



FEBRUARY 2011

NEWSLETTER 52

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*16th Annual Conference
& General Meeting
of the IAP
together with
the 4th World Summit of
Prosecutors General
Seoul Korea
June 25 – July 2, 2011*

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An introduction from the President

As I write this here in Ireland, there are unmistakable signs of spring. Traditionally spring in Ireland begins on 1 February, St. Brigid's day, although the original Brigid was not a christian saint but a pagan fertility goddess. The early date for spring represents the reality, too, of our (usually) mild and moist Atlantic climate, where in February snowdrops, cyclamen and winter jasmine are in bloom and many trees and shrubs have buds which are about to burst into leaf.

So it is that time of year when we start to make plans for later on, and for many of us we think of attending the annual IAP conference and maybe of having a short holiday (or not so short for those who have the time) in some part of the world being visited for the first time.

This year the conference will be earlier than usual, in late June, in the Korean capital, Seoul.

I am told this is a better time to see Korea, before the more humid weather of the later summer has its effect.

The Korean Prosecutor General, Mr. Joon Gyu Kim, generously stood in at short notice when we had to cancel plans to hold the conference in Santiago de Chile following the devastation caused by the Chilean earthquake. This will be one of Mr. Kim's last official acts as Prosecutor General, since he retires after a distinguished career at the end of June. He will be a great loss to the IAP having

made a major contribution to the Association over the years.

The theme of the conference is "Prosecution as a Public Service". I am old enough now to remember when in my own country the concept of prosecution as a public service would have seemed strange to some lawyers. Duties were owed to the law, to justice, to the courts, and perhaps even to a client if you were acting for the defence. But the idea that the public were owed or entitled to a service or indeed had any role unless they happened to be witnesses would have seemed novel and perhaps slightly dangerous. Perceptions are very different now.

The IAP conference will be followed by the World Summit, which will bring together Attorneys General and heads of prosecution services from all over the world. It therefore has a somewhat different basis for participation than IAP conferences which are open to prosecutors at whatever level in their organisation, but there is of course some overlap and it seemed worthwhile to hold the two close together.

I have visited Korea once before, at the IAP Conference seven years ago. To the Western European, Korea is an amazing place. Physically it is ultra-modern, but the real contrast with the West is cultural, with habits and traditions that are quite different to a westerner. The visitor will find Korean people very helpful and friendly. I recall standing in an underground station to read the subway map. Instantly I was surrounded by Koreans anxious to help – this in a busy railway in one of the largest cities in the world. It would not happen in London or New York.

As always the Seoul Conference will provide many opportunities to network and make friends among prosecutors from all over the world, and to share information and experiences. Even if the hospitality and the social events are only half as good as when we met in Seoul seven years ago, the conference will be a memorable one.

So I hope to see you there.

James Hamilton

Diary dates

IAP Executive Committee Meeting, 4-5 March 2011, Vienna, Austria.

7th IAP Asia, Pacific & Middle East Regional Conference, 14-18 March 2011, Jakarta, Indonesia.

4th IAP Latin American Regional Conference, 23-25 March 2011, Fortaleza, Brazil.

16th IAP Annual Conference and General Meeting and the World Summit, 26 June-2 July 2011 Seoul, Korea.

6th IAP Central and Eastern Europe and Central Asia Regional Conference, 4-6 October 2011, Astana, Kazakhstan.

2nd IAP North America and Caribbean Conference in Quebec, Canada, May 2012.

17th IAP Annual Conference Thailand, October 2012.



16th Annual Conference & General Meeting of the IAP

Introduction from Joon Gyu Kim, Prosecutor General of the Republic of Korea and Vice President of IAP

I would like to extend our warm greetings and best wishes for 2011. As was previously announced, the Korean Prosecution Service is hosting the 16th IAP Annual Conference from 26 to 29 June 2011 in Seoul, the Republic of Korea. We cordially encourage members to actively participate in this Conference, and we believe your contribution to this event would be highly regarded.

The upcoming event is truly exceptional in that it will be the first time the IAP Annual Conference and (the World Summit of Prosecutors General, Attorneys General & Chief Prosecutors (World Summit)) will be held together. We believe that linking those two events together will add great momentum to strengthening prosecutorial collaboration.

The theme of the Conference

The theme of the Conference is 'Prosecution as a Public Service'. As it is universally accepted, the mission of prosecutors is, has been, and always will be to protect the public by prosecuting criminals in a manner that is fair, competent, and transparent with strict adherence to the principle of the rule of law.

However, attaining this task has become more difficult and challenging as crimes of the modern society are increasingly characterized as supra-jurisdictional, complex, organized and equipped with advanced technology.

Accordingly, the public demands that the approach of prosecutors to fighting criminality adapts to these changes.

In the light of this, prosecutors are beginning to hold a series of fora at both the domestic and the international level in order to create

a vision of a modern prosecution service which embraces change and the ever-increasing challenges. This Conference is therefore intended to heighten the awareness of this collective effort and bring greater clarity to the role of the prosecution service in the modern environment.

Putting more emphasis upon the intrinsic value of the concepts of "public interest" and "public service", this Conference will attempt to instill progressive re-thinking about the role of the prosecution service and inspire prosecutors by introducing diverse prosecutorial approaches that are innovative, imaginative, and customer-oriented.

The Conference will promote wide discussion, especially to what extent prosecution services have lived up to the expectations of the public and what can be enhanced to better serve the public. Thus, issues such as the fundamental duties and responsibilities of those delivering prosecutions services and how those roles may be extended, will be open for discussion.

Further, the Conference will encourage opportunities to explore ways in which the capacity of prosecution services and prosecutors needs to be enlarged so that they become more competent, more capable and more far-reaching in delivering justice.



To facilitate a productive and in-depth discussion, the following topics are encompassed within the Conference programme.

"Prosecution as a Public Service"

Plenary I

Fundamental Duties and Responsibilities of Prosecution Services

Plenary II

Extending the Role of Prosecution Services

Plenary III

Enhancing Prosecution Services

Plenary IV

Of the Public and To the Public

The Conference Aim

The aim of the 16th IAP Annual Conference is to revisit the ambit of prosecution services with a view to reframing the roles and responsibilities of prosecutors. In this respect, the Conference intends to define and clarify the future shape of prosecution services, highlighting essential values and standards such as the competency and capacity of the prosecution to deal with challenging crimes; the need for a robust approach to root out and prevent criminality and a willingness to respond sensitively to public expectations, thereby gaining public confidence. This Conference therefore aims to produce some direction and guidance setting a new standard

for prosecution services in light of a modern and fast moving society.

The Conference Programme

The Conference Programme is composed of four plenary sessions which feature in-depth discussions on the aforesaid topics. The Workshops, Regional Fora and General Meeting will take place thereafter in order to precipitate an outcome which can be adopted by the membership. Networking events and the Special Interest Group Meetings are also scheduled within the Conference Programme.

Notably, a ceremony for the Prosecutor of the Year Award is officially included in the Conference Programme for the first time in IAP history. Mr. Joon Gyu Kim, Vice President of the IAP, is

the originator of this programme and has generously offered a sum of 60,000 USD for this and next year's award which will be awarded to those who have shown outstanding performance domestically and internationally in the fight against crime including corruption, cyber crimes, drug-related crimes and organised crimes. Much gratitude has been extended to Mr. Kim for his significant contribution to the IAP.

In the spirit of creating a synergy between the Conference and the World Summit, the IAP Conference participants are entitled to attend the first day of the World Summit as observers. Furthermore, the farewell reception of the IAP Conference and the welcoming reception of the World Summit will

be held together, at the National Museum of Korea, the beautiful site where the G-20 Summit Reception was held in November 2010.

Finally, Conference participants and accompanying persons will also be invited to enjoy the Official Tour Programmes before and after the event. We are planning to have various themed city tours and recreational courses where participants will be overwhelmed by Korea's ancient heritage, dynamic culture and world-leading information technology(IT). It will be a truly unique and unforgettable experience.



Prosecutor of the Year Award (extended deadline)

Dear Colleagues and Friends,

I am writing this letter regarding the "Prosecutor of the Year Award", scheduled to be handed out for the first time at the Seoul Annual Conference in June. As you may have read in last month's IAP newsletter, the Executive Committee resolved to establish this Award at the 2010 Hague Annual Summit, following my proposal.

The main purpose of the Award is to recognize and encourage the efforts of working and line prosecutors who have shown outstanding performance domestically and internationally in the fight against crime. Working and line prosecutors include prosecutors who are involved in the investigation and/or prosecution of criminal matters, up to the level of those directly in

charge of the case such as a team leader.

