosecutors are either designated as heads of investigation or are empowered with the right to supervise police investigations and set priorities for such investigations. In some States, police and prosecution services are amalgamated at the local levels. Finally, in other States, the investigation and the prosecution functions are kept quite separate and the role of the prosecutors during crime investigations is mostly an advisory one. As a result of these differences, the relationship between public prosecutors and the police is quite different from one legal context to another.⁴ Furthermore, a hard and fast distinction between investigation and prosecution is not always meaningful, particularly when proactive or ongoing and complex investigations are involved. For these reasons, it makes sense here to think of the

² OSCE (2005), *Overview of the OSCE Expert Workshop on Enhancing Legal Co-operation in Criminal Matters Related to Terrorism*, Vienna, 15 April 2005.

³ See the legislative guides that have been made available by the UNODC to facilitate that process: UNODC (2005), *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto*. UNODC (2005), *Guide for the Legislative Incorporation and Implementation of the Universal Instruments against Terrorism*.

⁴ See: Take, J.P. (2005). *The Relationship between Public Prosecutors and the Police in the Member States of the Council of Europe*. Conference of Prosecutors General of Europe – 6th Session, Council of Europe, Budapest, May 29-31, 2005. Also: Council of Europe (2005). *Replies to the Questionnaire – Relationship Between Public Prosecutors and the Police*, Strasbourg, May 13, 2005. (<http://www/coe.int/prosecutors/>)

capacity of prosecution services in terms of the overall capacity of law enforcement agencies to successfully investigate and prosecute serious crimes⁵.

II. A Capacity for Strategic Action

9. Because of the dynamic nature of transnational crime and terrorism, prosecution services must constantly refine and perfect their strategies. They need to take into account how criminal elements are themselves acting strategically in order to defeat detection and prosecution. They need to favour strategic approaches to the investigation and prosecution of organized crime, corruption and terrorism. Prosecutors can and must play a role in the development of crime reduction strategies and in the planning of strategic responses to organized crime, corruption and other significant threats to society. More proactive, intelligence-led approaches are needed to detect and counter organized crime, corruption and terrorism, dismantle criminal networks, and apprehend and punish criminals.⁶

10. Prosecution services are conscious of the need to use their discretionary powers, when such powers are available to them under the law, more strategically and to invest their efforts and resources in actions that promise the best return in terms of crime and terrorism prevention. In order to do so, they need timely access to the best criminal intelligence information available.

11. The active participation of prosecutors in crime analyses is still relatively limited, as they tend to rely on the analyses provided by other agencies. Prosecutors do not always see themselves as playing a major role in crime analysis and in supporting and using the findings of major research on organized crime and other significant criminal threats. Prosecution services are increasingly aware that they can make a significant and unique contribution to these analytical processes and use them to more carefully plan their own activities and more efficiently deploy their own efforts. Through such interactions, prosecutors may also offer feedback and guide investigative agencies towards improved preparation and stronger support of the prosecution cases in the future.

12. In cases where criminal activity occurs in several countries or when transnational organized criminal groups are involved, States with jurisdiction, usually find it important to coordinate their investigations and prosecutions to more effectively target these groups and their international activities⁷. Coordination of cross-border investigations and prosecutions is still rare and tends to require considerable preparation through formal channels. Some international

⁵ The Council of Europe, for example, used the words “law enforcement agencies” and proposed the following functional definition: “irrespective of national definition, those public institutions and agencies that carry out under their legal terms of reference, investigations and/or prosecutions of criminal offences. See: Council of Europe (2001). *Guiding Principles in the Fight against Organized Crime. Recommendation Rec (2001) 11 of the Committee of Ministers to Member States Concerning Guiding Principles on the Fight Against Organised Crime. Strasbourg. 19 September 2001, p.24.*

⁶ See, for example, Council of Europe (2004). “Crime Analysis”, in *Combating Organised Crime, Best Practice Surveys of the Council of Europe*, Strasbourg, Council of Europe Publishing, pp. 105-144.

⁷ See for example: Recommendation # 7 of the P8 Senior Expert Group 40 Recommendations to Combat Transnational Organized Crime, Paris, April 1996.

structures are being developed to facilitate that process.⁸ In this context, it is important to note the important role of informal interactions, personal relationships and acquaintances in building trust and contributing to faster and effective international cooperation. International workshops, training sessions, seminars and conferences that bring representatives from different countries together can perform this useful function and provide opportunities for bonding and building trust.

13. The success of strategic approaches, at the local, regional or global levels, is largely predicated on the capacity of strategic partners to cooperate effectively. For that purpose, technical assistance, capacity building, information exchange systems, and training activities to help build the capacity of strategic partners, internally and internationally, are necessary to combat organized crime, corruption and terrorism.

III. A Capacity for Inter-agency Cooperation

14. It is clear that inter-agency cooperation at the national level is not only crucial to effective local action against transnational organized crime, corruption and terrorism, but also an important precondition for effective cross-border cooperation against these major threats.⁹ Prosecution services can play a key role within these mechanisms and pave the way to more effective prosecutions based on inter-agency cooperation.

15. In many States, immense progress has been achieved at the national level in terms of the means of sharing criminal records and other law enforcement data among different law enforcement agencies. Law enforcement agencies are able to do so directly, in real time, while providing all the required security and human rights safeguards. More than any technological difficulty one may anticipate in supporting such exchanges, the most significant obstacles to exchange of law enforcement data is probably the persistent lack of the necessary legislative framework, at both the national and international levels, to support lawful and effective exchanges of data between States.

16. Mechanisms and processes that do not take advantage of advances in communication and data storage technologies often still govern mechanisms for the sharing of criminal record information and the exchange of other criminal justice data between agencies. At the international level, some progress is being made at the bilateral, sub-regional and regional levels to ensure that current exchange mechanisms meet the needs of judicial and law enforcement cooperation, while providing the necessary safeguards for the protection of personal data and

⁸ The international legal framework for the governance of international policing activities is still relatively undeveloped. Hartmut Aden observes that the structures of transnational policing today are “a special mix of multi-level-government and governance as well as of multi-actor government and governance”. Aden, H. (2001). *Convergence of Policing Policies and Transnational Policing in Europe*, *European Journal of Crime, Criminal Law and Criminal Justice*, Vol. 9/2, 99-112.

⁹ See: Council of Europe (2004). “Cross-border Cooperation”, in *Combating Organised Crime, Best Practice Surveys of the Council of Europe*, Strasbourg, Council of Europe Publishing, pp. 145-168.

individual privacy rights.¹⁰ For example, the Schengen Information System, in Europe, allows participating national law enforcement agencies to share data on many key issues almost instantaneously with their colleagues in other countries. For most observers, the strength of the arrangements enabled by the Schengen conventions lies in the fact that they allow for highly practical law enforcement cooperation and information exchange, at a level that is unique in the world¹¹.

