INTERNATIONAL ASSOCIATION OF PROSECUTORS

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NEWSLETTER 61

NEWSLETTER

3rd IAP African and Indian Ocean Regional Conference, Livingstone, Zambia

"Getting a fair bargain for Africa and the developing world: The role of the Prosecutor in combating financial crime including tax evasion and environmental degradation in the extractive and other significant industries".

From 2 to 6 March 2014 the IAP held its 3rd IAP African and Indian Ocean Regional Conference in Livingstone, Zambia, home to the magnificent Vitoria Falls and a fitting venue to consider the importance of combatting corporate financial crime and environmental degradation.

The conference was hosted by Mutembo Nchito, SC, Director of Public Prosecutions (DPP) and attracted over 100 participants from 21 countries across the globe, but most significantly from the African Continent and Indian Ocean. Speakers were excellent and represented the broad spectrum of those working in the area, including auditors, government agencies and NGOs. Many had first-hand experience investigating or prosecuting offences by large multinationals in Africa and abroad, and were adept at identifying the main types of corporate crime affecting the

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region and the key challenges facing investigators and prosecutors in this regard.

As we heard, corporate crime often involves elaborate financial schemes operating across multiple jurisdictions. Commercial transactions involving multinational enterprises, including tax evasion, are estimated to constitute more than 60% of the illicit financial flows emanating from Africa every year. This represents more than double the amount of foreign aid received by the region during the same period. Multinationals are also responsible for much of the environmental damage caused by the extractive and related industries. In both cases the need to prevent and punish such crimes and the implications for Africa's development in doing so is obvious. Whilst corruption by government officials remains a problem in some cases, the real responsibility for these crimes lies with the chief executives, directors and other officers of the multinational enterprises concerned and their financial and legal advisors.

In my view the success of the conference was twofold. Firstly, it identified a number of key recommendations for ensuring the effective and rigorous prosecution of corporate crime. The recommendations concerned three main issues: law reform; specialisation; and perhaps most importantly, engagement and coordination. Secondly, the conference provided the forum through which engagement and coordination could begin.

In summary it was agreed that reform is required in many jurisdictions to simplify the law, both to reduce the incentive and opportunity for complex schemes designed for its circumvention and to facilitate its enforcement. Penalties at the personal and corporate level should be strengthened to deter criminal conduct and should include significant gaol terms, substantial financial penalties and debarment. Prosecutors must have the ability to freeze and recover assets and, where possible, these assets should be used to build the capacity of government agencies to investigate and prosecute corporate crime. Prosecutors must engage with legislators to ensure that the law can be enforced effectively. Law reform is only one part of the puzzle, however, and is often beyond the immediate control of prosecutors.

In this regard it is also clear that there is a need for coordination at the national, regional and international levels. At the national level prosecutors must engage with agencies responsible for investigating corporate crime and consideration should be given to the establishment of inter-agency working groups for this purpose. Whilst respecting their different mandates, prosecutors should also engage with NGOs and civil society groups. These organisations often play a vital role in lobbying for transparency in the negotiation of contracts between governments and multinational corporations. They may also have access to resources, expertise and evidence that might not otherwise be available.

Given the international nature of these crimes, engagement on both a formal and informal basis is important to facilitate the sharing of information across jurisdictions and the provision of mutual legal assistance. Prosecutors should use networks and organisations at the international and regional levels, like the IAP, the African Association of Prosecutors and others to share best practices and lessons learned. Consideration might also be given to the creation of a regional network of prosecutors dedicated to fighting corporate crime.

It is also essential that prosecutors are given the financial and human resources required to create specialist teams. Specialisation facilitates the building of expertise necessary to guide complex investigations, conduct effective prosecutions against heavily resourced defendants and drive coordination at all levels.

Beyond the conference room itself there was also plenty of opportunity for delegates to network further and, of course, simply experience Zambia. How could we fail to do so with the falls literally at the hotel's doorstep? The Vice-President of Zambia, Dr Guy Scott, the DPP and the IAP also hosted a number of social functions involving some great food, traditional (and not so traditional) dancing and a sunset cruise complete with hippo, crocodile and cantankerous zebra.

And it is here with the image of the African sun setting over the Zambezi that I would like to leave you with a phrase our Zambian colleagues shared with us during the conference and which seems particularly apt given its outcome: "umwana ashenda atasha nyina ukunaya" - "a person who does not visit with others thinks his mother is the best cook" – or, in other words, you never know what you might see or learn at an IAP conference!

Teresa Berrigan
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A message from the President

In a century or two, our successors will look back to today and think that these were the dark days, when prosecutors were still fighting for their independence from the executive branch, from politics and governments. Just like us looking back to the 18th and 19th centuries, when the idea of independent judges was still revolutionary in many countries. In those days, people in power were afraid of ceding their ability to influence the outcome of court proceedings to fair and objective judges who only answered to the law. The idea of the rule of law including the imperative of impartial judges prevailed. Now, several centuries later, no modern politician aware of his reputation would try to change that and openly try to influence our courts. The next step towards a fair and objective justice should be that prosecutors are as equally independent from undue influence as judges. I trust, that this step will be achieved all throughout the globe within the next few decades.
New developments in some countries may appear to be a huge setback to this goal. In Turkey, the High Council for Judges and Prosecutors that had been elected according to the constitution was recently put under the control of the Ministry of Justice and its main positions filled by new people. Members of the IAP from several other countries have informed us that prosecutors in their jurisdiction have been forced to resign without reasonable grounds. Further the situation in Ukraine is dire, not only for its prosecutors.
However, other countries move in the right direction: During the last ten years or so, National Prosecution Agencies or similar institutions have become fully independent from governmental influence in many countries. Zambia, which recently hosted the third Regional IAP Conference for Africa and the Indian Ocean Region is one such example.
We as members of the IAP have to be at the center of discussions on this topic, not only because it is important for us, but also because it is important for the development of just and fair societies.

Gerhard Jarosch
President IAP

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Number: 48.76.95.097
IBAN: NL23ABNA0487695097

GRANTING PROGRAM
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Number: 42.49.05.345
IBAN: NL07ABNA0424905345

BIC-code for all the accounts: ABNANL2A

When paying your annual dues, please don't forget to indicate your name / the name of your office, country and year you are paying for!

If you want to help to make it possible for colleagues from developing countries to attend our conferences, please donate your money on the Granting Program account. We thank you in advance!

Taking stock of the progress made by the International Association of Anti-Corruption Authorities

Eduardo Vetere, Vice-President, International Association of Anti-Corruption Authorities

Giovanni Nicotera, Technical Advisor, Vienna International Justice Institute

Sponsored by the Supreme People's Procuratorate of China and by the Shandong People's Procuratorate, the Fifth IAACA Seminar was held from 22 to 24 June, 2013, in Jinan, the capital of Shandong Province.

The Fifth Seminar comes almost ten years after the event during which the intention to establish the IAACA Association was first heard. In December 2003 in Merida, Mexico, during the high-level conference convened to sign the United Nations Convention against Corruption (UNCAC), the conference delegates underlined the need and expressed the wish for specialized international anti-corruption arrangements devoted to assist countries in the implementation of the Convention. It is indeed worth remembering that while by its nature the IAACA is not an investigative organization, its establishment may be related not only to Article 49 of UNCAC which advocates for the creation of joint investigation bodies to further cooperation at the international level between national anti-corruption authorities, but also and especially to article 13 which stresses the importance of the participation of society, including non-governmental organizations. In fact, in accordance with Article 1 of its Constitution, the objectives of the IAACA, as an independent, non-political anti-corruption organization, are the following:

- To promote the effective implementation of the United Nations Convention against Corruption;
- To assist anti-corruption authorities internationally in the fight against corruption, and for this purpose to promote:
- International cooperation in gathering and providing evidence; in tracking, seizing, and forfeiting the proceeds of corrupt activities; and in the prosecution of fugitive criminals;
- Speed and efficiency in such international cooperation;
- More effective measures for the prevention of corruption in both the public and private sectors; and,
- Better relationship and coordination between anti-corruption authorities internationally;
- To facilitate the exchange and dissemination among them of expertise and experience;
- To promote examination and comparative criminal law and procedure and best practices and to assist anti-corruption authorities engaged in reform projects;
- To promote examination of comparative preventive measures; and,
- To co-operate with international and judicial organizations in furtherance of the foregoing objectives.

In addition, in accordance with article 2 of the IAACA Constitution, the membership of the Association is open to all those national authorities (e.g. bureau, agency, commission, unit, office, etc.) organized by the government in a country or a jurisdictional area and established for: coordinating prevention practices and policies as well as for the pre-investigations, investigations or prosecutions against corruption.

Today, ten years after that event, and seven years after the official birth of the Association in Beijing, in October 2006, one can look with satisfaction both at the achievements in building a universal anti-corruption framework and at the activities of the International Association of Anti-Corruption Authorities. If we give a brief look at how much the international anti-corruption framework has improved in these ten years, we can more easily gauge the progress of the Association as well as identify areas for further improvement.

With 168 State Parties having ratified or acceded to the Convention (at 27 September 2013), UNCAC is well on the way to reaching universal application. A Conference of State Parties (CoSP) was established pursuant to article 63 of UNCAC to improve the capacity of and cooperation between States Parties to achieve the objectives set forth in UNCAC and to promote and review its implementation. More importantly, at its third session, held in Doha, Qatar, from 9 to 13 November 2009, the Conference decided on the Terms of Reference of a Mechanism for the Reviewing of Implementation of the Convention and established the Implementation Review Group to oversee the review process under the authority of the Conference. The relevance of this Group is evident as this particularly innovative instrument, if not properly configured and conceived, could have intruded in a field that is considered as extremely sensitive by any country as it touches upon their sovereignity. On the contrary, the UN and its Member States have succeeded in creating a mechanism that is above all transparent, non-intrusive, inclusive and fair. In other words, the mechanism has so far proved to be a true technical inter-governmental review, not a game of name and shame, so that States Parties can measure progress against themselves, not against each other.

Against this outstanding backdrop, the IAACA has come to consolidate its standing in the international anti-corruption agenda. Following a now well tested scheme, these seminars organized by the IAACA are now being held annually and follow the holding of annual conferences and general meetings. A rapid overview of the chronology of the events organized by the IAACA shows this clear pattern and, as well, an increase in world reach, with more countries willing to host and sponsor these important events and thus project the action of the Association well beyond its place of birth. Hospitality and support have so far been provided, beyond China, by Azerbaijian, Brazil, India, Indonesia, Malaysia, Morocco, Qatar, Singapore, Tanzania, Ukraine and, later in 2013, Panama will join the list of host countries with the hosting of the Seventh Annual Conference, while the Eight Conference will be held next year in Kazakhstan, with Barcellona hosting of the Executive Committee next spring.

Thus, in a short span of six years, the IAACA has managed to put together an impressive series of major events: the First Annual Conference and General Meeting held in Beijing in October 2006, during which the Association was formally established with the approval of its Constitution, and the First Seminar held in Guangzhou in June 2007, the Second Annual Conference and General Meeting held in November 2007 in Bali, and the Second IAACA Seminar held in May 2008 in Chongqing, the Third Annual Conference and General Meeting held in October 2008 in Kiev, the Fourth Annual Conference and General Meeting held in November 2010 in Macau, the Third IAACA seminar in Shanghai in July 2011, the Fifth Annual Conference and General Meeting held in Morocco in October 2011, the Fourth IAACA seminar in Dalian in June 2012, and the Sixth Annual Conference and General Meeting, held in Kuala Lumpur, Malaysia, in October 2012 .

It should be recalled that, at the conclusion of each conference a final declaration is adopted, the text of which contains specific recommendations emerged from the debates and that these recommendations are not only addressed to the concern of national authorities of all the countries participating in the conference, but are also usually submitted as an official document to the United Nations, either directly to the UNCAC Conference of States Parties, or to the General Assembly.

Following the first conference in Beijing that reviewed the implications related to the application of the provisions of the main chapters of UNCAC i.e. preventive measures, criminalization and law enforcement, international cooperation, asset recovery, and technical assistance and information exchange, like every conference, the substantive programme of which is usually composed of plenary meetings and specific workshops, each seminar has been focusing on one chapter of UNCAC. This scheme allows the organizers and participants to engage in fruitful in-depth discussions and exchanges of views related to the implementation of each chapter's provisions, to look at common problems and difficulties as well as best practices and to explore viable strategies adopted to overcome such problems. Last but not least, it also helps to further strenghen modalities for international cooperation and joint collective action while at the same time reinforcing mutual trust, confidence, friendship and personal contacts, achieve an increasing depth in the analysis of the chapter's provisions and of national compliance These seminars and annual conferences have thus contributed to the achievement of the following goals:

Firstly, capacity building, by equipping policy makers, practitioners and relevant personnel with the requisite knowledge and skills required by anti-corruption work. Indeed, every speaker brings to the forum his country experience in preventing and responding to corruption and on the progress towards UNCAC practical application by reporting on successful measures taken to address particular challenges in strengthening the justice system;

Secondly, fostering networking: contacts and personal relationships developed through these events which may turn extremely useful at critical times of criminal investigation and prosecution to facilitate international cooperation on criminal matters, in particular mutual legal assistance and extradition as well as transfer of evidence, exchange of information, recovery of stolen assets and repatriation of corrupt officials;

Thirdly, through these experience-sharing events the Association contributes to reducing inter-jurisdictional obstacles. Indeed, in the implementation of those

UNCAC provisions dealing with cross border issues, prosecuting authorities may at times face almost insurmountable obstacles stemming not only from existing differences inherent to national cultural values and political systems, but also to the still prevailing differences in national legislation. For example, the interpretation given by countries of what constitutes criminal conduct when assets have to be transferred from one national jurisdiction to another. An additional example relates to the differences in the procedures employed by countries when requesting legal assistance;

Fourthly, most of IAACA's events, in particular its conferences, are concluded with high-level policy statements unanimously agreed upon by all its participants, which reinforce the Countries' commitments towards anti-corruption work and contribute to corroborate the global consensus enshrined in the Convention;

Finally, and drawing on the above, one could be easily taken by the temptation of concluding not only that IAACA has satisfactorily reached all its main objectives, but that it has also provided an impressive contribution to the effective implementation of UNCAC. In fact, it has consistently and persistently encouraged its ratification process by a number of Countries, thus promoting its universal application. Moreover, IAACA has also been instrumental in recommending and pursuing the early establishment of the UNCAC review mechanism. In this connection, let us not forget that for the United Nations Convention against Transnational Crime, which was adopted three years earlier, its Conference of State Parties has not been able to reach consensus and it is still struggling to agree on the terms of reference of such a mechanism.

However, now that through its succesful seminars and conferences the IAACA has consolidated its status as one of the main international anti-corruption actors in the global arena, it is important to reflect on what else can be done to exploit to the utmost its potential and avoid loosing momentum. Two are the main areas of further intervention: one concerns the substantive programmatic area of work, the other concerns its financing.