For us to ensure such prestige and to make this year's ceremony a success, I believe active participation from all IAP Members is essential. As the proposer, member of awarding committee and host of the first ever award ceremony, I take the liberty of urging all of you to actively participate in recommending appropriate candidates for this Award.

The IAP is now receiving recommendations from members, prior to the decision of the Executive Committee. Since the first awardees are to be acclaimed at the Seoul Annual Conference this coming June, the awardees must be decided at the Vienna Executive Committee meeting in March, or shortly thereafter.

Thus, it would be very helpful if you could recommend outstanding prosecutors to the IAP Secretariat (sg@iap-association.org) by no later than the **end of April**. You will find detailed information and additional contact points on the IAP website.

I thank you for your heartfelt support and hope to see all of you in Seoul during the 4th World Summit of Prosecutors General, Attorneys General and Chief Prosecutors and the 16th IAP Annual Conference.

Sincerely yours,
Joon Gyu Kim,
Vice President, IAP
Prosecutor General, Republic of Korea





7th IAP Asia Pacific and Middle East Regional Conference and High level Meeting

The Attorney General of the Republic of Indonesia, Mr Basrif Arief, would like to invite you to participate in the 7th IAP Asia Pacific and Middle East Regional Conference and High level Meeting.

The conference will be held in the Capital City of Indonesia, Jakarta from 16th to 18th March 2011 and will be followed by the High Level Prosecutors Meeting on the 19th of March 2011.

The theme for the Asia Pacific and Middle East Regional Conference is 'Asia Pacific and Middle East Cooperation in Criminal Matters'.

We are becoming increasingly aware that international and organized crime is growing at an unprecedented rate. It often seems that law enforcement lags behind the criminals as they become ever more sophisticated. During

this conference we will have opportunities not only to find a way to combat crimes and recover the proceeds of crime, especially transnational crime, but also how to prevent such crime spreading. Moreover we can share our knowledge, experiences and best practices to face such challenges.

In 2010, the Attorney General's Office of the Republic of Indonesia became the leading sector of a program called "Toward Asia Just" which was initiated by UNODC. This program is adopted from Eurojust. We hope that the conference will be an occasion to discuss how to improve coordination amongst us to fight against serious crime, and to sustain direct cooperation from prosecutor to prosecutor.

On the last day of the conference, there will be High Level Prosecutors meeting to strengthen the relationship between Attorneys General and Prosecutors General in the Asia Pacific region and to discuss a proposed international

convention: 'An Asia Pacific Convention for Cooperation in Criminal Justice'.

The conference will take place in The Sultan Hotel in Jakarta, please book you room via the Organizing Committee. Hotel room and transportation will be at your own expense, however there is no registration fee.

For further information please contact us through our contact person Ms. Apsari Dewi mobile: +62 81 80 540 1400, tel/fax : +62 21 7395908

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or email

legalcooperation_ina@kejaksaan.go.id
or

legalcooperation_ina@kejaksaan.go.id,
Registration forms can be found in the IAP website www.iap-association.org.

or on the Indonesian Conference website: www.kejaksaan.go.id.

Public Prosecutor Training Centers Conference March 16-18, Jakarta, Indonesia

A strong professional training center is critical to the development of prosecution services around the world. Training centers set the tone for new prosecutors, introduce legal changes to prosecutors, and sharpen prosecutorial skills. The IAP is working with the United Nations Office on Drugs and Crime and the United States Department of Justice to organize a conference with the Indonesian Attorney General's Office in Jakarta on March 16-18, 2011. This conference is directed at public prosecution training center officials worldwide. The

purpose of this conference is to permit different prosecutor training centers to share information and experience concerning their own prosecutor training programs, such as distance learning, interactive teaching methods, peer instructors, and internships, and build an international network of public prosecution training centers for future cooperation. The conference will report to the 7th IAP Asia Pacific and Middle East Regional Conference, which is being held in parallel in Jakarta the same week 16- 19 March .

Parties interested in attending this program in March should promptly email Ms. Cut Yunita at iaptrainingcenterconf@yahoo.com for registration information. In anticipation of the upcoming program, each public prosecution service is completing a survey of its existing prosecutorial training programs. If you have not yet responded, please email your completed responses to trainingcentersurvey@yahoo.com.



“COOPERATION AGAINST CORRUPTION”

5th IAP REGIONAL CONFERENCE FOR EASTERN AND CENTRAL EUROPE AND CENTRAL ASIA

“COOPERATION AGAINST CORRUPTION”

Belgrade, 27 - 30 October 2010

The association of public prosecutors and deputy public prosecutors of Serbia hosted the 5th IAP Regional conference for Eastern and Central Europe and Central Asia.

The conference was sponsored by the International Association of Prosecutors (IAP), which is the only prosecutorial professional organization on a global scale and whose membership has more than 140 prosecution organizations from around the world. The Conference entitled “Cooperation against Corruption” was held from 27 - 30 October 2010 in Belgrade.

Participants at the conference included two hundred prosecutors, judges, governmental authorities, representatives of NGOs and Embassies from the host country and abroad. There were representatives from thirty different countries around the world: Germany, Italy, Spain, Argentina, South Korea, United States, Czech Republic, Poland, Azerbaijan, Kazakhstan, all countries in the region, and many others.

The conference was opened by Goran Ilić, PhD president of the Management board of the Prosecutors Association of Serbia and deputy Republic prosecutor, H.E. Vincent Degert, Head of EU Delegation to Serbia, Thomas Moore, Acting Head of OSCE Mission to Serbia and Earl

Licenberger, Deputy Chief of Mission at the U.S. Embassy in Serbia.

On the first day of the conference attendees were addressed by Derk Kuipers, Secretary General of the International Association of Prosecutors, Jadranka Jelinčić, director of the Fund for Open Society, Christian Hueck, Program Manager of the IRZ Foundation,

in the fight against corruption. Delegates also heard from Nemanja Nenadić, Programme Director of Transparency Serbia and Dimitrije Popić, deputy special prosecutor for Organized Crime.

Attendees were able to exchange experiences with colleagues from EU countries: delegates had the benefit of hearing from Adina Daria Lupea, a judge from Romania,



From left to right: Secretary-General Derk Kuipers, Mr. Goran Ilić, President of the Association of Prosecutors of Serbia and Ms. Marina Matic, Strategic Development Manager.

Vito Monetti, President of the European Association of judges and prosecutors for Freedom and Democracy (MEDEL) who spoke about the importance of international cooperation in asset confiscation, Elizabeth Howe, General Counsel of the International Association of Prosecutors, spoke about experiences with internal control mechanisms to prevent corruption within the prosecution service, Carlos Donoso, a Vice President of the International Association of Prosecutors and currently the President of the Prosecutors Association of Argentina offered a presentation about the role of prosecutor

Miroslav Specian, a prosecutor from the Czech Republic, Alberto Perduca, a prosecutor from Italy and Director of Investigations and Operations in OLAF, Arthur Ozimek, a judge from Poland, Melinda Szabo, a prosecutor from Hungary and Eric Alt, a judge of Court of Cassation from France.

The second day of the conference was dedicated to cooperation between prosecution services and anti-corruption authorities. Attendees were addressed by Zorana Marković, director of the Serbian Agency for Anti-corruption, Xavier Sisternas, Assistant Director of the Agency for fight against fraud in Catalonia,

Kendal Day, Chief of the Anti-Corruption Department at the U.S. Embassy in Serbia, Aleksandar Vujičić, Director of the Agency for money laundering prevention, Glyn Powell, Serious Fraud Office of the United Kingdom, Pedro Baranita, Public Prosecutor from Portugal and Ignacio Gonzales Vega, judge from Spain. Representatives of Republic of Korea and Kazakhstan also addressed the participants about forthcoming IAP Conferences and The World Summit in Korea in 2011.

Assigning such an important conference to the Prosecutors Association of Serbia affirms that the efforts and contributions made

by the association, especially in investing in the process of judicial reform in the Republic of Serbia are recognized by the relevant actors in the field of justice at a global level. The importance of the conference in our country is reflected both in drawing public attention to the problems of corruption, as well as by establishing a platform for public and expert discussion at all levels of government. Also, the conference was an opportunity to exchange experiences with colleagues from abroad and to establish contacts with the aim of future cooperation. The International Association of Prosecutors noted the excellent organization of the 5th IAP

Regional Conference for Eastern and Central Europe and Central Asia, and awarded special recognition to Goran Ilić, PhD. The conference was very well covered by the media which is evidenced by numerous reports in almost all major electronic and print media in Serbia.

Presentations of the speakers, as well as pictures from the conference and from the Royal Palace can be found at the site of the conference <http://www.iap2010belgrade.rs>

Marina Matic



Information about Regional Conferences

IAP members will have noticed the increase in the number and variety of IAP Regional Conferences.

IAP Regional Conferences are now being held in 6 separate regions. The 11th IAP European Regional Conference is to take place in February 2011 and by contrast Regional Conferences were held for the first time for North America and the Caribbean Region and for Africa in 2010. We are also holding both the 4th Latin American Regional Conference in Brazil and the 7th Asia Pacific and Middle East Regional Conference in Indonesia in March 2011 and the 6th IAP regional Conference for Prosecutors from Eastern and Central Europe and Central Asia will be held in Kazakhstan in October 2011.

These conferences are primarily aimed at frontline prosecutors and allow for the exploration of

issues which may be peculiar to the region. The IAP Executive Committee has determined that regional conferences should ideally be held every 12-18 months and we are indeed fortunate to have so many enthusiastic members who are prepared to host these popular and valuable events.

If any member is interested in offering to host a regional conference-they should contact the Secretary General. The IAP has a regional Conference manual-currently being revised-which gives guidance about recommended arrangements and which is available upon request from the IAP Communication Manager.

It is generally expected that most attendees at IAP regional conferences will be drawn from the relevant region but frequently speakers and delegates are welcomed from outside the region to add diversity and to introduce different perspectives.

To assist hosts in targeting their audience, the IAP Secretariat is drawing up a very flexible list of members within each region. Some IAP members may, because of their geographical location or certain affiliations, consider themselves to be within more than one region. The IAP will so far as they are able, respect members' choices in this regard.

Regional Conferences are also an opportunity for organisational contact persons to meet their counterparts and the IAP officers and also to learn about their responsibilities as an IAP organisational contact person and to be trained in the use of the electronic administration system. Organisational members are encouraged to enable their designated contact persons to attend these regional events.





IAP Participation in 13th Eurojustice Conference Budapest 28-29 October 2010

The EUROJUSTICE Conference has been organized yearly since 1998 (Noordwijk, Netherlands). The latest conference was held in Budapest, capital of Hungary.

Eurojustice was established in order to foster and improve co-operation between law-enforcement authorities across Europe and to encourage mutual understanding of the different legal systems in existence in member States.

The Eurojustice Conference is a network which provides a forum for Heads of Prosecution Services and top level prosecutors across Europe to discuss issues relating to European criminal law policy, management and best practice. It can identify problems, offer solutions from the prosecutors' point of view and stimulate discussions that are on-going within the different European Union organisations.

The Eurojustice network of European Prosecutors-General aims to strengthen mutual understanding between prosecution services in the European Union, which is of crucial importance in a time when the principle of mutual recognition of decisions in criminal matters is increasingly becoming the cornerstone of judicial co-operation in the European Union. The European Arrest Warrant is the first and best known example, which was followed by the European Evidence Warrant.

According to designation by IAP General Council and Secretary General – as a member of the IAP Executive Committee - I had the possibility to represent the IAP

at the Budapest EUROJUSTICE Conference. I sat on a reserved place for the IAP delegate, with representatives of organizations like Council of Europe, ERA etc.

The 13th EUROJUSTICE conference was attended by PGs or their representatives from 27 countries, delegates of 7 European Union organizations, 50 foreign delegates all together.

The importance of the conference was underlined by Pál SCHMITT, the President of the Hungarian Republic in his keynote address who also hosted a reception for delegates of the conference in his office in Sándor Palace, Buda Castle.

Professional Program

Subjects of EUROJUSTICE conference had been chosen from issues current both for the host state and for other European countries and were discussed in 3 plenary sessions.

After the opening keynote speech of President Pál SCHMITT, Kálmán GYÖRGYI former Prosecutor General of the Hungarian Republic (1990-2000) launched a speech on the occasion of the 10th anniversary of the adoption by the Committee of the Ministers of the Council of Europe Recommendation The Role of the Prosecution in the Criminal Justice System. /Rec(2000)19/

Plenary I. on the Constitutional Position of the European Prosecutions was chaired by Peter POLT director of the Criminal Appeal Department of the PG's Office (Former PG between 2000-2006 and since 14 Dec. 2010 PG again).

Tamás KOVÁCS PG of the Hungarian Republic (2006-2010 13 December) delivered a speech about

the necessity of the independence of the prosecution offices which was underlined by Róbert RÉPÁSSY undersecretary of state (Ministry of Public Administration and Justice).

Hungarian presentations were followed by speeches of the deputy PG of Portugal and the deputy chief prosecutor of Appellate Chief Prosecution Office of Liege (Belgium) who introduced the constitutional position of PP office in their countries. Peter CSONKA gave an overview on the plenary subject from the perspective of the European Commission. The Polish speaker, chief of PP office prosecuting organized crime shared some actual details with the audience about the current reform of the prosecution.

Plenary II. session - Options and Institutions in Promotion of the Simplification and Speeding up of Criminal Procedure - was chaired by Deputy PG Ervin BELOVICS.

László LÁNG - director of Inspectorate of the Criminal Investigations in PG O. - in his plenary opening speech he described the Hungarian legislation and practice on the subject, analyzing advantages and disadvantages of special institutions, while György VIRÁG director of the Hungarian Criminal Institute was speaking about mediation in criminal cases.

This was followed by the presentation of the Spanish PG and Danish PG, who also explained the strategy of their countries on the plenary subject.

Deputy PG of Romania informed colleagues on the principles of the new Criminal Procedure Code in his country. The representative of Italy gave details of the Italian practice.

Plenary III session was chaired by Agnes DIÓFÁSI so, - I had the chance to moderate the session on Prosecutor's Activity in Public Interest on the field of Environmental Protection and Protection of Consumers' Interest.

Nora Katalin BONOMI Deputy PG of Hungary started her plenary opening presentation with the latest details and information on the red mud flood on 4 October 2010. when in Kolontár and Devecser villages (120 km from Budapest) the biggest environmental catastrophe that Hungary has ever suffered, happened.

The ground container of red mud, a waste of aluminum production broke, releasing 700,000 cubic meters or 24 million cubic feet of highly toxic and extremely alkaline liquid, killing 9 people, sweeping cars off roads and damaging bridges and houses, forcing the evacuation of about 500 residents. Red mud is a problem for the aluminum industry that was not able to find a solution to this matter for as long as 120 years. Experts say that this was the largest red mud spill in the world to date, however, other countries also suffer from such threats. The accident was due to negligence since no specific human action or extraordinary weather situation preceded the event. The aluminum factory has an IPPC permit, however, its activity was immediately suspended by the competent Regional EPA after the spill. Due to the lack of class action in Hungary, unfortunately the damaged individuals and municipalities will have to take individual legal actions against the aluminum company, also because the European Law (although it covers such incidents) does not regulate private law damages in such cases. PP office offers an appropriate remedy amongst it's possibilities in public action.

Presentations by English and Dutch prosecutors enlightened the connection between environmental protection and criminal law,

the methods of prevention and sanctions.

A Finnish prosecutor advised colleagues on national solutions while the Romanian prosecutor informed us about the Romanian practice and actual questions of environmental legislation and also some criminal cases handled by prosecution.

Conclusion

All presentations of the three plenary sessions were very interesting and very informative. According to the organizing committee, attendance at this EUROJUSTICE conference was the same as it was on previous occasions, which shows that the chosen subjects proved to be attracting PG-s from both European Union and other invited countries.

Organizers prepared a DVD on the professional program of presentations which was sent to the participating countries.

Next EUROJUSTICE Conference will probably be held in Poland.

Thank you for the opportunity to represent the IAP at the EUROJUSTICE conference.

Agnes Diófási
IAP Executive Committee member
Prosecutor at Debrecen Appellate
Chief PP. Office
Vice-president of HAP



On the occasion of the 20th anniversary of the Hungarian Association of Prosecutors the **Kriminalexpo** and a seminar about the protection of prosecutors and judges was held in Budapest on the 23th and 24th of November in 2010.



On the left side Tamás Kovács, until the end of 2010 Prosecutor General of the Republic of Hungary, next to him Maria Marianné Molnár, President of the Hungarian Association of Prosecutors, on the right side Agnes Diófási, Vice-president of the H.A.P. and member of the Executive Committee of the International Association of Prosecutors and standing next to her Derk Kuipers, Secretary General IAP.

Dr. Péter Polt has been elected by the Hungarian Parliament as the successor of Dr. Tamás Kovács as Prosecutor General.



The First IAP African Regional Conference

The Kuramo Conference 2010 2 – 4 November 2010, Lagos, Nigeria

“The Kuramo Conference 2010 is not another talk shop!”

Those were the words of Hon. Justice E.O. Ayola, retired Justice of Supreme Court of Nigeria and Chairman of the Kuramo Conference, at the opening of the Conference.