17. Interagency cooperation is often hindered by the fact that the various law enforcement agencies involved in the fight against crime, corruption and terrorism, do not always agree on how to deal with specific crime issues, what methods to use, or what level of law enforcement priority to attribute to various threats. The development of joint strategic planning and problem-solving mechanisms among these agencies can be very important. It can lead to “project-based action”, cross-agency ‘task-force’ arrangements, multi-agency priority setting processes, systematic threat assessment, strategic target identification, and sound resourcing decisions drawing on the full strength of each of the agencies involved.

18. A number of issues and difficulties arise on the domestic level with respect to data sharing. Questions of sensitivity, laws regulating the access to certain information and turf considerations have an impact on the collection and (non-)sharing of the type of information collected by Financial Intelligence Units. That includes banking or commercial information, Suspicious Transaction Reports (STRs), currency transaction reports (CTRs), international bulk cash transfers, marketing and immigration information, and information on ongoing investigations. In some countries, a variety of software programs and databases exist among agencies, which enable strategic and operational analyses, data mining and efficient investigations. However, such programs and databases are not always available to or shared among personnel or agencies with the need to know. Coordination of efforts and systematic sharing of such resources in a speedy and transparent manner can increase the effectiveness of investigations and prosecutions of serious crimes, especially those involving sophisticated and transnational offenders able to move themselves and their assets across borders very fast.

19. Further, most attention is focused on financial transactions and institutions. On the international side, this may lead to a neglect of commercial transactions the volume and nature of which can serve as a vehicle for the commission or facilitation of serious crime, such as corruption, money laundering or sanctions/embargo violations. For the purpose of fighting trade-related or trade-based crime, the sharing of import/export data independently and jointly with financial data is indispensable as it allows the detection and tracking of irregularities.

20. Vital for cross-agency coordination and collaboration especially in complex and transnational offences is the establishment of trust and reliability, which are conducive to speedy sharing of information. The development of clear guidelines and rules, accountability and initiatives aiming at the prevention and detection of improper or corrupt practices can be

¹⁰ See for example, the Commission of the European Communities (2004). *Proposal for a Council Decision on the Exchange of Information from the Criminal Record*. Brussels, 13.10.2004- 2004/0238 (CNS).

¹¹ Joutsen, M. (2001). *International Cooperation against Transnational Organized Crime: The Practical Experience of the European Union – 119th International Training Course – Tokyo: UNAFEI*, p. 398.

instrumental to collaborative efforts by diminishing or eliminating concerns about the risks (or perceptions of them) of other agencies compromising cases and efforts.

IV. Building Multidisciplinary Teams

18. The use of specialised multidisciplinary teams is sometimes also a necessity. The use of specialised police, investigation and prosecutorial structures vested with the means to carry out financial investigations and analyze computerized information systems can be a prerequisite to the success of complex investigations. Lawyers, investigators and prosecutors should form multidisciplinary teams to more effectively combat financial crimes, corruption¹², and various other sophisticated forms of crime.

19. In States where prosecution services play an active role in directing or supervising the investigation of serious crimes, they can provide immediate direction on how to proceed and how to deal with complex evidentiary and other procedural issues. Helping in the development of training materials, guidelines, checklists and other quick-reference tools for law enforcement can also produce some significant improvements in the efficiency and effectiveness of investigative practices.

A. Pre-Charge Advice and Assistance to the Police

20. In jurisdictions where prosecutors do not direct the investigation, the eventual success of the prosecution often depends on the quality and timeliness of the advice and assistance that prosecutors can offer the police during the investigation. One of the methods used to build this capacity consist of designating prosecutors dedicated to providing pre-charge advice and assistance. However, there are still questions about whether or not dedicating some prosecutors exclusively to that task is the most effective use of available prosecutorial resources.

21. A variation on this theme, in a situation where a special task force has been created to deal with a particular type of crime or a criminal group, is to designate a prosecutor who will be working very closely with that task force and provide timely advice on an ongoing basis.

22. In jurisdictions where the prosecutors are not responsible for overseeing or directing the investigations, it appears advisable to resort to various methods of multiplying the contacts between the police and prosecutors, thus increasing their mutual understanding and trust and reducing counter-productive territorial attitudes. The involvement of a prosecutor in the early stages of an investigation can eliminate unnecessary work, ensure that the evidence necessary to support a prosecution is obtained and, where appropriate, assist in formulating the charges that are to proceed.¹³ In particular, the early involvement of a prosecutor can help identify potential

¹² International Association of Prosecutors (1999). *Recommendations on Combating Corruption in Public Administration – IAP Best Practice Series No. 3*. The Hague: IAP

¹³ Dempsey-Bench, J. (2003). “United Kingdom: Cooperation between Police and Prosecution Services in England”, in ADB-OECD Anti-Corruption Initiative for Asia-Pacific – Combating Corruption in the New Millennium (2003). *Effective Prosecution of Corruption*. Ghaziabad, India, 11-13 February 2003, Asian Development Bank

evidential difficulties and the means of resolving them, identify possible lines of defence and lines of enquiry that may be useful to rebut them, improve the presentation of evidence within case file preparation, facilitate the management of the disclosure process, reduce post-charge investigations, reduce the need for court adjournments, and reduce attrition, discontinuance and late alteration of charges.¹⁴

23. In some cases, it is useful to develop a protocol that establishes a constructive and predictable framework for cooperation between law enforcement and prosecution in relation to major, complex or politically sensitive cases.

B. Specialized Multi-disciplinary Teams for the Investigation and Prosecution of Corruption Offences

24. Particular difficulties may often arise when a crime involves prominent politicians, powerful public figures or wealthy business people. For example, prosecuting corruption when it occurs within law enforcement or the criminal justice system entails particular difficulties resulting from the fact that the perpetrators not only have knowledge of police and prosecutorial methods and tactics, but they may also have accomplices and allies within the system itself. The creation of a special anti-corruption unit within which the police and the prosecutors can collaborate closely is usually responsible for the success of such prosecutions.¹⁵ Providing for the co-location of police officers and prosecutors, usually in a dedicated facility with its dedicated information systems, can be a necessary precaution against the infiltration of the team by corrupt elements and the risk of having the success of the investigation compromised by outside factors.

C. Participation in Police Training

25. Given the complexity of the evidentiary and other requirements of the effective prosecution of most major crimes, prosecution services often see the need to participate in the training of other law enforcement officials, including the training of members of special squads and task forces. In many instances, they also find it necessary to offer similar training to foreign law enforcement officials with whom they expect to cooperate on a regular basis. Unfortunately, that training function tends to be performed on an *ad hoc* basis without the full support of the agencies involved and without the benefit of good training material. Investments in these training initiatives are likely to pay some interesting dividends in terms not only of police/prosecution cooperation, but ultimately also in terms of a more effective prosecution of serious crimes.

and Organisation for Economic Co-operation and Development. pp. 43-51; see also United Nations Convention against Corruption article 38; General Assembly Resolution 58/4, Annex.