On the programmatic side, it would be important for the Association to focus its future conferences and seminars - now that it has completed the task of unravelling and analyzing in depth the implications related to the effective implementation of the five chapters of UNCAC – on priority issues of major concern to its global and international anti-corruption constituency. The theme of the next annual conference to be held in Panama next November – just before the biennial session of the UNCAC Conference of States Parties – devoted to look at the relationship between the rule of law and anti-corruption efforts in order to review opportunities and challenges, represents a good decision by the Executive Committee and a step in the right direction. In addition, it would be important not only to periodically review the implementation of its action plan adopted at its fifth Marrakech annual conference and general meeting, but as well as to update its content and joint initiatives in particular by institutionalizing and expanding its training programme. An expanded technical assistance programme would greatly help UNCAC States Parties to meet the needs identified through the Implementation Review Mechanism. Such a programme would include the development of specialized guides, curricula and other training material which track and support the needs of anti-corruption authorities. The IAACA International Anti-Corruption Public Service Announcement Video Competition and Workshop, held in Hong Kong in December 2011, cannot remain a one in a lifetime event, and more of these initiatives are required to involve the public in government efforts against corruption. This is particularly true at times when, unlike in the past, the ordinary people are now more willing to stand up and point fingers at suspected corruption. Through social media or letters that are increasingly not anonymous, ordinary people bring to the attention of the authorities what they suspect can be official corruption. The joining of hands between internet users and anti-corruption officials increasingly becomes a new anti-corruption tool. Furthermore, it would be desirable that the Association establish synergies with old and new initiatives and bodies that are active in the anti-corruption field, such as the recently established International Anti-Corruption Academy (IACA) in Vienna.

On the financial side, it is desirable to identify a way forward to ensure the predictable and sustainable financing of the Association. Indeed, it is still the Chinese Government, in particular the Supreme People's Procuratorate at both central and local level, which is providing the lifeline to the Association. The constant increase in the number of countries willing to host and support conferences and events is very welcome and appreciated, but cannot solve the issue as it lacks the criteria of predictability and sustainability. A better way would be to establish as soon as possible a system of membership fees, as fully contemplated in article 5 of IAACA's Constitution.

While a satisfying solution to the expansion of its work programme and to the financing of the Association is found and agreed upon by all members of the Association, it is as well important that its members build on this scheme of technical seminars to launch in their own countries and regions other initiatives of similar nature to take advantage of the momentum created by the IAACA. Indeed, as anti-corruption cannot be left to one country alone, it cannot be left to one association alone. Many more regional, national and local initiatives are needed to raise awareness and consequently mobilize responsible stakeholders, in particular the private sector. Despite the progress made, corruption still remains a powerful and debilitating cancer affecting all communities, with growing linkages to both the financial centers and transnational organized crime.

Much more can and should be done, but it is everybody job! In this connection, considering that in a few weeks it will be exactly ten years since the adoption of the Convention by the General Assembly in its landmark resolution 58/4 of 31 October 2003, there would be no better way to conclude our remarks than to recall the words of the United Nations Secretary General, Kofi Annan, who stated as follows to the plenary of the General Assembly: "The adoption of the new Convention is a remarkable achievement, but let us be clear it is only the beginning…If fully enforced, this new instrument can make a real difference to the quality of life of millions of people around the world. And, by removing one of the biggest obstacles to development, it can help us achieve the Millennium Development Goals… It is a big challenge, but I think that together we can make the difference." IAACA should feel honored and proud to have been one of the major players in assisting countries to effectively implement the Convention and, therefore, to have significantly contributed to these global, collective and joint efforts.

Inaugural General Meeting Asset Recovery Interagency Network – Asia Pacific (ARIN-AP)

Cheol-Kyu Hwang, Deputy Minister for Crime Prevention Policy
November 19-20 2013, Seoul, Republic of Korea

Participants
Australia, Austria, Bangladesh, Brunei, Cambodia, China, Fiji, Hong Kong, Indonesia, Japan, Korea, Lao PDR, Mongolia, Myanmar, New Zealand, Philippines, Solomon Islands, Sri Lanka, Chinese Taipei, Thailand, Timor-Leste, Vietnam, CARIN, KIC (Korean Institute of Criminology), KoFIU (Korean Financial Intelligence Unit), UNODC, World Bank.

Plenary Session 1: Progress Thus Far

1) The background of ARIN-AP
The preventive and suppressive effect of investigation and punishment will be diminished without taking out the proceeds of crime; therefore we have to follow and confiscate the money. While CARIN, ARINSA, and RRAG were created around the world to expedite the process and ensure efficient contact with counterparts, we did not have such network in the Asia-Pacific region. ARIN-AP intends to be an informal network of practitioners in asset recovery, consisting of law enforcement officers and prosecutors.

2) The progress in launching ARIN-AP
While there is APICC (Asia-Pacific Information Coordination Centre for Combating Drug Crimes) in drugs and narcotic area, and G8's network of international high-tech crime points of contact in the field of cyber crime, there was a big hole in the Asia-Pacific region in terms of asset recovery area. Therefore Korean SPO, in support of the UNODC, proposed a plan to launch the ARIN-AP, an informal network of contacts and cooperation in all aspects of tackling the proceeds of crime in the Asia-Pacific region.

3) The outcomes of the Preparatory Expert Meetings
The contents of the draft Manual and the draft Questionnaire were prepared during the Steering Group meetings; the draft Manual of ARIN-AP heavily relied on CARIN Manual since the Steering Group did not think that a completely new manual was needed to be reinvented. Two key comments from Steering Group meetings were that: 1) informal networks are all about people rather than countries; 2) the progress of the network needs to be small steps, i.e. it was suggested that ARIN-AP start with a list of contacts and expand into a database progressively into the future.

Plenary Session 2: Sharing Other Experiences I

1) Mongolian experience
Mr. Ganzorig Gombosuren from the Office of Prosecutor General of Mongolia gave a presentation on an example of cooperation in asset recovery between Korea and Mongolia. It was about a case involving a Korean national named An Jae-man who had bought a hotel in Mongolia with the proceeds of the crime. After the negotiation with the Korea SPO and the Korean Supreme Court, the Mongolian Bailiffs Department confiscated and auctioned off the 35% of the hotel that Mr. An owned, and transferred the money back to Korea in 10 months.

2) CARIN (Camden Asset Recovery Inter-Agency Network)'s experience
Ms. Jill Thomas from CARIN gave a presentation on the 5 most important basis on which CARIN is operated: 1) CARIN is an informal network; 2) the network is English speaking; 3) CARIN is both a judicial and law enforcement network since both law enforcement and prosecutorial intervention are needed in order to confiscate assets; 4) CARIN is an informal network of 'practitioners' in asset recovery; 5) the process of 'tracing, freezing, seizure and confiscation' is important, because contact points need to either have knowledge on that process or have links to individuals that have knowledge. CARIN has a simple aim which is to increase the effectiveness of its members' efforts on a multi-agency basis in depriving criminals of their illicit profits across every area of criminality.

3) Indonesian experience
Mr. Chuck Suryosumpeno from the Attorney General's Office of Indonesia explained that Indonesia faced many obstacles in the effort to freeze and confiscate the proceeds of transnational crime, such as different legal systems, the absence of framework legislation, lack of coordination with the counterpart in the requested countries, etc. However, when Indonesia became a member of CARIN with observer status in 2012, this informal network provided a new means to address several obstacles faced by Indonesia. For example, Indonesia could facilitate the process of a protracted Mutual Legal Assistance request with the Netherlands thanks to a stable CARIN contact person for the Netherlands.