“The Conference is about vision, mission and values. It is a forum to define the path of a new vision, deploying application of knowledge and experience drawn from multifarious disciplines as tools. It is the platform to launch the new order that is shaped by right thinking, right values, right ideas and palpable commitment”.

After the opening ceremony with excellent speakers like Lord Paul Boateng and Reverend Jesse Jackson, the participants had the occasion to take part in one of the modules of the conference.

Module 1: Global Trade and Development;

Module 2: International legal Order;

Module 3: Housing and Habitat;

Module 4: Arbitration and Dispute Resolution.

The second module was visited by prosecutors and they talked about Contemporary Issues in Criminal Jurisdiction and Economic and Social Rights.

This part of the Conference was called: “the First IAP African Regional Conference”.

Themes that were discussed: recovery of stolen wealth; international arrest warrants and mutual legal assistance; improving access to social and economic rights in Africa.

Mr. Olasupo Shasore, Attorney General, Lagos, Nigeria



The first session of module 2 was chaired by Mr. Olasupo Shasore, Attorney-General & Commissioner for Justice, Lagos State and member of the International Association of Prosecutors. (IAP)

In this session the Secretary-General of the IAP was one of the speakers and he had taken the opportunity to talk about the IAP, its history, its objectives, its work, its results and the importance of regional conferences, also in Africa.

Mr. Edward Davis, founding partner of the law-firm of Astigarraga Davis in Miami, Florida, gave a very interesting speech about “The Recovery of Stolen Wealth: Time for a New Model”. (the speech is available from the SG of the IAP)

In another session of module 2 Mr. Basil Elombat, Vice-President of the IAP was one of the speakers and he also emphasized the importance of the IAP for the jurisdictions of Africa.

In this session there was also a very “strong discussion” between two speakers Mrs. Fatou Bensouda, Deputy Prosecutor International Criminal Court, The Hague, and Mr. Courtenay Griffiths. QC, Counsel to Charles Taylor.

Questions like: “Is the ICC there only for accusing African people”,

“Is the ICC a representative of a new colonial movement.” and “What is the position of someone like Charles Taylor in his process by the ICC” were discussed.

During the Plenary of the Closing Session Mary Robinson, President of the International Commission of Jurists and former President of the Republic of Ireland and United Nations High Commissioner, spoke about “Strategic Drivers for Socio-Economic Transformation – the next 50 Years”.

A very inspiring speech and the participants were very pleased by her performance.

During the Governor’s Dinner the Secretary-General of the IAP spoke, together with the Vice-President of the IAP, Basil Elombat, words of thanks to Mr. Olasupo Shasore for the organisation of the First IAP African Regional Conference and offered him the IAP-shield as a token of appreciation and gratitude.

A very well organised and inspiring conference and we hope that the Second IAP African Regional Conference will follow soon.

Derk Kuipers, Secretary-General IAP



First IAP North American and Caribbean Regional Conference, Bermuda, November 2010

The first IAP North American and Caribbean Regional Conference entitled “International Challenges & Coordinated Solutions” was hosted by the Department of Public Prosecutions of Bermuda in mid November.

Bermuda is a particularly beautiful island set on its own in the North Atlantic and favoured by the Gulf Stream, which gives it a wonderful climate. It is an island of hills and bays, small winding roads, pink sand beaches and coral reefs. The landscape is scattered with pastel coloured houses, seemingly all immaculately presented. Travel on any boat is normally accompanied with ‘oohs’ and ‘aahs’ as yet another superb waterside home is seen, often with its own landing stage, boat and pool.

There were 60 international attendees at the conference, together with about a dozen counsel from the Bermuda Department of Public Prosecutions. The international guests were drawn from Canada, the USA and 10 Caribbean jurisdictions. They were joined by a representative of the Republic of Korea currently working at their Mission to the UN in New York. There was strong organizational representation from the IAP with James Hamilton, the President, Derk Kuipers the Secretary General, Elizabeth Howe, the General Counsel and Janne Holst Hubner, the Communications Manager all present.

The conference started with formal introductions from senior figures (the Acting Governor, Attorney General and Minister of Justice and the Chief Justice) and then went into the first plenary session with an audience that included many non prosecutors, namely leading figures from the criminal justice

establishment of Bermuda. Present were Court of Appeal Judges, Puisne Judges and Magistrates, together with senior police and representatives from institutions such as customs, corrections, court services and family services. There were also attendees from the criminal defence bar. Although all these non prosecutors departed after the first coffee break, when the conference went into closed session, their partial attendance had the benefit of informing the wider criminal justice establishment about the issues the prosecutors were considering, as well as informing those same persons about the IAP, specifically they heard a key note address from James Hamilton. It also ensured that at the social events, which many of these non prosecutors attended, there was greater collegiality.

The conference dealt with very serious topics for the region, concentrating on the first day on gangs, the way drugs trafficking



Participants in the First IAP North American and Caribbean Regional Conference

supports them and on international efforts to fight these twin problems. These being internationally based cross border issues, consideration was given to extradition, mutual legal assistance, money laundering, asset forfeiture and associated matters. The day was kicked off with a very dynamic presentation by the DPP of Jamaica on how gangs had taken hold in Kingston, Jamaica, how gangs develop over time and what was being done to push back. This was a sobering presentation, as a number of the jurisdictions attending could see their own gangs are likely to develop and get worse if they follow the Jamaican pattern.

On day two the focus changed to domestic violence and sexual assault, encompassing issues such as testimony of vulnerable witnesses, sex tourism and new threats created by digital technology and the advent of cyber crime. It was interesting to see in the area of sexual crimes against children that what had formerly been a fairly localized form of criminality had now taken on international dimensions due to increased mobility and the internet. A lunch was hosted by the Attorney General and Minister

for Justice, Michael Scott. It went well particularly given the accompaniment of a very witty speech by Derk Kuipers. Indeed networking opportunities were everywhere. There were many DPPs present and there was a meeting on the margins of the attending DPPs of the Caribbean which focused on considering a 'DPPs of the Caribbean conference' in 2011. Several development board members of GPEN also took the opportunity to meet.

Everyone agreed there was a very fine series of social events. On the arrival evening, before the work of the conference began, attendees were driven to the residence of the US Consul General, who kindly provided cocktails and canapés in her classic Bermuda home. The next evening the conference dinner was held at the Waterlot Inn, which is associated with the Fairmont Southampton Hotel where the conference was held. The Inn is about 350 years old and is a lovely, traditional Bermuda institution. The dinner was co-hosted by the Office of the DPP and by the Bermuda Bar Association (BBA). Dining was interrupted by impromptu dancing when a uniquely Bermudian

Gombey troupe appeared. The farewell evening was marked by a cocktail reception kindly hosted at Government House by the Governor, Sir Richard Gozney.

On the departure day, for those who were in no hurry to leave Bermuda, there was an excellent island tour including a visit to the crystal caves and the UNESCO world heritage site of St Georges, others played golf, while some of the IAP executive committee members who were present went out on a boat trip kindly organized by the Honorary Secretary of the BBA.

All in all it was a delightful few days in a beautiful place with new friends made, much learnt and a fine start to Regional Conferences in the North American and Caribbean Region.

Rory Field, Director of Public Prosecutions, Bermuda, member IAP Executive Committee, member GPEN Development Board



Appointment of Mrs. Vinette Graham Allen



Mrs. Vinette Graham Allen, member of the IAP Executive Committee, has been appointed as Director of Public Prosecutions [DPP] of the Bahamas and took up her post in August 2010.

Mrs. Vinette Graham Allen is a Jamaican lawyer, who has been the Director/Principal of the Ministry of Justice Training Institute in Jamaica for the past few years. She started her career

in 1976 in the magistrates' courts in Jamaica, and thereafter was appointed as the DPP in Bermuda, and whilst holding that office, she was publicly recognized for increasing conviction rates and clearing a backlog of criminal cases.





Counsel's Comment

It seems a long time since I wrote this column-I am starting it in Mauritius where I am the guest of Satyajit Boolell, the dynamic and progressive Director of Prosecutions who has only been in office since 2009,when his office separated from that of the Attorney General. Mauritius is a member of the Commonwealth and gained independence from Britain in 1968. Whilst the criminal justice system is based on British Common Law-having previously been a French Colony ,there are significant French influences and the Mauritian I met slipped effortlessly between English(the language of the courts), French and Creole, the local dialect. Being in the Indian Ocean and on the rim of the African Continent, Mauritius holds a strategic position between Africa and the Asian sub-continent. It is a growing financial hub and has attracted the interest of the IMF and will shortly be introducing comprehensive asset recovery legislation with the DPPs office being the enforcing authority. Given my international perspective and back ground in British Common Law, the DPP had asked me to assist in some training of his young prosecutors about their responsibilities and the values and standard that they should observe. I was happy to do so and was pleased to note that this is the beginning of more structured training programme-with ambitions espoused by the young and equally dynamic Attorney General, Mr Yatin Varma to set up a judicial studies institute alongside a compulsory professional development scheme. Perhaps the event which is to take place in March -in Jakarta Indonesia-to explore the possibility of setting up a global network of prosecutors training centres-which is to take place in parallel with the 7thIAP Middle East Asia and Pacific Regional Conference(see

page 5) will provide some useful information in connection with this initiative.

I go home tonight to a cold Britain leaving behind me the warmth of the Mauritian hospitality and its weather.

As General Counsel I am responsible for the professional work programme of the association-that can involve assisting with the development of themes and professional agendas for our many conferences, supporting projects and initiatives such as GPEN, FICJ, PEP, involvement with partnership work such as the OSCE/ODIHR guidance for prosecutors on Hate Crime which it is hoped will be launched later this year and many more. The detailed work plan for 2011 will be on the website shortly following approval from the Executive Committee in March.

I am also involved on behalf of the IAP with a number of other international organisations and these responsibilities take me far and wide. In early October I went to the International Bar Association Annual Conference in Vancouver, Canada where I spoke in a forum organised by the IBA War Crimes Committee about the newly formulated International Crime of Aggression and its potential impact on domestic jurisdictions. If you access the FICJ(Forum for International Justice)via the IAP website-using your membership password-(contact the IAP Secretariat if you do not have one)-you can see my paper and enter into a discussion via the discussion forum about this issue. I also spoke about in one of the Criminal law Sessions on prosecuting crimes which have concurrent jurisdictions. You will recall that one of the outcomes of the IAP Annual Conference in The



Hague last year was to collate all the existing guidelines and seek to draw out some common principles which could be applied universally and published. If you wish to become involved in this project contact me.

My data base of 'experts' who can be upon in response to specific requests for assistance has already paid dividends-see page..for a successful outcome in Moldova. Let me know together with a CV if you want your name added. There may be more opportunities coming up in regard to certain grant aided prosecutorial capacity building Rule of Law projects in the Middle East and elsewhere, which the IAP has pledged to support.

Late October 2010 saw me in Belgrade in Serbia with our new Secretary General, Derk Kuipers for the 5th IAP Regional Conference for Central and Eastern Europe and Central Asia (see the report on page 6/7).Thereafter Derk and I were together again in Bermuda for the 1st North American and Caribbean Regional Conference) see report page 11/12). We hope it will be the first of many and indeed the second one is already planned for May 2012 in Quebec, Canada.We are deeply grateful to the Prosecutors Association of Serbia and to the

office of the Director of Bermuda for hosting both these events.

The next few months will be busy given my active involvement in the arrangements for forthcoming Regional Conferences in Brazil, Indonesia and The Hague-as well as preparations for the Executive Committee meeting in Vienna in March, but the main focus of my attention will be increasingly dedicated to assisting the Korean Public Prosecution Service with their preparations for the 16th IAP Annual Conference and the 4th World Summit-both of which promise to be splendid affairs.

The calls upon the IAP to attend or participate in events abroad are sometimes more than I, or Derk can manage. Henk our former Secretary General is restored to good health and has remained as a special adviser to the IAP. In that capacity

he was able to attend aStAR (Stolen Asset Recovery)/Interpol Asset Recovery Focal Points Meeting at the UN offices in Vienna in December last year. There are currently 74 members of the focal points platform and all countries are urged to provide contact details of a focal point or points within their jurisdiction with a view to world wide coverage and cooperation-as envisaged in the IAP standards.

In April I anticipate I intend to attend, at least for a few days-the UN Crime Prevention and Criminal Justice Commission in Vienna -since the Resolution passed in 2008 adopting the IAP' Standards for professional responsibility and statement of the essential duties and rights of prosecutors' is to revert to the Commission in order to assess the responses received.

For more information about the IAP work programme, take a look at the detailed business plan which should be on the website shortly after approval by the Executive Committee in early March. Best wishes for the year ahead

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Sir Alasdair Fraser's retirement reception

The President and the General Counsel of the IAP, James Hamilton and Elizabeth Howe went to Sir Alasdair Fraser's retirement reception on the 27th September 2011 at Hillsborough Castle in Northern Ireland. It was a splendid setting to celebrate a splendid man. They were both able to represent the IAP and Sir Alasdair spoke proudly of his association with the IAP and how it had supported him. Sir Alasdair Fraser Q.C. was the director of Public Prosecutions for Northern Ireland for 21 years

[Sir Alasdair Fraser Q.C., his wife Maggie and their family.](#)





International co-operation to combat corruption considered by IAACA

by Grenville Cross QC
IAP Senator

The 4th Annual Conference and General Meeting of the International Association of Anti-Corruption Authorities (IAACA) was held in Macao, China, at the Grand Hyatt Hotel, from the 2nd to the 5th November 2010. The host was Dr Ho Chio Meng, Prosecutor General of the Macao Special Administrative Region, assisted by the Public Prosecutions Office of Macao. The Secretariat of IAACA provided the fullest support to the event, which attracted 750 delegates from all corners of the globe.

Since its inauguration in Beijing, China, in 2006, IAACA, under the leadership of its President, Jia Chunwang, and with the support of the United Nations Office on Drugs and Crime (UNODC), has promoted the effective implementation of the United Nations Convention Against Corruption (UNCAC). At each of its three conferences, in Beijing, in Bali, Indonesia, and in Kiev, Ukraine, there has been a focus on the best means of achieving different objectives contained within UNCAC.

The theme of year's conference was "UNCAC Chapter IV: International co-operation," and delegates considered extradition (Article 44),

the transfer of sentenced persons (Article 45), mutual legal assistance (Article 46), the transfer of criminal proceedings (Article 47), law enforcement co-operation (Article 48), joint investigations (Article 49) and special investigative techniques (Article 50).

The IAP has been involved in the work of IAACA from the outset. An IAP Vice-President, Ye Feng, is its Secretary General, and IAP members have been active on its Executive Committee. At this conference, the Association was represented by IAP President James Hamilton, and by IAP Senator Grenville Cross QC, each of whom addressed the delegates and used the opportunity to explain the work and objectives of the Association. IAP Executive Committee Members Richard Buteera, Stephen Pallaras QC, Richard Rogers and Oleksandr Shynalski were also involved in the activities of the conference, as also were IAP Senators Werner Roth, Severino H Gana and Fikrat Mammadov.

The opening ceremony of the conference was addressed by Dr Fernando Chui Sai On, Chief Executive of the Macao Special Administrative Region, who stressed the importance of tackling corruption effectively through joint action, and explained that this was a priority of his government. The delegates were then also addressed by Jia Chunwang, the IAACA President, Cao Jianming, Prosecutor General of China, Dmitri Vlassis, Chief of Corruption and Economic Crime Branch, Division for Treaty Affairs, UNODC, representing the Secretary General of the United Nations, James Hamilton, the IAP President, and Ho Chio Meng, the Prosecutor General of Macao.

In his opening address, James Hamilton discussed the similarities between the IAP and IAACA, as well as the differences. Both organizations were committed to international co-operation to counter corruption, but whereas the IAP was an organization for prosecutors alone, IAACA involved prosecutors, investigators and corruption prevention personnel in its work. Whilst IAACA concentrated upon the question of corruption, the IAP was concerned with the prosecution of crime in general. Successful co-operation between states in the combat of corruption had, he said, to be underpinned by a respect for human rights, and effective mutual assistance had to be "built on trust and respect for the rule of law."

When Grenville Cross QC chaired the Workshop on Extradition and the Transfer of Sentenced Persons, he said the IAP took the keenest interest in the work of IAACA, "not least because the success of UNCAC will achieve at the global level what so many of us are seeking to achieve at the domestic level." He explained that no matter how effective corruption laws might appear, they counted for little if corrupt persons could not be brought to account and were able to obtain safe haven elsewhere. He said that China was to be complimented for its strong support of the efforts of the UNODC to achieve the objectives of UNCAC.

At the General Meeting, Professor Cao Jianming became IAACA President, in succession to Jia Chunwang, who, upon retirement, acquired Honorary Membership. Ye Feng, whose hard work was acknowledged by all, remains IAACA Secretary General. In his acceptance speech, Professor Cao

paid tribute to his predecessor, for guiding IAACA so successfully through its formative years, and he committed himself to the objectives of IAACA. He called for comparative studies on the building of anti-corruption authorities, and concerted efforts to transform research into results to ensure the full implementation of UNCAC. Professor Cao assured the delegates that “I will never let you down.”

