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INTERNATIONAL COOPERATION AGAINST TRANSNATIONAL ORGANIZED CRIME: THE GENERAL DEVELOPMENT

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I. CRIME: FROM A DOMESTIC TO AN INTERNATIONAL PROBLEM

Before World War II, crime was almost solely a domestic issue. Few persons were concerned with what happened beyond their borders, since this had little effect on day-to-day life. This scenario has now changed fundamentally.

Some of the changes have been due to technology. Faster air service for people and goods means that it is easier to get around, and also easier both for offenders to move from one country to the next, keeping more than one step ahead of the law enforcement authorities, who must respect jurisdictional limits. More sophisticated telecommunications make the planning and directing of crimes possible from a distance, also from abroad. Electronic fund transfer means that the profits from crime can be rapidly moved beyond the reach of national authorities.

Among the political and economic changes have been the establishment of regional trade groupings such as the North American Free Trade Association and the European Union, which are removing barriers to the movement of people, goods, services and capital. The opening of formerly closed economies and disruptions in economic development have contributed to an enormous increase in crime, crime which has had an impact

even outside the region. And because of political developments and corruption in many countries around the world, some government officials have shown their willingness to collude with offenders in, for example, terrorism, drug trafficking, money laundering and economic crime.

The social changes have included the impoverishment of people, in particular in developing countries and the countries in transition. Although informal social control still operates effectively in large parts of the developing world, many developing countries have undergone massive rural-urban migration, with the new arrivals in the cities faced with an almost total lack of prospects for education and employment. In many countries, attempts at economic development have failed, leaving a legacy of a growing external debt. War and internal conflict have not only had a disastrous effect on persons caught in their grip, they have increased the number of internally displaced persons and the international flow of refugees. Given the scale of such problems, it is understandable that the criminal justice system in many developing countries is under-resourced and under-trained.

According to one dominant explanation for changes in the structure and level of crime, the routine activity approach, the amount and structure of crime is affected by three factors: the number of suitable targets for crime, the number of likely and motivated offenders, and the absence of capable guardians to prevent would-be

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offenders from committing crime.¹ In all three respects, the potential for crime and for organized crime is expanding worldwide and the technological, political, economic and social changes just referred to have intensified this expansion.

The number of suitable targets for crime has increased. The increase in industrial production and, in many countries, the change from a state economy to a market economy have increased the amount of consumer goods available. Radios, televisions, video recorders, compact disk players, brand-name clothing, cosmetics and other goods are now being produced in greater numbers domestically. These factors increase the number of targets for property crime.

In a somewhat parallel manner, for example the introduction of modern telecommunications and computer systems, the proliferation of private companies, and the wide use of new forms of non-cash payment (such as credit cards) have increased the number of targets for economic crime.

The number of likely and motivated offenders has increased. Throughout the world, millions of people have been willing or unwilling participants in what has been called the “shadow economy” or “underground economy”, which grew out of the iron laws of supply and demand. What the legal market could not produce and distribute in sufficient quantities and/or of adequate quality (which in many countries often seemed to be just about anything and everything) the shadow economy sought to supply. This

leads, among others, to smuggling, illegal migration, and prostitution.

The borderline between the legitimate economy and the shadow economy is often impossible to draw, and many people received their indoctrination into crime in this way. Where economic times have been bad, the standard of living has dropped, unemployment has spread and inflation has increased. As a result, more and more persons have turned to the shadow economy and to crime as a means of supplementing their income. The reality (and perception) of increased crime has contributed to the readiness to commit crime.

The pool of likely and motivated offenders is also being expanded by the prison system. The prison population in many countries (particularly in the United States, the Caribbean, Central and Eastern European and Central Asia) is quite high, and has been expanding during the 1990s.² Conditions in such prisons appear to be very poor by UN standards, and these prisons can thus do little to rehabilitate the offenders. On the contrary, the time spent in prison can provide the prisoners with information on new crime techniques and suitable targets, as well as supply them with willing partners in crime.

The readiness and ability of society to intervene in criminal activity has weakened. The current resources and approach of the criminal justice systems in many countries cannot provide an effective response to the increase in crime. There are shortages in personnel, facilities and equipment. Training and

¹ See in particular Cohen, L. and Felson, M., Social change and crime rate trends: A routine activity approach, *American Sociological Review*, 1979, vol. 44, pp. 588–608, *passim*.

² Roy Walmsley, World Prison Population List. Second edition. Home Office Research, Development and Statistics Directorate, Research Findings No, 116, London 2000.

the level of knowledge among practitioners in many cases is woefully inadequate. With the recent economic changes, the relative salary level of criminal justice professionals has often deteriorated, making it difficult to recruit and retain competent individuals. The poor economy also means that criminal justice agencies are often unable to obtain or upgrade their facilities and equipment. For example, many officials in Central and Eastern European countries have sadly noted that they are trying, both figuratively and literally, to use Ladas and Moskvitches to catch criminals who are speeding away in BMWs and Mercedes-Benzes.

The developments reviewed briefly above have contributed to the growth of ordinary crime as well as to the growth and the internationalisation of organized crime. Organized crime as such is not new. For example Italian, Nigerian, Chinese and Japanese organized crime has long roots, and organized criminal groups from these countries have had members or cells even in foreign countries, as well as the international contacts needed to exploit emerging markets for illegal goods (such as drugs, but also illegal firearms, pornography, smuggled alcohol and cigarettes, counterfeit currency, counterfeit goods and stolen goods) as well as for illegal services (such as prostitution, slave labour, loan-sharking, money laundering and illegal immigration). What is new is the degree to which they are prepared to expand their activities internationally, supplementing their traditional criminal areas with new areas, and networking with other criminal organizations.

II. THE EVOLUTION OF INTERNATIONAL CRIMINAL JUSTICE

A. From Strict Territoriality to the Recognition of the Need for International Cooperation

And how has the criminal justice system responded to the growth and internationalisation of crime? As long as crime was defined as (and, in most respects, actually was) a local or at most national issue, criminal law remained almost wholly territorial, concerned only with acts or omissions that had been committed in the territory of the forum state. This was the approach taken in particular by the common law countries: offences committed abroad were not their concern, and their authorities would not tend to be willing to assist the authorities of another State in bringing offenders to justice.³

Where formal cooperation in criminal cases is impossible, informal cooperation may arise. This began to emerge in law enforcement during the 1700s and early 1800s, when the major international law enforcement concerns were related to

³ This attitude was not limited to criminal law, but could also be seen in civil cases. It is true that private international law began to evolve already during the 1200s. This discipline seeks to determine what law should govern a transaction or occurrence that has a connection with two or more jurisdictions. However, international cooperation even in civil cases was almost non-existent up until the 1800s. A person who wanted to summon a person in another country or enforce a civil court judgment in another country often found this to be impossible. It was not until the mid-1800s that growing interest was expressed in international cooperation in civil matters. One of the earliest treaties on service of process for civil cases was signed in 1846 by France and by the Grand Duchy of Baden (later, part of Germany).

piracy, the slave trade, smuggling and cross-border forays by bandits. At that time, the tendency was for States to take unilateral action to make arrests and bring the offenders to justice. This could take the form of blatant incursions into foreign territory (with or without the support of law enforcement colleagues on the other side of the border), such as seizures of suspected pirate or slave-trade ships even when they lay in the territorial waters of a foreign state, or where posses rode across the Rio Grande from the United States to Mexico in pursuit of bank robbers or cattle rustlers.

Such informal and unilateral actions, colourful as they may be, were an unsatisfactory response to a growing problem. Unilateral action could create unnecessary tensions between nations. For the police to be able to work across borders, arrangements had to evolve on three different levels: the political level, the structural level and the practical level.

On the political level⁴ (what Benyon calls the macro level), governments must create the legal and political possibilities for international police cooperation. This is the level that deals with the constitution and legislation of the individual countries, and with international agreements. It is the political level that determines the legal issues relating to police operational powers across borders. Countries that had many cases in common gradually began to enter into more formalised arrangements for cooperation, including bilateral treaties. In 1919, Belgium and

France even agreed on allowing their respective police forces limited cross-border authority. In its most ambitious form, the political level seeks to unify and harmonise the way in which criminal justice and law enforcement is carried out in two or more countries.

The second level, the structural level (referred to by Benyon as the meso level), deals with operational structures, practices and procedures. It is the structural level that provides the tools for cooperation. These tools include information systems, common data bases, methods of coordination, access to information, and where necessary the establishment of specialist organisations dealing, for example, with counterfeiting or fraud.⁵

One expanding element of international work on the second, structural level consists of training and technical cooperation. Considerable bilateral and multilateral efforts have been made to develop police skills and techniques, through joint training and joint exercises, and through the provision of direction, training and resources. Such assistance is provided not only for altruistic reasons of helping the police in other countries to deal with serious problems, but also for understandable reasons of national interest, such as efforts to stabilise a regime in a neighbouring country, or to assist in preventing and controlling crime that might otherwise spread internationally.

The third level is the practical level (referred to by Benyon as the micro level).

⁴ Benyon, John (1997), *The Developing System of Police Cooperation in the European Union*, in McDonald, William F. (1997) (ed.), *Crime and Law Enforcement in the Global Village*, Anderson Publishing Company, Cincinnati, pp. 103–121.

⁵ As Benyon points out, cooperation on this second level often takes place between different law enforcement organisations even without governmental initiative or parliamentary approval.

119TH INTERNATIONAL TRAINING COURSE
VISITING EXPERTS' PAPERS

It is this level that is concerned with the investigation of specific offences and with the prevention and control of particular forms of crime. Where the specific case at hand has points of contact with a foreign State, the practical steps may involve turning the matter over to private investigators, turning the foreign aspects of the case over in full to the foreign law enforcement body (or bodies), or granting law enforcement authorities the power to act on foreign territory.⁶

Judicial cooperation in criminal matters was even slower in emerging than was cooperation in law enforcement. Once again, it was cooperation in civil matters that evolved first, and in some ways paved the way for cooperation in criminal matters.⁷ Extradition and mutual assistance in criminal matters lagged behind. Some work was done on the subject by the League of Nations Committee of Experts for the Progressive Codification of International Law, and a draft convention was prepared in 1928, covering "measures of enquiry", the summoning of witnesses and experts to attend in the requesting State (with

immunity from prosecution in respect of earlier conduct), the transfer of persons in custody to appear as witnesses (available only on the basis of reciprocity), and the surrender of exhibits. Assistance could be refused if the relevant offence was not extraditable.⁸ The Harvard Draft Convention in 1939 dealt with service of process, obtaining evidence abroad and supply of certain records relating to convictions and to convicted offenders (McClellan, *ibid.*). In respect of extradition, the first multilateral treaty did not emerge until 1933; this was the Convention on Extradition prepared within the framework of the Organization of American States.⁹ In respect of mutual assistance in criminal matters, even more years had to pass until a multilateral treaty was drafted: the Convention on Mutual Assistance in Criminal Matters of 1959, prepared within the framework of the Council of Europe.

This is not to say that judicial cooperation did not exist in criminal matters before the 1933 and 1959 treaties. A few bilateral treaties were

⁶ Nadelmann notes that today, this third type of cooperation, where law enforcement authorities from two or more countries work directly together on specific cases or types of activities, is increasing. He observes that lower-level officials tend to regard international politics as a hindrance, and that they therefore seek to establish working relationships with foreign colleagues based on a common professional culture and objectives. Ethan A. Nadelmann, in McDonald, *op.cit.*, pp. 107–108.

⁷ Many bilateral treaties on the service of process and the taking of evidence abroad were made during the 1800s. At the end of the 1800s, multilateral initiatives emerged. In 1889 and 1890, a Latin American Congress on Private International Law was held in Montevideo. It produced the 1889 Convention on Civil Procedure. Only a few years later, the first permanent intergovernmental structure for progressive unification of the rules of private international law was set up: the Hague Conference on Private Law began regular meetings in 1893. The Hague Conference meets every four years, and brings together official delegations from a wide spectrum of legal systems around the world. It not only develops draft conventions, but follows their implementation and, as needed, updates them. Already in 1894, the Hague Conference produced a draft Convention on Civil Procedure, which was signed one year later. It was this Convention that created the system of central authorities, which supplemented the existing network of consular authorities.

⁸ David McClellan, *International Judicial Assistance*, Clarendon, Oxford, 1992, p. 125.

⁹ This has subsequently been replaced by the 1981 Inter-American Convention on Extradition.

made already during the 1800s, and in respect of drug trafficking, which has long been the core of transnational organized crime, even multilateral treaties were made at the beginning of the 1900s.¹⁰ The International Opium Convention was completed in 1912, and a second Convention on this subject appeared in 1925. This was followed, in 1931, by the Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs,¹¹ and in 1953 by the Protocol Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade in, and Use of Opium.

Bringing these multilateral treaties up to the present, the 1961 Single Convention established new mechanisms and obligations. It assigned certain functions to the Commission on Narcotic Drugs and to an International Narcotics Control Board. It also required States to provide annual estimates of drugs used

for various purposes, to abide by restrictions on manufacture, production and import, to criminalise the possession, supply and transport of drugs, and make them extraditable offences.

The main drug treaty today is the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which entered into force in 1990. The 1988 Convention calls for criminalisation of a range of criminal offences, including the organisation, management or financing of drug offences, and the laundering of the proceeds (art. 3). If two States have acted in this respect, there should be no problem with the double criminality requirement in extradition. According to article 6, the offences criminalised by the 1988 Convention are by definition extraditable offences, and the convention *itself* can be regarded as providing the necessary legal basis for extradition and mutual assistance. Art. 5 contains provisions on confiscation, art. 7 on

¹⁰ Many countries have long preferred bilateral agreements over multilateral agreements. The advantage of bilateral agreements is that they can be tailored to the specific needs of the two countries in question, and they can be expanded, amended or terminated relatively easily, as required by the situation. Furthermore, the two States will obviously have greater control over the planning, implementation and follow-up of the cooperation.

Multilateral agreements, in turn, require that the States in question commit themselves to certain common rules agreed upon by all the States involved. They are more difficult than bilateral agreements to draft, amend and terminate. The infrastructure that is often required for the implementation of multilateral agreements calls for the investment of resources. At the same time, however, multilateral agreements provide a greater degree of stability to international cooperation. They represent an intention to create lasting institutions based on mutual solidarity and shared responsibilities. Moreover, accession to a multilateral agreement relieves the State of the responsibility for entering into a number of different bilateral agreements, each of which may require different procedures. Finally, the extension of multilateral agreements lessens the possibility that offenders can seek to evade justice by operating in or from, or escaping to, States that are not parties to such agreements. (A list of multilateral treaties on criminal law issues is provided in Bassiouni, M. C., *A Draft International Criminal Code and Draft Statute for an International Criminal Tribunal*, 1987, pp. 355–475.)

Several countries (in Europe, these include Austria, Finland, Germany and Switzerland) have adopted national legislation on international cooperation, which makes cooperation possible with those countries with which there is no bilateral or multilateral agreement in force.

¹¹ The 1925 Convention has subsequently been amended many times with protocols.

119TH INTERNATIONAL TRAINING COURSE
VISITING EXPERTS' PAPERS

mutual assistance,¹² art. 8 on the transfer of proceedings, and art. 11 on controlled delivery.

Asides from the topic of drugs, before the United Nations Convention against Transnational Organized Crime (the Palermo Convention) was opened for signature at the end of 2000 there were almost no multilateral treaties that would have defined aspects of organized crime.¹³ During the 1970s, in response to a rash of sky-jacking and other hostage-taking, treaties were signed on this topic.¹⁴ In 1980, a Convention was completed on the physical protection of nuclear material, ten years later the Council of Europe completed the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, and in 1996 the Inter-American Convention against Corruption was completed. As this scattered examples show, it has taken a long time for the world to realize the need for

agreeing on the rules for international cooperation in responding to transnational organized crime. The Palermo Convention can well be said to represent a significant and welcome change in this respect.

B. Moving On to the Next Stage: The Emergence of International Criminal Policy

Bilateral and multilateral treaties only establish the framework for international cooperation. In many respects, even this framework remains very incomplete. Responding to transnational organized crime requires more than the capacity to extradite fugitives or provide basic mutual legal assistance. During the post-World War II period, countries around the world have shown an increased readiness to go beyond treaties, and seek to agree on a common approach to criminal justice issues—in effect, they are seeking to develop international criminal policy.¹⁵

One element in this emergence of international criminal policy has been the strengthening of international academic and professional cooperation. The International Penal and Penitentiary Commission was established already in 1846, and began to organize international congresses. The International Association of Penal Law was established in 1924. Many other international academic and professional associations have been established since then.¹⁶ The early work of the United Nations crime prevention and criminal justice programme can be

¹² One notable aspect of the 1988 Convention is that a State Party may not refuse to render mutual legal assistance on the grounds of bank secrecy.

¹³ Among the few exceptions are treaties on the slave trade, the trade in women and children, the forgery of currency and terrorism. See Roger Clark (1994), *The United Nations Crime Prevention and Criminal Justice Programme. Formulation of Standards and Efforts at Their Implementation*. University of Pennsylvania Press 1994, p. 201, fns 10 through 21.

¹⁴ The 1970 Convention for the Suppression of Unlawful Seizure of Aircraft, the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents, and the 1979 International Convention against the Taking of Hostages. In 1988, the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation was completed.