Demonstration of the ARIN-AP website

Main functions and properties of the ARIN-AP website were explained. Members can access the website at www.ARIN-AP.org. Members need confirmation from the Secretariat after they register as member in a written form, which will allow them to log into the page. The participants are encouraged to keep the latest information on the website.

Plenary Session 3: Sharing Other Experiences II

1) HSI (Homeland Security Investigations)'s experience
Mr. Kenney commented that HSI has a great relationship with the SPO and one of the areas they were trying to develop was asset sharing and recovery. He explained that there are 3 types of forfeiture in United States: criminal, civil and administrative, and he elaborated each forfeiture system in turn. He explained the types of assistance that HIS can offer in terms of formal requests. He gave an example about the cooperation with Korea on a big ponzi scheme, in which civil forfeiture was initiated for the house which was bought with the proceeds of crime, and the money will soon be transferred back to Korea to be provided to the victims.

2) StAR (Stolen Asset Recovery Initiative)'s experience
Ms. Muzila explained that StAR is a joint initiative between the World Bank and the UNODC. Based on requests for asset recovery from countries, StAR does studies on different aspects of asset recovery processes, including studies on specific topics such as politically exposed persons, non-conviction based forfeiture, corporate vehicles, etc. StAR is also working on networking agenda because in order for transnational asset recovery to take place, the best way is to establish contacts in other jurisdictions. She further shared experiences about challenges and lessons learned in working with networks.

Plenary Session 4: Results of Group Discussions

1) The scope of member states/jurisdictions
There was a comment that members only are allowed to vote, but not observers (Group 1). Some concerns were raised about both Australia and Indonesia being part of the CARIN and the ARIN-AP group at the same time (Group 2). A question was raised as to who will have the power to accept or reject an application for observer status. It was noted that the intention of the draft Manual was to let this issue determined by the Steering Group (Group 3).

2) Contact Points
It was noted that people should be encouraged not to have too many contacts because it could be confusing. As to whom the contact is going to be, it suggested that people from international relations department can be the contact for the short term (Group 1). A question was raised on whether member has to identify an individual contact point or whether a generic department email address could be used (Group 2). Another question was raised if the contact points make contact with counterparts directly or via the Secretariat and how the contact points can contact other counterparts in other regions. Based on CARIN experience, it was recommended that the Secretariat will be used for communication between contact points for the first few years (Group 3).

3) Informal nature of the network/Informal sharing of information
Concerns were raised about whether we bypass Mutual Legal Assistance (MLA) or treaties that we have been using for years. However, it was noted that although the network can speed up the MLA process, members need to follow the MLA protocol (Group 1). There was a discussion on whether a particular legal framework is needed for this informal information sharing. However, it was noted that ARIN-AP is simply for putting the right person in touch with each other and doing it quickly (Group 2). It was suggested that prior to or during MLA process, national contact points can conduct the role of an adviser to people in charge of MLAT in their central authority (Group 3).

4) Website
General consensus was that the website was very well developed and just one concern was raised on the fact that it would be in the public domain (Group 2). There was an inquiry of whether we'd better include any encrypted forum for direct communication in this website like RRAG (Group 3).

5) Presidency/Steering Group
Securing funding is going to be a key issue for jurisdictions having the Presidency of the ARIN-AP. It was noted that the participation on the Steering Group was more important than thinking about holding the Presidency (Group 1). In relations to the election of Presidency, there were a number of suggestions. There was significant discussion around the term of the Presidency, which was whether 1 year was long enough to give the Presidency a real opportunity to do the role In relation to the Steering Group, there was a request for clarification on whether the Steering Group will operate by a unanimous vote or by a simple majority vote (Group 2). Two points were raised in relation to this matter: 1) how the Presidency is selected and when the term starts; 2) if it is possible for a member of the current Interim Steering Group to join the ARIN-AP as just a member not as a Steering Group member (Group 3).

6) Secretariat
It was commented that on the role and function of the Secretariat, participants agreed on the way it is currently written (Group 1). There was a suggestion to include ARIN-EA in 'other networks' in an item 3.2.4. (k) (Group 2). Several delegates expressed concerns that usually, in most international organizations, the Secretariat office is fixed (Group 3).

7) Annual General Meeting
There was a question on who would prepare and decide on the agenda for each AGM. It was noted that the Steering Group will decide on the topics or agenda, as stated in the draft Manual. The second point was about who would come to the AGM every year. A comment was made that the ARIN-AP contact should always attend the AGM. Any additional participants should be based on the topics to be discussed at the AGM (Group 1).

8) Funding
Funding is the key to the success of bringing members together at the AGM so that they can build the essential relationships, which will keep the informal network running (Group1). It was suggested that Steering Group and the Secretariat work together to secure funding for attendance at the AGM, which will reduce the burden of it being placed solely on either the Presidency, the Secretariat, or the Steering Group (Group 2). A strong suggestion was made that we need to include a clear provision to accommodate concerns of some countries regarding costs and expenses (Group 3).

9) Relationship with other organization
There was a general agreement with what was written in the guidance manual (Group 1). There wasn't a lot of discussion on this issue apart from slight modification to the draft manual, where we would specify ARIN-EA (Group 2). There was a suggestion that we could include StAR global network as one of the 'other network' (Group3).

Mongolian Justice Officials Study Tour to Canada: An IAP / Justice Education Society Successful Inaugural Joint Project

Nicola Mahaffy, IAP Prosecutors Exchange Program Coordinator, Crown Counsel, Ministry of Justice, Vancouver, Canada

Evelyn Neaman, International Program Manager, Justice Education Society of British Columbia

Mongolian delegation with Nicola Mahaffy (second from left) and Evelyn Neaman (far right)

In March 2013, the International Association of Prosecutors and the Justice Education Society of British Columbia, Canada, (JES) entered into a partnership as part of the IAP's Prosecutors' Exchange Program (PEP). The first joint project through this partnership -- a study tour of the Canadian criminal justice system by 21 Mongolian justice officials - - was very successful and took place, with a considerable amount of support from the British Columbia, Ministry of Justice, Criminal Justice Branch, in Vancouver, Canada, from January 13 – 17, 2014.

Mongolia is currently embarking on significant reforms to their justice system which have been underway for a number of years. In 2012, the British Embassy in Mongolia funded an initial exchange under the PEP in which 3 Mongolian prosecutors traveled to Canada to learn about the Canadian criminal justice system with 1 Canadian prosecutor then traveling to Mongolia to provide more information and training to justice system personnel there (see article newsletter 56, July 2012). Through that initial exchange, Mongolian justice officials have been studying Canadian criminal procedure and are looking to adopt a similar system in Mongolia.

The joint IAP / JES project which took place in January provided the Mongolian delegates with opportunities to see the Canadian criminal justice system in action. The delegates were all part of a criminal justice reform working group that included senior representatives of the judiciary, police, prosecution office, legal offices and also a Member of Parliament. Over the course of their week in Vancouver the delegates met with: Canadian police officers, prosecutors, defence counsel, a legal aid representative, a representative from a victim assistance program, representatives of the Canadian Bar Association, representatives of the Justice Education Society, numerous judges including the Chief Justice of BC Appeal Court and Chief Judge of the Province of British Columbia, and the Minister of Justice for the Province of British Columbia. They also met with a variety of Canadian experts who work in the area of domestic violence, an area the delegation identified as important in their reform efforts. The delegates toured a police detachment and holding cells, the police emergency 911 call centre, observed bail hearings, trials, and sentencing hearings. The delegation participated in many discussions with Canadian criminal justice experts who shared their expertise through very engaging presentations.

Part of the Mongolian delegation with the Honourable Suzanne Anton, Minister of Justice and Attorney General for the Province of British Columbia, Wendy Stephen, Crown Counsel and Vice-President IAP, Oyunbaatar Tserendash, Member of Parliament and Chairman Standing Committee on Security and Foreign Police and Nicola Mahaffy.

From the first day on, it was apparent that the delegates were very well prepared for the sessions and had specific issues that they wanted to discuss and specific people they wanted to meet. Because of the partnership between the IAP and the JES and the expertise and contacts of both organizations, we were quickly able to adapt the program to arrange for meetings with, and presentations by, additional subject matter experts, as well as a site visit to a police training facility which was of great interest to some of the delegates. The IAP / JES partnership ensured that delegates got the information they needed in a seamless and efficient manner, and made the study tour a great success. Indeed, as noted by the Mongolian delegates, "it was a fabulous week with lots of great meetings, all of our questions around Canadian criminal procedural laws were answered, and the week was very efficient and productive because we were able to meet Canadian judges and lawyers face to face. We had a couple of surprises for you after our arrival, in seeking different meetings, and you had no problem dealing with our requests and making them happen."

This inaugural IAP / JES partnership project was a wonderful example of the power of collaboration The skills and expertise of both organizations ensured that the Mongolian delegates' study tour was productive, efficient and effective and we look forward to continuing to work together in the future.

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The European Public Prosecutor's Office: A Revolutionary Step Forward

Jorge Espina, Prosecutor at the International Cooperation Unit

General Prosecutor's Office of Spain

According to some authors, the European Union could be defined as the first –and so far the only- Postmodern State, born from the ashes of WWII and the need to work together in order to adapt to a global world. Others have called it a UPO –Unidentified Political Object- but considering it from either a positive or from a critical viewpoint, what cannot be denied is the number of advances and ground-breaking achievements that the EU has managed to develop in many fields, including Criminal Law, an area where national sovereignty reigned unchallenged until very recently.

A good example of this development is the legislative proposal presented on July 17th 2013 by the European Commission for setting up a European Public Prosecutor's Office (EPPO hereinafter). Building on previous work like the Corpus Iuris (2000), the Green Paper of the European Commission (2001) and its Follow-up Report (2003), the Lisbon Treaty finally provided in art. 86 of the Treaty on the Functioning of the EU-TFEU (the Treaty) the legal basis for setting up a new body. Unlike anything that had been developed before, the Treaty did not rely on improving the cooperation mechanisms among national authorities, but rather created a new autonomous prosecuting body at EU level in charge of investigating, prosecuting and bringing suspects to judgment before the competent courts of the Member States. The rationale behind it being the need to offer a unified response in the field of criminal prosecution to a phenomenon which is widespread and very often transnational, and that affects the common interests of the Union: the offences against EU budget.

The Treaty has not created a fully fledged new jurisdiction because, on one hand, it relies on the national Courts for adjudicating the cases and executing the penalties and, on the other, despite the possibility for further expansion in the future, contains a very limited scope of offences: since one of the priorities of the Union is the protection of common goods and interests, the task of fighting offences which affect its financial interests has been put at the centre of the EPPO. Thus, we can say the EPPO is basically a prosecutorial office established to combat financial crimes committed to the detriment of the EU budget.

Article 86 TFEU, when regulating the possibility to establish an EPPO closed some debates and settled some issues. Now the legislative proposal (the Proposal) completes the picture by taking a position concerning the structure, scope and other procedural subjects. Needless to say, the Proposal is but a starting point and negotiations will eventually determine the final profile of the EPPO, but as the more definitive document so far, it allows us at least to anticipate its final shape.

To begin with, it designs a European body which is independent, impartial, hierarchically organised, decentralised and embedded in the national jurisdictions. The Proposal defines an exclusive competence of the EPPO as regards a list of crimes which are defined somewhere else (the so called PIF Directive, currently under negotiation and which includes the offences against the Union's financial interests). It is headed by the European Prosecutor, who will be assisted by four Deputies, and the ordinary operational work will be carried out by Delegate Prosecutors, who will be national prosecutors wearing a double-hat, and will be bound by instructions received from the European Prosecutors in cases under the scope of competence of the EPPO.

These Delegates will in my opinion be the crucial factor to reach the level of efficiency desired, which is the main reason to justify such a revolutionary step as the setting up of an EPPO. A step that will bring a lot of reactions, frictions and institutional inertias to be overcome before everything starts running smoothly. The Delegates will keep all their powers as national prosecutors and are entitled to act on behalf of the EPPO, whose cases will be a priority in case of conflict.

As indicated by the Treaty, the EPPO will have a special relationship with Eurojust, the EU body for judicial cooperation, but this should not mislead us as regards the nature of the body being set up: Eurojust has played an invaluable role and will continue to play it by taking care of coordination of investigations and promoting judicial cooperation, but the EPPO goes one step beyond. While the key words for Eurojust are cooperation and coordination (implying a group of equals needing such coordination or cooperation), the EPPO is based on direct action, relying on European-wide powers, exercised by the only prosecuting body with competence to act as regards crimes affecting the financial interests of the Union. Therefore, the Commission has somehow solved the dilemma concerning the interpretation of the phrase used by the Treaty when stating that the EPPO should be established "from Eurojust" by respecting the duality of both bodies and pointing to a special relationship based on the assistance and flow of information between both.

The proposal includes a list of investigative measures that could be carried out by the EPPO indicating when judicial authorisations are required. This common approach to investigative measures is important because evidence gathered by the EPPO and presented to national courts shall be admissible without any validation (although it is made clear that this admissibility does not affect the competence of the court to freely assess the evidence presented).

The Proposal includes provisions concerning the necessary respect for Fundamental Rights and Procedural Safeguards, as defined by the EU Charter, EU law and the national legislation of the Member States. Data protection rules have also been included.

As regards judicial review of the acts of the EPPO, the Commission opts for a system based on the national Courts of Member States, excluding the jurisdiction of the EU Court of Justice. This has been an issue long debated, but in my opinion a system which is so clearly connected with the national jurisdictions – where the trial and sentencing will take place- requires judicial control also based on national courts. Whether this should mean a total exclusion of the jurisdiction of the EU Court of Justice, is debatable.

On a more practical note, it is obvious that the idea behind the above mentioned characteristics is not equally welcomed by all Member States, given the variety of legal traditions and political will to accept such a novel body as the EPPO. This is why the Treaty allows for enhanced cooperation for at least nine Member States if unanimity is not achieved. It is clear that if the EPPO is to be established, it will be through enhanced cooperation, given the reluctance or even the opposition already expressed by some Member States. If a group of 9+ Member States is established, then the proposal would probably be re-negotiated and further amended to better fit the needs of the participating Member States, and new provisions will have to be included in order to regulate situations like the relationship between the EPPO and the prosecuting services of the non participating Member States.

In a nutshell, this is where this appealing project is at the moment, but the fact that discussions are taking place at the Council even as I am writing these lines prevents me from offering a clearer picture on some of the topics. For instance, it is not clear if the EPPO competence will remain exclusive or if it will at some point turn into a concurrent competence, either by allowing the possibility of transferring minor cases to national prosecution services or by keeping a right to evocate the case in favour of the EPPO. On a different point, the EU Court of Justice may be deemed competent on certain matters such as the control of the choice of jurisdiction made by the European Prosecutor. These are but examples of the wide range of issues that may change in the course of the coming weeks and months.

However, the important thing, in my view, is that we have a truly historical text to work on, based on an idea that would have seemed unattainable only a few years ago and that now appears as feasible and realistic. To me, this is a very good example of the creative and progressive impulse the EU has given to the field of the transnational fight against crime, always keeping an open mind in order to innovate and react accordingly to the ever changing needs of a world in constant evolution, seeking as its main aim, the better service and protection of our citizens.

TIPP

TIPP (Trafficking in Persons Platform) was launched by the IAP in October 2012 for the benefit of its members. TIPP is a global networking facility that provides a forum for the exchange of best practice, a repository for training material and guidance, information on current human trafficking issues and the means to identify in-country experts and exchange questions and ideas.

TIPP is an important tool for prosecutors and all members of the IAP can assist by making the prosecutors in their respective countries aware of the platform and its benefits. Members can also assist by providing content for the platform including guidance to prosecutors, training material, case law and legislation and any other material that they think may be relevant.

TIPP is for the benefit of members and prosecutors and your participation and contributions are encouraged and welcomed.

Please contact Glynn Rankin, TIPP administrator, if you require further information or want to contribute to the platform. tipp@iap-association.org

Counsel's Comment

I start this column on 28 February on an Emirates flight to Zambia – where we are holding our 3rd IAP African and Indian Ocean Regional Conference, in Livingstone. Our host is the impressive Director of Public Prosecutions of Zambia, Mutembo Nchito, one of our new Executive Committee members. I first met him at our second such Regional Conference in Mauritius which was hosted by the equally impressive (albeit somewhat smaller in stature) DPP of Mauritius, Satyajit Boolell, also a member of the IAP Executive Committee. The theme, very topical especially in Africa, is "Getting a fair bargain for Africa and the Developing World. The Role of the Prosecutor in Combating Corporate Financial Crime including Tax evasion and Environmental Degradation in the extractive and other significant industries". Somewhat ironically, I find myself seated next to the Company Director of a Chinese Chrome Ore extraction and manufacturing company, operating in Zimbabwe. He has assured me – following extensive cross examination - that he pays his 300 African employees well and also pays income tax to the Zimbabwean government, however further quizzing reveals that most of the raw material is exported to China where it is processed and sold on. See elsewhere in this newsletter for a full report of the Regional conference in Zambia (which was terrific) together with recommendations for action.

Mutembo Nchito

I hope that by the time you receive this newsletter, you will have noticed the transformation of our website. This has not been accomplished without some pain, particularly for our communications/IT team who have had to get to grips with a new operating system. The redesign has been effected on the back of funding received from the UK Government Cyber Capacity Building Fund, to enhance and develop our Global Prosecutors E Crime Network (GPEN) which now presents more extensive content and produces a regular newsletter. Please ensure that your specialist E Crime prosecutors are signed up and are activating the site and that we have the details of your organisation's E Crime Contact person: E-mail: gpen@iap-association.org.

Africa has featured extensively in my 'globe trotting' this year. In January, I went to Entebbe in Uganda to participate in a workshop organised by the Office of the Prosecutor (OTP) of the ICTR (International Criminal Tribunal for Rwanda) on 'Sexual Violence in Conflict' (see the outcome on the FICJ IAP website). The event marked the launch of a manual, produced by the ICTR, which can be found on our website and which complements the 2 other manuals in our custody, which have been produced by the OTPs of the various specialist tribunals and courts and which are exclusively available on our website ('A Compendium of lessons learnt and suggested practices from the Offices of the Prosecutors' and 'The Tracking and Arrest of Fugitives from International Criminal Justice: Lessons from the International Criminal Tribunal for Rwanda').

Following the workshop in Entebbe, I had a fascinating visit to the ICTR itself in Arusha, Tanzania, and in this newsletter you will find an article by Hassan Jallow, the Prosecutor of the ICTR, reciting how the ICTR has fulfilled its purpose over the last 20 years following the Rwandan Genocide in 1994 and explaining how the ICTY (International Criminal Tribunal for former Yugoslavia) and the ICTR will be conjoined within a residual body when decommissioned later this year.

Prior to my African venture I found myself in Azerbaijan as the guest of Kamran Aliev the Director of their Anti-Corruption Directorate and a member of our Executive Committee. I was also hosted by Mr Zakir Garalov the Prosecutor General and Fikrat Mammadov the Minister for Justice for Azerbaijan and a former member of the IAP Executive Committee and currently a member of the IAP Senate. The Azerbaijan Prosecution Service is responsible for the Russian IAP sub website in conjunction with our Communication Manager and are, and I am sure will continue to be, very supportive of the association. Azerbaijan can boast a very impressive court construction programme in partnership with the World Bank and I saw Court and Prison facilities that would be the envy of many countries. I also saw evidence that the Azeri authorities are actively seeking to engage the public in addressing corruption through accessible public services. We look forward to some real beneficial outcomes at a time when all eyes in the world are directed towards conflicts of values and loyalties which are occurring in certain parts of Eastern Europe and other former USSR countries.

Every year the UNODC (United Nations Office of Drugs and Crime) hosts the United Nations Commission on Crime Prevention and Criminal Justice (CCPCJ) in Vienna, this year will be the 23rd such event from May 12-15. Most UN State Parties are members and the IAP as an NGO (Non-Governmental Organisation) in Consultative status with the United Nations Economic and Social Council, is invited to send a representative. I have attended most years since my appointment as General Counsel in 2007, if only for a day or two, and I shall be attending again briefly this year together with our President, who is based in Vienna. I have been invited by ISISC (The International Institute of Higher Studies in Criminal Sciences), which is one of the Institutes of the UN Crime Prevention and Criminal Justice Programme Network and is based in Siracusa, Italy, to speak at a side meeting they are organising on the first day upon 'International Cooperation in Criminal Matters: current gaps and perspectives of the international, regional and national legislations'. This is one of the central issues to be addressed during the Commission. I am hopeful that our IAP guidelines on 'IAP Prosecutorial Guidelines for Cases of Concurrent Jurisdiction; Making the Decision – "Which Jurisdiction Should Prosecute?" will be published by then.

Next Year, 2015 there will be no Commission in Vienna as the Thirteenth UN Congress on Crime Prevention and Criminal Justice will be convened in Doha, Qatar.
Another project which I am pleased to announce is reaching fruition, after something of a hiatus, is the ODIHR (The Office for Democratic Institutes and Human Rights) 'Guidance on the Prosecution of Hate Crime' which I have been closely involved with, on behalf of the IAP. ODIHR is part of the OSCE (Organisation for Security and Cooperation in Europe), and we are hoping this guidance will be launched and published soon. There may also be opportunities arising for IAP member participation in a prospective joint training initiative between IAP and ODIHR to deliver Hate Crime in 4 selected European Union Countries. If anybody reading this is interested in getting involved, please let me know.

Requests for information and assistance from the IAP and the provision of information to the IAP come from many sources, the following are just some examples;

- In November last year I received a call for recommendations and best practices on gender-related killings of women and girls in particular on the investigation and prosecution of these crimes issued by the UNODC Justice in order to inform a working group on the subject and I was able to send them material from our IAP European regional conference held in March last year on Gender Violence, as well as material from the VAWG (Violence against women and girls group) of The Crown Prosecution Service of England and Wales.
- The Director of Public Prosecutions (DPP) of Namibia, Africa asked whether we could provide examples of recently established independent Prosecution Services and their governance procedures and I was able to send her examples from as far afield as Fiji and the Republic of Ireland. Thank you for all those who contributed.

The preparations for the IAP Annual Conference and General Meeting in November have started in earnest (if you are interested in contributing please let me know) and don't forget if you wish to be added to my data base of experts with a view to involvement in any of our projects and programmes, let me know.

