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International cooperation in combating transnational crime

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Note by the Secretary-General

1. The Second World Summit of Attorneys General and General Prosecutors, Chief Prosecutors and Ministers of Justice, hosted by the Government of Qatar, was held in Doha from 14 to 16 November 2005. It was attended by representatives of 97 States. Also attending the Conference were observers for units of the United Nations Secretariat, other entities and specialized agencies of the United Nations system and intergovernmental and non-governmental organizations. In accordance with Economic and Social Council resolution 2004/30 of 21 July 2004, the United Nations Office on Drugs and Crime assisted the Government of Qatar in the preparation and substantive servicing of the Summit.

2. Pursuant to Economic and Social Council resolution 2004/30, the Secretary-General has the honour to bring to the attention of the Commission on Crime Prevention and Criminal Justice the recommendations of the Summit.

* E/CN.15/2006/1.



Second World Summit of Attorneys General and General Prosecutors, Chief Prosecutors and Ministers of Justice, held in Doha from 14 to 16 November 2005

Recommendations*

1. Requirements of prosecution services to deal with new and sophisticated forms of crime, particularly cybercrime and economic and financial crime

1. The Summit recommends that, in view of the fact that certain forms of cybercrime are entirely new and may require specific legislation or regulations, action should be taken with a view to updating existing laws or formulating new appropriate legislation to address the challenges posed by the particular nature of such crimes and facilitate their effective prosecution.

2. The Summit further recommends that such action could, inter alia, include:

(a) Clarifying or abolishing provisions that are no longer adequate, such as statutes that do not address destruction or theft of intangibles;

(b) Creating new provisions for new crimes, such as obtaining unauthorized access to computers or computer networks, phishing and other forms of identity fraud or the production and dissemination of child pornography;

(c) Amending procedural laws on, for example, tracing communications or procedural regulations governing the conduct of domestic and cross-border electronic searches; and

(d) Developing and implementing legal powers, jurisdictional rules and other procedural provisions to ensure that cybercrime can be investigated effectively at the national level and that adequate cooperation can be obtained in cases involving multiple jurisdictions.

3. The Summit also recommends that efforts to standardize forensic procedures relating to digital evidence should be promoted further with a view to facilitating the harmonization of methods and practices used in collecting, preserving, analysing and presenting digital evidence in court, addressing problems raised by the intangible nature of such evidence and minimizing defence challenges to the integrity of the evidentiary material.

4. The Summit recommends that prosecution and investigation of cybercrime should be subject to strict guidelines and rigorous oversight to ensure adherence to rule of law principles, including human rights and fundamental freedoms, particularly those related to privacy.

5. The Summit further recommends that consideration should be given to facilitating operational cooperation between law enforcement agencies and mutual legal assistance in cybercrime investigations, including:

(a) Resolving issues arising from conflicting jurisdictional claims;

(b) Expeditious “fast freeze” preservation of electronic data;

* The recommendations are reproduced in the form in which they were received.

- (c) Expeditious disclosure of preserved data;
- (d) Allowing tracing electronic communications in “real time” across multiple jurisdictions; and
- (e) Establishing 24/7 (24 hours per day/7 days per week) points of contact for prosecutors and investigators.

6. The Summit also recommends that action be taken with a view to developing forensic computing skills of law enforcement and investigative personnel in order to promote expertise on ways and means to deal with cybercrime, especially while conducting online undercover investigations or remote searches or managing large volumes of digital evidence. The collaboration of private sector organizations with public law enforcement agencies should also be promoted to that effect.

7. The Summit recommends that measures be taken to prevent the use of financial centres and offshore facilities for money-laundering and conducting illegal financial transactions. For that purpose, action is needed towards allowing the inspection of financial transactions which have no apparent commercial or other legitimate purpose and requiring the identification of parties involved in them.

8. The Summit also recommends that the increasing use of information technology in the financial sector, such as cyberpayment methods or transactions through virtual banks, should be accompanied by appropriate security features that prevent or reduce opportunities for illegal use.

9. The Summit further recommends that appropriate monitoring mechanisms should be developed and financial intelligence units should be established to serve as national centres for the collection, analysis and dissemination of information related to money-laundering activities.