¹⁵ The term “international criminal policy” is used here to refer to the mutual alignment by several countries of their criminal policy. It is not intended to suggest the existence of a supranational body with the authority to establish its own “international criminal policy” independent of the will of sovereign nations.

readily described as being based on a networking of individual academics and professionals, with a focus on research, and gradually also on norms and standards.¹⁷

Three developments in particular contributed to international alignment of national criminal policy. One, of course, was the practical reality: during the period since the Second World War, cross-border crime has become a practical problem, and countries realised that domestic or unilateral efforts alone were not enough. At the same time, crime was becoming a political issue that forced some countries to reconsider how it should be approached. This was most clearly evident with the case of the United States and its “war on drugs”, which focused attention also on the

international aspects. The emergence of international terrorism during the 1960s served to enforce this internationalisation of criminal policy.

A second development was the intensifying cooperation among certain neighbouring countries, such as the cooperation among the five Nordic countries (Denmark, Finland, Iceland, Norway and Sweden) and among the three Benelux countries (Belgium, Luxembourg and the Netherlands). The Nordic countries, for example, organized regular meetings among their respective ministers, at which also criminal policy issues were discussed. Cooperation was also close in the drafting of legislation, so close that in 1960, all five countries enacted similar legislation on the extradition of offenders, and in 1963 on the enforcement of sentences. As a result of this and other harmonized legislation, extradition and mutual legal assistance within this group of countries became very simple and effective.

The third and perhaps most important factor leading to the emergence of international criminal policy was the establishment of inter-governmental organisations that provided the framework for the development of such policy. These organisations took various forms.

- the United Nations has already been mentioned. As noted, during its early years the UN crime prevention and criminal justice programme focused more on academic and professional issues. Over the past fifteen years, however, it has become very active in mobilising international cooperation, as shown by the development of several model treaties, and most clearly in the drafting of the United

¹⁶ Among the more widely known such organizations, in addition to the International Association of Penal Law and the International Penal and Penitentiary Foundation, are the Asian Crime Prevention Foundation, the International Criminal Police Organization (Interpol), Amnesty International, Defence for Children International, the Howard League for Penal Reform, the International Association of Juvenile and Family Court Magistrates, the International Commission of Jurists, the International Society for Criminology, the International Society for Social Defence, and Penal Reform International.

¹⁷ Although the delegations at the sessions of the United Nations Committee on Crime Prevention and Control and at the quinquennial Congresses represented Member States, the discussions maintained a strong flavour of intellectual discourse and the exchange of professional experience. It was not until the reform of the structure of the United Nations programme at the beginning of the 1990s that Governments clearly began taking an active interest in the decision-making process. See, for example, Clark (op.cit.), and Manuel Lopez-Rey (1985), *A Guide to United Nations Criminal Policy*, Cambridge.

119TH INTERNATIONAL TRAINING COURSE
VISITING EXPERTS' PAPERS

Nations Convention against Transnational Organized Crime.¹⁸

- a second form is represented by the Commonwealth Secretariat (established in 1965), that provides a link among countries that share a similar cultural heritage. Other examples of similar cooperation can be found among the Francophone countries, and between Portugal and Portuguese-speaking African countries.
- a third form is represented by the various intergovernmental organisations for general regional and subregional cooperation, such as the Council of Europe and the European Community (later the European Union), the Economic Community of West African States, the Arab League, the Organisation of African Unity (to be replaced in 2002 by the African Union), the Organisation of American States, and by cooperation among the Southern African countries, and among the Mercosur countries (Argentina, Brazil, Paraguay and Uruguay).
- a fourth form is the organisations that focus on specific issues. These may be interregional, such as the Financial Action Task Force. On the regional level, there are many examples.¹⁹

¹⁸ Prior to the 1980s, the only significant organized crime issues addressed in the United Nations related to organized crime were trafficking in women, and drugs (see, for example, Lopez-Rey 1985 and Clark 1994). The spread of transnational organized crime, the establishment of the United Nations Commission on Crime Prevention and Criminal Justice, and the model of the 1988 Convention all contributed to the activation of the UN also in this area.

The types of cooperation carried out within these structures vary considerably. The main forms include the development of new international agreements, international legal assistance, non-binding recommendations, resolutions and guidelines, and the exchange of information and experience.

Today one can already speak of a problem with a proliferation of actors and agencies in international cooperation in criminal justice: various Government agencies (not always working in harmony even within a country), academics, Interpol, Europol, regional bodies for Africa, Europe and Latin America, the Customs Co-operation Council, the Group of Seven (which established the Financial Action Task Force), the Commonwealth Secretariat, the Organisation of Economic Cooperation and Development, and various bodies with the United Nations. Asides from the practical difficulty of too

¹⁹ In the Asian and Pacific region, for example, regional cooperation has developed perhaps most strongly among Australia, New Zealand and other South Pacific jurisdictions, for example in the form of the annual Pacific Island Law Offices Meetings. Perhaps the premier recurring theme at these meetings has been law enforcement cooperation and development. Essentially the same group of countries is brought together by the South Pacific Forum on Law Enforcement Cooperation. The heads of government of the South Pacific Forum issued a "Honiara Declaration" in 1992 that dealt with such basic issues as mutual assistance in criminal matters, forfeiture of the proceeds of crime, extradition, the Financial Action Task Force, customs, police and drug issues, and training.

The Asian-African Legal Consultative Committee meets regularly, as does the Asian and Pacific Conferences of Correctional Administrators. The Asian and Pacific Economic Community appears to be taking tentative steps towards including criminal justice-related issues on its agenda.

many meetings, the agencies may end up pursuing different approaches and instruments. Already now, some aspects of existing treaties (especially in relation to the proceeds of crime) are technically difficult for the legislator and the court. Multiplying them could well increase these difficulties.

III. THE DYNAMICS OF INTERNATIONAL COOPERATION IN CRIME PREVENTION AND CRIMINAL JUSTICE

Section II above has outlined some of the historical development of international cooperation in crime prevention and criminal justice. It is time to put some flesh on the bones, and look at how the system works in practice. This will be done by presenting five trends, with special reference to the need to respond to transnational organized crime:

- international cooperation is strengthening with increasing rapidity
- the intensity of international cooperation varies, and we are increasingly seeing the emergence of small groups of “fast track” countries, among which cooperation is developing very rapidly
- international cooperation is becoming formalised and “deeper”, with “soft” resolutions and recommendations being increasingly supplemented by treaties and joint decisions
- international cooperation is developing from an ad hoc (thematic) focus on individual offence categories or issues, to a more general international criminal policy
- international cooperation is becoming increasingly politicised.

A. International Cooperation is Strengthening with Increasing Rapidity

The first trend is clear enough: international cooperation has strengthened, and is doing so with increasing rapidity.

This can be seen on a number of levels:

- the increase in arrangements for informal cooperation between individual agencies, including the establishment of formal and informal networks;
- the growing mesh of liaison officers around the world;²⁰
- the growing interest in the exchange of information in different fora;
- the increase in the number of international cooperation projects;
- the increase in the number of offenders extradited;

²⁰ The United States has been the most active in sending out liaison officers and legal attaches. On the European experience with liaison officers, see for example Malcolm Anderson and Monica Den Boer (eds.), *Policing Across National Boundaries*, London 1994.

The magnitude of this work can be seen for example in the fact that the United States Drug Enforcement Administration alone has some two hundred agents stationed abroad. Another example is that the United States Embassy in Rome has forty persons working full-time on operational cooperation in criminal justice related matters; many of them have a regional mandate. The five Scandinavian countries have developed a unique form of cooperation: their police authorities have established a joint network of liaison officers in Austria, Cyprus, Germany, Greece, Hungary, Italy, the Netherlands, Pakistan, Poland, Spain, Thailand, Turkey and the United Kingdom. Information collected by these liaison officers is then shared directly with their colleagues back home in all five Scandinavian countries.

119TH INTERNATIONAL TRAINING COURSE
VISITING EXPERTS' PAPERS

- the increase in the number of requests for mutual legal assistance, and so on.

Mere expansion of activity, of course, is no measure of its effectiveness. Much operational cooperation remains frustrating and bureaucratic, with for example requests for assistance often not leading to the desired results. Similarly, much cooperation in institution-building is of doubtful effectiveness for a number of reasons: the projects are poorly planned and implemented, there is needless overlap with other projects, little or no attention is devoted to follow-up, and so on.²¹

Nonetheless, the growth in the amount of activity reflects the growing concern over crime, and the increasing hopes being placed on the capacity of international cooperation to help in providing a suitable response.

B. The Emergence of Groups of “Fast Track” Countries

As a general rule of thumb, the wider the geographical scope, the looser the cooperation in crime prevention and criminal justice.

At one extreme, the United Nations includes some 190 member States, and has traditionally worked on the basis of consensus—something which has proven to be difficult to achieve in respect of such contentious criminal justice issues as the use of capital punishment, the use of mutual evaluation or the establishment of joint investigative teams.

At the other extreme, as already noted, bilateral forms of cooperation have constituted and will doubtless continue to constitute the mainstay of international cooperation in crime prevention and criminal justice.

Somewhere between the globality of the United Nations on one hand and bilateral cooperation on the other is regional cooperation. For example the Council of Europe is a much smaller entity than the United Nations, and has arguably had considerably more impact on the development of the criminal policy of its member States. When established in 1949, it brought together ten Western European countries which—despite the differences between the Germanic, French and common law legal systems and certain other differences in criminal justice—shared fundamental values and goals.

The Council of Europe has been expanding at a rapid rate. From ten original members in 1949, it grew to 21 Member States ten years ago, to 43 Member States today. This expansion has been largely towards the East, with the Russian Federation the most significant new member (January 1996). In joining, the new Member States have implicitly and expressly endorsed the same values and goals.

An even smaller unit, the European Union with its fifteen members at present has also been expanding. Currently, discussions are underway with twelve countries on their applications for membership in the European Union,²² and the possibility exists that some may

²¹ See, for example, Matti Joutsen, *International Cooperation. The Development of Crime Prevention and Criminal Justice in Central and Eastern Europe*. HEUNI Papers no. 2, Helsinki 1994.

²² Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia. Negotiations are at an earlier stage with Turkey.

become members in 2003 or 2004. Within the EU, in turn, there are even smaller units of more intensive integration, and again these are expanding. For example, the current parties to what are known as the Schengen accords are Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Spain and Sweden.²³ The Schengen accord countries have agreed among themselves on such highly developed forms of cooperation and hot pursuit across borders, trans-border surveillance (i.e. surveillance carried out by law enforcement officers in the territory of another state) and controlled delivery (following the international delivery of, e.g., narcotics in order to ascertain the source and the destination). Perhaps even more importantly in the electronic age, law enforcement and border authorities in the Schengen countries share certain information systems.

Continuing with the example of the European Union, one of the current fashionable terms is “flexibility” in decision-making. In a speech given in June 2000 in Berlin, Mr. Jacques Chirac, the President of France, suggested that a new “pioneering group”, self-evidently led by France and Germany, would henceforth guide developments in the European Union. Other countries might “join forces” with France and Germany in such a group.²⁴ He suggested that flexibility would allow groups of countries to go ahead with new projects and institutions whether the countries left outside those ventures liked it or not. And

if flexibility was not enough, said Mr. Chirac, France and Germany should cooperate outside the framework of the EU treaties entirely.

The conclusion here is that there is an obvious need for more intensive cooperation in crime prevention and criminal justice. If this cannot be achieved within a larger entity, smaller groups of countries with the greatest interest in cooperation may well form a sub-group that moves onto the fast track. Others, realising the benefits being achieved, may soon seek to join this smaller group—but this at the same time may complicate the problems involved in finding a common approach.

C. “Soft” Resolutions and Recommendations are Being Increasingly Supplemented with Treaties and Joint Decisions

Reference has already been made to the fact that cooperation in criminal justice usually begins with law enforcement, and only then expands to include judicial cooperation. Law enforcement cooperation tends to be based on direct contacts and a pragmatic approach, while judicial cooperation often requires a legal framework. For this reason, one trend in international cooperation is towards formalisation.

This trend towards formalisation appears for example in the increasing use made of treaties and binding decisions. As has been noted, up until recently, relatively few multilateral treaties have been signed in the crime prevention and

²³ Although Norway and Iceland are not members of the European Union, they are involved in Schengen cooperation. This is due to the fact that they, together with three EU members (Denmark, Finland and Sweden), form a passport-free zone of their own.

²⁴ Mr. Chirac did not refer to any other country by name in this connection, just as he did not refer to the Commission. Past experience suggests that Belgium, Luxembourg, Italy and the Netherlands might wish to associate themselves with such a group.

119TH INTERNATIONAL TRAINING COURSE
VISITING EXPERTS' PAPERS

criminal justice field, and only a few countries have been active in drafting bilateral treaties. As a result, intergovernmental cooperation has long relied almost solely on "soft" resolutions and recommendations, in which states are merely requested to adopt certain policies. For example the United Nations has produced a large number of non-binding statements of principles in the form of resolutions, recommendations, declarations, guidelines, and standards and norms.²⁵ Also other intergovernmental and even non-governmental organizations have produced statements of principles which are designed to guide the work of their membership, but which have no binding effect.

It is true that even "soft," non-binding instruments can be influential. For example the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations have clearly guided national practice in corrections and, in several cases, helped bring about legal reform. However, states have traditionally been quite protective of their sovereignty in this field, as can be seen in the protracted negotiations that are required when such instruments are being drafted or when there is discussion of possible monitoring of the implementation of these instruments.²⁶

²⁵ For an analysis of the legal nature of United Nations instruments, see Clark 1994, pp. 141-144 and *passim*.

²⁶ Discussions on the monitoring of the implementation of standards and norms have often run up against different understandings of what exactly "monitoring" involves. Currently the preference is to use different terminology. The Secretary-General of the United Nations does not "monitor implementation" of standards and norms, but for example "promotes their use and application". See, for example, Clark 1994, pp. 229 ff.

As a result, the wording in resolutions and recommendations tends to allow different interpretations of how they should be applied.

Today, "soft" resolutions and recommendations continue to be produced, but there has been a clear increase in the drafting of "hard" bilateral and multilateral treaties world-wide. On the regional level, several multilateral treaties have been prepared for example in Europe and in Latin America. On the global level, the United Nations 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances was a decisive step in this direction. One of the weaknesses with most multilateral agreements has been that they have been offence-specific, and have presumed (often, incorrectly) the prior existence of workable arrangements for extradition and mutual assistance. The 1988 Convention was innovative in including provisions on, for example, extradition and mutual assistance. As a result, the Convention has proven to be workable. It has, for example, contributed to the relatively rapid spread of the criminalisation of money laundering, and to the revision of legislation on the forfeiture of the proceeds of crime.

The 1988 Convention was followed by the United Nations Convention against Transnational Organized Crime. Reference should also be made to the model treaties prepared by the United Nations, on extradition, mutual assistance, the transfer of proceedings in criminal matters, the transfer of foreign prisoners, and the transfer of supervision of offenders conditionally sentenced or conditionally released. Currently, work has begun on a United Nations convention against corruption.

A parallel development—one that is so far limited to some parts of the world—has been the development of new mechanisms to ensure the effective implementation of treaty obligations related to criminal justice. One model has been the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms, prepared by the Council of Europe. Acceptance by signatory states of the jurisdiction of the European Court of Human Rights means that even individual citizens can turn ultimately to the Court when they believe that their human rights (as defined by the Convention) have been violated. Since this provides considerable protection against such violations, the various articles of the European Convention on Human Rights have clearly affected national legislation and practice in criminal procedure, for example on issues related to torture or to inhuman or degrading penalties or treatment (art. 3); conditions of arrest and charges, transfer before a magistrate and right to recourse (art. 5), the right to a fair trial (art. 6), and the legality of punishment (art. 7).²⁷

The tenor of international cooperation changed once again in Europe with the 1992 Maastricht Treaty, by which the European Communities metamorphosed into the European Union, and by the 1997 Treaty of Amsterdam. Having previously focused more on economic integration, the member states of the European Communities realised that also home and justice affairs must be placed on the agenda for European integration.

²⁷ The European Convention on Human Rights has also had an impact on the use of capital punishment (protocol no. 6 from 1983, and the possibility allowed under the 1957 European Convention on Extradition to refuse extradition if the requesting country could impose the death penalty).

Accordingly, home and justice issues form what is called the “third pillar” of the European Union.²⁸ In areas defined as being of “common interest,” the European Council may adopt framework decisions and joint positions, and draw up conventions. Once a framework decision has been adopted, member states are required to amend their laws and practice to bring these into line.²⁹ Once the European Union has adopted a joint position, member states are required to abide by it in international organisations and at the international conferences they attend. This means that even in respect of contacts with non-member states, EU members must “toe the line” adopted on an international level.

Overall, “soft” methods of cooperation will remain an important element of international criminal policy. These allow individual states considerable leeway to decide on how best to realise the goals set in the resolutions or recommendations. However, in particular the response to

²⁸ In EU jargon, the “first pillar” is essentially economic cooperation through the original European Communities, the second is foreign relations and security, and the third is home and justice issues.

²⁹ One example of obligations on member states in respect of criminal justice relates to Community law. The European Court of Justice has found that Member States have an obligation to act against violations of Community law as if these were violations of national law (*Commission v Greece*, ECR 1979, p. 2965). In *Germany v. Commission C-240/90*, the Court ruled that the European Community has the authority to require that a Member State enact appropriate sanctions against violations of Community law. Note, however, that this is an indirect obligation: Community law cannot directly change the criminal law of a Member State. Any amendments or reforms would have to be made by the Member State through domestic legislation.

transnational organized crime is requiring "harder" methods, and at least in Europe states are agreeing to relinquish part of their sovereignty to this end. Although no other regions have intergovernmental political entities comparable with the European Union, the "European model" may point the way to multilateral development also elsewhere.

D. From an *Ad Hoc* Focus to a More General International Criminal Policy

The traditional pattern in international cooperation in this field has been for states that find that they share a common concern to agree among themselves, on a case-by-case basis, on the appropriate mechanism and response. The existing international treaties that deal for example with criminal justice issues have all been signed by quite different sets of states.

Such a case-by-case approach has undeniable benefits, in that the states can focus on a specific issue and find the appropriate response. It nonetheless does not promote a more integrated and long-term policy in international cooperation. Theoretically, each state, as it were, continues to act entirely on its own, without any reference to the interests of other states in crime prevention and criminal policy.

The alternative would be for groups of states to agree on certain priority issues, and develop an integrated strategy for dealing with these issues.

The Council of Europe has been a forerunner in this. The Council has regularly organized meetings on European criminal policy, and its Committee on Crime Problems has

offered a forum for discussion on further action.

More recently, also the European Union has been identifying priority areas. In June 1997, the European Union adopted a "Plan of Action" to combat organized crime. This plan of action was drawn up following discussions about what types of measures in general were needed to respond to organized crime nationally and internationally. In effect, the 1997 decision embodied an agreed-upon international criminal policy. Moreover, instead of being presented as a resolution, recommendation or declaration that have so often been adopted in other fora, regrettably often with little practical impact, the European Union decided on specific action, with a clear division of responsibilities, a clear timetable and a mechanism for implementing the action plan. The strong consensus reached by Member States on the 1997 Plan of Action helped to create the political and professional climate required on both the EU level and the national level to take and implement the necessary decisions.³⁰ In the year 2000, the Plan of Action was replaced by a new integrated EU strategy to prevent and control organized crime, "The Prevention and Control of Organized Crime: A European Union Strategy for the beginning of the new Millennium."

The shift from an *ad hoc* approach to attempts to formulate a more coherent and general international criminal policy can also be seen in the work of the United Nations. Formerly, there was little

³⁰ The model for this was taken from the "European Plan against Narcotics" adopted by the European Union in December 1990, and updated several times since then, most recently in December 2000, when a strategy was adopted for the years 2000–2004.

evidence of an over-all strategy in the work of the United Nations Committee on Crime Prevention and Control. Although the Committee dealt with a large number of important issues, this was almost invariably done on a piece-meal basis.

At the beginning of the 1990s, two developments took place that ensured that organized crime would become a central issue in the United Nations crime prevention and criminal justice programme, and that a strong attempt would be made to move from an *ad hoc* approach to the setting of policy.

The first development was that the structure of the United Nations Programme was reformed. The 27-member Committee on Crime Prevention and Control, which consisted of individual experts, was replaced by a 40-member Commission on Crime Prevention and Criminal Justice. These members were Member States. The reform also called for the setting of priorities in the programme.

At its second session in 1993, the United Nations Commission decided on the priority themes for the United Nations crime prevention and criminal justice programme. Organized crime was identified as part of one of three priority themes. The formulation of this priority theme is “national and transnational crime, including organized crime, economic crime (including money laundering), and the role of criminal law in the protection of the environment”.³¹

The second development was a series of three meetings, culminating in a major conference at the end of 1994. First, an expert group meeting was held in Bratislava (Czech and Slovak Federal Republic) in 1991. The meeting developed a set of fifteen recommendations on

“strategies to deal with transnational crime”. Only five months later, a seminar, co-organized by HEUNI, was held in Suzdal, Russian Federation. This international seminar brought together leading law enforcement officers and experts from fifteen countries. The seminar prepared a report which sought to describe the profile of organized criminal groups, and went on to provide a large number of recommendations on substantive legislation, procedural legislation, law enforcement methods, organisational structures, international cooperation, and evaluation. Both sets of recommendations were forwarded to the newly established United Nations Commission. The Commission annexed the two sets to a brief resolution on organized crime, which was subsequently adopted by the Economic and Social Council.³²

The third and most important meeting was the World Ministerial Conference on Organized Transnational Crime, held in Naples, Italy on 21–23 November 1994. Delegations from 142 countries agreed on the broad outlines of cooperation in the prevention and control of organized transnational crime. The agreement was

³¹ The other two priority themes are (ii) crime prevention in urban areas, juvenile and violent crime; and (iii) efficiency, fairness and improvement in the management and administration of criminal justice and related systems with due emphasis on the strengthening of national capacities in developing countries for the regular collection, collation, analysis and utilisation of data in the development and implementation of appropriate policies.

³² E/CN.15/1992/7, draft resolution II. The Commission also adopted a resolution entitled “Control of the Proceeds of Crime”, which in general called on Member States and the Secretary-General to take action to prevent and control money laundering; *ibid*, resolution 1/2.

119TH INTERNATIONAL TRAINING COURSE
VISITING EXPERTS' PAPERS

embodied in a draft resolution for the General Assembly entitled "Naples Political Declaration and Global Action Plan against Organized Transnational Crime." This was approved by the General Assembly by its resolution 49/159.

The Naples Political Declaration consists of ten paragraphs that express the intention of the countries represented at the Conference to join forces to develop co-ordinated strategies and other forms of international cooperation. Special reference was made to the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. States which had not yet done so were urged to become parties to this Convention, and to fully implement it as well as other relevant existing agreements.

The same document also expresses the wish of the participants to strengthen international cooperation, in particular in relation to closer alignment of legislation on organized crime, operational cooperation in investigation, prosecution and judicial activity, the establishment of modalities and basic principles for regional and global cooperation, the elaboration of international agreements, and measures and strategies to prevent and control money-laundering.

The Global Action Plan consists of seven sections:

- a. the definition and description of transnational organized crime,
- b. specific issues in national legislation and guidelines,
- c. operational cooperation,
- d. regional and international cooperation,

- e. the feasibility of international instruments on organized transnational crime,
- f. the prevention and control of money-laundering, and
- g. follow-up and implementation.

The Naples Political Declaration and the Global Action Plan led, in time, to the United Nations Convention against Transnational Organized Crime, and thus their significance has to a large extent been overtaken by events. Even so, they, together with the Vienna Declaration adopted at the Tenth United Nations Congress in the year 2000, are further illustrations of the trend towards adopting broad statements on international policy regarding criminal justice issues.

**E. International Cooperation is
Becoming Increasingly
Politicised**

Although all states are undoubtedly agreed on the necessity of determining priorities and establishing policy, this process has not run smoothly. Different states will continue to have different priorities. Furthermore, if too many "priority issues" are accepted into a programme, or if these priority issues are defined too broadly, they do not assist decision-making on the national or international level.

These difficulties are clearly perceptible in the work of the United Nations. One of the fundamental reasons for restructuring the United Nations Crime Prevention and Criminal Justice Programme was that the Programme had become inundated with a large number of mandates, and the Secretariat as well as the other implementing bodies had not been provided with the resources required to implement anywhere near all of these mandates.

The four trends in international cooperation described above—the increasing rapidity of its strengthening, the development of groups of “fast track” countries, the supplanting of “soft” forms of cooperation with treaties, and the shift towards the formulation of a more general international criminal policy—are all in themselves welcome features. It is the fifth trend—the increasing politicisation of international cooperation—that raises questions.

Furthermore, the politicisation of international criminal policy (a process which is perceptible at least in the work of the United Nations Commission, but also for example in the European Union) raises the spectre that international criminal justice forums will be used as a tool in national and international politics. One illustration of this danger can be taken from the recent global debate over money laundering. In July 2000, the Financial Action Task Force on Money Laundering published a so-called “blacklist” of 15 jurisdictions that, in its view, had not been sufficiently cooperative in preventing and controlling money laundering.³³ Since the blacklist appeared, many if not all of these jurisdictions have been more active in, for example, reforming their legislation and filing suspicious activity reports (SARs). Some, however, have regarded this public blacklisting and the related measures as a violation of their sovereignty, and as an attempt to steer their economy, to the advantage of the wealthier FATF members.

³³ FATF updated the list in June 2001. It now includes Cook Islands, Dominica, Egypt, Guatemala, Hungary, Indonesia, Israel, Lebanon, Marshall Islands, Myanmar, Nauru, Nigeria, Niue, Philippines, the Russian Federation, St. Kitts and Nevis, and St. Vincent and the Grenadines.

The negotiations over the United Nations Convention against Transnational Organized Crime provided a few examples of the politicisation of international criminal policy. Among these were the debate over whether or not to include a specific reference to the recommendations adopted by the FATF,³⁴ how to address the interrelationship between terrorism and organized crime,³⁵ how to deal with the issue of sovereignty,³⁶ and whether or not a mechanism should be created to monitor

³⁴ The solution adopted was to delete references to the FATF resolutions or any other resolutions, and refer only to using as a guideline “the relevant initiatives of regional, interregional and multilateral organizations against money laundering”. References to FATF as well as to several other regional organizations were inserted into the *travaux préparatoires*.

³⁵ The issues involved here are complex. Essentially, several States are convinced that terrorism is one form, and indeed a particularly dangerous form, of organized crime. The majority of States, however, were of the view that a distinction should be made between terrorism and organized crime, not least because including terrorism in the scope of the Convention would raise vexatious political problems with the definition. The view of the majority was that terrorism ultimately had political aims, while organized crime had material aims. Having said that, it was explicitly recognized that terrorists may commit acts (such as murder, arson, extortion and robbery) to which the Convention would clearly apply.

³⁶ One source of tension in the discussions was the concern of some States that, when transnational organized crime is at issue, some States may engage in actions that violate the sovereignty of other States. This concern was raised, for example, when speaking about joint investigations (art. 19) and special investigative techniques (art. 20). The issue was resolved by including in the Convention a separate article entitled “Protection of sovereignty”.

119TH INTERNATIONAL TRAINING COURSE
VISITING EXPERTS' PAPERS

implementation of the treaty obligations.³⁷

IV. CONCLUSIONS

Crime has evolved considerably over the past few years. Economic, social and political factors have contributed to changes in the amount and structure of crime. Theories that are based on the concept of a weakening of self-control and on the opportunity for crime help us to understand what has happened.

The background factors—economic integration, political and economic reforms, wide-spread wars and civil disturbances, and demographic changes—are factors that either cannot be changed (or will not be changed solely) in the interest of crime prevention. For example, although economic integration leads to a greater opportunity for economic crime, this is the cost we seem to be prepared to pay for a higher standard of living. And although there are loud calls in many countries for a return to the “good old days” before economic and political reform, such reform will presumably not be halted—and certainly not on the grounds that the process appears to increase the amount of crime.

The *effects* of these changes on crime and the control of crime, however, can be influenced in order to lessen the amount and seriousness of crime, and provide a fair allocation of the costs of crime and of crime control. The strengthening fear of crime in many countries, fanned by the media and by political rhetoric, calls for attention—in particular since this fear is influenced by false or misleading information, and the rhetoric may lead to counterproductive policy decisions, or at worse, to the spread of hate crimes.

Many states are responding to their national crime problem by reviewing the effectiveness of their criminal policy and by setting up a variety of crime prevention councils and projects. Because of the growing ties between countries, it is not surprising that information on successful initiatives is spreading internationally. Although each country's situation is unique, and projects that have worked elsewhere can rarely be transplanted as such, they can lead to modified approaches that are successful in this different environment.

The response to the international aspects of crime has also been notable. International cooperation is broadening and strengthening to the extent that, in such areas as drug trafficking and organized crime, we can speak of broad agreement on the general goals. However, even with such regional initiatives (in Europe) as the Council of Europe, Schengen, Maastricht and Europol, we are a long way from developing a truly international crime policy, much less an international criminal justice system. The different states will continue to have different views of the general role of criminal law in society. Integration can help the different states in responding to their crime problems, but it can never replace national and local action.

³⁷ For example European Union countries advocated the inclusion in the Convention of arrangements for mutual evaluation. According to this system, international experts assess how well the authorities of a State are implementing their responsibilities. Several States were sceptical of such a system, for example on the grounds that it amounted to interference with State sovereignty. Ultimately, the reference was modified to a rather vague “information provided ... through such supplemental review mechanisms as may be established by the Conference of the Parties.”