Warm regards,
Elizabeth Howe OBE
General Counsel

Diary Dates

IAP Executive Committee Meeting,
9 and 10 May 2014, Québec, Canada

International Society for the Reform of Criminal Law, "Crime and Punishment – Back to the future for Sentencing and corrections reform",
22 June 2014, Vancouver BC, Canada

9th IAP Asia Pacific and Middle East Regional Conference, jointly with the Annual Meeting of the Australian Association of Crown Prosecutors,
2 - 4 July 2014, Sydney, Australia

International Association of Penal Law,
Congress on Cybercrime,
18 September 2014, Rio de Janeiro, Brazil

19th IAP Annual Conference and General Meeting,
23 - 27 November 2014, Dubai, United Arab Emirates

20th IAP Annual Conference and General Meeting,
13 - 17 September 2015, Zurich, Switzerland

The International Criminal Tribunal For Rwanda (ICTR): Twenty Years Of Combating Impunity

Justice Hassan B. Jallow, Chief Prosecutor, UN International Criminal Tribunal for Rwanda (UNICTR), Chief Prosecutor, UN Residual Mechanism for International Criminal Tribunals (UNMICT) Under Secretary-General, United Nations

On 8 November 1994, the United Nations Security Council, having determined that the situation in Rwanda constituted a threat to international peace and security, adopted Resolution 955 for the establishment of the International Criminal Tribunal for Rwanda (ICTR). The Resolution mandated the Tribunal to investigate and prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring states between 1 January and 31 December 1994. The Security Council resolution was also motivated by the council's recognition that such an action will promote justice, peace and reconciliation in Rwanda.

Thus was created the third such international criminal tribunal since Nuremberg and the first on the African continent. Resolution 955 delineated the personal, temporal, territorial and subject-matter jurisdiction of the ICTR. First, all persons without regard to their political or other office or status were subjected to the jurisdiction of the Tribunal. Second, the tribunal was to focus only on serious violations of international humanitarian law, including genocide, war crimes and crimes against humanity as reflected in the Statute of the ICTR and not on all crimes. Third, the crimes must have been committed in Rwandan territory or by Rwandan citizens in the territory of neighbouring states. Fourthly, the crimes must have occurred between 1 January and 31 December 1994.

The Statute of the Tribunal created three organs which comprise the Court: - the Chambers, comprising the judges, the Office of the Prosecutor and the Registry. The office of The Prosecutor (OTP) is responsible for the investigation and prosecution of the crimes, the selection of targets, the tracking and arrest of fugitives etc. The Registry is responsible for servicing and providing administrative support to the other organs of the Tribunal.

The creation of the ICTR followed an unprecedented scale of killings and violence against mostly people of Tutsi ethnicity in Rwanda, triggered by the shooting down of the Presidential aircraft and the resulting death of the President on 6 April 1994. In the period of 100 days between April and July 1994, conservative estimates put the number of deaths at 800,000. Neighbour turned on neighbour, and a ruthless band of trained and armed militiamen of the ruling MRND political party called the Interahamwe and members of the Rwandan Armed Forces with the complicity of political leaders engaged in a killing orgy throughout Rwanda. Opposition politicians, including the country's Prime Minister at the time, and other important personalities were targeted and systematically eliminated from the early hours of 7 April.

From the onset, the ICTR faced many daunting challenges. How do you investigate such a crime scene which spanned the length and breadth of the entire country? How do you begin to piece together the evidence and make sense of what happened, how it happened and who was responsible? How do you select the limited targets for prosecution from a mass of thousands of perpetrators? Against this background, the ICTR embarked on its 20 year old journey for justice and with the ultimate aim of promoting reconciliation in a post genocide Rwanda.

In the course of its 20-year existence, the Tribunal has indicted 93 persons who in the assessment of the Prosecutor committed serious violations in Rwanda. They comprised members of the government at the time - the Prime Minister, Cabinet ministers, senior military officers and senior officials of the ruling political party, the MRND, local government administrators, members of the media, the clergy and certain civilians who were notorious perpetrators. All of those indicted were duly arrested and transferred to the Tribunal except for nine who remain at large. The cases of six of those at large have been referred to Rwanda for trial with the remaining three referred to the Mechanism (MICT), successor to the ICTR and the ICTY. Two cases were also referred to France for trial.

All trials have now been concluded at first instance with 61 convictions for genocide, crimes against humanity and war crimes and with 14 acquittals. The last of the cases are currently on appeal. The ICTR is expected to conclude its work and close down by the end of 2015.

Together with its counterparts at the ICTY, the SCSL, the ECCC, the STL, the tribunal has also contributed significantly to the expansion of the jurisprudence of international criminal law, the development of techniques and best practices in the investigation and prosecution of international crimes and to making the process of international criminal justice an acceptable aspect of international relations.

The selection by the Prosecutor of appropriate cases for investigation and prosecution was an important first step in the prosecution of these heinous crimes. Since it was impossible to prosecute everyone falling within the category of persons identified in the ICTR Statute, a decision had to be made on the choice of targets and the criterion for their selection.

The important point here is that the 93 indictees were not selected randomly. A conscious decision was made to identify each indictee on the basis of a number of objective factors including the strength of the evidence, the official or other status of the person, the nature of the offence, their leadership roles in the commission of the crimes and the extent of participation in the crimes.

Given the limited numbers of perpetrators that an international criminal tribunal can prosecute, the selection of targets by the Prosecutor is often controversial and a target of criticism. There must be selectivity given the limited scope of international justice. The criticism is best answered by a selection based on clearly identified objective, transparent criteria which should be in the public domain.

Over the course of its mandate, the ICTR has registered several important developments amongst them:-

- The first international tribunal to interpret the definition of Genocide in the 1948 Genocide Convention;
- The first international tribunal to take judicial notice of the fact that a genocide had occurred;
- The first international tribunal to provide an acceptable legal definition of the crime of rape as an international crime;
- The first international tribunal to define rape as an act of genocide and crime against humanity;
- The first international tribunal to hold a head of government responsible for genocide, conspiracy to commit genocide and crimes against humanity;
- The first international tribunal to hold members of the media responsible for broadcasts intended to inflame the public to commit genocide.

Whilst still focused on the task of completing its core mandate of prosecutions, the ICTR is also conscious of its responsibility to future generations of international and national prosecutors, investigators, Judges, witness protection officers who may become engaged in the investigation and prosecution of international crimes. Thus, the ICTR is also engaged in several legacy related activities designed to share the lessons and best practices from its work.

In the particular case of the OTP, we have documented a number of lessons as well as best practices in manuals that we are currently sharing with other relevant stakeholders. These manuals cover a range of investigative and prosecutorial strategies which we believe may carry useful lessons for international tribunals such as ICC but also for national authorities which under the principle of complementarity now bear the primary responsibility for the investigation and prosecution of international crimes.

The manual of lessons and best practices in the prosecution of sexual violence and gender based crimes was recently adopted with the objective of providing some guidance to lawyers, judicial officers, policy makers and welfare workers on some critical aspects of handling the investigation and prosecution of sexual crimes as well as on the protection of the victims and witnesses. It is also proposed for use in training and capacity building purposes, particularly in the Great Lakes region where such offences continue to be prevalent.

The OTP has also completed the manual of best practices and lessons in the tracking and arrest of fugitives. The challenges of tracking and arrest of the fugitives cannot be understated. Following the defeat of the genocidaires, senior politicians, military authorities and businessmen associated with the Rwandan Government at the time fled Rwanda to different parts of the world including other African states, Europe and North America. By the time UN Security Council Resolution 955 was adopted for the creation of the Tribunal in November 1994, many of these persons, who were later indicted by the tribunal, were already hiding in different parts of the world. Many of them assumed new identities and sought refuge in inaccessible areas where the terrain or internal conflict provided sanctuary. The ICTR Statute does not permit trial in absentia. Hence, there was the need to find the fugitives and to seek their arrest and transfer to the seat of the Tribunal in Arusha for trial. This was not an easy task. A specialized Tracking Unit was created within the OTP whose work was solely dedicated to that task. Their invaluable experience and the lessons learned from their activities in terms of skills, strategies, organization and international cooperation have been documented in the form of a manual to serve as a reference to various stake holders around the world.

The OTP recognized very early the need to have a compendium of best practices on all aspects of the investigation and prosecution of international crimes as a guide for national and international prosecutors. The idea was proposed by the ICTR-OTP in 2004 at the first Prosecu-

tors' Colloquium hosted by it in Arusha, Tanzania, and accepted by the Prosecutors of other international tribunals. On 1 November 2012, at the 17th Annual Conference of the International Association of Prosecutors held in Bangkok, Thailand, as a result of their effort by the OTPs of these tribunals a "Compendium of Lessons Learned and Suggested Practices from the Offices of the Prosecutors" was launched. This Compendium covers shared experiences from the different Offices of the Prosecutors of international tribunals on a range of areas including investigative activities, external relations and cooperation activities, trial preparation, information and evidence management, witness protection, indictment, evidence analysis, pre-trial legal issues, residual issues etc.

The referral of cases to national jurisdictions has been an important element of the completion strategy of both the ICTR and the ICTY. Faced with the completion deadlines, both ad hoc tribunals have had to establish a de facto relationship of concurrence and partnership rather than merely rely on the de jure relationship of concurrence and primacy. The experience of the ICTR and the challenges it faced in securing able and willing States to prosecute some of its cases and the law reform and capacity building measures some of the States had to undertake to empower their legal systems to this end is of great relevance to the implementation of the principle of complementarity on which the future of international criminal justice rests. The OTP-ICTR is consequently documenting such experiences to share with States and other international tribunals as part of the ICTR legacy programme.

The elimination of avoidable delay and unnecessary expense is a continuous challenge for every legal system, including the tribunals which have been much criticized on this score. In recent years however, a combination of rule changes, improved working methods and strategies as well as better utilization of resources has impacted positively on the management of cases at the ICTR. These too constitute, when properly documented, an important legacy for the future.

The OTP is also currently engaged in the writing of the Genocide Story project on the basis of the facts established at trial in respect of the Rwandan genocide. The idea is to let the facts, as adjudicated, tell the story. We are hoping that the Genocide Story will tell the story of the Rwandan genocide in an impartial and objective manner, allowing the reader to be influenced only by the facts and nothing else.

As the ICTR winds down its operations, its mandate is being gradually taken over by the Residual Mechanism for International Criminal Tribunals which is also doing the same in respect of the ICTY.

The Mechanism was created by United Nations Security Council Resolution 1966 of 22 December 2010. It is a smaller Tribunal compared to the ICTR, and it is mandated to take over and continue the material, territorial, temporal and personal jurisdiction of the ICTR and the International Criminal Tribunal for the former Yugoslavia (ICTY).

The Mechanism has one President, one Registrar and One Prosecutor common to both the ICTR and the ICTY and it is mandated to carry out the "residual functions" of the two Tribunals after their closure. These include:

(a) Residual judicial functions such as hearing and determination of review applications for convicted persons;
(b) Determination of contempt cases;
(c) Management of the voluminous and sensitive archives of the Tribunals;
(d) Mutual cooperation and judicial assistance with national prosecuting authorities;
(e) Enforcement of the witness protection regimes of the Tribunals;
(f) Supervision of sentences;
(g) Monitoring of cases referred by the ICTR for trial elsewhere;
(h) Tracking and trial of the remaining fugitives.

The numbers, the status of those brought to account before the tribunals, the outcome of the trials and the extensive jurisprudence thereby created are undoubtedly important elements in the evaluation of the legacy of the ICTR and other tribunals. These factors are in the public domain. Of equal importance perhaps is what essentially lies embedded within the tribunals themselves: the working methods, strategies and techniques fashioned and utilized to attain those results. The tribunals themselves in partnership with each other and with other international organizations such as the International Association of Prosecutors (IAP) are rightly devoting considerable time and resources to ensure that the lessons learnt in this respect are captured and put at the service of the struggle against impunity. The evaluation of the impact and legacy of the ICTR and of the other tribunals as well, will of course continue well into the future beyond the lifespan of these institutions and will involve other stakeholders as well. That process has only begun.

From the Secretary-General

First of all I have to make my apologies. In Newsletter 60, which was released in December 2013 we published a report on the Conference of the Hungarian Prosecutors, held in Budapest, from 30 September to 1 October 2013, written by Mrs. Agnes Dr. Diofasi, Vice-President of the Hungarian Association of Prosecutors and member of the Executive Committee of the International Association of Prosecutors. By mistake the name of Mrs. Angela Nicolae was mentioned in the photo caption (page 24), but of course this had to be Mrs. Agnes Diofasi. Therefore I sincerely apologise to both Mrs. Diofasi and Mrs. Nicolae.

From 12 to 14 February 2014 I visited Chinese Taipei together with the Communication Manager of the IAP, Mrs. Janne Holst Hubner. We were there to contribute to a Conference about "Practice and Theories of International Judicial Assistance in Criminal Matters", organised by the Ministry of Justice and opened by Ms. Luo Ying-Shay, Minister of Justice and we were there to talk with our Chinese Taipei colleagues about the development of a Chinese website for the IAP.

The Conference was very interesting, because of the importance of international judicial assistance for Chinese Taipei at one side and the problems that they are still facing in their relationship to other jurisdictions at the other side.

It was clear that for us as professionals in the field of combating cross-border criminality, international judicial cooperation is of the highest importance and that we have to take away as many obstacles as possible.

Our colleagues from Chinese Taipei are now studying on the possibilities to support a Chinese website based on the information provided by us. We really hope to receive a positive response in the near future and we would like to stress that we are very grateful for this cooperation until now and we are looking forward to the further development of this part of the website.

Again we experienced a warm welcome and great hospitality of the team that we met, which was headed by Ms. Wen-Chi CHEN, Director General at the Ministry of Justice.

From 2 until 6 March I attended the 3rd IAP African and Indian Ocean Regional Conference in Livingstone, Zambia, together with our President, Gerhard Jarosch, our General Counsel, Elizabeth Howe and our Communication Manager Janne Holst Hubner. This Conference was organised by the National Prosecution Authority of the Republic of Zambia and Mr. Mutembo Nchito, the Director of Public Prosecutions, was our host.

You may have already noticed a report on this conference on the front page of this Newsletter, but personally I can say, it was a conference in the good tradition of the IAP, well-organised, very good speakers, fruitful discussions and outcomes, a great hospitality, an overwhelming social programme and very dedicated colleagues, combined with the beautiful African landscape as background!!!

Also here and on behalf of the IAP I want to express our gratitude to the organisers of this very special conference.

In this Newsletter you will find once more the numbers of the IAP-accounts that you have to use for your payments. Please be sure to use these numbers only, because there are still members who transfer their membership dues to our old accounts!

What is also very important is that when you transfer the amount of dues, please state your name (in case of an individual member) or the name of the office (in case of an organisational member), the country and the year(s) you are paying for.

Derk Kuipers
Secretary-General IAP

Ms. Wen-Chi CHEN and Derk Kuipers


3rd IAP Africa & Indian
Ocean Reginal
Conferance
2-6 March,2014
Zambezi Sun,Livingstone,Zambia