10. The Summit recommends that prosecutors and investigators should be provided with adequate technological facilities and support for use in their daily operations, as well as training opportunities to strengthen their professional investigative capacity in countering money-laundering. In that respect, provision of technical assistance by countries with advanced knowledge and skills in money-laundering investigation to countries suffering from weak institutional capacity should further be encouraged in order to avoid providing money-laundering havens for criminals.

11. The Summit also recommends that attention should be paid to the development and enactment of appropriate legislation to enable full use of the benefits of the exchange of financial intelligence, in accordance with appropriate safeguards, between agencies responsible for working with financial transaction data.

2. Strategies and practical measures to strengthen the capacity of prosecution services in dealing with transnational organized crime, terrorism and corruption

12. The Summit recommends that States that have not yet done so should ratify or accede to the United Nations Convention against Transnational Organized Crime and the Protocols thereto and should review or adapt their legislation with a view to implementing them effectively at the national level.

13. The Summit further recommends that, in the implementation of the requirements of the Convention and the Protocols, and where relevant action has not

yet been taken, competent national authorities should devote particular attention to the adoption and implementation of legislative and/or other regulatory measures to ensure:

(a) The establishment, where appropriate, of special investigative techniques, such as controlled delivery, electronic surveillance and undercover operations, particularly in dealing with sophisticated organized criminal groups;

(b) The provision and availability of adequate human and financial resources within the national criminal justice system to facilitate the effective use of such techniques, including appropriate training to the relevant authorities to enhance their familiarity with their effective use and application, in accordance with the principles of the rule of law and human rights standards;

(c) Appropriate coordination between the agencies involved in carrying out special investigative techniques, including the necessary agreements or arrangements between relevant authorities and key agencies, to avoid operational difficulties, eliminate duplication of efforts and maximize the efficient use of resources;

(d) Appropriate flexibility in regulating controlled deliveries, taking into account that:

(i) The requirements for authorization of a controlled delivery should not be too onerous so as to adversely affect the operational use of the measures in a timely and effective manner;

(ii) The legislation/guidelines should not be too detailed or restrictive so as to provide criminals with sufficient information as to how to circumvent their application; and

(iii) The provisions of the law/guidelines should not unduly prevent effective international cooperation;

(e) The extension of the scope of application of controlled delivery beyond drug trafficking offences to cover all activities of organized criminal groups. In determining whether or not to use the measure in any particular case on a practical level, the relevant authorities should decide if it is necessary to carry out the controlled delivery, taking into account factors such as the risk of loss or irreparable damage to the commodity concerned, any threat to public health, safety and security, and the principle of proportionality between the effects of the use of controlled delivery and the objective to be achieved;

(f) The use of undercover operations as an investigative technique, especially in cases of identification, tracing, freezing or seizure and confiscation of proceeds and instrumentalities of organized crime, corruption and terrorism and the establishment of an appropriate legal framework that would allow for the admissibility of the evidence gathered. Their use in practice, however, should be proportional to the objectives to be achieved;

(g) The establishment of an appropriate legal framework in relation to undercover operations to regulate:

(i) Authorization, oversight and control of the operation;

(ii) Limitations on types of activity that may be carried out;

- (iii) Questions of criminal or civil liability of undercover agents;
- (iv) Protection of agents, informants, other persons involved in the undercover operation and their relatives, where appropriate; and
- (v) The provision of sufficient safeguards to ensure protection of fundamental human rights.

14. The Summit also recommends that States should take and implement measures to ensure the effective protection of witnesses, collaborators of justice and people close to them from potential intimidation or retaliation. In this connection, it is further recommended that priority should be accorded to:

(a) The review and adjustment of domestic legislation so as to establish criminal offences, with appropriate sanctions, for intimidation of and threats to witnesses, obstruction of justice, interference with the functions of law enforcement or judicial authorities or tampering with evidence; and

(b) The establishment of procedural rules to permit witness testimony to be given in a manner that ensures the safety of the witness.

15. In particular, measures oriented at rendering the promotion of witness protection in the pre-trial, trial and post-trial phases more effective should include:

(a) Promoting training programmes for prosecutors to achieve familiarity with witness protection measures and ensure that those involved in the investigation of offences who may have the first contact with the witnesses are knowledgeable and able to provide them with basic information about the protection measures available;

(b) Reviewing, where necessary, domestic procedural laws in cases where such laws do not foresee the consideration of statements made during the preliminary phase of the procedure, to enable the impact of intimidation on testimonies to be taken into consideration and for such statements to be allowed and/or used in the court subject to the principle of free assessment of evidence by the court and with due regard to the rights of the defence;

(c) Allowing for witness testimony to be given by video/satellite link from a secure location, if necessary with a judge or other official being present with the witness;

(d) Protecting the identity of the witness and, where appropriate and without prejudice to the rights of the defence, permitting to that effect non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of the witness. In view of that, measures such as excluding the defendant from the courtroom and having the testimony given in the presence of the prosecutor, a judge/magistrate and defence counsel, or allowing the witness to testify without his/her identity being revealed to the accused or his counsel, could be considered in conjunction with the need to protect the right of the defendant to due process;

(e) Protecting the witness from public or media exposure by, inter alia, empowering the judge to order that evidence be given in a closed court room with only the parties and essential court staff present;

(f) Establishing protection programmes for witnesses, collaborators of justice and people close to them that might include measures such as relocation or

change of identity, taking into account the resources available for that purpose and the material and social difficulties that such persons may face.

16. The Summit recommends that, with due regard to the administrative organization of each State, consideration should be given to affording operational autonomy to staff dealing with the implementation of protection measures for witnesses, collaborators of justice and people close to them. Such staff should not be involved either in the investigation or in the preparation of the case where these persons are to give evidence. However, an adequate level of cooperation/contact with or between law enforcement agencies should be ensured, in order to successfully adopt and implement protection measures and programmes.

17. The Summit recommends that States that have not yet done so should sign and ratify the United Nations Convention against Corruption and should review or adapt their legislation with a view to implementing its provisions effectively at the national level.

18. The Summit further recommends that States should put in place appropriate regulatory regimes and promote the necessary administrative reforms to ensure accountability in both the public and private sectors and create a culture of integrity and good governance as effective deterrents to corruption-related practices.

19. The Summit also recommends that States should establish appropriate and efficient legal and administrative mechanisms and methods that would allow for assets plundered through corruption and confiscated in one country to be repatriated, in accordance with the requirements established by the United Nations Convention against Corruption.

20. The Summit recommends that States that have not yet done so should ratify or accede to the universal instruments against terrorism, and review their domestic legislation to ensure their effective implementation. States should also consider signing and ratifying the newly adopted International Convention for the Suppression of Acts of Nuclear Terrorism. The Summit expresses its wish that the international community should soon complete the work related to the draft comprehensive convention against terrorism.

21. The Summit also recommends that further action should be taken to put in place measures to detect and suppress practices related to the financing of terrorism. Such measures should be consistently and universally enforced, taking into account the International Convention for the Suppression of Financing of Terrorism and guidelines developed by international expert bodies and in accordance with the principles of the rule of law and human rights standards.

22. The Summit further recommends that particular attention should be devoted to the enhancement of the overall capacity of prosecutorial services to deal with complex cases of organized crime, corruption and terrorism and that, for this purpose, further steps should be taken towards, inter alia, offering training, developing case management skills and encouraging an appropriate level of specialization among prosecutors.

3. The role of prosecutors in promoting and strengthening the rule of law

23. The Summit recommends that, in order to maintain the integrity and impartiality of the prosecutors and ensure that they can play their crucial role as

guardians of the rule of law, States should ensure that they are able to perform their professional functions without intimidation, hindrance, harassment or undue interference in accordance with the guidelines on the role of prosecutors, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in 1990, and endorsed by the General Assembly. In this connection, efforts should be strengthened at the national level to deter the exertion of inappropriate political or other form of influence on the impartial and fair execution of the prosecution function.

24. The Summit also recommends that, in the performance of their functions, it is fundamental that prosecutors be guided by the need to ensure full protection of human rights and civil liberties as essential components of the rule of law and that concerns about extraordinary threats to public security are not allowed to undermine such protection.

25. The Summit recommends that States should further promote a more strategic and proactive role of prosecutors in defining crime control policies, advising the legislator and directing investigations. In this connection, it is recommended that action should be taken to further promote the participation of prosecutors in inter-disciplinary teams, alongside with specialists from other disciplines, as well as the exercise of leadership skills by the prosecutors, including the provision of timely advice on an ongoing basis to law enforcement authorities or special task forces created to deal with a particular type of crime and the involvement in the training of law enforcement officers.

26. The Summit further recommends that development activities to strengthen the rule of law should continue to focus on upgrading the prosecution and investigation functions of criminal justice systems and enhancing the capacity of prosecution services.

27. The Summit also recommends that, in countries where prosecutors are vested with discretionary functions, rule of law considerations should always guide their decisions. In this connection, transparency in the prosecutorial decision-making should be encouraged as a basis for a healthy measure of public scrutiny and discussion without prejudice to the rights of the defence, especially the right to due process. In addition, the identification and publication of prosecutorial priorities and policies should be promoted to facilitate fair, just and credible prosecution practices.

28. The Summit further recommends that peacekeeping and post-conflict programmes should include as a necessary component a full range of processes and mechanisms to rebuild the capacity of national justice sector institutions, including as a matter of priority, the capacity of prosecution services, in order to fill the rule of law vacuum in post-conflict societies particularly with a view to addressing organized crime, corruption and terrorism in an effective manner. In this connection, the role of prosecutors in the institutionalization of accountability processes and in stimulating or supporting their fair operation should further be strengthened.

29. The Summit also recommends that, in adopting measures aimed at preventing and controlling acts of terrorism, States should adhere to the rule of law and comply with their obligations under international law, in particular human rights law, refugee law and international humanitarian law.

30. The Summit recommends that restrictions to the right of defence aiming at combating serious forms of crime, and particularly terrorism, should be strictly proportionate to their purpose and need to be counterbalanced by measures aimed at maintaining the fairness of the proceedings in order to ensure that procedural rights of the defendants are not drained of their substance.

31. The Summit further recommends that, particularly in emergency situations, States that adopt extraordinary measures should not depart or derogate from their obligations ensuing from the international instruments of protection of human rights and observance of international humanitarian law, as well as under the conditions set by international law. Appropriate action should be taken to reassess on a regular basis the circumstances that led to the adoption of such measures with a view to lifting the derogations as soon as these circumstances no longer exist.

4. Measures and mechanisms to strengthen international cooperation among prosecution services

32. The Summit recommends that States should consider expanding their extradition treaty network and/or enacting or revising extradition domestic legislation to be used as a supplementary legal framework for surrendering fugitives to a requesting State or as a procedural or enabling framework in support of the implementation of extradition treaties or arrangements.

33. The Summit also recommends that further action should be taken at the national level to ease difficulties arising from the strict application of traditional grounds for refusing extradition and that States should take to that effect appropriate measures aimed, *inter alia*, at:

- (a) Reviewing and simplifying the double criminality requirements;
- (b) Applying to a broader extent the principle *aut dedere aut judicare*, where extradition cannot be granted, especially where there is sufficient evidence; and
- (c) Enabling temporary surrender of a person sought to the requesting State for purposes of trial only.

34. The Summit further recommends that, in regulating extradition practice, States should consider simplifying evidentiary requirements for granting an extradition request, particularly with respect to the quantum of proof required and to the methods of proof allowed. Particularly for those States which require a preliminary review of the sufficiency of the evidence, extradition proceedings should not require in effect an abbreviated trial on the merits in the requested State.

35. The Summit also recommends that, in order to achieve judicial economy and accelerate the extradition process without prejudicing the effectiveness of judicial review, appropriate and expeditious appeal mechanisms should be adopted in accordance with basic constitutional principles. This appeal would be heard and determined at the completion of all administrative and judicial processes and would review appropriate factual and legal issues in order to eliminate repeated and partial reviews.

36. The Summit recommends that flexibility in mutual legal assistance domestic laws and practice should be encouraged to enable States to afford one another the widest measure of cooperation by, *inter alia*, minimizing the ambit of relevant

grounds for refusal and allowing for the execution of relevant requests in accordance with procedures that make possible the use of evidence in the foreign proceedings.

37. The Summit further recommends that, particularly in cases of cooperation in the investigation of corruption and economic and financial crime, States that have not yet done so should put in place appropriate legal framework in order to:

(a) Ensure that the provision of assistance is not denied on the grounds of bank secrecy; and

(b) Enable the provision of assistance even in the absence of dual criminality when such assistance does not involve coercive measures.

38. The Summit also recommends that appropriate action should be taken at the national level in order to enhance the effectiveness of mutual legal assistance by:

(a) Establishing effective central authorities to deal with relevant requests timely;

(b) Ensuring the dissemination of up-to-date contact information for central authorities;

(c) Ensuring consistency of central authorities for mutual legal assistance purposes under different international instruments. These authorities should be given an institutional position sufficiently autonomous and independent; and

(d) Encouraging the direct transmission of the requests and the spontaneous transmission of information.

39. The Summit recommends that more concerted efforts should be made to ensure awareness of national legal requirements and best practices for officials involved in mutual legal assistance proceedings, particularly through:

(a) Increasing availability and use of practical guides regarding national mutual legal assistance regulatory framework and practices (domestic manuals, guides for foreign authorities); and

(b) Increasing training of personnel involved in mutual legal assistance proceedings.

40. The Summit recommends that further consideration should be given to ways and means of enhancing direct personal contacts between officials of the central authorities, prosecutors and investigators with a view to developing the familiarity and trust necessary to achieve best results. In this connection, it is recommended that States take initiatives such as the exchange of liaison police officers, magistrates or prosecutors either by posting permanent members of staff to the central authorities of other countries, or by arranging short term exchanges of staff.

41. The Summit also recommends that, wherever possible, States should make use of modern means of communications to transmit and respond to urgent requests for mutual legal assistance, as well as of the most modern mechanisms for providing assistance, especially in areas such as:

(a) The taking of evidence via video-link; and

(b) The exchange of DNA material to assist in criminal investigations.

42. The Summit recommends to States that priority should be accorded to maximizing availability and use of resources to enable effective mutual legal assistance, particularly by providing central authorities with adequate human and material resources and optimizing language capabilities by virtue of bilingual or multilingual personnel working with such authorities.

43. The Summit also recommends that States should take decisive steps to improve international cooperation for purposes of confiscation and afford, to that effect, the widest possible assistance to other countries in relation to the identification, tracing, freezing or seizure and confiscation of proceeds of serious crime, as well as property, equipment or other instrumentalities used in or destined for use in the commission of a criminal offence. In this connection, appropriate action should be taken to address operational problems arising from delays in the execution of foreign restraint and confiscation orders, as well as to make best use of the methods available for their enforcement.

44. The Summit further recommends that States should consider concluding agreements or arrangements on asset-sharing with countries involved in tracing, freezing or seizure and confiscation of assets originating from organized crime activities. In this connection, Economic and Social Council resolution 2005/14 of 22 July 2005, on the model bilateral agreement on the sharing of confiscated proceeds of crime or property covered by the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, could be used as a guiding tool for the conclusion of such agreements or arrangements.

45. The Summit also recommends that national competent authorities should be encouraged to make better use of their international networks of contacts in order to exchange information on national regulations and operational experience with a view to facilitating special investigative techniques in an international context.

46. The Summit further recommends that appropriate action should be taken to put in place the required legal and regulatory framework at both the national and international levels that would govern joint investigations where the offence or offences under investigation involve aspects of transnationality. Such a framework should promote the effectiveness of this form of cooperation by providing the necessary basis to address practical issues that often arise in this respect, including lack of common standards and accepted practices or possible conflicts on the actual supervision of joint investigative teams.

47. The Summit also recommends that special efforts should be made with a view to enhancing the efficiency of law enforcement cooperation mechanisms by, inter alia, developing effective systems of information-sharing, establishing channels of communication between competent authorities and concluding arrangements to foster assistance or promoting joint activities of operational nature.