At the conclusion of the conference, the “Macao Declaration” was adopted. This reviewed the achievements of IAACA, considered future planning, and identified the scope of new initiatives. The importance of anti-corruption training and education was acknowledged, and the role of Ye Feng in concluding agreements and strengthening co-operation was specifically commended. The Declaration called upon States Parties to the UNCAC “to develop and implement appropriate programmes of work to maintain, sustain and strengthen the momentum generated by the Convention, especially in the periods between the regular sessions of the Conference.”

Throughout the conference, Ho Chio Meng and his staff provided their guests with great hospitality and the arrangements were superb. The banquets at the Grand Hyatt Hotel, at the Venetian Macao Resort Hotel, and at the Macao Tower Convention and Entertainment Centre, were all most memorable affairs, not only for the excellence of the cuisine but also for the splendid cultural mix of the acting, dancing and musical performances, which drew on the diversity of Macao’s unique heritage. Everyone



was deeply impressed by Macao’s rich combination of old and new, and many expressed the hope that other such conferences would be held there in future.

At another special occasion, IAP Senator Grenville Cross QC receives the Silver Bauhinia Star from Hong Kong Chief Executive Donald Tsang at Government House on 23 November 2010, in recognition of his services to public prosecutions.



Winner Essay Competition 2010

SOME THOUGHTS ON JURISDICTIONAL PRIMACY AND THE FIGHT AGAINST CROSS JURISDICTIONAL CRIMINALITY

Steven W. Kayuni*

Introduction

Internationalization of crimes,¹ the emergence of casual chains stretching across national jurisdictional boundaries has had effects that transgress one or more national criminal norms.² This has led to cross jurisdictional or cross-boarder criminality whereby transnational organised criminal groups are indulging in inter alia, cyber-crimes³ and drug-trafficking. In the end this poses challenges to traditional municipal forms of jurisdiction. Prosecutors and other law enforcement agencies are having difficult time to muster issues of primacy where there are multiple claims of jurisdiction. This article examines the extent to which cross jurisdictional criminality is stifling the duty of prosecutors to fight crime and stay a step ahead of criminals. It will firstly outline briefly history of criminal jurisdictional rules. Secondly, it will analyse criminal jurisdictional principles and problems of cross jurisdictional criminality as regards prosecution. Lastly and in conclusion this article will attempt to suggest solutions where potential may lie for increased prosecutorial and judicial negotiation between jurisdictions in order to secure the right outcome.

Brief history of criminal jurisdictional rules

Jurisdiction has been defined as the power of the State to regulate

affairs pursuant to its laws.⁴ Jurisdictional rules developed historically to describe and balance the various interests of sovereigns to the conduct of persons or things as well as to other sovereigns.⁵ National law has drawn explicitly from international law in order to fashion its early jurisdictional rules tenaciously confirming the sentiment that a state's jurisdiction is tied foremost to a piece of geographic territory.⁶ It was held in the United States that, &[t]he general and almost universal rule is that the character of an act as lawful or unlawful must be determined wholly by the law of the country where the act is done . . .⁷

In 1891, Lord Halsbury LC could straightforwardly state that 'All crime is local. The jurisdiction over the crime belongs to the country where the crime is committed . . .'⁸ Almost exactly one hundred years later, however, Lord Griffiths⁹ recognised that Lord Halsbury's approach to criminal jurisdiction could no longer be considered satisfactory in the face of the challenge posed by modern forms of crime. He said that, & unfortunately in this century, crime has ceased to be largely local in origin and effect. Crime is now established on an international scale and common law must face this new reality.¹⁰ Criminal offences were now extending over a continent as the modern world was now a spread-out world. The modern criminal had become a diffusive animal and the world could not be protected from modern criminals by setting up arbitrary limits to places where they could be punished.¹¹

There has been diverse state practice when it comes to criminal jurisdiction within international law. Positivist view states that unless international law provides

a rule limiting jurisdiction then a State can exercise jurisdiction over whatever matter it likes. The Permanent Court of International Justice examined the general principles governing criminal jurisdiction under international law and concluded that whilst international law undoubtedly restricts the right of a State to enforce its laws by police action or other law enforcement agency within the territory of another state, each state nevertheless enjoys considerable freedom to delimit the territorial and extraterritorial ambit of its own laws.¹² This generally permissive approach to the subject of state jurisdiction has not been without critics. Notwithstanding this, it still helps to explain the continuing diversity of state practice in this area.¹³

Criminal jurisdictional principles and problems of Cross jurisdictional criminality

Criminal jurisdictional principles

International law recognises five distinct bases on which jurisdiction (including criminal jurisdiction) could be claimed by states. These were identified in a Harvard Research in 1935 as being territorial; national; universality; protective and passive personality.¹⁴

Territorial jurisdiction

It is the right to prescribe and enforce criminal prohibitions over conduct within a state's own territory.¹⁵ Lord Macmillan in *The Cristina*¹⁶ explained it as, & an essential attribute of the sovereignty of this realm, as of all sovereign states, that it should possess jurisdiction over all persons and things within its territorial limits and in all causes civil and criminal arising within these limits.¹⁷ It is therefore seen as an indispensable attribute of

national sovereignty. This is the first and most entrenched of the five principles regarded everywhere as of primary importance and of fundamental character.¹⁸ Two reasons may be adduced for this wide acceptance. Firstly, equality of states and non-interference in domestic affairs of a state are fundamentals of the international order. To extend jurisdiction beyond the territory of a state is to exercise jurisdiction in a space that may belong to another state bringing about conflicts.¹⁹ Secondly, most systems of criminal law developed having regard to crimes committed within definite geographical spaces, seldom extending beyond a village or a city.²⁰ States are therefore allowed territorial jurisdiction where a crime is committed “in whole or in part” within its territory. There is the subjective application for crimes commenced within a State, consummated abroad and the objective application for crimes commenced abroad and consummated within a State.²¹

Nationality (or personal) jurisdiction

This is second generally accepted principle of jurisdiction also known as active nationality principle.²² Notwithstanding its general acceptance, there are striking differences in the extent to which it is used in the different national systems.²³ States are entitled to legislate²⁴ with respect to the conduct of their nationals abroad as reliance is on the link between a national and the state to which the suspect owes allegiance.²⁵ Legislation in a state determines who qualifies as its national. The Nottebohm Case²⁶ enunciated probably the likely test by which other States are required to accept nationality and any jurisdiction based on it. It was held that the person asserting nationality must have a genuine connection with the State of which he or she is an alleged national.

Protective (or security) principle

This principle provides that states may exercise jurisdiction over aliens who have committed an act abroad which is deemed prejudicial to the security of the particular state concerned.²⁷ This principle is regarded with misgivings in a few, and generally ranked as the basis of an auxiliary competence.²⁸ The injury or prejudice should be to the vital interests of the state claiming it. In referring to the extermination of Jews during Nazi rule, it was held in the case of Attorney General for Israel v- Eichmann²⁹ that, ...this crime deeply concerns the “vital interests” of the State of Israel, and under the “protective principle” this State has the right to punish the criminals. In the United Kingdom it has further been held that, No principle of comity demands that a State should ignore the crime of treason committed against it outside its territory. On the contrary a proper regard for its own security requires that all those who commit that crime, whether they commit it within or without the realm, should be amenable to its laws.³⁰ However, this is a principle that can easily be abused and could be easily manipulated to subvert foreign governments.

Passive personality (nationality) principle

Under this principle, a state may claim jurisdiction to try an individual for offences committed abroad which have affected or will affect its nationals. It is asserted in some form by a considerable number of states and contested by others. It is admittedly auxiliary in character and is probably not essential for any state if the ends served are adequately provided for on other principles.³¹ This principle has not gone without criticism,³² and the overall opinion has been that passive personality principle is rather a dubious jurisdictional ground.³³

Universal jurisdiction

Universal jurisdiction is probably the most controversial³⁴ and most talked about³⁵ principle of jurisdiction. Each and every state has or is assumed to have jurisdiction to try particular offences. The basis for this is that the crimes involved are regarded as particularly offensive to the international community as a whole. Piracy and war crimes as two categories that clearly belong to this sphere.³⁶ The most famous excise of this principle has been the Eichmann Case where Court in Israel held that , &the abhorrent crimes defined in this Law are not crimes under Israel law alone. These crimes, which struck at the whole of mankind and shocked the conscience of nations, are grave offenses against the law of nations itself (delicta juris gentium). Therefore, so far from international law negating or limiting the jurisdiction of countries with respect to such crimes, international law is, in the absence of an International Court, in need of the judicial and legislative organs of every country to give effect to its criminal interdictions and to bring the criminals to trial. The jurisdiction to try crimes under international law is universal.³⁷

Problems of cross jurisdictional criminality

Cross jurisdictional criminality escape punishment mostly due to prosecutors failing to map way forward where there are multiple claims for jurisdiction. Prosecutors are often so absorbed in the attempts to out-wit each other in order to establish primacy forgetting that cross jurisdictional criminality requires cross jurisdictional efforts. Investigations and prosecutions are very problematic in this area³⁸ as complex criminal investigations and prosecutions entail political will presence on the counter-parts across the boarder. For instance an investigation into crimes involving computer assisted transfers of money would require search

of computer banks in different countries. Data stored in one country may have to be examined. This would require intervention, knowledge or agreement of the state in which the data is located. Preservation of evidence may be necessary as the suspected offenders may seek to cover up by deleting it. Therefore, speed becomes an issue of paramount importance.³⁹ The only way for speedy investigations to take place is the political will availability among responsible officials of the country being requested.