¹⁴ *Idem*, p.42

¹⁵ ADB-OECD Anti-Corruption Initiative for Asia-Pacific – Combating Corruption in the New Millennium (2003). *Effective Prosecution of Corruption*. Ghaziabad, India, 11-13 February 2003, Asian Development Bank and Organisation for Economic Co-operation and Development.

V. Building a Case-Management Capacity

26. Complex cases, particularly transnational ones, require management methods, processes and skills that do not always exist within prosecution services. This obviously includes a capacity to effectively coordinate multi-jurisdictional cases among jurisdictions. The lessons learned in the management and international coordination of some of these major cases (sometimes “mega-cases”) need to be identified and shared within and between jurisdictions. Prosecution services can perhaps consider working with each other to produce detailed case histories and together draw some of the hard-won lessons. Such material can also be used in the development of case management skills and expertise among senior prosecutors, something which must obviously be part of any capacity building initiative.

27. Case management practices among prosecutors are evolving rapidly as they benefit from various technological advancements which facilitate safe information storage, management, and analysis, as well communication, resource management and inter-agency collaboration. Ironically, the same technological advancements have also created new kinds of circumstances, including cooperation difficulties (such as system or other compatibility issues) and new forms of crime, as well as new kinds of evidentiary material with which prosecutors must now deal. Increasingly, prosecutors and prosecution services are held publicly accountable for their performance and for the resources placed at their disposal. Modern management methods are therefore at the heart of successful prosecution practices and services. Case management support and offering training in the necessary management skills are now part of the activities of modern prosecution services. Individual prosecutors can be encouraged to specialize in the conduct of major cases (or “mega-cases”) and develop the skills required to succeed in prosecuting increasingly complex cases.

A. Evidence Management and Protection

28. The amount of evidentiary material to be managed in large complex and often in most international cases can be overwhelming. Technological advances and dedicated databases with search facilities can support that process. The safe storage of that evidence can also be an issue. There are known cases of prosecutions that failed because organized criminal groups were able to locate the place where the evidence was being kept and to destroy that evidence (e.g. burning down a storage building where the evidence was being kept). The safekeeping, back-up and the integrity of the evidence available may also be compromised by corrupt individuals within the justice system.

29. Some evidence can be easily and quickly destroyed or tampered with, even from a distance. This is the case of various forms of electronic evidence. Some jurisdictions have instituted “preservation orders” in order to temporarily require the preservation of electronic evidence until a production order can be obtained.

B. Management of the Evidence Disclosure Process

30. In common-law countries, the management of the disclosure process is an important part of the overall case-management process. In complex cases, with numerous witnesses and large quantities of evidentiary material - which may include evidence obtained from foreign jurisdictions - the disclosure process can become very complicated. That process, when poorly managed, can be a source of delays and complications that may threaten the overall success of a prosecution. In some jurisdictions, prosecutorial services have delegated prosecutors to work directly with the police to form a “disclosure unit” and thus help tightly manage that process.

31. Another effective measure consists of developing “disclosure protocols” intended to improve the timeliness and completeness of disclosure. In some cases, the codification and/or the review of criminal procedure as it relates to disclosure rules are necessary. In such instances, the review must take into consideration the impact of disclosure rules on international cooperation and the work of joint investigative bodies in which local law enforcement and prosecution officials may be called upon to participate.

32. Evidence management and disclosure process management are but two areas where increased resources, particularly technical support and the services of paralegal staff, can make a big difference.

C. Managing the Costs of Prosecuting Complex Cases

33. Complex prosecutions, particularly those involving cooperation across borders, can have significant cost implications. In a world of limited resources, these costs can have a paralysing or debilitating effect on prosecution services and can hamper international cooperation in the prosecution of transnational crimes. Best practices in terms of the financial management of prosecution services should be identified and shared among jurisdictions.

34. Given the escalating costs of prosecution, the financial accountability of prosecution services is increasingly becoming an issue. Several prosecution services are seeing the need to offer resource management and financial management training to their senior managers. In many instances, it is a matter of supporting the development of automated financial management systems and other information management systems that can support the effective management of the workload and the resources involved and eventually also serve as a basis for performance monitoring. Given the recurring incidence of major cases, with major expenditures and complex case management decisions, it is important to ensure that financial and other management information systems available to senior prosecutors can produce case-based or project-based reports on the costs, resources and other aspects of various prosecutorial initiatives.

35. In most countries, performance data relating to effective criminal prosecution services tend to be rather limited. In many countries, it is virtually non-existent. States can work together in identifying credible performance indicators for prosecutorial services and consider adopting indicators that are comparable across jurisdictions.

36. Some prosecution services have established internal high-level committees on “prosecutorial efficiencies” or have instituted internal “continuous improvement” processes and other performance feedback mechanisms. Best practices in that regard should be identified and shared among jurisdictions through organizations such as the IAP or the European Judicial Network.

D. Specialisation of Prosecutors

37. Because of the legal and material complexity of many cases against members of organized crime groups, terrorist organizations or people involved in corruption offences, several prosecution services are making use of dedicated organized crime prosecutors or organized crime prosecutor teams. Similar teams also exist for the prosecution of major crimes, terrorist acts, corruption offences, money-laundering, computer crime, or financial and economic crime. These special prosecution teams consecrate the practice of encouraging a certain level of specialization among prosecutors. That practice has produced appreciable results in most jurisdictions, as it has favoured the development of skills and relationships that have enhanced the overall capacity of prosecutorial services to deal with complex cases. The perceived disadvantage of this specialization is often the corresponding diminished flexibility of prosecution services to allocate staff to meet shifting needs and priorities. Some prosecutors may also feel that that specialization can negatively affect their career progression and their chances of promotion.

VI. Capacity to Investigate and Prosecute the Criminal Activities of Legal Persons

38. The prosecution of offences committed by legal persons is yet another area which may present some special challenges to prosecution services. Corruption and various other forms of organized crime can obviously be committed by a company or by criminal organizations acting under the cover of a legal entity. The financing of terrorism can be hidden under the financial activities of companies or charitable organizations. International instruments such as the UN Convention against Transnational Organized Crime, the UN Convention against Corruption, or the OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions address the need for specific provisions in domestic law for corporate liability in relation to the type of offences they cover. Money-laundering prevention regimes are also largely ineffectual unless accompanied by an ability to subject legal entities to a criminal, civil or administrative liability. It is therefore essential to establish the liability of legal persons for offences committed on their behalf. Domestic corporate laws should adequately reflect the need to regulate corporations to ensure that companies or agencies are not misused to facilitate corruption.¹⁶ Investigators and prosecutors must also be able to rely on means to legally and operationally exchange information with respect to legal entities, their shareholders and officers, their business and other activities, as well as their financial transactions.

¹⁶ International Association of Prosecutors (1999). *Recommendations on Combating Corruption in Public Administration – IAP Best Practice Series No. 3*. The Hague: IAP

VII. Capacity to Investigate and Prosecute Bribery/Corruption, Financial Crime and Money-Laundering

39. Given that organized criminal groups and terrorist organizations frequently make use of illegal financial transactions to both transfer and fraudulently/illegally acquire funds, the investigation and prosecution of these offences deserves a high priority as part of any prosecution policy. The goal is to prevent and disrupt financial crimes without disrupting legitimate commercial activity. This is yet another area where advances in technology and the resulting new opportunities for criminal activities present some constant challenges for prosecutors and stretch the capacity of prosecution services to their limit.

40. Both the UN Convention against Transnational Organized Crime (when the crime is perpetrated by organized criminal groups) and the UN Convention against Corruption (when the crime results from corrupt practices) contain provisions pertaining to financial and economic crimes and anti-money-laundering measures. However, at present, no international instrument deals exclusively with the problem of economic and financial crime.

41. The main focus of investigation and prosecution services has been on controlling money-laundering activities. The international regime against money-laundering is the result of a framework and a number of international standards adopted in the context of various regional and international organizations. The United Nations conventions against organized crime and against corruption include provisions against money-laundering. The renewed attention given to preventing the financing of terrorism also points at the need for concrete actions. The International Convention for the Suppression of the Financing of Terrorism¹⁷ requires States Parties to establish the offence of financing of terrorism and to enact certain requirements concerning the role of financial institutions in the detection and reporting of evidence of financing of terrorist acts.

42. At a practical level, prosecutors and law enforcement agencies have been trying to identify effective measures to curb money-laundering in countries where participation in the “formal” financial system is low. Understanding these informal financial networks and knowing how organized criminal groups and terrorist organizations can abuse them is a priority for many law enforcement agencies¹⁸.

43. The gathering of financial information by prosecutors to detect financial networks linked to criminal groups and their investments, including exchanges of information between law

¹⁷ *International Convention for the Suppression of the Financing of Terrorism* (1999), G.A. res. 54/109. See also: International Monetary Fund (2003). *Suppressing the Financing of Terrorism – A Handbook for Legislative Drafting*. Washington (D.C.): IMF, Legal Department. The handbook contains some examples of model legislation.

¹⁸ On the links between informal networks and serious crimes see Passas N. 1999. *Informal Value Transfer Systems and Criminal Organizations: A Study into So-Called Underground Banking Networks*. The Hague: Ministry of Justice (The Netherlands); Passas N. 2003. *Informal Value Transfer Systems, Money Laundering and Terrorism*, Report to the National Institute of Justice (NIJ) and Financial Crimes Enforcement Network (FINCEN), Washington D.C.; Passas N. 2004. *Informal Value Transfer Systems and Criminal Activities*. The Hague: WODC. Ministry of Justice, The Netherlands.

enforcement and regulatory bodies, is part of any strategic approach to combating organized crime, corruption, and terrorism. Establishing national financial intelligence units (FIUs) is part of the capacity building initiatives that must be encouraged. The Convention against Transnational Organized Crime (Article 7) calls upon States Parties to establish financial intelligence units. It is important to build the capacity of prosecution services to make use of that information/analysis and to fully realize its evidentiary potential. It is also important to identify innovative ways and technologically proven methods to facilitate direct cooperation between these units and between these units and prosecution services across borders.

44. The successful investigation and prosecution of financial and economic crime and money-laundering offences require the quick identification of relevant information from banks, other financial institutions and commercial or other businesses. The tracing and confiscation of assets, both within a jurisdiction and internationally, are made difficult by the complexity of the banking and financial sector. Technological advances are also complicating these efforts. Because many of these transactions are transnational, changes to bilateral treaties or national legal frameworks are required to allow for the lawful and expeditious exchange of that information across borders between prosecution services or between other law enforcement authorities. In that regard, the existence of offshore centres presents some practical problems from the point of view of international cooperation among prosecution services. Difficulties are frequently experienced in dealing with the differences in the company laws and other regulatory norms involved. There are also issues with cyber-payments, “virtual banks” operating in under-regulated offshore jurisdictions, and shell companies operating outside of the territory of the offshore centres.

45. In the prosecution of financial crimes and money-laundering, the use of efficient methods for the tracing, freezing, seizure, and confiscation of crime-related assets is a crucial aspect of the intervention. Similarly, disrupting the activity of terrorist organizations requires action to trace and intercept their means of financing their activities.

46. The United Nations Convention on Illicit Trafficking in Narcotic Drugs and Psychotropic Substances, the UN Convention against Transnational Organized Crime, the UN Convention against Corruption, and the International Convention for the Suppression of the Financing of Terrorism all contain provisions relating to the tracing, freezing, seizing and confiscation of instrumentalities and proceeds of crime. Other improvements in the fight against money-laundering are based on the Forty Recommendations of the Financial Action Task Force on Money Laundering and the Basel Committee on Banking Regulations and Supervisory Practices.

47. Effective action against corruption must include measures to deprive perpetrators of the proceeds of corruption and targeting such proceeds by rigorous international cooperation to enable the freezing, seizing and recovery of assets diverted through corruption. The new UN Convention against Corruption contains some innovative and far-reaching provisions on asset recovery, including provisions to facilitate the return of stolen government assets to their countries of origin and reparation of victims.

48. The G-8 Lyon Group has put forward a set of best practice principles on tracing, freezing and confiscation of crime related assets, including terrorism.¹⁹ These principles emphasize the need for multi-disciplinary cooperation between legal, law-enforcement, and financial and accountancy experts not only within a jurisdiction, but also across jurisdictions. They underline the necessary specialization of competent authorities to deal with a number of complex cooperation issues.

49. The OSCE Expert Workshop on Enhancing Co-operation in Criminal Matters Relating to Terrorism suggested the adoption of a non-conviction based civil forfeiture regime as well as direct methods of execution of mutual legal assistance requests in restraining terrorist assets.²⁰

50. A number of emerging practices in this area are worth considering for strengthening the capacity of prosecution services to intercept criminal assets and to prevent the financing of terrorism. They include:

- The use of investigative strategies that target the assets of organized crime through inter-connected financial investigations.
- The development of arrangements and of a capacity to engage in active and ongoing exchanges of relevant financial intelligence information and analyses.
- Initiating confiscation or forfeiture of assets proceedings that are independent from other criminal proceedings.
- Establishing a reversed onus of proof (or methods to mitigate the onus of proof) regarding the illicit origin of assets.²¹
- Paying attention to tax and fiscal offences linked with organized crime.
- Entering into bilateral or other agreements for assets sharing among countries involved in tracing, freezing and confiscation of assets originating from organized crime activities²².

¹⁹ G8 – *Best Practice Principles on Tracing, Freezing and Confiscation of Assets*
http://www.usdoj.gov/ag/events/g82004/G8_Best_Practices_on_Tracing.pdf

²⁰ OSCO (2005). *Overview of the OSCO Expert Workshop on Enhancing Legal Co-operation in Criminal Matters relating to Terrorism*, Vienna, April 2005.

²¹ See also Council of Europe (2004). “Reversing the Burden of Proof in Confiscating Proceeds of Crime”, in *Combating Organised Crime, Best Practice Surveys of the Council of Europe*, Strasbourg, Council of Europe Publishing, pp. 43-76. Note that the study concluded that “(...) merely to pass laws that change the burden of proof – whether post-conviction or as part of a separate civil process – will not *ipso facto* lead to a substantial increase in recoveries from offenders or third parties. The extra recovery can happen only if unspent assets can be found, and can be attributed to the possession or control of someone against whom an order can be made” (p. 46). Therefore, it is largely the amount of skills resources devoted to the financial investigations that will determine the success of the various initiatives.

²² A model treaty on the sharing of assets was developed under the auspices of the Commission on Crime Prevention and Criminal Justice and adopted by the Economic and Social Council by its Resolution 2005/14 of 22 July 2005

VIII. Capacity to Make Effective Use of Modern Investigative Techniques

51. Proactive law enforcement strategies and complex investigations frequently involve resorting to special investigative techniques. In fact, the relevance and effectiveness of techniques such as electronic surveillance, undercover operations and controlled deliveries can probably not be overemphasized. The techniques are especially useful in dealing with the activities of sophisticated organized criminal groups because of the inherent difficulties and dangers involved in gaining access to information and gathering evidence and intelligence on their operations. Domestic arrangements and legislation relating to these techniques must be reviewed to reflect recent technological developments, taking full account of any human rights implications and of the need to facilitate international cooperation in these fields.²³

52. As was noted in the best practice survey conducted by the Council of Europe, as part of its Octopus Programme, “(...) it is not primarily the technical, but foremost the ethical and legal (including constitutional) barriers to such activities that are the subject of very intensive discussion, controversy and sometimes strong objections, in many contemporary democratic societies”.²⁴

53. Furthermore, new technological developments, such as cross-border surveillance using satellites or the interception of telephone conversations conducted through satellite connections, make cross-border investigation possible without physical presence of a foreign investigating officer.²⁵ Some of these methods are particularly useful, for example, in the investigation and prosecution of cyber-crime cases where evidentiary data may be dispersed across a computer network, in unknown places, far removed from where the actual search is taking place.

54. When a case requires international cooperation, differences in the law regulating the use of these investigation techniques can hinder the efforts of the prosecution. Major efforts have been devoted in the context of the implementation of the United Nations Convention against Transnational Organized Crime and in other international cooperation initiatives to identify these obstacles and remedy the situation. These efforts are also relevant obviously to the prevention of terrorist acts and their use by both law enforcement and intelligence agencies within the framework of their ongoing cooperation has drawn some close attention.^{26 27} The role of

²³ See UNODC (2005). *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto*, Vienna, United Nations Publication, Sales No. E.05.V.2.).

²⁴ Council of Europe (2004). “Interception of Communication and Intrusive Surveillance”, in *Combating Organised Crime, Best Practice Surveys of the Council of Europe*, Strasbourg, Council of Europe Publishing, pp. 77-104.

²⁵ Tak, P.J.P. (2000). “Bottlenecks in International Police and Judicial Cooperation in the EU”, *European Journal of Crime, Criminal Law and Criminal Justice*, Vol. 8/4, 343-360, p. 346.

²⁶ The European Court of Human Rights has endorsed the use of such techniques in the fight against terrorism (*Klass and Others v. Germany*) and, within the Council of Europe, a draft Recommendation of the Committee of Ministers to Member States that seeks to promote the use of special investigative techniques in relation to serious crime, including terrorism, is being drafted. See: De Koster, P. (2005). “Part 1 – Analytical Report”, in Council of Europe, *Terrorism: Special Investigation Techniques*, Strasbourg, Council of Europe Publishing, April 2005, pp. 7-43, in particular, “Chapter 5: Special Investigation Techniques in the Framework of International Cooperation”, pp. 35-38.

prosecution services and the judiciary in the supervision of the use of these methods is part of that discussion.

55. In addition to the admissibility of evidence collected in other States through methods that are not necessarily accepted in one's own State, there is also the question of whether violations of national laws by investigation officers from other countries affect the admissibility of the evidence gathered. The answer to that question varies from State to State. The verification of the legitimacy of evidence obtained as a result of international police cooperation is not without difficulties, both procedural and practical.

IX. Capacity to Make Effective Use of DNA Information and other Advanced Methods of Forensic Investigation

56. The use of DNA analyses is playing an important role in resolving complex criminal investigations and in supporting the prosecution of serious offences. Not all jurisdictions have legislation which allows the use of this analytical tool as part of a criminal investigation. Some of them have the necessary legislation, but do not have the forensic analysis capacity to collect, analyze and make use of that kind of evidence. International cooperation, in many instances, is taking the form of sharing that analytical capacity. The exchange of law enforcement expertise regarding scientific and technological developments such as advances in forensic sciences must be encouraged.

57. Many States need to review their legislation to ensure that it provides for the gathering, analysis, storage and lawful sharing of DNA information on offenders involved in organized crime offences and in the activities of criminal and terrorist organizations.²⁸ In the case of transnational crime, cooperation must often take the form of sharing information and evidence collected from DNA tests and other modern forensic investigation techniques. These exchanges too often tend to trigger a tedious and time-consuming procedure that does not contribute to quick investigations.²⁹ A lot of energy has been spent to standardize DNA analyses techniques globally. However, differences in national legislations, and sometimes the absence of DNA legislation at the national level, still create significant obstacles to international cooperation in sharing DNA information. DNA legislation harmonisation is still required.

²⁷ A survey of best practices as they relate to the interception of communications and intrusive surveillance led to the observation that “Although, in principle, the increasing co-operation between law-enforcement and national security services can be fruitful in the combating of criminal organizations, extra precautions should be taken to prevent the potential illegitimate gathering of evidence by security services”, Council of Europe (2004). “Interception of Communication and Intrusive Surveillance”, in *Combating Organised Crime, Best Practice Surveys of the Council of Europe*, Strasbourg, Council of Europe Publishing, pp. 77-104, p. 102.

²⁸ See the recent Canadian Legislation: *Act to Amend the Criminal Code, the DNA Identification Act and the National Defence Act*, S.C. 2005, Chapter 25.

²⁹ See Janssen, H.J.T. (2000). “The DNA Database in the Netherlands”, in C.M. Breur (ed.), *New Trends in Criminal Investigation and Evidence. World Conference on New Trends in Criminal Investigation and Evidence*. Antwerpen: Intersentia

X. Capacity to Prevent Corruption and Preserve the Integrity of Investigations and Prosecutions

58. Corruption within the justice system itself is always a concern and so are its implications for upholding the rule of law and preserving the integrity of the criminal investigation and prosecution processes. Corruption cannot only affect the credibility and effectiveness of a justice system, in a general sense, but it can also compromise international cooperation in criminal matters, defeat coordination efforts, condemn international initiatives to failure, and place witnesses, victims and justice officials at risk. More proactive investigations, the creation of special anti-corruption units, and other specific measures³⁰ can offer some means of protecting the integrity of the justice process against the effect of corruption and strengthen the capacity and willingness of various agencies to engage in deeper levels of effective cooperation, including joint operations and exchange of intelligence.

59. Prosecutors have a duty to give due attention to the prosecution of crimes committed by public officials particularly corruption and other abuses of power and, where authorized by law or consistent with local practice, the investigation of such offences.³¹

XI. Capacity to Protect Witnesses, Victims and Collaborators of Justice

60. Physical, economic and psychological intimidation of witnesses and their relatives can and does take place in a variety of contexts. The successful prosecution of organized crime activities, corruption and acts of terrorism usually entails that effective measures be taken for the protection of witnesses, victims, and collaborators of justice. These include legislative and practical measures to ensure that witnesses may testify freely and without intimidation, including the criminalization of acts of intimidation or reprisals, the use of alternative methods of providing evidence, physical protection, relocation programmes, permitting limitations on the disclosure of information concerning their identity or whereabouts, and in exceptional circumstances, protecting the anonymity of a person providing evidence.

61. Article 24 of the United Nations Convention against Transnational Organized Crime contains provisions requiring States Parties to take appropriate measures within their means to provide effective protection from potential retaliation or intimidation of witnesses in criminal proceedings who give testimony concerning offences covered by the Convention and its protocols. Article 25 of the UN Convention against Corruption requires the criminalization of efforts to influence potential witnesses and others in a position to provide the authorities with relevant evidence. States parties are required to criminalize the use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony

³⁰ Dempsey-Brench, J. (2003). Investigation and Prosecution of Police Corruption: Operation Othona”, in ADB-OECD Anti-Corruption Initiative for Asia-Pacific – Combating Corruption in the New Millennium (2003). *Effective Prosecution of Corruption. Ghaziabad, India, 11-13 February 2003, Asian Development Bank and Organisation for Economic Co-operation and Development. pp. 52-60.*

³¹ *Guidelines on the Role of Prosecutors*, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, Article 15.

or to interfere in the giving of testimony or the production of evidence in proceedings in relation to the commission of offences covered by the Convention (article 25, subpara. (a)). In the case of corruption offences, given the frequently consensual nature these offences, the cooperation of corporate information sources with law enforcement authorities is often crucial. The adoption of measures to protect “whistle-blowers” is therefore an important component of an effective anti-corruption strategy.

62. See also United Nations Convention against Corruption article 33, which requires Member States to consider incorporating into their domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning corruption offences.

63. To ensure greater international cooperation in offering effective witness protection at home or across borders, prosecution services often experience the need to develop arrangements with other jurisdictions for the safe examination of witnesses at risk of intimidation or retaliation. Developing a capacity to protect witnesses and even relocate them across borders must often be considered. Article 24 (para. 3) of the UN Convention against Transnational Organized Crime and article 32 (para. 3) of the UN Convention against Corruption require States Parties to consider entering into agreements or arrangements with other States for the relocation of witnesses.

64. Prosecution services must also have a capacity to offer effective protection to collaborators of justice. The investigation and prosecution of sophisticated crimes and conspiracies can be greatly assisted by the cooperation of members and other participants of organized crime groups and terrorist organizations. In some cases, these individuals are offered immunity from prosecution or comparative lenience in exchange for their collaboration. Their effective protection can therefore be essential to the successful prosecution of a case. Ensuring their protection will often require the collaboration of another State. This is why Article 26 of the United Nations Convention against Transnational Organized Crime promotes this kind of international cooperation. Among the measures contemplated are agreements between States on providing mitigation of punishment or immunity to a person with respect to charges that might be brought in these States, agreements to collaborate in ensuring the temporary or permanent relocation of these collaborators/witnesses, and exchanges of prisoners agreements.

XII. Capacity to Engage in Effective International Cooperation

65. During the last decade or so, a new determination of States to work together to improve international cooperation in fighting various forms of transnational criminal activities, including terrorism, has brought into focus a number of obstacles to cooperation and has led them to bring some significant improvements to the existing international cooperation regime in criminal matters. In spite of the considerable progress accomplished at the bilateral, regional, trans-regional, and international levels, international cooperation in the investigation and prosecution of serious crimes still needs considerable strengthening³².

³² See: Laborde, J.-P. (2005). *État de droit et crime organisé*. Paris: Dalloz.

66. At the same time, there is growing convergence of thinking around some of the best means of enhancing international cooperation in the investigation and prosecution of serious crimes. Some of it is now included in the international cooperation framework established by the UN Convention against Transnational Organized Crime, the Convention against Corruption, or the Convention against the Financing of Terrorism and several other multilateral instruments at the global and regional levels.

67. Criminal justice practitioners are well aware of the many obstacles that still exist to international cooperation in criminal matters. They include sovereignty issues, the diversity of law enforcement structures, the absence of enabling legislation, the absence of channels of communication for the exchange of information, and divergences in approaches and priorities. These problems are often compounded by difficulties in dealing with the varied procedural requirements of each jurisdiction, the competitive attitude that often exists between the agencies involved, as well as language and privacy issues.

68. International cooperation among prosecution services can be greatly strengthened by the ratification and implementation of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, the United Nations Convention against Transnational Organized Crime and the Protocols thereto, the United Nations Convention against Corruption, and the universal conventions against terrorism. Member States must review their extradition and mutual legal assistance arrangements, as well as their national legislation, to ensure that they are in compliance with these international instruments. In that process, the implications of a number of regional instruments, when relevant, should also be considered. Prosecutors who have first-hand experience of these matters can also play a significant role at the national and international levels in offering their own input into this review process.

69. Generally speaking, prosecution services still need to promote further legislative, judicial and administrative initiatives to enhance their ability to give, receive, and effectively use mutual legal assistance. A key component of such efforts consists of establishing, at the national level, an effective and comprehensive legal basis for mutual legal assistance and, at the international level, the necessary treaties to create binding obligations to cooperate with respect to a range of modalities.

A. *Building the Treaty Network*

70. In matters of international cooperation, prosecution services must rely, to a large extent, on the treaty network developed by their State. The various conventions mentioned above call upon their States Parties to widen their treaty network by entering into new bilateral and multilateral treaties to facilitate international cooperation in criminal matters. However, making this network work for them in a practical manner is often still a challenge for prosecution services.

71. Existing treaties and laws should be reviewed periodically and amended as necessary to keep pace with rapidly evolving practices and challenges in international cooperation. They should provide maximum flexibility to enable broad and expeditious assistance. To facilitate

these efforts, the UN has prepared a Model Treaty on Mutual Legal Assistance in Criminal Matters.³³

B. Strong and Effective Central Authority for International Cooperation

72. Designating a single³⁴ central authority for all incoming and outgoing legal assistance and extradition requests and strengthening its effectiveness remain crucial to the success of international cooperation in criminal matters. This is how a State, among other things, can coordinate its own requests for assistance and stand ready to respond expeditiously to requests for cooperation it receives from other States. Increasingly, mutual legal assistance treaties require that States Parties designate a central authority (generally the ministry of justice) to which requests can be sent, thus providing an alternative to diplomatic channels. The Convention against Transnational Organized Crime makes it a mandatory requirement for States Parties in order to ensure the expeditious transmission or execution of the requests. Nevertheless, the role of the central authorities need not necessarily be an exclusive one. Direct exchanges of information and cooperation, to the extent permitted by domestic law, should also be encouraged.

C. Procedural Reforms and Practical Measures

73. In addition to advocating for various procedural reforms to simplify the cooperation process, developing an “international cooperation capacity” in the investigation and prosecution of serious crimes also involves taking a number of important measures such as:

- Improving law enforcement cooperation mechanisms, including cooperation in the use of special investigative techniques.
- Considering means to facilitate, where feasible and desirable, processes for the transfer of criminal proceedings to another jurisdiction.
- Exploring, wherever feasible on a bilateral or regional basis, means of facilitating the mutual recognition of decisions and judgments in criminal matters, including decisions at the pre-trial stage, and decisions relating to the seizure and confiscation of criminal assets.
- Engaging with each other’s prosecution services, wherever possible and appropriate, in strategic analysis, strategic planning, and coordination of investigations and prosecutions of corruption, organized crime and terrorist activities.

³³ *General Assembly resolution 45/117, annex, and 53/112, annex 1.*

³⁴ The UNDCCP Informal Expert Working Group on Mutual Legal Assistance Casework Best Practice (Vienna, December 2001) noted the wide and growing range of international treaties requiring States to establish a central authority for the purpose of mutual legal assistance in relation to the various offences covered by these instruments. The Group urged States to ensure that their central authorities under these conventions are a single entity in order to avoid duplications and inconsistencies.

- Engaging with other States, as necessary, in the creation of joint investigative teams and the use of approaches and techniques that support proactive methods of law enforcement.
- Improving the training of law enforcement officials and prosecutors, and enhancing international communication and regular exchanges of information, criminal intelligence and best practices.
- Improving cooperation between prosecutors and other law enforcement officials through the use of police liaison officers and liaison magistrates, and developing and participating in international structures to provide a framework for that liaison function and for broader international law enforcement and prosecutorial cooperation.
- Exploring the feasibility of promoting greater integration and coordination of the different modalities of international cooperation in criminal matters.
- Enhancing the international cooperation capacity of developing countries and countries with economies in transition through financial, material and technical assistance.

D. Promoting and Implementing Best Practices in Extradition and Mutual Legal Assistance Casework

74. The *Report of the Informal Expert Working Group on Effective Extradition Casework Practice*³⁵ offers a number of best practice recommendations for extradition. Finally, there is now a greater understanding of how best practices for extradition casework can be promoted. Member States have an interest in exchanging that information with each other and making it broadly available to their own criminal justice personnel. For instance, the UNODC Informal Expert Working Group on Effective Extradition Casework Practice developed a list of very concrete suggestions on how to enhance the effectiveness of extradition casework.³⁶ Among them, obviously, are suggestions relating to the training of law enforcement and other criminal justice personnel and the development of various tools to facilitate the use of available national laws and international agreements.³⁷

³⁵ United Nations Office on Drugs and Crime (2004). *Report of the Informal Expert Working Group on Effective Extradition Casework Practice*, Vienna, pp. 8-15.

³⁶ United Nations Office on Drugs and Crime (2004). "Chapter 3 – Best Practice Recommendations for Extradition Casework", *Report of the Informal Expert Working Group on Effective Extradition Casework Practice*, Vienna, pp. 16-23. The report of the Informal Expert Working Group also includes a "Checklist for Outgoing Extradition Casework Planning" and a "Checklist for the Content of Extradition Requests, Required Supporting Documents and Information".

³⁷ See, for example, the Codes of Practice developed by the Home Office in the United Kingdom to clarify the operation of police powers in extradition cases. United Kingdom, Home Office (2003). *Extradition Act – Codes of Practice*, London: Home Office, December 2003.

75. The UNDCCP Informal Expert Working Group³⁸ also identified a number of best practices that are directly relevant to the development of a greater capacity, within prosecution services, to respond quickly and efficiently to foreign requests for assistance. They include:

- Ensuring awareness of national legal requirements amongst domestic officials involved in the process (e.g., through the dissemination of information, guides, or procedural manuals to domestic officials regarding mutual legal assistance law, practice, and procedures and on how to make requests to other States).
- Ensuring awareness of national legal requirements amongst foreign officials involved in international cooperation, by developing guidelines, simple forms, checklists³⁹, and procedural guides on the requirements that must be met in order to obtain assistance.
- Increasing the training of personnel involved in mutual legal assistance, by the provision of technical assistance when required, lectures and presentations by central authorities, and exchanges of personnel between authorities. The International Association of Prosecutors, for example, has published a booklet for prosecutors on what international assistance may be available and how to seek it in order to enhance the investigation and prosecution of crime.⁴⁰
- Encouraging direct personal contacts between officials.
- Encouraging prosecutors and other officials to avoid a rigid interpretation of the prerequisites to mutual assistance in a way that can impede the granting of assistance.
- Making available to prosecution services the modern communication and other technological means they require for expediting transmission of requests and responses.
- Optimizing the language capability within the central authorities and prosecution services in general.

