Joint Investigation Teams

A New Form of International Cooperation in Criminal Matters

1. INTRODUCTION

Experience has shown that where a state is investigating offences with a cross-border dimension, particularly in relation to organised crime and terrorism, the investigation can benefit from the participation of law enforcement and other relevant personnel from another state, or states, in which there are links to the offences (or suspects) in question. The importance of operational cooperation among law enforcement agencies in the form of joint investigation teams was recognised in various arenas and expressed in a few legal instruments. It is noteworthy, however, that this modality of inter-state cooperation between law enforcement agencies is a new phenomenon within the international community.

Although the need for some sort of direct involvement of foreign authorities in a domestic investigation has been sensed and its potential benefits have been pointed out for a long period of time, many problems, most notably political and organizational, had to be solved by governments to make this form of cooperation functional. One of the key issues that had to be addressed was the legal framework within which the law enforcement authorities of various countries are to be involved in a joint investigation. The good will of police officers did not (and still does not) suffice. Since this modality undoubtedly affects state’s sovereignty the governments concerned had to create a solid legal basis for it – both at the international level and at domestic the level.

This article offers a review of ways the fundamental and practical questions have been answered in five international instruments and one domestic legislation.

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2. THE TOC CONVENTION: A FORERUNNER

The U.N. Convention against Transnational Organized Crime (TOC) is a modern instrument of the fight against this form of criminality. It was being worked out by the representatives and experts from over 100 countries under the auspices of the United Nations in Vienna from 1998 until the Fall of 2000,¹ and adopted on 12-15 December 2000 in Palermo.² Some countries stressed both the importance and usefulness of joint investigation teams as a new form of cooperation between law enforcement authorities. However, other delegates opposed this idea for its incompatibility with their domestic law (most notably constitutional provisions) as well as for practical problems this type of activity may create.

The original draft convention submitted by Poland to the General Assembly of the United Nations in September 1996 did not contain a provision to that effect. Following the discussion at the Commission on Crime Prevention and Criminal Justice at its seventh session, held in Vienna from 21 to 30 April 1998, the relevant proposal was placed and considered within the scope of Article 19: “Law enforcement cooperation”.³ This provision envisioned that States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat offences set forth in this Convention. Each State shall, in particular, adopt effective measures – in appropriate cases and if not contrary to domestic law – to establish joint teams, taking into account the need to protect the security of persons and operations, in order to carry out the provisions of this paragraph.

The provision of paragraph 2(c) of this Article went on to state that officials of any State Party participating in such teams shall act as authorized by the appropriate authorities of the Party in whose territory the operation is to take place. Since some delegations emphasized in this connection the importance of respecting the sovereignty and territorial integrity of States this provision was supplemented with the following clause: “In all such cases, the States Parties involved shall ensure that the sovereignty of the Party in whose territory the operation is to take place is fully respected”.

The placement of this provision was discussed not only in the light of the legislative technique. More importantly, the delegates had to take into consideration the nature of the modality of cooperation concerned, especially in relation to other forms and

² Professor Plachta was the head of experts of the delegation of Poland to the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime.