



## **First Meeting of Experts on the Development of a Digest of Organized Crime Cases – Good Practices and Lessons Learned**

*23-26 May 2011, Rome (Italy)*

### **BACKGROUND**

On the occasion of the Tenth Anniversary of the United Nations Convention on Organized Crime (UNTOC), the Organized Crime and Illicit Trafficking Branch of the United Nations Office on Drugs and Crime, in cooperation with the Governments of Colombia and Italy and the International Criminal Police Organization (INTERPOL), has decided to enlist the help of anti-organized crime practitioners from different countries and regions to collect and analyse cases to be published as a *Digest of Organized Crime Cases*.

The overall purpose of the Digest is to serve as a practical tool for Member States to illustrate good practices and lessons learned in the fight against organized crime, as well as to contribute to facilitate the implementation of the United Nations Convention against Transnational Organized Crime (Organized Crime Convention) and its Protocols.

### **SUMMARY FINDINGS AND CONCLUSIONS OF THE FIRST MEETING**

The first meeting of experts was held in Rome from the 23<sup>rd</sup> to the 26<sup>th</sup> of May 2011 at the Italian Superior Police Academy (*Scuola Superiore di Polizia*). Approximately forty five experts with direct experience in various aspects of organized crime from twenty one countries, international and regional organizations<sup>1</sup> attended the meeting in order to present, and comment on relevant cases, and to provide suggestions on the method to develop the *Digest*. The meeting was held in English, French, Spanish and Italian<sup>2</sup>.

#### **Session 1: Global Threats posed by organized crime - Aims and scope of the Digest on Transnational Organized Crime Cases.**

*Scope and target readers of the Digest:* Experts welcomed the Digest initiative as a useful and needed tool to assist States in their efforts to counter organized crime in its various forms and manifestations and to receive inspirations and guidance by the experience of their peers. Several speakers underlined the practical and educational value of the Digest and its potential not only to improve existing practical and operational procedures and practices, but also trigger or anticipate changes in national practices and laws in order to apply the identified good practices.

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<sup>1</sup> Albania, Brazil, Colombia, El Salvador, France, Hungary, Italy, Jamaica, Kenya, Mexico, Morocco, Nigeria, Philippines, Romania, Russian Federation, Serbia, South Africa, Spain, Switzerland, United Kingdom and United States of America, the European Union, the International Criminal Police Organization - ICPO INTERPOL and the Organization for Security and Cooperation in Europe -OSCE.

<sup>2</sup> The experts from Serbia and the Russian Federation attended the meeting with personal interpreters.

*Methodology:* The Digest will contain a series of good practices and strategies against transnational organized crime, based on the practical experience and the insight knowledge of practitioners in this field. The group agreed to depart from actual cases to see how States are responding to organized crime and so reconstruct good practices and lessons learned. Experts underlined also the importance of considering the cases in the light of their legal systems and cultural background in which the cases are embedded.

*Selection of cases:* One important aspect resulting from the analysis of the cases would also be that of looking to which extent the existence and application of national laws in line with the Palermo Convention have been useful and effective in dealing with organized crime cases, and identifying legal gaps. However, the group agreed to consider also cases that were not directly linked to the Palermo Convention as long as they were illustrative of good practices in the criminal justice response to organized crime. The cases should not be limited to offences contained in the Palermo Convention and its Protocols, but cover possible offences and manifestations of organized crime.

*Structure of the Digest:* The group discussed the different options to structure the Digest following a thematic order or an offence approach. The first one was adopted.

*The Digest as a living document:* Several experts pointed out that the Digest should remain a practical and user-friendly document, with relevant references to case law and a “living” document of easy access for practitioners through the internet.

## **Session 2: Challenges and difficulties in the prevention, investigation and prosecution of transnational organized crime.**

### **Criminalization and other substantive criminal law issues**

*Participation in an organized criminal group:* Experts discussed the relevance of the application of Article 5 of the Palermo Convention, which required State Parties to criminalize the participation in an organized criminal group, as a fundamental component of the Convention’s system. The group addressed the challenges for domestic legislators, as well as the risks of a deficient implementation of such provision, which affected both the effectiveness of the national response to organized crime, as well as the ability to provide international cooperation.

*Relevance of well crafted criminal offences:* Experts discussed also the importance of other substantive criminal law provisions such as the money-laundering and other criminalization provisions contained in the Convention and of the Protocols.

*Special considerations regarding the criminalization of human trafficking:* The Special Representative of OSCE related to the criminalization and investigation of crimes of human trafficking. The first observation was that that human trafficking was still not treated as a serious crime in many jurisdictions. Referring to some concrete cases, the Special Representative stressed that often practitioners did not recognize the abuse of the situation of vulnerability of trafficking victims, or wrongly considered the transfer of the victim was a necessary element to qualify the trafficking offence, and hence refused to grant the victims’ status to illegal migrants. The other observation she offered was that criminal associations rarely formed part of the indictments on human trafficking.

### **Technical Working Groups on major criminal phenomena, their normative**

## **framework and criminal justice responses - Case discussions**

During the Working Group sessions the experts split in three groups to discuss specific cases on:

- (i) Main forms of organized crimes, drugs and firearms trafficking, money laundering, and related other offences;
- (ii) Human Trafficking and Smuggling of Migrants;
- (iii) Cybercrimes, trafficking in cultural property, environmental crimes, counterfeiting and other emerging forms of organized crimes.

### **Investigation Powers and Techniques**

Experts from United Kingdom and from Italy made introductory presentations respectively on new responses to investigative challenges and good practices in identifications of persons, followed by the discussion of one case presented by Switzerland.

*Identification of persons:* The subsequent group discussion focused on different forms of investigative techniques and the difficulties faced. It was also noted that there were very different standards and practices with regard to the use of fingerprints in the world. The experts addressed also the pitfalls when dealing with cross-boarder operations and when requesting information about traced criminal perpetrators identified in a foreign country. The group considered electronic surveillance and surveillance of the email as useful and effective practices and discussed its benefits.

*Proactive investigative methods:* The experts discussed the usefulness of “proactive” identification systems to serve future investigations and the potential benefits of a shared world-wide data-base to undertake complex, transnational criminal investigations and to facilitate the establishment of links between apparently isolated cases occurring in different countries.

### **Criminal Procedure: Dealing with Witnesses and Collaborators of Justice.**

The Italian expert made a presentation of their Witness Protection Programme, its benefits and limitations regarding the role of witnesses and collaborators in investigative phase.

The group discussed practical issues such as the need to evaluate the credibility of the declarations made by the collaborators (and witnesses), and the challenges that this posed when no additional external evidence existed to support the statements. Experts however agreed on the usefulness of the institute. Relevant issues pertaining more to the protection of victims of crime, especially of human trafficking were highlighted, and the importance of early identification of a person as a victim of human trafficking and smuggling of migrants in order to ensure his / her placement in a protection programmes.

The group noted the different regime applicable in different countries to witnesses, collaborators and informants. Several countries do not have a specific legal concept for such a distinction. The group discussed also the sensitive issue of good practices such as the establishment of sub-regional witness protection programmes and its potential suitability for other sub-regions, were also discussed.

### **Criminal Procedure: Seizure and Confiscation and Other Criminal Proceedings and Sentencing Issues.**

The Italian and the US experts' presentation on their respective national forfeiture regimes, preceded the discussions.

The subsequent case, was very illustrative of the different strategies concerning the management and security of confiscated assets, and its final disposal. The group discussed and noted the existence of different levels of evidentiary requirements for the distinct forms of confiscation. Reference was also made to the important role of international cooperation for the purposes of confiscation, and the possibility under the Palermo Convention to choose between direct and indirect execution of such requests.

*Management and disposal of seized and confiscated property:* Several countries informed about the establishment of specialized units and different management and disposal practices were encountered. One good practice suggested by experts was that of allowing the preventive sale or auction of the seized assets before the final sentence, and the deposit of the amounts on a bank account. The case presented by South Africa dealing with the trafficking of precious metals focused specifically on the redistribution of assets, collected in a joint operation with the United Kingdom, between the countries involved in the route of the offence. The settlement for division was characterized according to the location of the assets, belonging to the country where it was originally found.

### **Session 3: International Cooperation in Criminal Matters.**

#### **Law enforcement cooperation.**

The module was opened with a kick-off presentation on the Major Challenges of Law Enforcement Cooperation by the expert from South Africa. He highlighted amongst others the following difficulties in collaboration between States: (i) lack of willingness of involvement in a crime that belongs to another country; (ii) lack of understanding of local crime phenomena; (iii) shortage of dual criminality provisions; (iv) difficulties in cooperation between States; (v) insufficient crime awareness; and (vi) not adherence to international legal instruments. The expert highlighted inter alia also the conflicting perceptions of priority issues at global and regional level.

Several experts noted that everywhere the levels of formal and informal cooperation were expanding, including among the diplomatic services, using all available scenarios for cooperation, both at regional and global level.

Law enforcement cooperation through bilateral and regional agreements were extremely important and very commonly used, and encouraged by the Palermo Convention. The group once again emphasized the importance of making full use of existing structures and mechanisms, not only through ordinary information exchange, but also to make use of joint investigating teams and liaison officers.

*Value of law enforcement cooperation on trafficking in cultural property:* The Italian expert stressed how particularly in the area of trafficking in cultural property, the exchange of information among law enforcement agencies, had been essential, and represented often the first level of dialogue with a foreign State.

*Inclusion of specialists in the investigating teams and establishment of specialized units:* In the case of money forgery, presented by Italy, the involvement of an expert with specialist knowledge of the details and means used for the performing the specific duplication, turned out to

be very beneficial throughout the entire process. The establishment of a specialized unit for money forgery within the police had also given very positive results for the overall investigations of this crime in Italy. Also, the existence of a centralized database for all forged money was considered a useful reference tool. The experts agreed on the importance of exchange of information and experience in this specific field.

## **Judicial Cooperation, Extradition and Mutual Legal Assistance.**

### **Extradition**

The Mexican expert made an introductory presentation on major challenges and difficulties with extradition.

Subsequently, the European Commission representative, Ms. Trichia Harkin, described the experience of the EU Members with the European Arrest Warrant (EAW). The EAW replaces de facto the extradition procedures among EU Member States, and applies simplified procedures and admits only a limited number of admissible grounds for refusal. States are not allowed to refuse extradition requests based merely on nationality grounds.

From the group discussion emerged that indeed the EAW was a very interesting tool to overcome the traditionally long and complex extradition procedures and was based on the mutual trust in the criminal judicial system of the respective countries.

### **Mutual Legal Assistance**

The group discussions on mutual legal assistance were a continuation of the previous session, which already introduced several aspects of the discussions. The expert from Spain made an introductory presentation on mechanisms to facilitate judicial cooperation.

It was noted throughout the meeting that judicial cooperation was by its nature more formal and less flexible than law enforcement cooperation. The expert stressed the importance of establishing direct contacts among judicial authorities especially for enhanced cooperation.

The expert focused on the advantages of enhancing judicial cooperation through a variety of facilitating mechanisms: (1) the organization of regular meetings among central authorities; (2) the establishment of liaison officials; (3) through judicial networks. He indicated that regular meetings were useful but less effective because not case-oriented.

From the group discussions emerged a number of issues relevant to mutual legal assistance practices: the issue of timely responses to cooperation requests was raised several times, along with the need to ensure a certain homogeneity of criteria in order to provide a more dynamic and efficient collaboration.

### **Concluding Remarks and Way Forward.**

The closing session provided an additional opportunity to clarify and reinforce a number of issue that had emerged during the meeting.

It was suggested to include some theme-specific examples of proactive investigations.

Experts stressed that the international dimension of cooperation was a cross-cutting issue

and should be reflected in all the stages and chapter of the Digest.

Some experts suggested to add a chapter on prevention of organized crime, as not enough attention has been devoted to the issue.

From an organizational aspect, experts, also emphasized the importance of maintaining the interpretation services in several UN languages and considered ways to ensure coverage of more languages.

Experts reiterated, also the need to ensure the presence of law enforcement, prosecution and judicial officials.

The UNODC representatives described some of the financial constraints and expressed also the appreciation for those countries that had sent additional experts at their own costs and for the sponsoring countries for their additional in-kind support provided. UNODC offered to reach out to the Permanent Missions in Vienna and seek for additional financial or in-kind contributions.

Finally, experts agreed to revise their cases and send additional ones by the end of June.

The second meeting was scheduled to take place in Colombia during the last week of November 2011.