Political barrier is another problem faced by prosecutors. If criminal proceedings are brought against suspects and perpetrators who happened to be either connected to some government officials or the said government officials involved,⁴⁰ cooperation would be a challenge. Different jurisdictions have different criminal justice systems.⁴¹ Differing roles and powers of prosecutors and police can sometimes be an obstacle to effective cooperation. For instance in some countries police do investigations and also have quasi-judicial powers; in others, prosecutors do police work as well as bring cases to trial.⁴²

The tension between the interest of effective prosecution of crimes and the preservation of fundamental rights of individual suspects play a critical role in creating difficult environment for establishing primacy of jurisdiction. Notwithstanding human rights being of universal recognition, there is variance of degree of respect and also recognition among states. Procedural rights are one area that is usually in contention.

Suspensions over prosecutorial efficiency are always vexing the prosecutor's mind. How may the case be proceeded with expeditiously? In which jurisdiction is a conviction most likely to be

secured? Considerations such as the availability of witnesses or the admissibility of evidence may influence the prospects of conviction and prospective punishments may be a factor when deciding in which system prosecutors prefer the case to go ahead.⁴³ Where are defendants likely to have fierce battle on extradition? All these questions get even more complicated when dealing with cybercrime as it is always evolving and moving at a fast pace.⁴⁴

Lack of harmonisation of procedural rights is another complicates the work of prosecutors in cross jurisdictional criminality. The notion of an equivalent standard of procedural rights is still not a reality,⁴⁵ and Conventions do not provide for a self-contained system of procedural law and the granted rights constitute only absolute minimum standards.⁴⁶ Ratification Statutes vary from one state to another. The slow pace of harmonisation can be attributed to the fact that criminal proceedings are the most intrusive measures available to the states.⁴⁷ Further, what states consider as a criminal act differs greatly and depends to a large extent on ethnic and moral values, which have developed historically.⁴⁸

Conclusion

Increased prosecutorial and judicial negotiation between jurisdictions in order to secure the right outcome should be the ultimate goal of all prosecutors. Putting the legal question of jurisdiction aside, there are many practical, procedural, criminological, political and social reasons⁴⁹ that crimes should be investigated and prosecuted where they were committed.⁵⁰ There is need for international co-operation among states. On a regional or international level, states need to have appropriate and harmonised domestic legislation to enable easy extradition proceedings.⁵¹ Further to this, states need to have bilateral

or multilateral mutual recognition where by like-minded and trusted states agree on no need for engaging in lengthy and bureaucratic mutual legal assistance processes.⁵²

States should be ready to invest more resources in building capacity for indictable cybercrimes⁵³ specialist prosecutors and availability of such expertise evaluation should be one of the guiding principles in increased prosecutorial and judicial negotiations. Judicial negotiations should seriously consider expeditions handling of the matter by one criminal justice system; chances of such state securing a conviction; availability of witnesses; difficulties of obtaining evidence both oral and documentary; prospective punishment in that state. It is submitted in this article that a long term issue for prosecutors to consider should be negotiating for a Multilateral Convention on Jurisdiction which can more easily establish a uniform set of jurisdictional rules and a more accessible form of law,⁵⁴ such as into a codified form of inter-state penal cooperation.⁵⁵

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A Canadian Goes To Moldova

Thanks to the IAP Newsletter, General Counsel Elizabeth Howe and the Warsaw-based Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE), I recently participated in a capacity building project in the Republic of Moldova. The purpose of the project was to prepare a report on ways to strengthen the independence and

effectiveness of the Moldovan prosecution service. The report is intended to inform debate on further prosecutorial reform in Moldova.

In her capacity as General Counsel of the IAP, Elizabeth often receives requests from multinational, governmental and non governmental organizations for access to IAP s highly regarded experts list . The list is made up of the names and resumes of IAP members who, like me, have expressed an interest in short-term international assignments.

Elizabeth contacted me to see if I was interested in discussing a 6 week project in Moldova with a representative of ODIHR. I said yes - nothing ventured, nothing gained. I did some research for my selection interview and learned that Moldovans speak a language very similar to Romanian. Four million of them live in a country nestled between Romania and Ukraine. History has not been kind to Moldova. It lies on the cross-roads of Europe and Asia and has been the subject of numerous invasions by the Ottoman Empire, Romania and Russia. Prior to 1991 it was part of the Union of Soviet Socialist Republics.

The first interview question asked by the ODIHR representative was to the point: what assistance could an English speaking prosecutor experienced in the Canadian legal system provide to a Romanian speaking country transitioning from a Soviet legal system to one that hoped to meet European standards? Good question. I must have said something right because soon thereafter and with the blessing of my employer, I was on an airplane bound for Chisinau, the capital of Moldova.

Any communication concerns I had were soon swept aside after meeting the project team's Moldovan lawyers.¹ They both speak flawless English. In addition to providing insightful legal analysis and translating for me, my Moldova colleagues were able to fill me in on a veritable mountain of useful information about Moldova's legal and political system and culture, the people we were interviewing and where to go for a beer at the end of a long day (Robin's Pub was a favourite).

It soon became apparent that prosecuting is prosecuting wherever it is done. My 33 years of experience prosecuting and managing prosecutors in two Canadian provinces had taught me how to recognize and address many of the issues Moldova is now confronting. How do you 1) secure adequate funding from central agencies in times of economic turmoil; 2) balance prosecutorial independence with public accountability; and 3) train young prosecutors and inculcate in them appropriate professional standards and values? These types of fundamental issues are universal.

During the Soviet era, the office of the Prosecutor General (PG) in Moldova was centralized,

hierarchical and based on a military model. The role of the PG and his agents (the procuracy) was to ensure that all state operated organizations (including the judiciary) acted in accordance with socialist and state approved ideology. The PG had authority to inspect the books and conduct audits of all state organizations. Citizens could petition the PG to look into and take action on any grievance they had against state officials or employers. In short, the PG of Moldova was the most powerful official in the Soviet justice system.

Today's prosecution service in Moldova retains vestiges of its Soviet past. Prosecutors continue to wear military uniforms. This appears to have, in part, shaped their attitude to the community and the community's attitude towards them. Their mandate still includes non criminal justice related matters. And corruption remains a serious problem in Moldova. Much has changed but many things stay the same.

Before going to Moldova, I was aware of three basic types of prosecutorial arrangements designed to balance prosecution decision making independence with public accountability. The two arrangements most familiar to me involve top down independence. One arrangement positions all prosecutors as agents of the Attorney General (AG). While the AG is usually a politician and a member of the executive branch of government, tradition dictates that the AG makes prosecutorial decisions independent of the Prime Minister or other members of the government. While the AG has authority to substitute his/her opinion on individual cases for that of the professional prosecution service, it is rarely done. Day to day management of the prosecution

service rests in the hands of civil servants. Accountability for the prosecution service remains with the AG and he/she is answerable in the legislature for individual prosecution decisions and general operations.

In jurisdictions where tradition has not sufficiently protected independent prosecutorial decision making, Directors of Public Prosecutions (DPPs) have been appointed and can make independent case specific decisions unless in receipt of a direction from the AG that is published in a public record. The DPP has security of tenure and other guarantees of independence. A form of public accountability is provided by requiring the DPP to publish an annual report on the activities of the prosecution service. The AG continues to answer for the general operation of the prosecution service in the legislature. There are many variations of the DPP model around the world.

The third prosecutorial arrangement of which I am dimly aware confers judicial status on every investigating magistrate. The jurisdictions in Continental Europe that employ this model have done so since the days of King Louis XIV of France. I understand that the model is sometimes criticized for its lack of institutional and public accountability.

The Constitution of Moldova provides for top down prosecutorial independence because it declares that the PG is imbued with the principle of independence excluding the possibility of subordination & to the authority of the legislative and executive powers. However, The PG is appointed and can be dismissed by Parliament. These provisions are open to a perception that the

appointment and removal of the PG for partisan political reasons is possible. Adding to this perception is the frequency with which PGs in Moldova resign² when there is a change in government. Despite a constitutionally entrenched guarantee of independence, it appears to be conceded in Moldova that the PG is not free from the influence of the political sector.”³

A law was recently introduced in Moldova that appears to be designed to provide more democratic prosecutorial independence. It establishes a new autonomous body called the Superior Council of Prosecutors (SCP).⁴ The new law⁵ provides that the SCP shall act as guarantor of independence, objectivity and impartiality of prosecutors. This provision brings to Moldova what is often called the Southern European Model. All the responsibilities and competencies of a council created pursuant to this model are related to career decisions (the power to select and promote, discipline and train, etc.). In some countries these councils exist as guarantees of judicial independence only. However, prosecutors as well as judges are members of magistrates councils in ten European jurisdictions, including Hungary, Slovakia, Romania and Ukraine. Some jurisdictions have, like Moldova, created separate prosecutors councils (e.g. Portugal and Serbia).⁶

The new law provides that the Supreme Council of Prosecutors in Moldova consists of 12 members:

- Five elected by the General Assembly of Prosecutors (through secret and direct vote⁷) with two members from the Prosecutor General's office and three from territorial offices and specialized prosecution offices);

- Four law professors selected by the Parliament from among tenured law professors; and
- three ex officio members who are members by virtue of holding another office (the PG, the Minister of Justice, and the Chairperson of the Superior Council of Magistracy).

The intended result of implementing the Southern European Model is to place the careers of prosecutors in the hands of their peers and colleagues. Whether they get hired, transferred, promoted or fired will no longer be exclusively up to the PG. The goal of the model is to have prosecutors make independent and impartial decisions without fearing that a decision which does not find favour with the powerful will threaten their livelihood. The hope is that this will make them less susceptible to telephone orders that come from or on behalf of the influential and powerful.

It was a great pleasure to spend 6 fascinating weeks in Moldova discussing with members of the SCP and other interested parties how the SCP can be strengthened (e.g. unlike councils in other jurisdictions, the SCP in Moldova can only make non-binding recommendations to the PG) and the Moldovan prosecution service modernized. The Moldovans I met were welcoming and generous people. They were interested in and open to ideas from abroad. I came away from the project with admiration for the great majority of Moldovan prosecutors. They discharge their responsibilities under difficult conditions and without tools of the trade most Canadian prosecutors take for granted. Moldova is making serious efforts to bring its prosecution service into line with OSCE commitments and European Union standards. It has some way to go yet

but where there is a will, there is a way.

John Pearson, General Counsel, Crown Law Office Criminal, Ministry of the Attorney General for Ontario, the views expressed in this article are those of the author alone.

¹ MIHAELA VIDAICU, CRIMINAL LAW AND CRIMINOLOGY CHAIR, MOLDOVA STATE UNIVERSITY AND OLIMPIA IOVI, STAFF ATTORNEY, ABA/ROLI MOLDOVA.
² NONE OF THE LAST 5 PGs HAS SERVED MORE THAN 3 YEARS OF THEIR 5 YEAR TERM. FORMER PG VALERIU CATANA STATED IN ILASCU AND OTHERS V. MOLDOVA AND RUSSIA, ECtHR, 8 JULY 2004 AT PARA. 210 THAT HE WAS FORCED TO “RESIGN” FOR POLITICAL REASONS BECAUSE HE INSISTED ON TAKING HIS DECISIONS ON THE BASIS OF THE LAW AND NOT ACCORDING TO THE WAY THE POLITICAL WIND WAS BLOWING.
³ MINISTER OF JUSTICE ALEXANDRU TANASE, INFO-PRIM NEO, 14 JANUARY 2010.
⁴ THE NEW LAW WAS ADOPTED BY PARLIAMENT ON 25 DECEMBER 2008. THE SCP HELD ITS FIRST MEETING ON 14 JANUARY 2009 AND ELECTED ITS PRESIDENT.
⁵ ARTICLE 80 OF THE LAW OF THE PUBLIC PROSECUTOR'S SERVICE, LAW No. 294-XVI, 25 DECEMBER 2008, OFFICIAL MONITOR No. 55-56/155, 17 MARCH 2009
⁶ AUTHEMAN V., ELENA S. AND HENDERSON K. (ED), GLOBAL BEST PRACTICES: JUDICIAL COUNCILS, IFES RULE OF LAW WHITE PAPER, APRIL 2004 AT P. 25.
⁷ AT LEAST ONE KNOWLEDGEABLE MOLDOVAN OBSERVER IS OF THE VIEW THAT BECAUSE OF THE STRONG HIERARCHICAL TRADITION IN THE MOLDOVAN PROSECUTION SERVICE, THE GENERAL ASSEMBLY OF PROSECUTORS KNOWS WHO IS “EXPECTED” TO BE SUCCESSFUL AND VOTES ACCORDINGLY.





Obituary

With great sadness we received the tragic news of the loss of Mr. David Martinez Madero, the Director of the Anti-Fraud Office of Catalonia in Spain.

He passed away unexpectedly on 21st January in Milan on his way home following his attendance at a working group of the International Association of Anti Corruption Authorities in Singapore.

Mr. Madero was a member of the Public Prosecutors Department against Corruption and Organised Crime for 11 years and accumulated extensive experience in the area of anti-corruption, financial crime and organised transnational crime.

From 2001 to 2007, he was the Pre-Adhesion Advisor of The European Union in Romania, having been awarded the highest official decoration for his contribution to the improvement and strengthening of institutional capacity to fight against corruption. In May 2009 he was appointed Director of the Anti –Fraud Office of Catalonia, a parliamentary



institution for the prevention and investigation of corruption cases, created by statute in November 2008 (www.antifrau.cat)

Mr. David Martinez Madero was a much valued and long standing member of the International Association of Prosecutors and his contribution to the fight against corruption was widely recognised and will be sorely missed.

Our condolences to Mr. Madero's family, friends and colleagues.



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The IAP Russian Website – revived and refreshed

The recognition of effective communication as the most important tool for enabling a worldwide association like the IAP to operate as a network for the benefit of our members has since 2007 been the reason behind the expansion of the electronic communication platform within the IAP. This has led to the launch of a new version of the IAP website in 2007 followed by two new expert sister websites: GPEN (Global Prosecutors E-Crime Network) in 2009 and the FICJ (Forum for International Criminal Justice) in 2010.

In the pursuit of the Association's objective to reach prosecutors around the world, 10 years ago, the IAP launched a French sister website operated by the Canadian Federal Prosecution Service and a Russian sister website operated by the Ministry of Justice and General Prosecutor's office of the Republic of Azerbaijan. Both these sister IAP websites mainly served as information boards offering members translated versions of key documents and the IAP

quarterly newsletters. As part of the technological development of the multi-lingual communication modes within the IAP, the members of the Executive Committee agreed to prioritise the upgrade of the "other language sister websites".

As a result of that decision a new member of the Executive Committee in 2010, Mr. Kamran Aliyev, Director of the Anticorruption Department of Azerbaijan invited me to pay a visit to the Office of the Prosecutor General and his own department to devise a forward action plan for an immediate upgrade of the Russian sister website. That meeting took place at the beginning of February this year and offered fruitful and inspiring suggestions regarding the future function of the Russian website. It was for example agreed to include a Russian online member application facility which should assist the IAP in maintaining a strong membership representation and promoting further recruitment in Eastern Europe.

During my stay in Baku, the impressive capitol of Azerbaijan, I enjoyed a captivating tour through Azerbaijani history gaining great insight into the fascinating and rich Azerbaijani culture and hospitality. I discovered that the IAP holds a significant place in the history of Azerbaijan –and was shown the IAP "wall of recognition" in "The Historic Museum of the Prosecutors Office".

I was also introduced to the local IAP Support Team, which has over a number of years not only produced translations of the quarterly newsletters and manuals including the IAP Human Rights Manual, but has also recruited local members to the IAP. The hard work of Mr. Kamran Aliyev and his support team and others has resulted in the recruitment of approximately 175 new individual members from Azerbaijan within the last 5 months. A remarkable achievement. During an afternoon session at the Office of the Prosecutor General I had the great honour to meet a number of these new individual members and to learn about how they expected to benefit from IAP membership and their experiences so far.

The next few months will bring much work for those involved in the re-launch of the Russian website, which is scheduled to take place in mid-May 2011 in the presence of the Minister of Justice of Azerbaijan and IAP Senator Mr. Fikrat Mammadov, the General Prosecutor of the Republic of Azerbaijan, Mr. Zakir Qaralov and the IAP President, Mr. James Hamilton and the IAP offers its grateful thanks to those who will have been responsible for making this happen.

8 February 2011,
Janne Holst Hübner
IAP Communication Manager

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