E. Establishing Joint Investigative Teams

76. The establishment of joint investigative teams represent a major new trend in the development of an effective capacity to investigate and prosecute transnational crimes of all sorts. It offers one of the most promising new forms of international cooperation against organized crime, corruption and terrorism, even if there are still some remaining issues in terms of making it fully functional on a broad scale. There are legal issues, as well as issues of attitude

³⁸ United Nations Office for Drug Control and Crime Prevention (2001). *Report of the UNDCCP Informal Expert Working Group on Mutual Legal Assistance Casework Best Practice*, Vienna, December 3-7, 2001.

³⁹ See the *Model Checklists and Forms for Good Practice in Requesting Mutual Legal Assistance*, developed by the UNDCCP Informal Expert Working Group on Mutual Legal Assistance Casework Best Practice (Vienna, UNDCCP, December 3-7, 2001)

⁴⁰ International Association of Prosecutors (2004). *International Co-operation –Basic Guide to Prosecutors in Obtaining Mutual Legal Assistance in Criminal Matters*. The Hague: IAP.

and trust among law enforcement agencies, or even procedural questions such as whether a foreign investigation official who participated in a joint investigative team may be compelled to take the witness stand subsequently during the criminal proceedings. As some observers have noted, “(t)he good will of police officers did not (and still does not) suffice.”⁴¹

77. There are also some practical problems in the organization of joint investigations, including the lack of common standards and accepted practices, issues around the supervision of the investigation, and the absence of mechanisms for quickly solving these problems.⁴² For joint investigative teams to become an effective tool for international cooperation States must put in place the required legal framework, both at the national and international levels, although such a framework need not necessarily be very complicated.

78. A few European Union Member States have created joint investigation teams to deal with potential terrorist activities and other complex criminal cases requiring international investigation, and for which coordinated and concerted law enforcement action is necessary. These teams are composed of magistrates and police officers from two or more countries, who act as judicial police with powers to carry out searches, interrogations and telephone interceptions within the participating countries. The Agreement on Mutual Assistance between the European Union and the United States of America⁴³ provides that each State may communicate directly with each other for the purpose of setting up and operating such joint teams, except in some complex situations requiring central coordination. Members of these teams may also request their own competent authorities to take measures to facilitate the joint investigation, as if it were in support of a domestic investigation, without a formal request for assistance being required from the other State. Other States in every part of the world are experimenting with different variations on the theme of joint investigations and prosecutions.

XIII. Technical Assistance and Capacity Development

79. This too is an area where integrated approaches are important. Smaller States often experience difficulties implementing the various provisions of the numerous international conventions and bilateral treaties they are expected to comply with. They can benefit from integrated technical assistance activities which focus on building their overall investigation and prosecution capacity as well as their ability to engage in effective cooperation.

80. Law enforcement agencies and prosecution services can provide bilateral assistance and cooperation through various technical assistance and capacity-building projects in other States. The provision of such assistance also helps establish future cooperation on solid grounds. Effective technical assistance activities are carried out through the means provided by

⁴¹ Plachta, M. (2005). “Joint Investigation Teams – A New Form of International Cooperation in Criminal Matters”, *European Journal of Crime, Criminal Law and Criminal Justice*, Vol. 13/2, pp. 284-302.

⁴² See Schalken, T. and M. Pronk (2002). “On Joint Investigation Teams, Europol and Supervision of their Joint Actions”, *European Journal of Crime, Criminal Law and Criminal Justice*, Vol. 10/1, 70-82.

⁴³ Agreement on Mutual Assistance between the European Union and the United States of America, signed on 25 June 2003, O.J. L 181/34 of 19 July 2003. See: Article 5: Joint Investigative Teams.

multilateral institutions such as the United Nations, the Commonwealth, the Association of South-East Asian Nations, or the World Bank, and it can be linked to best practices identified in other jurisdictions.

81. With respect to the success of international anti-terrorism initiatives, more is required in terms of capacity-building assistance in the context of the rule of law, both for the implementation of the universal instruments against terrorism and to enhance international cooperation between prosecution services. This would include: the strengthening of institutional structures and mechanisms at the national level to create a capacity to cooperate more effectively and to contribute to international initiatives; provision of on-line advice on international cooperation mechanisms; international mentorship (at the individual and institutional levels) in the development and implementation of institutional capacity and cooperation mechanisms; and, the provision of training.

XIV. Evaluating the Effectiveness of Prosecutorial Strategies and Practices

82. Systematic evaluations of the effectiveness of prosecutorial strategies and practices, including evaluations of prosecutorial decision-making, are very rare. There are practical, operational and even political reasons why this is so. New and innovative practices are sometimes assessed on the basis of the perceptions of prosecutors themselves⁴⁴, but that field of research remains largely undeveloped. However, this is clearly an area which could benefit from a more systematic approach to learning from experience.

83. Model guidelines for the investigation and prosecution of various forms of serious crime are periodically developed by various organizations⁴⁵. These, as well as best practice compendia, can also provide a benchmark against which prosecutors and prosecuting agencies may develop their own strategies and assess their own performance.

XV. Conclusions

84. The above review of issues affecting the capacity of prosecution services to successfully prosecute organized crime, corruption and terrorist activities revealed a number of areas in which it has become essential to build a substantially enhanced capacity of prosecution services.

85. Modern prosecution services, with their emphasis on sound case management practices, strategic planning, performance based standards, effective use of modern technologies and sustained cooperation with other law enforcement agencies, both domestically and

⁴⁴ For example, the Mid-Term Evaluation of the Department of Justice Canada's measures to Combat Organized Crime, February 2004. http://www.justice.gc.ca/en/ps/eval/reports/04/mcoc/mcoc_1.html

⁴⁵ For example, by the International Association of Prosecutors. Sometimes these instruments take the form of an analytical presentation of best practices as they relate to the investigation and prosecution of various forms of crime.

internationally, are indeed very different from their predecessors. However, the new challenges they face and the increasing complexity of their tasks leave them no choice but to work together, across borders when necessary, to develop their respective capacity to confront these emerging new threats to human security.

86. Practitioners are invited to compare their respective experience in the development of an enhanced prosecution capacity, the importance of these efforts in upholding the rule of law, and the methods they have found most effective or appropriate for strengthening the capacity of prosecution services.

87. In doing so, they will not escape reaching the conclusion that building the capacity of prosecution services with such dangerous, complex and often transnational crimes cannot be accomplished in isolation from similar efforts in other parts of the criminal justice system. The success of the criminal justice enterprise clearly requires that concurrent efforts be devoted as well to the development of the capacity of other parts of the system, notably the police and the courts, as the effectiveness of one clearly depends on that of the others.

88. Discussions will no doubt lead to consideration of how progress can be measured and how States, and in particular their prosecution services, can assist each other in the fight against organized crime, corruption and terrorism.

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