

Asia-Pacific Prosecutors' Networking through IAP

- Asia-Pacific Convention for Cooperation in Criminal Justice -

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Advancement in information technology and increased exchange of goods and personnel has caused a tremendous increase in transnational crimes. Asia-Pacific Region is also facing similar situation. Despite desperate efforts by each country to cope with this situation, judicial cooperation within the Asia-Pacific region has been underperforming with many problems and limits. Unlike Europe, we are yet to have any multilateral and comprehensive regional cooperation mechanism. And despite many bilateral treaties, we still lack in numbers, not to mention confusion caused by different clauses in bilateral treaties.

Therefore it's time for us to focus our efforts to build more strengthened regional mechanism using regional homogeneity as another pillar to form effective international cooperation. In this respect, my proposal is to formulate a convention draft, under the IAP framework, with the colleagues from the Asia-Pacific and then to send the draft, after the approval from the IAP, to the UN for the development into a regional convention of UN.

Proposal

We need to adopt an Asia-Pacific Convention to set a landmark for regional networking of prosecution services which,

- Promotes a multilateral and comprehensive cooperation system in the Asia-Pacific Region,***
- Encompasses mutual legal assistance, extradition and transfer of sentenced persons and***
- Enhances more efficient and effective international cooperation under the umbrella of IAP***

I. The Progress of Networking in the Asia-Pacific region

The importance of networking between prosecutors cannot be over-emphasized as it is one of the most efficient ways to deal with an increase in transnational crimes. Realizing such importance, various efforts have been made to enhance regional networking under the umbrella of the IAP. Especially, in 2008, many leading prosecutors and experts in the Asia-Pacific region gathered at the 5th IAP Regional Conference held in Seoul to make a thorough and comprehensive discussion on ways how to promote and strengthen networking among countries in the Region. Following the regional conference, the first High-Level Prosecutors' Meeting was held in Busan where the heads of prosecution services in the region shared their views about the importance of networking and agreed

on the 'Busan Declaration' which declared strengthening networking for close collaboration, and improving multilateral cooperation through the IAP. We continued to develop the fruitful outcome of the Busan Declaration at the Regional Fora of IAP Singapore Annual Conference in 2008 which I chaired with honor. In the Fora, the same topic, 'Networking' was once again actively discussed at the working level based on what had been discussed in Korea. After all, I am proud to say prosecution services in Asia-Pacific region have taken the historic first step toward establishing well-functioning networking system in the region, still knowing that there is a lot to be done in the future to develop this into more concrete platform for cooperation.

II. Proposal made at the 6th IAP Regional Conference in Dubai

I proposed the "Asia-Pacific Convention" in the opening speech at the 6th IAP Asia-Pacific Regional Conference held in Dubai in November 2009. The proposal was meant to succeed and develop the outcome of the Busan Declaration and the networking framework suggested at the Regional Fora of Singapore Annual Conference. In this proposal, I highlighted the importance of regional cooperation through Asia-Pacific Prosecutors' Networking of IAP and also the importance of "Direct Contact" and "Speedy Response" mechanism between Prosecution Services based on 'mutual trust' and 'Asian Common Values'.

III. The Need of Multilateral Convention in the Asia-Pacific region

In the region, we are having more and more bilateral treaties between each other but the number is far from satisfactory and there are lots of missing links between countries concerned. On top of that, since diplomatic channels are used as the basis of establishing contact, legal assistance is rarely provided on time and a great deal of time is wasted even between contracting states. We also have multilateral treaties such as the UN Conventions(UNTOC, UNCAC, etc) and various EU Conventions(MLAT, Extradition, etc). But UN conventions were only for the specific crimes and not much being used in practice and EU Conventions are mainly for EU nations being of no use for Asia-Pacific region due to geographical limit even though these seem to be well-structured.

Therefore, we need to establish a multilateral convention which would apply only to Asia-Pacific region reflecting the characteristics of Asia-Pacific region. But, considering the countries in the region differ in many aspects unlike EU which is the integration of politics and economy, 'softer approach' is necessary in formulating convention.

The convention shall encompass mutual legal assistance, extradition, and transfer of sentenced persons for all the crimes by mainly operating contract points in the prosecution services. Such a

convention will reinforce the accumulated regional networking of the Asia-Pacific and will provide a continuous mechanism for growing understanding and trust between prosecution services, realizing the blueprint of networking of “speedy response” through “direct contact”.

IV. How to Build the Asia-Pacific Convention

The first step for the establishment of the convention would be to make a draft of such a convention. It is ideal to gather working group composing of experts from Asia-Pacific region but to expedite the procedure, the first draft would be prepared by Korea and would be distributed to the countries in the region asking comment and advice as a consultation process. Then, the draft reflecting the output of consultations would be in review to be agreed on by working-level and high-level prosecutors. Considering there will be no IAP Asia-Pacific Regional Conference scheduled for this year, with the permission of IAP, the Korea may host regional Meeting to further discuss the matter in-depth. If prosecution services in the region agreed on the draft, it would then be submitted to the IAP Excom, Regional Fora and annual conference to get approval as a work product of IAP. Then, the draft would subsequently be sent to the UN in order to develop into a regional convention of UN. It would result in the first regional IAP Agreement being put into formal regional convention of UN and these efforts follow the current trend of the UN which promotes regional cooperation.

V. Strategic Approach

1. The role of Korea in carrying out the Proposal

If the ExCom agrees to proceed with this proposal, as a proponent country, Korea will play leading roles in every step to establish the convention. As a first step, the first draft under being prepared would be finalized by Korea and distributed to countries in the region as latest as April, this year. The draft reflecting comments and advice gathered from countries in the region would be reviewed and agreed on by both working-level and high-level prosecutors hopefully by end of this year.

2. Close contact with members and non-members of the IAP in the Asia-Pacific region

The Asia-Pacific convention would cover countries in the region such as Korea, Japan, China, ASEAN countries, Middle East and Central Asia. In proceeding with the plan, we will closely cooperate with countries above mentioned in the region. Also, participation shall be encouraged to the prosecution services of non-IAP member states in formulating the convention. This will expand the membership and activities needed in the IAP, especially in the region where many countries still demonstrate more or less passive attitude toward the IAP.

3. Close relationship with UN

As the ultimate goal of this proposal is to make regional convention of UN, it is requested to have close relationship with the UN, especially UNODC and ECOSOC in carrying out this proposal. Currently, UNODC Regional Centre for the East Asia and the Pacific is undertaking the 'Asiajust' project. 'Asiajust' is basically an extensive and ideal business plan which will need a very long-term approach since this plan requires coordination across all sectors of criminal justice system; prosecution service, police, court, and other law enforcement agencies. Instead, the proposal of convention will focus mainly on the points that could be realized much sooner, highlighting on the cooperation among the prosecution services. So we will continue in-depth discussions and coordination with the UNODC Regional Centre as well as accommodating the core principles and consensus existing in the present UN conventions. This will enable cooperative and productive results, preventing conflicts or overlaps, if any, that may arise.

4. The formal international procedure among Governments Followed

Considering IAP is non-governmental and the draft would be made by experts in the prosecution services in the region, it would be needed to go through formal procedure by each government to be concluded as international convention. However, as the draft is the outcome of the agreement of prosecution services who deal with international cooperation in practice, there would not be much difficulty in completing international procedure. Also, it could expedite the whole process avoiding undue delay.

VI. Expected Outcomes of the Asia-Pacific Convention

1. Creating clear legal basis for efficient and effective international cooperation

The major advantage of the Asia-Pacific Convention is that it creates 'catch-all' legal basis for cooperation in the field of criminal justice. The adoption of the Convention can greatly improve our chances for receiving adequate assistance because specific provisions of the convention will provide clear picture of each nation's obligations unifying and complementing diverse contents of existing bilateral and multilateral treaties. It also promotes the standardization of the legal system in Asia-Pacific region considering degrees of development vary greatly in the legal system from country to country.

2. Realizing the objective of the IAP

Constitution of the IAP states that one of the main objectives of the association is to assist prosecutors internationally in the fight against organized or other crime and to promote speedy and efficient international co-operation. This convention perfectly meets the objectives of the IAP.

VII. Closing remarks

I would like to emphasize that “the sooner we start the better it will be”. Never before has the region been so much connected, and never before has the prosecution services across the region needed a much more strengthened cooperative platform against crime.

At this stage, prosecution services in Asia-Pacific region desperately need something more than just the conventional system based on bilateral treaties.

The convention I proposed will start serving as the region’s most comprehensive and permanent supporting vehicle, the sooner we start our effort.

If the ExCom could agree on my proposal as the Business Plan of the IAP, I will spare no efforts to reach the ultimate goal.